

Date Revised: 08/09/17

Annual Training 2017- Bias-Based Policing

Instructors: M. Roth

Course Goal: To provide students with the awareness of their own personal biases.

Module Goal: To allow students to measure biases and assess how that might influence policing.

Learning Objective: Learners will distinguish biases and their relationships to current law, case law and policy.

Module Time: 2 hour

Classroom size should have a projector, screen, and computer with internet access for PowerPoint.
Classroom large enough to accommodate up to 35 students

Computer or laptop with PowerPoint capabilities
Computer / laptop wireless remote
Computer / laptop with internet capabilities for instructor
Projector to use for PowerPoint presentation
Projector screen
Speakers
Extension cords with 4-outlets for each table (4)
Student roster

Module Summary:

Learners, working collaboratively, will engage in a facilitated discussion on Bias-Free Policing.

Outline	Instructor notes
<p><u>Lexipol 402 Racial or Bias Based Profiling</u></p> <p>A. Purpose</p> <ol style="list-style-type: none"> 1. Do not engage in racial/bias based profiling 2. Do not violate related laws <p>B. Definition 402.1.1</p> <ol style="list-style-type: none"> 1. An inappropriate reliance on factors such as <ol style="list-style-type: none"> a) <i>race,</i> b) <i>ethnicity,</i> c) <i>national origin,</i> d) <i>religion,</i> e) <i>sex,</i> f) <i>sexual orientation,</i> g) <i>economic status,</i> h) <i>age,</i> i) <i>cultural group,</i> j) <i>disability or</i> k) <i>affiliation with any other similar identifiable group</i> 2. Use as a factor in deciding whether to provide service or 3. Take law enforcement action without <ol style="list-style-type: none"> a) <i>Independent reasonable suspicion and/or</i> b) <i>Probable cause.</i> <p>C. Policy 402.2 - Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used</p>	<p>Show Video POST Bias Based Policing</p> <p>Scenario 1 Facilitated Discussion:</p> <p>ASK: 1.1 <i>Two cars committed the same violation. Why might the officer have stopped this one?</i></p> <p>ASK: <i>What are the protected classes we are talking about?</i></p> <p>SHOW: Discussion 1 -Sgt. briefing 14th Amendment/4th amendment- (7:30min)</p> <p>ASK/Discussion: 1.2 <i>Describe the 14th Amendment of the US Constitution.</i></p> <p>Section 1 “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”</p> <p>ASK: <i>How does the 14th Amendment protect illegal immigrants?</i></p> <p><i>What in the 14th Amendment addresses the illegal immigrant who is arrested?</i></p> <p><i>How does this relate in the current topic of Immigration?</i></p> <p><i>How does this affect your enforcement of US Immigration laws?</i></p>

<p>as the basis for providing differing levels of law enforcement service or the enforcement of the law.</p> <p>D. 402.3- Racial or Biased based Profiling Prohibited without other factors race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause such as suspect description</p> <p>E. 402.4.1 Reason for Detention</p> <ol style="list-style-type: none"> 1. Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class. 2. To the extent that written documentation would otherwise be completed <ul style="list-style-type: none"> (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable. 3. Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting. <p>F. 402.5 Administration</p> <ol style="list-style-type: none"> 1. Each January, the Patrol Division Commander shall <ol style="list-style-type: none"> a) Review the Department's effort to prevent racial/bias based profiling and submit an overview, including public 	<p>SHOW: Interviews 1: (6:10 min) ASK: 1.3 Describe <i>Whren v. United States</i></p> <p>ASK: How does recent case law <i>City of San Jose vs. Superior Court (Smith)</i> relate to the <i>Whren</i> decision? (Cell Phones/CPRA)</p> <p>Follow-Up: How are you mitigating those decisions currently within your unit?</p> <p>SHOW: Scenario 2</p> <p>Facilitated Discussion:</p> <p>ASK: 2.1 How would you ensure that the drivers knew your investigation would not be impacted by any bias?</p> <p>Show Discussion 2 -Sgt. briefing 14th Amendment/4th amendment- (6:15min)</p> <p>Discussion 2.2 Describe additional ways to address this situation.</p> <p>ASK What are some other things you might say to the drivers?</p> <p>Show Interviews 2: (3:20 min)</p> <p>Task 2.3 ASK Do you think the officers should address the driver's personal bias? Why, or why not?</p> <p><u>Decision-Making</u></p> <p>Show Intro (0:40) Show Scenario 3 (2:00min)</p> <p>Task 3.1 ASK: How would you handle this call?</p> <p>Show Discussion 3- (6 min)</p> <p>3.2 ASK: Would you have made contact with the individuals? Follow-Up: Why or why not?</p>
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<p>concerns, to the Chief of Police.</p> <p>b) This overview shall not contain any identifying information regarding any specific complaint, citizen, or officer.</p> <p>G. 402.6 Supervision and Accountability</p> <p>1. Supervisors shall ensure that all personnel in their command are familiar with the content of this policy and are operating in compliance with it.</p> <p>a) This supervisory responsibility includes monitoring employee compliance with this General Order</p> <p>b) Determining if noncompliance is</p> <p>(1) Intentional or</p> <p>(2) Because of a lack of training and initiating the appropriate</p> <p>H. 402.7 Training</p> <p>1. Every 5 years or sooner if deemed necessary to keep current with changing trends</p> <p>2. Per Penal Code § 13519.4(i).</p>	<p>Show Interviews 3 (4 min)</p> <p>3.3 ASK <i>What steps could be taken to educate both sides of the community on issues like this?</i></p> <p><u>The Community</u></p> <p>Show Intro</p> <p>Show Scenario 4</p> <p>4.1 ASK: <i>How would you resolve this situation?</i></p> <p>Show Discussion 4 (6:45min)</p> <p>4.2 ASK <i>What actions should the partner officer take?</i></p> <p>Show: Interviews 4 (6:00 min)</p> <p>4.3 ASK: <i>What actions can officers take to help build community trust?</i></p> <p>Show Scenario 5 (6:30min)</p> <p>5.1 ASK: <i>Describe effective community partnerships in your area. What makes them successful?</i></p> <p>Show Discussion 5 (5:30min)</p> <p>5.2 ASK <i>As an individual, what can you do to build and maintain community trust?</i></p> <p>Show Interview 5 (5:45min)</p> <p>5.3 ASK <i>What community resources are available in your area?</i></p> <p><i>How do you maintain or improve agency interaction with those resources?</i></p> <p>If time permits;</p> <p>SHOW POST Procedural Justice Video</p>
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Resources:

14th Amendment

Section 1 "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Case Law 14th

US v. Wong Kim (1898) Kim born here by Chinese Parents left to China, came back and denied entry. FTB citizen.

More recently, the U.S. Supreme Court ruled in Zadvydas v. Davis (2001) that "due process" of the 14th Amendment applies to all aliens in the United States whose presence maybe or is "unlawful, involuntary or transitory."

Three key Supreme Court decisions in 1886, 1896 and 1903 laid the 14th Amendment basis for the consistent ruling of the court that aliens, legal and illegal, have constitutional protection in criminal and certain civil affairs in the justice system.

In Yick Wo v. Hopkins (1886), the court ruled that:

Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons of similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution [the 14th Amendment].

In Wong Win v. United States (1896), the court ruled that:

It must be concluded that all persons within the territory of the United States are entitled to the protection by those amendments [Fifth and Sixth] and that even aliens shall not be held to answer for a capital or other infamous crime, unless on presentment or indictment of a grand jury, nor deprived of life, liberty or property without due process of law.

In summary, the entire case of illegal aliens being covered by and protected by the Constitution has **been settled law for 129 years and rests on one word: "person."** It is the word "person" that connects the dots of "due process" and "equal protection" in the 14th Amendment to the U.S Constitution and it is those five words that make the Constitution of the United States and its 14th amendment the most important political document since the Magna Carta in all world history.

"Aliens," legal and illegal, have the full panoply of constitutional protections American citizens have with three exceptions: voting, some government jobs and gun ownership

<http://thehill.com/blogs/pundits-blog/immigration/255281-yes-illegal-aliens-have-constitutional-rights>

4th Amendment

Whren v US

Facts of the case

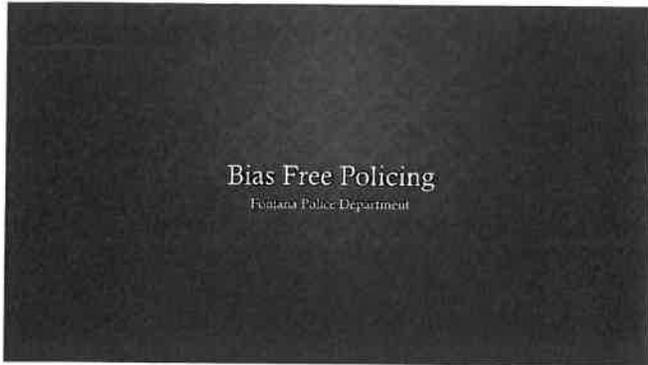
Whren and Brown were driving in a 'high drug area.' Some plainclothes officers, while patrolling the neighborhood in an unmarked vehicle, noticed Whren and Brown sitting in a truck at an intersection stop-sign for an unusually long time. Suddenly, without signaling, Whren turned his truck and sped away. Observing this traffic violation, the officers stopped the truck. When they approached the vehicle, the officers saw Whren holding plastic bags of crack cocaine. Whren and Brown were arrested on federal drug charges. Before trial, they moved to suppress the evidence contending that the officers used the traffic violation as a pretext for stopping the truck because they lacked either reasonable suspicion or probable cause to stop them on suspicion of drug dealing. The District Court denied the motion to suppress and convicted the petitioners. The Court of Appeals affirmed. The Supreme Court granted certiorari.

Question

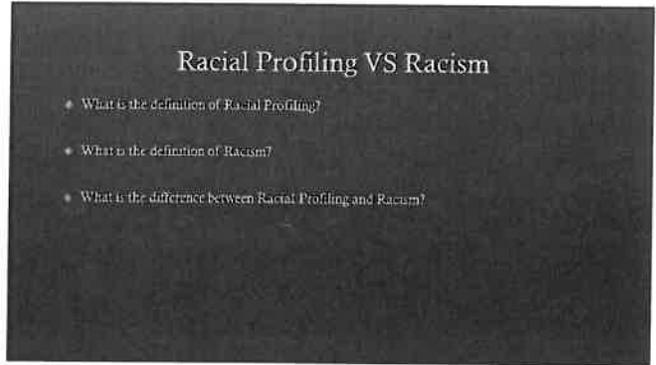
Did the officers conduct an unreasonable search and seizure in violation of the Fourth Amendment?

Conclusion UNANIMOUS DECISION - MAJORITY OPINION BY ANTONIN SCALIA

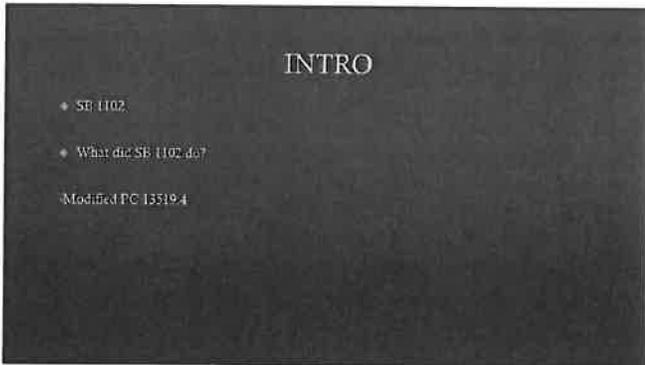
No. The unanimous Court held that as long as officers have a reasonable cause to believe that a traffic violation occurred, they may stop any vehicle. In the present case, the officers had reasonable cause to stop the petitioners for a traffic violation since they sped away from a stop sign at an 'unreasonable speed' and without using their turn signal. Thus, since an actual traffic violation occurred, the ensuing search and seizure of the offending vehicle was reasonable, regardless of what other personal motivations the officers might have had for stopping the vehicle. Furthermore, the Court rejected the claim that the anxiety, confusion, and haste which the petitioners experienced from the stop-and-search outweighed the government's interest in traffic safety. While the Fourth Amendment does require a balancing test between a search-and-seizure's benefits and the harm it might cause to the individual, such a test only applies to unusually harmful searches and seizures. There was nothing unusually harmful about this traffic stop.



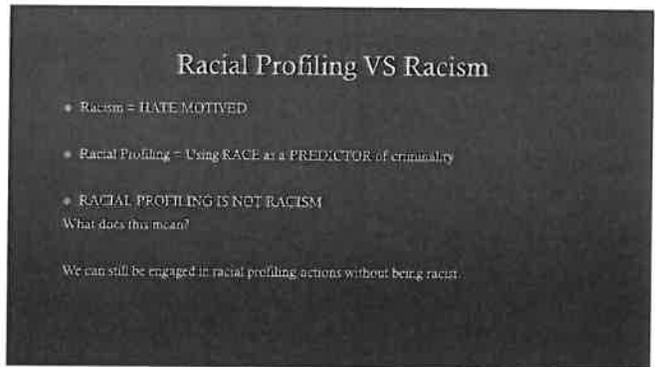
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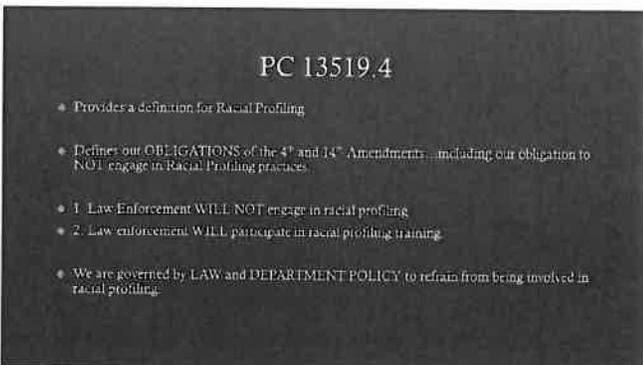
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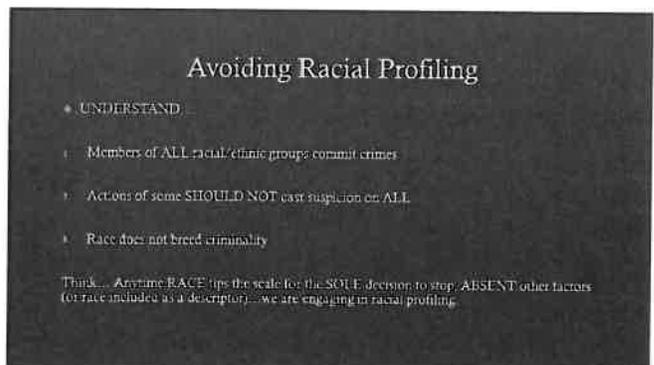
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402 – Bias-Based Policing

- Bias Based Policing – An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4).

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402.4.1 – Reason For Contact

- Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.
- To the extent that written documentation would otherwise be completed (e.g., arrest report, field interview (FI) card), the involved officer should include those facts giving rise to the contact, as applicable.
- Except for required data collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

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402.2/402.3

- 402.2 – The Fontana Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this [department/office] to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.
- 402.3 – Bias-based policing is strictly prohibited.
- However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information concerning a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

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What Does This Mean?

1. Be detailed and thorough in our reports regarding the reasons for our contacts. This will help avoid questions of racial profiling to come up. We want to describe the circumstances so as to let up to the court to decide. (Ex. 1538.5 motions, law suits, Brady list, bad case law, juror nullification, admin action for policy violations)
2. Nothing in our policy requires us to document a contact that wouldn't normally be documented through a report.

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KEY POINTS

- It is our policy to enforce the law **EQUALLY** without discrimination
- Bias based policing is **STRICTLY PROHIBITED**
- **NOTHING** in the policy prohibits us from considering race/ethnicity/etc in **COMBINATION** with other credible, distinct information connecting a person to a specific crime/unlawful incident...including specific criminal/crime patterns

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402.5 - Supervisor Responsibilities

- Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaint Policy.
- Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
 - Supervisors shall document these discussions in the appropriate manner.
- Supervisors should periodically review recordings (portable audio/video recordings, Mobile Data Computer (MDC) data and any other available resources used in decisional contact between officers and the public to ensure compliance with this policy.
 - Supervisors shall initiate these periodic reviews.
 - Recordings of data that suggest a potential instance of bias based policing should be appropriately retained for administrative and/or legal purposes.
- Supervisors shall initiate investigations of any actual or alleged violation of this policy.
- Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this [department/office] who discloses information concerning bias based policing.

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- Supervisors have a responsibility to monitor for situations of racial profiling
- Supervisors will discuss issues with officers
- MDC, BWC recordings are subject to periodically being reviewed
- Suspected issues of racial profiling will be reported and investigated

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4th Amendment

- "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

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Whren V United States

- CIRCS
- 1. Officers observed a vehicle occupied by "youngful" African American male in a high drug area
- 2. Vehicle stopped at a stop sign for longer than normal
- 3. Vehicle makes a turn without a signal
- 4. Vehicle speeds away from stop sign at high rate of speed

T-Stop occurs and officers observe crack cocaine in the vehicle

Defendant tried to appeal stating there was no PC for the stop and it was based on race

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14th Amendment

- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Whren V United States

- Unanimous US Supreme Court decision (multiple levels of court appeals)
- "any traffic offense committed by a driver was a legitimate legal basis for a stop"
- The personal or subjective motives of an officer are not a factor of whether the cause for a stop is sufficient

KEY POINTS:

1. Pretext stops are good with PC based on a law violation or reasonable suspicion
2. The violation does not have to be the motivation for the stop
3. Officers are still good to use training, experience, intuition, and instinct

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4th and 14th Amendments

- Two Point Test
- From stop good under the 4th and 14th amendments
- 4th - Must have reasonable suspicion with PC for traffic violation
- Think before you stop on PC
- Any traffic violation
- Absoluter a person to a specific criminal activity or crime - this can find the person to a crime?
- 14th - Was an officer's motivation for the stop was not your decision to stop (cannot used as a particular specific decision)
- Can't be motivated by our conduct
- Objective - by police - 14th Motive of PC

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