

*1999 - 2000*

*Ventura County Grand Jury Report*

**An Investigation Into Alleged Racial Profiling  
by the Ventura County Sheriff's Department**



# An Investigation Into Alleged Racial Profiling by the Ventura County Sheriff's Department

## Background

Effective January 1, 2001, California Penal Code section 13519.4(e) provides that, "A law enforcement officer shall not engage in racial profiling." Subsection (d) defines "racial profiling" as the "practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." To facilitate compliance, subsections (f)-(I) mandate POST training for officers beginning January 2002, with a refresher course required every 5 years.

The code provisions are new, but the principle they reflect is not. The United States Supreme Court has long said that the Fourth Amendment requires detentions to be supported by facts and inferences that support a reasonable suspicion that the particular individual detained may be involved in criminal activity, *Terry v. Ohio* (1968) 392 U.S. 1, 30.

In *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 886, the Court said that a suspect's race alone could not amount to reasonable suspicion. In language similar to California's new statute, the Ninth Circuit said several years ago that reasonable suspicion cannot be based on "broad profiles, which cast suspicion on entire categories of people."

However, the courts also recognize that where the circumstances make race relevant to the level of suspicion attaching to an individual, it can be a factor in calculating reasonable suspicion – it simply cannot be the **Sole** factor. *Brignoni-Ponce*, supra, 422 U.S. 87 (statistical disparity may sometimes make appearance "a relevant factor"); *U.S. v. Montero-Camargo* (9th Cir. 2000) 209 F.3d 1122, fns. 21, 22, 25 (race might be "one factor relevant to reasonable suspicion" when a suspect is described as being of that specific race, but cannot be the sole criterion for detention).

As a result of a citizen complaint, the Grand Jury looked into the subsequent investigation conducted by the Ventura County Sheriff's Department of the alleged racial profiling of a newspaper reporter in Moorpark.

## Methodology

On March 22, 2001, as part of its investigation into the citizen's complaint, the Grand Jury requested input from the National Association for the Advancement of Colored People (NAACP) as to names, dates, and law enforcement agency involvement of alleged racial profiling throughout the County of Ventura. The NAACP informed the Grand Jury that their reply would be forthcoming no later than May 15, 2001, but by May 23, 2001, no response to that request has been received.

The Grand Jury reviewed the complaint's investigative file provided by the Sheriff's Department. Particular scrutiny was applied to verification of the initial illegal soliciting report, and comparison of the physical description of that suspect to that of the newspaper reporter.

The Grand Jury also carefully read the reporter's first hand complaint to the Sheriff, of the incident in question.

## Findings

- F-1. A trio of men was stopped by deputies for illegally soliciting cell phones in the City of Moorpark.
- F-2. The following day, the newspaper reporter was stopped by a deputy who thought he was one of the same people who had been accused of illegally soliciting the day before. After questioning the reporter and viewing his identification, the officer concluded he was not the same man who had been stopped the day before.
- F-3. Later, the reporter filed a complaint with the Sheriff's Department alleging racial profiling.
- F-4. The Sheriff's investigation into that complaint confirmed the existence of an inquiry the day before that involved a man matching the general description of the newspaper reporter. Height, weight, complexion, race, and age were similar or the same.
- F-5. The investigation showed that the alleged solicitor and the reporter were both dressed in casual business clothing, each carrying a cellular phone and an attaché case.
- F-6. None of the witnesses interviewed reported seeing anything resembling an argument between the reporter and the deputy.
- F-7. The reporter was seen on the street using a cell phone on the day following the incident with the men illegally soliciting cell phones in the area.
- F-8. During questioning, the reporter and deputy took the time to go to the reporter's car to retrieve picture identification that established him as a reporter, and not a subscription salesman.
- F-9. The deputy's calls in to the dispatcher reporting the beginning and ending of the stop involving the reporter showed that the entire contact took less than five minutes.
- F-10. As a result of the investigation, the deputy was exonerated of charges of racial profiling.
- F-11. In the past five years, there have been five complaints regarding alleged racial profiling; four have been resolved, and one is still under investigation.

## Conclusions

- C-1. The Sheriff's Department investigation into the incident was thorough and professional. (F-1, F-2, F-3, F-4, F-5, F-6)
- C-2. Exoneration of the deputy of the charge of racial profiling was reasonable and proper. (F-7)
- C-3. It appears the deputy in this matter didn't violate the law. (F-1 through F-11)

## Recommendations

How can officers insure that they avoid "racial profiling," while taking legitimate account of race in establishing reasonable suspicion (probable cause) to detain? Pending implementation of the POST training program on profiling, the Sheriff's Department might wish to consider interim steps in order to comply with both the Fourth Amendment and PC 13519.4(e), including these:

- R-1. Do not rely on race without explaining why.
- R-2. In writing crime reports, after entering initial comprehensive suspect descriptions, do not repeat references to racial or ethnic descriptions, such as "black male," "Asian female," or "white male."
- R-3. Do not differentiate in the restraint or treatment of suspects based on race.
- R-4. Identify and document all suspicious factors justifying the action taken. If race is a legitimate factor, fully explain why and do not emphasize it disproportionately in reports or testimony. Where objective facts establish the relevance of a suspect's race, it is permissible to include race as one factor in justifying a detention or other action. However, in all cases, there must be articulated, individualized reasons for the official action taken. Race may not be the exclusive reason.

## Commendation

The Sheriff Department's response to the newspaper coverage of the reporter's complaint, and their willingness to cooperate with the Grand Jury in opening their files for review is to be commended. Sheriff Bob Brooks stated that he takes "the issue of racial profiling or any form of discrimination very seriously." He also takes "very seriously the matter of public trust." We are satisfied that with this approach to this issue, all citizens of Ventura County are being well served. (C-1, C-2, C-3)

## Responses Required

Ventura County Sheriff's Department (R-1, R-2, R-3, R-4)

## Addendum

After this report was written and was being processed, pertinent materials were received by the Grand Jury from the NAACP. These materials will be turned over to the 2001-2002 Grand Jury for their consideration.