

Posted 11/16/10

## AN EPIDEMIC OF BUSTED TAIL LIGHTS

### *LAPD struggles over claims of racial profiling*

*By Julius (Jay) Wachtel.* Here's a puzzler for our loyal readers. Click [here](#) to read LAPD's policy on "biased policing". Then read it again. Now imagine you're an LAPD officer patrolling an area where shootings involving ethnic gangs have occurred. You spot an older, beat-up car slowly circling the block. It's occupied by sloppily-attired young male members of that ethnic group. Children and pedestrians are present. Do you: (a) go grab a donut, (b) wait until shots are fired, or (c) pull the car over?

If you answered (c) you may wind up with a lot of explaining to do. Or not. It really depends on which paragraph of section 345 is controlling. The first, which paraphrases [Terry v. Ohio](#), appears to leave race open as one of the factors that can be used when deciding to detain someone for investigation:

Police-initiated stops or detentions, and activities following stops or detentions, shall be unbiased and based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable cause as required by federal and state law."

But the very next paragraph appears to limit the use of race to situations where cops are looking for a specific individual:

Department personnel may not use race...in conducting stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group. Department personnel seeking one or more specific persons who have been identified or described in part by their race...may rely in part on race...only in combination with other appropriate identifying factors...and may not give race...undue weight.

Section 345's prohibition against using race as an anticipatory factor has spurred spirited debate within LAPD. While everyone agrees that race should never be the *sole* factor, many cops don't think that it should *always* be out of bounds. In a [notable recent conversation](#) (it was, believe it or not, inadvertently taped) an officer told his superior that he couldn't do his job without racially profiling. Somehow the recording made its way to the Justice Department, which is still monitoring the LAPD in connection with the [Rampart scandal](#). As one might expect, DOJ promptly fired off a letter of warning.

Chief Charlie Beck, who's struggling to get the Feds off his back, quickly denied that the officer's comments reflect what most cops really think. Still, the faux-pas reignited a long-simmering dispute between LAPD and the Los Angeles Police Commission, whose president, John Mack, a well-known civil rights activist, has bitterly accused the department of ignoring citizen complaints of racial profiling.

Each quarter the [LAPD Inspector General](#) examines disciplinary actions taken against officers during that period. Last year, as part of an agreement that relaxed DOJ oversight, LAPD IG investigators started reviewing the adequacy of inquiries conducted by LAPD into alleged instances of biased policing (LAPD's preferred term for racial profiling.)

The [2009 second quarter report](#) summarized biased policing complaints for the prior five quarters. Out of 266 citizen complaints of racial profiling, zero were sustained. This was by far the greatest such disparity for any category of misconduct. IG employees examined a random sample of twenty internal investigations of biased policing. Six were found lacking in sufficient detail to make any conclusions. Incidentally, twelve of the police-citizen encounters involved traffic offenses. Ten were for no tail lights, cracked windshields, tinted front windows, no front license plate and jaywalking. An eleventh was for speeding, a twelfth for riding a dirt bike on a sidewalk.

The most recent report, covering the [fourth quarter of 2009](#), revealed 99 citizen allegations of biased policing; again, zero were sustained. The IG reviewed a sample of eleven investigations; it criticized two as inadequate. Four officer-citizen encounters had complete information. Each was precipitated by a traffic violation: one for running a red light, one for no brake lights (the driver later insisted only his supplemental third light was out), one for not wearing a seat belt, and one for tinted front windows.

Earlier this year DOJ criticized the IG's investigation review process as superficial. Biased policing claims will henceforward be investigated by a special team, using new protocols. Their first product is due out soon.

Cops have so many ostensible reasons for making a stop that divining their underlying motive, if any, is probably a non-starter. That was conceded by no less an authority than the Supreme Court. Here is an extract from its ruling in [Whren v. U.S.](#):

The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.

It's widely accepted in law enforcement (and apparently, by the courts) that using all available laws isn't cheating – it's simply good police work. That can make it well-nigh impossible to determine whether racial bias was a factor in making a stop. John Mack may not like it, but the commanding officer of Internal Affairs was probably just being candid [when he told the police commission](#) that sustaining an allegation of biased policing literally requires that an officer confess to wrongdoing.

What can be done? Target individuals, not ethnic groups. Selecting low-income, minority areas for intensive policing, even if they're crime "[hot spots](#)," can damage relationships with precisely those whom the police are trying to help. Aggressive stop-and-frisk campaigns [such as NYPD's](#) can lead impressionable young cops to adopt distorted views of persons of color, and lead persons of color to adopt distorted views of the police. Our nation's inner cities are already tinderboxes – there really is no reason to keep tossing in matches.

Target individuals, not ethnic groups. Repeat at every roll-call. And be careful out there!