

Roundtable on Current Debates, Research Agendas and Strategies to Address Racial Disparities in Police-initiated Stops in the UK and USA

**John Jay College
August 10-11, 2011**

Prepared by Dr. Jon M. Shane, John Jay College of Criminal Justice
Especially for this conference

Police-Citizen Encounters

It is widely recognized that the police have been granted great discretion when dealing with the public. But, just how far can police impinge upon a citizen's liberty in the interest of crime control? American policing is a product of English heritage, which places great value on individual liberty. Implicit in the notion of safeguarding individual liberty is that police officers must not unreasonably restrain a person from exercising certain inalienable rights. To that end the Anglo American legal tradition places limitations on government authority particularly the police (Bayley, 1994). The limitations placed on police authority dictate that all police-citizen contacts pass constitutional muster, meaning they must be "reasonable." Therefore, when police officers have contact with citizens, their actions must be balanced against the requisite level of constitutional authority. How police officers formulate their decisions and transform citizens into suspects is an important process. When doing so officers are required to corroborate and strengthen their suspicions or dispel them as they ascend the "staircase of belief and proof" (Holtz, 2011). This process is often fraught with legal and procedural ambiguity that may lead to interpretation and application problems for practicing police officers, particularly when shaping discretionary judgments (Eterno, 2003). In the face of such gaps police officers may rely on extremes to resolve matters such as extralegal factors, becoming overly authoritative, over or under enforcing the law and generally overreacting. If an officer violates the procedural requirements commanded by the substantive law, judicial precedent or department policy, then the officer may be held accountable. Equally important, when a police officer violates a citizen's constitutional protection, police legitimacy is vitiated and restoring public trust may be difficult.

This paper is divided into three sections: Part I reviews the lawfulness and legitimacy of police-citizen encounters including regulating police-citizen interaction, officer discretion, equitability during police-citizen encounters, and accountability. Part II examines the nature of police-citizen encounters, with an emphasis on building community capacity and the extralegal factors that shape the encounter. Part III examines the consequences from such encounters, including the impact on police-community relations and citizen satisfaction.

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Part I: Lawfulness and Legitimacy of Police-Citizen Encounters

One of the principles of democratic policing is that authority is granted or revoked by the people governed; this distinguishes democratic societies from totalitarian societies. Police authority is a necessary ingredient for ferreting out criminal activity and maintaining order, however the way in which authority is applied by individual police officers must be regulated. To be effective in their law enforcement and order-maintenance role, the police need public support and cooperation. Fortunately, they benefit from voluntary support and cooperation from the majority of the public, most of the time. The nexus between support and cooperation are the judgments made by the public about the lawfulness and legitimacy of the police. The notion that the public should cooperate with and obey the police hinges on the public's view that the police are a legitimate legal institution, entitled to be obeyed. This view of police legitimacy is often predicated on public sentiment about the way in which police apply their authority. It is the characteristics of "procedural justice" that are important to public sentiment and often influence opinion more heavily than police effectiveness in controlling crime. Consequently, police legitimacy is built around a reputation for dignity, respect and fairness more so than fear of punishment.

This section reviews a body of literature that examines how police-citizen interaction is regulated, including administrative rulemaking and other influences on officer discretion, equitability during police-citizen encounters and police accountability, including the implications of technology to improve accountability.

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Part II: Nature of Police-Citizen Encounters

The police typically encounter citizens on three different occasions: 1) to enforce the law, 2) to maintain order and 3) to provide service. Each police-citizen encounter is a chance to reinforce confidence in the police and to potentially lower the incidence of crime, or to diminish respect and confidence and potentially increase crime. The difference may reside in the style of policing adopted by the agency. Wilson and Boland (1978) characterized police organizations as either “passive” or “aggressive.” An agency that adopts an “aggressive” or “legalistic” style, oriented toward crime control, is tasking its officers with maximizing intervention. An agency that adopts a “passive” or “watchman” style, oriented toward service, is said to minimize public contact. The style of policing adopted by the agency’s leadership may dictate officer behavior. For example, the “get tough approach” practiced in Indianapolis, Indiana led to a higher incidence of use of force than the “toned-down approach” of “problem-solving” practiced in St. Petersburg, Florida (National Research Council, 1994:283). Similarly, Gould and Mastrofski (2004) discovered that when police agencies declare “war on drugs,” an aggressive organizational style, unconstitutional searches increase. These organizational characteristics, often coupled with management philosophy and the local political culture, may influence how police officers manage a given encounter to engender public support and minimize violence, while concurrently controlling crime.

This section examines the process by which the police and the public, through various interaction schemes, can become co-producers of public safety to build community capacity, a crime control correlate, while accounting for the extralegal factors that either forge or forestall social ties.

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Part III: Consequences from Police-Citizen Encounters

Providing police service in a democratic society inevitably produces opportunities for collaboration and conflict. This is reflected in contemporary efforts to promote community policing and partnership building. It is also reflected in the tumult that occurs when police officers use physical force, fail to maintain neutrality, fail to adhere to the rules, and fail to treat citizens with dignity and fairness. Such was the case during the civil rights era of the 1960's and the racial profiling period of the 1990's; the outcome for police departments was civil disorder, costly civil litigation, embarrassing publicity and criminal prosecution of police officers, yet new opportunities to forge stronger community relations emerged. Police-citizen encounters that produce conflict and negative emotion are long-lasting and vastly recounted over those interactions that produce collaboration (Dean, 1980:467; Rosenbaum, et al. 2005:343; Weitzer and Tuch, 2005:283). They originate from both direct and vicarious experience with police. Some of the most notorious police-citizen encounters in the United States can be traced to egregious police-initiated behavior, often involving minority citizens and white police officers. Building bridges and repairing the resulting physical and emotional harm can take decades, particularly when the perception lags behind the reality leading to "confirmation bias" (Brehm, Kassin and Fein, 2002: 119).

This section draws from a body of literature on the principles of community policing, human relations and general systems theory to examine police-community relations with an emphasis on police-minority relations and citizen satisfaction. The implications are critical for understanding the tactics and strategies police use and decisions they make as they prevent and control crime, minimize conflict and engender community support.

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