

Controlling Police Officer Behavior in the Field: Using What We Know to Regulate Police-Initiated Stops and Prevent Racially Biased Policing

Michael D. White, Ph.D.

**Associate Professor, School of Criminology and Criminal Justice
Associate Director, Center for Violence Prevention and Community Safety
Arizona State University
411 N Central Ave Suite 600, mail code 4420
Phoenix, AZ 85004-0685
Phone: (602) 496-2351; mdwhite1@asu.edu**

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

John Jay College of Criminal Justice, August 10-11, 2011

Controlling Police Officer Behavior in the Field: Using What We Know to Regulate Police-Initiated Stops and Prevent Racially Biased Policing

Introduction

“Such fundamental change is critical, because history teaches that if reform is to last, it must change the systems and values to which officers adhere rather than just the officers themselves (Skolnick and Fyfe, 1993: 187).”

Police-initiated stops of citizens have become an established crime-control tactic in many police departments, often as part of order maintenance and gun suppression strategies. This practice is rooted in the police powers granted through the U.S. Supreme Court ruling in *Terry v. Ohio* (392 U.S. 1, 1968), which allows police to stop and question a person if the officer has *reasonable suspicion* to believe that the person is engaged in or is about to engage in criminal activity. The stop decision must be based on facts that can be articulated, and if there is a reasonable belief that the individual may be armed, the officer is also permitted to conduct a protective over-the-clothes search for weapons. This tactic has become divisive in some jurisdictions. For example, recent studies show that the New York Police Department (NYPD) has been routinely stopping (questioning and searching), on average, more than 500,000 citizens annually since 2006. This practice has served as a major source of tension between the NYPD and minority communities, and has been tied to substantial increases in civil rights claims against police and citizen complaints (Greene, 1999) and two class-action law suits against the NYPD alleging racial profiling.¹ Similar events have transpired in Philadelphia.²

¹ The first, *Daniels, et al. v. the City of New York*, was filed in 1999 by the Center for Constitutional Rights (CCR) and settled in 2003. Despite this settlement, the CCR filed a second suit in 2008, *Floyd, et al. v. The City of New York*, alleging that the NYPD had violated the earlier settlement and was continuing to “engage in racial profiling and suspicion-less stops of law-abiding New York City residents... (Jones-Brown et al., 2010: 20).”

² The Philadelphia Police Department (PPD) stopped more than 250,000 citizens in 2009, and in November 2010 the ACLU of Pennsylvania filed a lawsuit in Federal Court alleging that the PPD was engaged in widespread racial profiling.

The core controversy surrounding police-initiated stops of citizens centers on the constitutionality of the practice – are police stopping citizens based on race or ethnicity, rather than reasonable suspicion that can be articulated? In other words, does the practice amount to racial-ethnic profiling? A second and equally important issue involves the consequences of the crime-control practice for police legitimacy and police-minority community relations (Tyler, 2006). The purpose of this paper is to assess how police departments can control their officers’ decision-making with regard to police-initiated stops of citizens. That is, how can departments prevent their officers from engaging in racially biased policing?³

This question is examined through a larger discretion control framework, drawing upon what we already know about how police departments can effectively control their officers’ behavior – or misbehavior – in the field. As the quote from Skolnick and Fyfe above suggests, these are complex issues that go far beyond simply removing a few bad apples, or adding a few extra hours of training. Clearly, the challenges surrounding this question are daunting. Also clear however, is that the larger discretion control framework offers numerous lessons on effective internal accountability strategies. These lessons are the focus of this paper. Four different organizational areas are described: 1) careful recruitment and selection (screening out [and in] processes); 2) training; 3) administrative policy; and 4) supervision, accountability and commitment from the Chief. With each area, the paper reviews what we know from prior research on other areas of officer behavior, and highlights how these lessons can guide the dialogue over controlling racial bias in police-initiated stops of citizens. The paper concludes with some final thoughts and ongoing challenges for police accountability.

³ I use the term “racially biased policing” instead of racial profiling because it is more general and encompasses a wider range of officer street behavior.

Lessons Learned from Prior Research on Organizational Control Strategies

Careful Recruitment and Selection of Personnel

More than 40 years ago, the President's Commission on Law Enforcement and the Administration of Justice (1967) recommended proper screening of applicants to identify those who are ill-suited for the policing profession. Though the traditional approach to recruit selection has been focused on "screening out" those who are mentally (or otherwise) unfit to be a police officer, this important process also involves efforts to identify candidates with sought-after qualities who should be "screened in" during the application process. This dialogue over screening out (and in) job applicants has typically occurred within the context of concerns over corruption and brutality, but the lessons are equally relevant for racially biased policing.

"Screening Out" processes: Both empirical research and practical experience have demonstrated that it is very difficult to identify individuals who are unfit for the police profession (Mollen Commission, 1994). For example, Grant and Grant (1995) concluded that "efforts to improve the quality of police officer performance by screening out those recruits who will not make good police officers have generally been unsuccessful." Grant and Grant (1995: 152) were especially critical of psychological testing (e.g., MMPI) and clinical interviews, which seek to identify applicants with "poor mental health and undesirable personality traits." Nevertheless, most police leaders would agree on two key points: 1) that there are certain characteristics that should serve as red flags for potential employment; and 2) police departments should conduct extensive background examinations to determine whether applicants possess those characteristics. In fact, numerous misconduct scandals (e.g., in Miami, Washington, DC and Los Angeles) have been linked to "mass hiring," where departments hired hundreds of

officers in a short period of time and did not carry out thorough selection processes (Skolnick and Fyfe, 1993; Fyfe and Kane, 2006). Background investigations typically include a criminal history check, credit check, and interviews of family members, neighbors, and former employers. Among other red flags such as prior criminal behavior, drug use, poor performance in prior employment, and questionable morality (e.g., lying on the job application), departments should also be looking for any evidence that a candidate possesses prejudicial attitudes that could lead to discriminatory actions on the job. Background examinations are costly and time-consuming, but recent research continues to highlight their importance for screening out poor applicants (e.g., the old axiom, ‘one the best predictors of future behavior is past behavior,’ remains true; Kane and White, 2011). In their study of career-ending misconduct in the NYPD, Kane and White (2009: 765) highlighted the importance of “screening out” processes.

Perhaps the most salient policy implications of the present study relate to departmental screening processes. Because of the low visibility of police work, the unique opportunities for misconduct presented to police officers, and the conflict that often exists between the police and the public in certain communities, it seems clear that police departments should continue to exclude people from policing who have demonstrated records of criminal involvement and employee disciplinary problems. These represent evidence-based policy recommendations for which criminological perspectives developed for the general population (i.e., outside of policing) produced support (e.g., control theories, opportunity theories, and perhaps even routine activities theory).

“Screening In” Processes: The second aspect of recruit selection involves the identification of qualities which “predict” good policing on the street. The interest in identifying those best-suited for police work (rather than those who are ill-suited) gained traction in the 1960s, particularly with the passage of the Civil Rights Act of 1964, amid concerns that prevailing “screening out” processes disproportionately affected minority and female applicants (Grant and Grant, 1995). Kane and White (2009: 765) highlighted this aspect of the application process as well, noting that their “findings also suggest the importance of screening *in* or identifying potential police

officers whose presence in police organizations may have the effect of making them better behaved.”⁴

Though efforts at identifying predictors of good policing have had limited success (see Grant and Grant, 1995), relevant personal attributes would certainly include good judgment, an even temperament, respect and appreciation for diversity, creativity and problem-solving skills, ability to think on one’s feet and handle pressure, and leadership skills. The skill-set for good policing can be traced back to the very earliest writings on the profession by Sir Robert Peel, who stated that recruits should be intelligent, in good physical condition, of good moral character and in possession of an even temperament (Miller, 1977). These qualities have been a mainstay in discussions of good policing since that time: from the President’s Commission on Law Enforcement and the Administration of Justice (1967), the classic works of Bittner (1967) and Muir (1977), to Goldstein’s (1979, 1990) work on problem-oriented policing and the recent work of the National Research Council (Skogan and Frydl, 2004). However, few have captured the complexity of these qualities better than Muir (1977) in his book, *Police: Streetcorner Politicians*. Borrowing from Weber’s model of the professional politician, Muir (1977: 50) argued that the *professional policeman* possesses two important qualities: the officer is morally reconciled with the use of coercive force (called “passion”), and the officer understands the dignity and tragedy of the human condition (called “perspective,” or empathy).⁵ Within this

⁴ Protective factors against misconduct that emerged in their study include college education, older age at appointment, married at appointment, and a recommendation to hire from the department’s background investigator (Kane and White, 2009).

⁵ Muir’s emphasis on coercion reflected a growing recognition of the centrality of force to the police role. Bittner (1970: 40), for example, stated that the capacity to threaten or use physical force is a core function of the police: “Whatever the substance of the task at hand, whether it involves protection against an undesired imposition, caring for those who cannot care for themselves, attempting to solve a crime, helping to save a life, abating

framework, Muir (1977) also described three types of nonprofessional policeman: *enforcers* (those with passion but no perspective); *reciprocators* (those with perspective but no passion); and *avoiders* (those who lacked both passion and perspective).

In his book, Muir (1977) introduces three police officers who work on skid row: two who lacked the qualities to be professional policeman (Jim Longstreet and Bee Haywood), and one who was a professional (Mike Marshall). Muir uses their stories to highlight the consequences of poor policing, and these characterizations are especially relevant for consideration of the importance of recruit selection for reducing the prevalence of racially biased policing. The first officer, Jim Longstreet, was an *avoider* who lacked both passion and perspective. Muir (1977: 65, 67) observed that Longstreet worked hard to avoid “difficulty” and “hot situations.” Unfortunately, this avoidance/neglect strategy had dire consequences for the community, as those “who stood to profit from the policeman’s absence – the strong-arm, the bully, the vicious” took control of Longstreet’s beat. The second officer, Bee Haywood, thrived on using physical violence. He was an *enforcer* who had passion but no perspective. Muir (1977) noted that officers like Haywood experienced a number of negative consequences from their brutal actions. First, the use of violence by police inevitably escalated police-citizen encounters, as residents soon learned what to expect and responded in kind (Muir, 1977). Second, residents learned to avoid the violence-prone officers and gave them little in the way of useful information. As a result, Haywood – and others like him – became completely disconnected from the goings-on in the neighborhood (Muir, 1977).

a nuisance, or settling an explosive dispute, police intervention means above all making use of the capacity and authority to overpower resistance.”

The third officer, Mike Marshall, had both passion and perspective. Unlike Longstreet and Haywood, Marshall had developed both eloquence and empathy in the way he carried out his work; and in doing so, Marshall “neutralized the fear, distrust and antagonism” that characterized the beats worked by Longstreet and Haywood. The consequences of Marshall’s efforts for both himself and his beat were profound.

Marshall’s development of skid row had transformed the dispossessed of that community into ‘good citizens’, into people who had something to lose and therefore something to protect – a line of credit, a decent friendship, a good public servant, whatever it was that Marshall had come to represent through ‘a life spent in doing good before their eyes.’

One consequence of this professional response was that the community tended to develop confidence in the beat patrolman. It became more open, had a greater sense of security, and enjoyed a number of little productive happinesses. For the officer himself, one result was that he developed a feeling of safety, a more informed understanding of his beat, and considerable moral gratification from doing the job well. (Muir, 1977: 79-80)

Relevance for Racially Biased Policing: Though the research by Muir is more than 30 years old, I believe the principles of good policing that he describes are still relevant today. Importantly, these principles – empathy, moral acceptance of coercive authority, protection of the vulnerable, and problem solving – reflect what Bittner (1967) and Muir (1977) called good craftsmanship. These qualities are also central tenets of community and problem-oriented policing, the prevailing philosophies of good policing (or good craft) today. Quite simply, officers who possess these skills will be less likely to engage in racially biased behavior, and departments should aggressively seek them out in their recruitment and selection processes.

Training

Careful recruitment and selection must be followed with effective training in the police academy, as well as later through field and in-service training. At the academy, the goal of training is to provide officers with the basic skills and knowledge necessary to become a police

officer. Cadets must receive a clear message at this early stage that racially biased policing is inappropriate, illegal and that it will not be tolerated. Following graduation from the academy, officers are typically assigned to a veteran officer for a period of field training (the FTO program). The FTO experience is intended to bridge the gap between the classroom environment of the academy and the “real world” of policing on the street. This is a formative stage of a police officer’s career, and it is critically important for field training officers to impart the message that racially biased practices are not consistent with the principles of good policing. Fyfe (1995: 164) highlighted the importance of the FTO role:

When sergeants or older officers give young cops those fabled instructions to ‘forget what they told you in the police academy, kid, you’ll learn how to do it on the street,’ formal training is instantly and irreparably devalued. Worse, when officers actually see firsthand that the behavioral strictures in which they were schooled are routinely ignored in practice, formal training is neutralized and the definitions of appropriate behavior are instead made in the secrecy of officers’ locker rooms.

The final form of training, called “in-service” where officers periodically receiving additional training while on the job, can be used to “refresh” officers on ethical issues, such as avoiding discriminatory decision-making, and to re-send the message that the department leadership denounces racial bias and expects the same from its officers.

In his review of how police training can be structured to reduce violence between police and citizens, Fyfe (1995) presented a number of key recommendations that are equally relevant for how training can reduce racially biased policing. These recommendations and how each applies to racially biased policing are described below.

1. *Effective training in violence prevention and reduction must be realistic.*

For police-citizen violence:

“Training for any endeavor should simulate as closely as possible the actual working conditions for which trainees are being prepared...Although it cannot be eliminated, the artificiality of police training can be minimized. Perhaps the best way to do this is in role-play scenarios in facilities that duplicate as closely as possible the conditions officers encounter in the field, both indoors and outdoors (Fyfe, 1995: 167).”

For racially biased policing:

Many scholars have argued for police training that moves away from the traditional pedagogical, lecture-based curriculum. For example, Bayley and Bittner (1984: 55) stated that learning can be “accelerated and made more systematic” by relevant training that brings the reality of police work into the academy. The question is how best to accomplish this. Andragogy has emerged as an effective adult learning technique in a variety of fields (Brookfield, 1986; Caffarella, 1993; Merriam and Caffarella, 1999), and several scholars have suggested that the approach could serve to increase the relevancy of police academy training (Birzer, 2003). Andragogy highlights self-directed learning with the instructor playing a facilitating role, with students participating in “self-directed group discussions and active debate,” while the instructors “...manage the classroom by allowing participants to share their experiences and knowledge...integrate new knowledge, and...provide strategies that will allow transfer of learning back to the job (Birzer, 2003: 34-35).”⁶ Instead of listening to dry lectures and war stories, recruits learn through critical discussion and interaction with other recruits and instructional staff. When this form of instruction is matched with the scenario-based role-plays described by Fyfe, police instructors can develop valued, informative curricula that eliminate the traditional artificiality of training; more sufficiently prepares recruits for the street; and most importantly, clearly conveys the message that racially biased policing will not be tolerated.

⁶ Proponents of the andragogical approach for police training argue that it: 1) draws on trainees’ past experiences; 2) treats trainees as adults; 3) adapts to the needs of participants; and 4) fosters critical thinking and creativity (Birzer and Tannehill, 2001).

2. *Violence reduction training must be carefully tailored to the officers; and community's experiences and needs.*

For police-citizen violence:

“Every community also possesses unique characteristics that create specific challenges for officers, and these must be taken into account in training...One of the best ways to assure that training closely fits the actual needs of the community and the police is to base it on the real experience of the community and the police. Noteworthy police encounters with citizens – both those that have come to unhappy endings and those in which potential disaster was averted – should be documented and reviewed thoroughly for their training implications (Fyfe, 1995: 171).”

For racially biased policing:

Related to Fyfe's point, for years there have been calls for police to be racially and ethnically representative of the communities they serve (e.g., Commission on Accreditation for Law Enforcement Agencies [CALEA; 2009] standards). There are a number of reasons why diversity in police departments is emphasized, most notably the perceived link between under-representation and long-term tense conflict between police and minority communities (Skolnick and Fyfe, 1993). Moreover, many believe that increasing the diversity of the police force so that it reflects the community demographic trends will enhance police legitimacy, which will ultimately increase community cooperation and police effectiveness (e.g., Skogan & Frydl, 2004). Logically, a representative police department is more likely to understand the culture and views of the community, and is more likely to be tolerant of those views. Importantly, this tolerance and understanding must be imparted early on to recruits during academy training (Haberfeld, 2002).

As an illustration, the Glendale (AZ) Police Department created a training curriculum to address the new state immigration law (SB1070), and they tailored the law to meet the mission of their department and the experiences of their community. This is perhaps best highlighted by the opening statements in the training:

- ⊙ It is the mission of the GPD to protect the lives and the property of the people we serve.
- ⊙ We serve everyone in this community regardless of their immigration status.
- ⊙ We have worked very hard to build a trusting relationship with our community.
- ⊙ We are effective as a law enforcement agency because we do have the community's trust.
- ⊙ It is important that we work to maintain this trust, which is the foundation of our community policing efforts.
- ⊙ It is, however, equally important that we enforce the law. This duty is part of the oath that we took when we became police officers (Glendale Police Department, 2010).

These statements highlight the critical importance of community trust and convey the clear message that Glendale police officers, though required to enforce state law (including the new immigration law), must honor the primary mission of the department. The tailored approach developed by Glendale is very different from other law enforcement agencies that have taken on immigration enforcement as a primary responsibility (e.g., Maricopa County Sheriff's Office).⁷

3. *Violence-reduction training must be continuous.*

For police-citizen violence:

“Some of the most critical police violence prevention and reduction skills are needed so rarely that they are likely to atrophy into uselessness unless they are the subjects of frequent refresher training...Thus, as in medicine and other emergency professions, constant in-service training is necessary to keep officers' most critical, but rarely employed skills at a useful level (Fyfe, 1995: 173).”

For racially biased policing:

⁷ SB1070 was signed into law by Arizona Governor Jan Brewer on April 23, 2010 and was set to go into effect July 29, 2010. Seven different law suits were filed challenging the law, including one by the U.S. Department of Justice. In July 2010, Federal District Court Judge Susan Bolton issued an injunction prohibiting four major components of the law from going into effect. The major thrust of her injunction was that immigration is the responsibility of the federal government, not individual states. On April 11, 2011 the 9th Circuit Court of Appeals upheld Bolton's injunction. Arizona has since petitioned the U.S. Supreme Court to overturn the ruling (<http://www.azcentral.com/news/election/azelections/articles/2011/04/11/20110411arizona-immigration-law-appeals-court-stay.html>).

Fyfe's recommendation for continuous training is important for racially biased policing, but his rationale is less applicable. Though use of force is rare and his concerns over skill atrophy are on the mark, the applicable skill set for avoiding racially biased behavior is employed by police on a daily basis – with each police/citizen encounter. As a result, the need for continuous training on issues related to race/ethnicity, cultural diversity and tolerance, and legal issues is even more critical. Besides the day-to-day use of these skills, there are number of additional reasons why this is important, such as changes in the law which impact police practice (e.g., SB1070 in Arizona). Also, the racial and ethnic makeup of a community can change very quickly, and failure on the part of the police department to recognize these changes can lead to significant conflict between police and those new population groups (e.g., Cuban immigration to Miami and the Liberty City riot in 1980; Los Angeles leading up to the riots in the early 1990s; Fyfe, 1995). In simple terms, departments must remain aware of changes in their constituency, and they must insure through proper training that their officers are prepared to handle those changes. Palmiotto (2003: 15) highlighted the importance of this point, noting that: "Continuing police training throughout a police officer's career enable the officer to function more efficiently and safely, and is considered important in curtailing civil liability actions against an officer and his department."

4. *Appraise the effects of violence-reduction training by concentrating on officers' conduct rather than incident outcomes.*

For police-citizen violence:

"Like assessments of surgeons' efforts, judgments about the propriety of officers' conduct and the adequacy of training should be based on what the officer *did*, rather than on the outcome of what they did. To do otherwise is to overlook inappropriate conduct until it results in disaster... (Fyfe, 1995: 174)."

For racially biased policing:

Scholars such as Bayley (1986) and Binder and Scharf (1980) have maintained that police-citizen encounters involve multiple decision points, with decisions made at earlier stages clearly affecting decisions made later in the encounter.⁸ At each phase of the encounter, the police officer and the citizen make decisions and respond to the decisions of the other participant – much like a chess match. The importance of this perspective is that it highlights Fyfe’s point above about process or conduct. How did the officer behave at each stage of the encounter? How could the officer have acted differently to achieve a more just outcome? With regard to deadly force incidents, Fyfe (1986) described police departments’ tendency to focus on the final frame of a decision – what he called the split-second syndrome – while neglecting the earlier and just as important decisions that an officer made that resulted in him/her being in a position where force was necessary. To judge the appropriateness of police behavior based solely on the outcome – whether that outcome is a use of force, or a search that led to confiscation of a small amount of marijuana – is shortsighted; in effect, allowing the ends to justify the means. As Fyfe (1995: 174) suggests, this final-frame perspective is too limiting and will “overlook inappropriate conduct.” The implications of this split-second syndrome for police-initiated stops of citizens are profound, as questions surrounding the lawfulness of a stop become irrelevant based on the results of the subsequent search.

Summary Statements on Training: The overall goal of training is to provide officers with the skills and knowledge necessary to perform their duties effectively, lawfully and humanely, and the principles outlined above by Fyfe (1995) offer an excellent roadmap for imparting those skills.⁹ In plain terms, officers who are properly trained are less likely than poorly trained

⁸ Binder and Scharf (1980) characterized five important decision phases in police/citizen encounters: anticipation, entry and initial confrontation, dialogue and information exchange, final frame decision, and aftermath.

⁹ Fyfe (1995: 171) described several other principles that are relevant for violence reduction training, but not for racially biased policing. These include: *Violence-reduction training must not make matters worse by creating a sense of paranoia among officers* (dealing with the traditional over-emphasis on danger); *Violence-reduction training must address the role of police officers during their non-working hours* (e.g., off-duty conduct).

officers to engage in racially biased policing. We can return to Fyfe's (1995: 163-164) discussion of the impact of training on violence – combined with Muir's professional policeman from the discussion above – to illustrate this point (again substituting in racially biased stops of citizens).

The development of successful boxers, diplomats, combat soldiers, and trial lawyers demonstrates that maintaining one's temper under stressful and confrontational conditions is a skill that can be taught. At the broadest level, police training designed to do so may involve providing students with what Muir (1977) called *understanding* – a nonjudgmental sense that people's behavior, no matter how bizarre or provocative, may usually be explained factors that go beyond the dichotomy of good and evil...Even if genuine *understanding*, as defined by Muir, cannot be imparted to individuals who bring extremely narrow views to policing, officers can be made to know in training that they simply will not be permitted to act out their prejudices through violent, or even discourteous conduct.¹⁰

Administrative Policy

Over the last 30 years, administrative rulemaking has emerged as the dominant form of discretion control in American policing. Administrative guidance in the form of policies, rules and procedures communicates to the rank and file officers what the department expects, what is considered acceptable, and what will not be condoned (Kappeler et al., 1998). Both CALEA and the American Bar Association (ABA) recommend written rules and policies as an effective manner in which to structure police decision-making. Importantly, prior police research has demonstrated that administrative rulemaking can effectively control police officer behavior in a number of misconduct and racial bias-prone areas. For example, research has consistently demonstrated that administrative policies –when enforced – can substantially curtail the rate of police shootings (Fyfe, 1988; Gain, 1971; Geller and Scott, 1992). Alternatively, administrative

¹⁰ Notably, Fyfe (1989) put these principles in practice as part of the Metro-Dade Police/Citizen Violence Reduction Project, which culminated in the development of a five-day role-play training program. Results from the project indicate substantial reductions in use of force, officer injuries and citizen complaints after the training program was implemented. See also Klinger (2010).

permissiveness can also lead to *higher* rates of police shootings (Fyfe, 1979). White (2001), for example, found that the number of police shootings in Philadelphia increased significantly after a restrictive administrative policy was abolished in 1974. Walker (1992: 32) concluded that:

...administrative rules have successfully limited police shooting discretion, with positive results in terms of social policy. Fewer people are being shot and killed, racial disparities in shootings have been reduced, and police officers are in no greater danger because of these restrictions.

Similarly positive results have been documented with high-speed pursuits, use of police dogs and responses to domestic violence incidents (White, 2007). For example, Alpert (1997) found that the number of pursuits, accidents and injuries all dropped significantly in Miami following the adoption of a restrictive pursuit policy.

The adoption of clearly articulated policies governing police stops of citizens, with specific prohibitions of racial profiling, is absolutely crucial for controlling unlawful police behavior. Research that highlights the ability of departments to manage their officers' behavior across a wide range of police actions (see above) serves as a foundation for administrative rulemaking as an effective strategy for preventing racially biased policing. As an illustration, the Glendale (AZ) Police Department developed clear administrative rules regarding immigration enforcement following the passage of SB1070, including an *Immigration Enforcement Field Card* (see Appendix A).¹¹ The field card provides officers with guidance on a range of important issues, including relevant factors for determining reasonable suspicion and whether an immigration investigation is "practicable," valid forms of identification, and procedures for immigration questioning and arrest. When administrative policy is clearly articulated and

¹¹ Of course, much of the training and policy associated with SB1070 is on hold while litigation questioning its constitutionality is being decided by the Federal Courts.

disseminated to officers in the field – as Glendale PD has done with this Field Card – the potential for racially biased policing is greatly reduced.

Supervision, Accountability and Commitment from the Top of the Organization

The Police Department Leadership

Yet, department policies and rules, by themselves, are not enough to control racially biased policing.¹² It is absolutely critical that the policies be supported and enforced by the organizational leadership. If the informal norms of the department support racially biased policing, and those who engage in it go unpunished, administrative policies become meaningless. The informal norms of the department are greatly determined by the leadership of the organization. Chiefs of police that demand accountability, that punish officers for their transgressions, and that hold supervisors accountable for their subordinates' misbehavior will send a clear message to their line officers regarding what will (and will not) be tolerated. Darryl Gates in Los Angeles, Frank Rizzo in Philadelphia and Harold Breier in Milwaukee demonstrate how attitudes of the chief can send a message to line staff that abusive and racially biased conduct is acceptable (Skolnick and Fyfe, 1993). Alternatively, police chiefs can change the informal norms of a department, as Pat Murphy did for the NYPD following the Serpico scandal. “Murphy used his three and a half years in office to create an environment that loudly and clearly condemned abusive police conduct, those who engaged in it, and – equally important – those who tolerate it (Skolnick and Fyfe, 1993: 179-80).” Twenty years later, the Mollen Commission (1994: 112) concluded in their investigation of misconduct in the NYPD that “commitment to

¹² See Skolnick and Fyfe (1993) and White (2007) for a discussion of the limitations of administrative rulemaking.

integrity cannot be an abstract value...It must be reflected not only in the words, but in the deeds of the Police Commissioner.”

The words and deeds of the chief are equally important for preventing racially biased policing and setting lawful standards for officers’ behavior during stops of citizens. I return again to the illegal immigration debate in Arizona. Following passage of SB1070, several police chiefs publicly challenged the new law. Then-Chief Jack Harris of the Phoenix Police Department stated in his declaration before the United States District Court for the District of Arizona:

Deterring, investigating and solving serious and violent crimes are the department's top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully (<http://www.scribd.com/doc/33979389/Declaration-of-Jack-Harris-on-SB-1070>).

George Gascon, former Chief of the Mesa Police Department similarly noted that the law:

will put officers in the impossible position of trying to enforce the law without racially profiling...Most professional law enforcement leaders around country are fairly united in their concerns about the impact that making immigration enforcement the primary function of local policing would have on resources, our ability to fight crime and our ability to work with various communities that may have significant representation of immigrants whether here with or without authority (<http://www.azcentral.com/news/articles/2010/04/21/20100421policereax-ON.html#ixzz1Q8MtXhVF>)

Statements such as these from the chief send a clear message to officers regarding what is expected of them on the street. Accountability begins and ends in the Chief’s office.

Supervision

Supervision of police officers is a critical department task that serves as a foundational element in the agency’s effort to control officer field behavior. Weisburd and colleagues (2000)

reported that nearly 90 percent of police officers surveyed agreed that effective supervision prevents misconduct such as racially biased policing. Fyfe (1995: 164) noted that:

Everything that supervisors do or tolerate, every interpretation of broad departmental philosophy, every application of specific rules and policies is a training lesson that has at least as much impact on officers' performance as what they may have learned in their rookie days.

There are many good discussions of how to insure effective supervision (see, for example, Kappeler et al. 1998; Skolnick and Fyfe, 1993; White, 2007), and key principles include proper span of control (8-10 officers per sergeant), proper training (good supervision can and should be taught), and holding supervisors accountable for the behavior of their subordinates. The International Association of Chiefs of Police (IACP, 1989: 53) stated that “many officers face temptations everyday...management has the capacity and control to reinforce high integrity, detect corruption, and limit opportunities for wrong doing.” These words apply to racially biased policing as well as they do for other forms of police misconduct. Simply put, if officers believe they will be caught and punished for their racially biased actions, they will be less likely to engage in those activities (Klockars et al., 2000).

Concluding Remarks

This paper applies a larger discretion control framework to examine the question of how police departments can prevent their officers from engaging in racially biased behavior during police-initiated stops of citizens. This framework allows us to draw on what we already know about controlling police officer misbehavior, and offers important lessons for insuring the lawfulness of officer actions during Terry stops. These lessons are:

- Careful recruitment and selection includes both “screening out” and “screening in” processes. Muir’s (1977) professional policeman, Mike Marshall, offers an excellent

starting point for hiring officers who will both avoid racially biased behavior and bring a sense of empathy and compassion to policing.

- Fyfe's (1995) recommendations for violence reduction training offer a solid foundation for training to prevent racially biased policing. This can be achieved with training that is:
 - Realistic (adult learning and role plays) and continuous;
 - Tailored to the department and the community (e.g., Glendale PD's response to SB1070) ;
 - Focused on the means (or process), not just the ends (i.e., avoiding the split second syndrome).
- Administrative rules that are clear and routinely enforced will effectively control officer behavior on the street.
- Accountability begins in the Chief's office and flows down through the organization to the first-level supervision of line officers.

Ongoing Challenges

These lessons are clear and straightforward, with obvious implications for policy and practice. Just as important, they are supported by empirical research. However, police departments do not function in a vacuum, and as a result, there are a number of challenges or pressures – both internal and external – that serve as barriers for moving forward. With regard to external pressures, both the political and economic environments will shape this ongoing discussion of organizational responses to racially biased policing. For example, the current economic recession has severely limited police departments' ability to hire new officers and retain the ones they currently employ. While there is evidence to indicate that the recession has increased and changed the profile of applicants seeking to enter police work (e.g., former real estate agents and bankers) budgetary constraints have prevented departments from taking advantage of the surging interest of people with diverse background who may fit Muir's vision of a professional police officer.

The issue of racial bias in policing is highly politically charged, and nowhere is this clearer than in Arizona. The immigration debate surrounding SB1070 has been divisive and has generated an inconsistent response among law enforcement agencies (with some supporting the law, and others opposed to it). In fact, SB1070 served as a major point of dissension between Phoenix Police Chief Jack Harris and the Phoenix Law Enforcement Association (PLEA, the primary union for rank-and-file officers). Moreover, Bornstein (2005) highlighted the impact of increased scrutiny on Arabic and Muslim residents (especially in New York City), suggesting that many of the concerns associated with racial profiling of African Americans are now increasingly evident in a new form of terrorist profiling. Bornstein (2005) noted an important distinction between the two forms of profiling, however. While there is near universal agreement that profiling of African Americans (and Hispanics) is wrong and should be outlawed, there is much less consensus on the inappropriateness of profiling Arabic and Muslim residents. It goes without saying that this political context has important implications for policing.

There are internal challenges facing police departments as well. Departments have a long history of resisting both change and efforts at regulation (especially external efforts). Guyot (1975) coined the term “bending granite” to describe police resistance to change (see also Reuss-Ianni, 1983), and Skolnick and Fyfe (1993: 176) noted that “even the best-respected police administrators have failed as reformers.” The battle between Phoenix Police Chief Harris and PLEA underscores this point (notably, Harris resigned in May 2011, in large part due to his battles with the union). And once reform has been achieved, there are major obstacles to sustaining that change, especially during an economic climate defined by employee turnover and attrition (at all levels of the organization), and concomitant expectations to do more with less. It is extremely difficult for a police department in these circumstances to maintain a strategic vision

and avoid slipping into crisis management mode. Last, departments are faced with increasing pressure to be transparent about their operations. Transparency flies in the face of the traditional, professional model of policing but it is crucial to building trust, especially with minority communities that have long histories of tense, antagonistic relationships with police. The challenge for police is to engage in open and frank dialogue, to provide access to their data, and to embrace perceived legitimacy as an important measure of their overall performance. When this occurs, true reform will be achieved.

References

- Bayley, D.H. (1986). The tactical choices of police patrol officers. *Journal of Criminal Justice*, 14, 329-348.
- Bayley, D.H. & Bittner, E. (1984). Learning the skills of policing. *Law and Contemporary Problems*, 47, 35-59.
- Binder, A. & Scharf, P. (1980). The violent police-citizen encounter. *Annals of the American Academy of Political and Social Science*, 452, 111-121.
- Birzer, M.L. (2003). The theory of andragogy applied to police training. *Policing: An International Journal of Police Strategies and Management*, 26 (1), 29-42.
- Birzer, M.L. & Tannehill, R. (2001). A more effective training approach for contemporary policing. *Police Quarterly*, 4(2), 233-252.
- Bittner, E. (1967). The police on skid row: A study of peace keeping. *American Sociological Review*, 32, 699-715.
- Bittner, E. (1970). *The functions of the police in modern society*. Rockville, MD: National Institute of Mental Health.
- Brookfield, S. (1986). *Understanding and facilitating adult learning*. San Francisco: Jossey-Bass.
- Caffarella, R.S. (1993). Self-directed learning. In S. Merriam (ed.) *An update on adult learning theory, new directions for adult and continuing education*. San Francisco: Jossey-Bass.

- Commission on Accreditation for Law Enforcement Agencies. (2009) *Standards for law enforcement agencies*. Retrieved on June 24, 2011 from <http://www.calea.org>
- Fyfe, J.J. (1979). Administrative interventions on police shooting discretion: An empirical examination. *Journal of Criminal Justice*, 7, 309-324.
- Fyfe, J.J. (1986). The split-second syndrome and other determinants of police violence." In *Violent Transactions*. (eds.) Campbell, A & Gibbs, J.J.. Oxford: Basil Blackwell.
- Fyfe, J.J. (1988). Police use of deadly force: Research and reform. *Justice Quarterly*, 5, 165-205.
- Fyfe, J.J. (1989). Police/citizen violence reduction project. *FBI Law Enforcement Bulletin*, 58, 18-25.
- Fyfe, J.J. (1995). Training to reduce police-civilian violence. In Geller, W.A. & Toch, H. (eds.) *And justice for all: Understanding and controlling police abuse of force*. Washington, DC: Police Executive Research Forum.
- Fyfe, J.J. & Kane, R.J. (2006). *Bad cops: A study of career-ending misconduct among New York City police officers. Final Report*. Grant No. 96-IJ-CX-0053. Washington, DC: National Institute of Justice.
- Gain, C. (1971). *Discharge of firearms policy: Effecting justice through administrative regulation*. Unpublished memorandum, December 23.
- Geller, W. & Scott, M.S. (1992). *Deadly force: What we know*. Washington, DC: Police Executive Research Forum.
- Grant, J.D. & Grant, J. (1995). Officer selection and the prevention of abuse of force. In Geller, W.A. & Toch, H. (eds.) *And justice for all: Understanding and controlling police abuse of force*. Washington, DC: Police Executive Research Forum.
- Glendale (AZ) Police Department. (2010). *SB1070 instructor points*. Glendale, AZ: Author.
- Goldstein, H. (1979). Improving policing: A problem-oriented approach. *Crime and Delinquency*, 25 (2), 235-258.
- Goldstein, H. (1990). *Problem-oriented policing*. New York: McGraw Hill.
- Greene, J. A. (1999). Zero tolerance: A case study of police policies and practices in New York City. *Crime & Delinquency*, 45, 171-187.
- Guyot, D. (1979). Bending granite: Attempts to change the rank structure of American police departments. *Journal of Police Science and Administration*, 7, 253-284.
- Haberfeld, M.R. (2002). *Critical issues in training*. Upper Saddle River, NJ: Prentice-Hall.

<http://www.scribd.com/doc/33979389/Declaration-of-Jack-Harris-on-SB-1070>). Retrieved on June 24, 2011.

<http://www.azcentral.com/news/articles/2010/04/21/20100421policereax-ON.html#ixzz1Q8MtXhVF>. Retrieved on June 24, 2011.

International Association of Chiefs of Police (1989). *Building integrity and reducing drug corruption in police departments*. Arlington, VA: IACP.

Jones-Brown et al., D., Gill, J., & Trone, J. (2010). *Stop, question, & frisk policing practices in New York City: A primer*. Retrieved from John Jay College of Criminal Justice website: http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf.

Kane, R.J. & White, M.D. (2011). *Jammed up: An examination of career-ending police misconduct*. New York University Press (NYU). In Press.

Kane, R.J. & White, M.D. (2009). Bad cops: A study of career-ending misconduct among New York City police officers. *Criminology and Public Policy*, 8 (4), 737-769.

Kappeler, V.E., Sluder, R.D., & Alpert, G.P. (1998). *Forces of deviance: Understanding the dark side of policing*. Prospect Heights, IL: Waveland Press.

Klinger, D. (2010). Can police training affect the use of force on the streets? The Metro-Dade violence reduction field experiment. In McCoy, C. (Ed.), *Holding Police Accountable*. Washington, DC: Urban Institute Press.

Klockars, C., Ivkovich, S., Harver, W., & Haberfeld, M. (2000). *The measurement of police integrity*. Washington, DC: National Institute of Justice.

Merriam, S.B. & Caffarella, R.S. (1999). *Learning in adulthood*. (2nd ed). San Francisco: Jossey-Bass.

Miller, W.R. (1977). *Cops and Bobbies: Police authority in London and New York City, 1830-1870*. Chicago: University of Chicago Press.

Mollen Commission. (1994). *Anatomy of failure, a path for success: The report of the commission to investigate allegations of police corruption and the anti-corruption procedures of the New York City Police Department*. New York: City of New York.

Muir, W.K., Jr. (1977). *Police: Streetcorner politicians*. Chicago: University of Chicago Press.

Palmiotto, M.J. (2003). An overview of police training through the decades: Current issues and problems. In Palmiotto, M.J. (ed.) *Police and training issues*. Upper Saddle River, NJ: Prentice-Hall.

President's Commission on Law Enforcement and Administration of Justice. (1967). *Task force report: The police*. Washington DC: US Government Printing Office.

- Reuss-Ianni, E. (1983). *Two cultures of policing*. New Brunswick, NJ: Transaction Books.
- Skogan, W. & Frydl, K. (Eds.). (2004). *Fairness and effectiveness in policing: The evidence*. Committee to Review Research on Police Policy and Practices. Washington, DC: The National Academies Press.
- Skolnick, J.H. & Fyfe, J.J. (1993). *Above the law: Police and the excessive use of force*. New York: Free Press.
- Tyler, T.R. (2006). *Why people obey the law*. Princeton, NJ: Princeton University Press.
- Walker, S. (1992). *Taming the system: The control of discretion in criminal justice, 1950-1990*. New York: Oxford University Press.
- Weisburd, D., Greenspan, R., with Hamilton, E.E., Williams, H., & Bryant, K.A. (2000). *Police attitudes toward abuse of authority: Findings from a national study*. Washington, DC: U.S. Government Printing Office.
- White, M.D. (2001) Controlling police decisions to use deadly force: Reexamining the importance of administrative policy. *Crime and Delinquency*, 47 (1), 131-151.
- White, M.D. (2007). *Current issues and controversies in policing*. Boston: Allyn and Bacon/Pearson.

Appendix A: Glendale (AZ) Police Department Immigration Enforcement Field Card

Immigration Enforcement Field Card		
<p style="text-align: center;">REASONABLE SUSPICION</p> <p>Officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion. Two elements: (1st) the assessment must be based upon the totality of the circumstances (2nd), that assessment must create a reasonable suspicion that the particular person is unlawfully present in the United States.</p> <p>In determining whether reasonable suspicion of unlawful presence exists, officers should consider all relevant factors, including, among others:</p> <ol style="list-style-type: none"> (1) Lack of or false identification (if otherwise required by law) (2) Possession of foreign identification (3) Flight and/or preparation for flight; engaging in evasive maneuvers, in vehicle, on foot, etc. (4) Voluntary statements by the person regarding their citizenship or lawful presence. Note that if the person is in custody for purposes of <i>Miranda</i>, s/he may not be questioned about immigration status until after the reading and waiver of <i>Miranda</i> rights. (5) Foreign vehicle registration (6) Counter-surveillance or lookout activity (7) In company of other unlawfully present aliens (8) Location, including for example: a place where unlawfully present aliens are known to congregate looking for work or a location known for human smuggling or known smuggling routes. (9) Traveling in tandem (10) Vehicle is overcrowded or rides heavily (11) Passengers in vehicle attempt to hide or avoid detection (12) Prior information about the person (13) Inability to provide their residential address (14) Claim of not knowing others in same vehicle or at same location (15) Providing inconsistent or illogical information (16) Dress. Note: Dress has been recognized by the courts as a valid factor, but in practice is very difficult to articulate. (17) Demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact (18) Significant difficulty speaking English 	<p style="text-align: center;">PRESUMPTIVE (VALID) IDENTIFICATION (For Detainee's NOT Arrestee's)</p> <p>If the detainee presents one of the following types of identification, it is presumed that the detainee is lawfully present in the U.S. No further investigation into the person's status is necessary, unless there are additional facts that cast doubt on the person's lawful presence:</p> <ol style="list-style-type: none"> 1. A valid Arizona driver license. 2. A valid Arizona non-operating identification license. 3. A valid tribal enrollment card or other form of tribal identification, or 4. If the entity requires proof of legal presence in the U.S. before issuance, any valid U.S. federal, state or local government issued identification. ** <p>** NOTE: All State Drivers Licenses are acceptable, except Washington, New Mexico, Illinois and Utah. US Passports and some Military ID's are acceptable, see ID reference guide for further. (As of 7/10)</p>	<p style="text-align: center;">MDC Enforcement Codes</p> <p>Four enforcement codes exist for classifying immigration related contact:</p> <p>I-1 Not Practicable</p> <p>I-2 Hinder or Obstruct Investigation</p> <p>I-3 No Reasonable Suspicion</p> <p>I-4 Arrest and Processed by Detention</p> <p>** Information contained in the documentation of category I-1 and I-2 will include as much of the following information as possible:</p> <ol style="list-style-type: none"> 1. Name 2. Date of birth 3. Physical description (hair, eyes, height, weight) 4. Home address and phone number 5. Work and/or school information if available 6. Date and time of contact 7. Circumstances of contact 8. Summary of efforts made (including date, time, name and ID if ICE is contacted) Vehicle information (minimum of license plate, state, vehicle description) 9. Vehicle information (minimum of license plate, state, vehicle description) 10. Any other pertinent information
	<p style="text-align: center;">PRACTICABLE?</p> <p>In determining whether it is practicable, officers should consider things such as work load, criticality of incident and of other present duties, available personnel on scene, location, available back-up, ability to contact ICE/CBP/287(g) and availability of ICE/CBP/287(g).</p>	
	<p style="text-align: center;">HINDER INVESTIGATION?</p> <p>Officer should consider when or whether to investigate immigration status in light of the need for suspect, victim and witness cooperation in an investigation (this consideration is not necessarily limited to the investigation for which you have detained the person). Example- complex investigations of money laundering, human trafficking and drug smuggling may require significant cooperation of those involved.</p>	
	<p style="text-align: center;">New Arizona Immigration Statutes</p> <p>ARS 11-1051 Cooperation and assistance in enforcement of immigration laws</p> <p>ARS 13-1509 Willful failure to complete or carry an alien registration document</p> <p>ARS 13-2928 Unlawful stopping to hire and pick up passengers for work</p> <p>ARS 13-2929 Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens</p> <p>If at any time, in the sound judgment of an officer, the officer believes that deviation from the G.O. is appropriate, the officer should contact a Supervisor.</p>	
		<p style="text-align: center;">Arrests</p> <p>All arrested persons shall have their immigration status verified by ICE/CBP/287(g) prior to the arrestee being released. Presentation by the arrestee of presumptive identification and/or agency identification processes does not meet this requirement.</p> <p>All arrested persons shall be asked the following questions, with the answers documented in the departmental report:</p> <ol style="list-style-type: none"> 1. What is your country of citizenship? <ul style="list-style-type: none"> • If other than the United States, the next question should be asked, but only after <i>Miranda</i> warnings have been given (if a juvenile, use Juvenile <i>Miranda</i> Form). • Officers must comply with agency policies regarding consular notification for persons who self identify as being foreign citizens. 2. Are you in the United States legally? 3. Do you have any registration documents or other proof of lawful presence?