

abundant evidence that police overuse disorderly conduct and similar statutes to arrest people who 'disrespect' them or express disagreement with their actions."⁵⁵

Patterns of real or perceived disrespect for the police have an important racial dimension. Donald Black found that after controlling for all other variables, African Americans were far more likely to be disrespectful to the police than were whites.⁵⁶ The explanation for this lies in the long history of police-community relations problems. African Americans are more likely to bring to an encounter the community memory of past abuses by the police, including knowledge of recent incidents, and express disrespect for the officer. Albert Reiss argued that in low-income, high-crime, and predominantly African-American neighborhoods, incidents of police abuse accumulate over time, creating a perception of systematic harassment.⁵⁷ A police program of frequent stops and frisks and/or traffic stops reinforces this sense of harassment.⁵⁸ Additionally, the police are the symbolic representatives of the established order, including societal race discrimination. The officer, meanwhile, brings to the encounter a memory of community criticisms of the police, and many officers see hostility everywhere in African-American neighborhoods.

Police reform expert David Kennedy explains the dynamic we just described in terms of each side bringing its own "narrative" (or script) to an encounter: people on the street see a continuation of a long history of police abuse; officers see bad communities (high crime rates and other problems) and bad people (gang members, drug dealers, and criminals). In his book, *Don't Shoot*, he suddenly realized he had been seeing this phenomenon for 15 years in his research "but had never put a name to it." "The real issue," he concluded, is that "the relationship between the police and community was being poisoned by toxic racial narratives."⁵⁹ The result is a vicious cycle of misconduct, disrespect, use of force, more disrespect, and so on.

The question is how to break the vicious cycle and replace the toxic racial narrative with a positive cycle of mutual respect. Procedural justice, where officers treat people with respect and answer their questions is one approach. Another alternative is the policy of police de-escalating encounters to keep them from escalating into uses of force. We discuss this important innovation on pp. 165. Other approaches, which we also discuss are better police department policies to control officer use of force (pp. 164) and to curb offensive language by officers which can provoke citizens and lead to a use of force incident (pp. 177).

Force in Traffic and Pedestrian Stops

A second estimate of police use of force is in the BJS Police–Public Contact Survey. This estimate uses the victimization survey technique of calls to citizens and is confined to traffic stops (and more recently pedestrian stops). A 2015 PPCS report, using all the survey data from 2002 to 2011, found that police *threatened or used force* in 1.6 percent of all contacts with people. Respondents in the survey reported that officers threatened or used *excessive force* in 1.2 percent of all contacts (representing 75 percent of all force incidents). There are two important points to keep in mind about these data. First, the survey reports *citizen perceptions*

of officer conduct and not an independent assessment (as is the case in the direct observations of patrol work). Second, it reports *threatened* as well as actual use of force, which will necessarily yield a higher estimate than actual uses of force. Despite these differences from direct observation research, the 1.6 percent estimate is remarkably close to the estimate from direct observation studies.

The PPCS report found significant racial disparities in both overall threatened use of force and actual use of force, and also use of excessive force. Non-Hispanic whites reported police threatening or using force in 1.4 percent of all contacts, compared with 2.1 percent for Hispanics and 3.5 percent for African Americans.⁶⁰

The race or ethnicity of the officer has little apparent influence on patterns of the use of physical force. Some people have the erroneous stereotype that police use of excessive force involves white cops beating up African-American men. Observational studies of police patrol work have not found a clear racial pattern of officer use of force.⁶¹ The data on citizen complaints against police reinforce the point that the race or ethnicity of the officer is not a significant factor in police misconduct. In New York City, whites represented 53.4 percent of all officers in 2009 and 49.5 percent of all officers receiving citizen complaints; African Americans represented 16.4 percent of all officers and 17.2 percent of those receiving complaints; Hispanics represented 28.4 percent of all officers and 25.2 percent of those receiving complaints. A similar pattern was found in San Jose, California.⁶²

At the same time, however, it is important to note that police officers of different races have very different *perceptions* of how the police in general use force and treat people of color and the poor. A Police Foundation survey of officers nationwide found that 57 percent of African-American officers agreed or strongly agreed with the statement, "Police officers are more likely to use physical force against blacks and other minorities than against whites in similar situations," compared with only 5 percent of white officers. The responses to this statement reflected not what officers said they personally do but what they perceived officers in general do (which probably means other officers in their own department).⁶³

The Control of Police Use of Force

The standard police department approach to controlling officer use of force is to have a formal policy indicating the circumstances in which force may be used and requiring the officer to complete a report on every use of force incident. This requirement follows the approach we discussed earlier (pp. 156) with respect to the use of deadly force. Some poorly managed police departments, however, allow officers to not file force reports at all or to file reports that do not accurately state what happened in the incident (and justify the officer's use of force in the process). The 2014 Justice Department investigation of the Cleveland, Ohio, police department, for example, found that "force incidents often are not properly reported, documented, investigated, or addressed with corrective measures." Also, "until recently, each officer at the scene was not required to write a report documenting the incident." Reports often did not "adequately convey the force [the officers used] and why."⁶⁴

Do these policies work in terms of controlling officer use of force? The Los Angeles Police Department (LAPD) has had a long history of bad community relations, marked by riots in 1965 and 1992. Because of its problems with use of force, the U.S. Justice Department intervened and obtained a consent decree in 2001 requiring the department to improve its procedures for the reporting and investigation of officer use of force. An evaluation of the impact of the consent decree by a team from Harvard University found that between 2004 and 2008, use of the most serious forms of force by LAPD officers declined by 30 percent. Additionally, use of force incidents involving African-American and Hispanic people declined more than they did against whites.⁶⁵

The Oakland, California, police department also had a history of abusive practices regarding the use of excessive force. A lawsuit by private plaintiffs resulted in a consent decree that required reforms similar to those in the LAPD case. It took several years for the department to fully implement the reforms, but when it finally did, the results were significant. Use of force incidents dropped from 1,200 in 2010 to 606 in 2014. Complaints against officers dropped from 2,593 in 2010 to 1,067 in 2014. And officer-involved shootings fell from 15 in 2011–2012 to only 2 in 2014–2015.⁶⁶

The lesson of these two cases is similar to the experience with the New York City police department deadly force policy: the implementation of policies limiting officer use of force can effectively reduce uses of force and related police performance problems.

De-Escalation: A New Approach to Reducing Police Use of Force

The most important new approach to reducing police use of force involves de-escalation. De-escalation is a policy under which officers are instructed that unless force is absolutely necessary they should attempt to use alternative techniques to resolve a citizen encounter without conflict or the use of force. Those techniques include keeping some distance from the person in question, in order to avoid a direct confrontation, verbal persuasion to gain compliance, or simply saying nothing in response to disrespectful words by the person.

The new Seattle Police Department policy adopted in late 2013 states, “When Time, Circumstances, and Safety Permit, Officers Will Take Steps to Gain Compliance and De-escalate Conflict Without Using Physical Force.” It is important to note that the policy says “*will* take steps. De-escalation is the required option when the circumstances permit. The policy lists the possible de-escalation techniques: “advisements, warning, verbal persuasion, and other tactics in order to reduce the need to use force.” A later section of the policy emphasizes the importance of taking steps to increase the options in an incident by gaining time, maintaining distance from the person, and calling in backup. De-escalation does not represent a “weak” or “soft” style of law enforcement, as some critics charge. The Seattle policy clearly states that when no other option is available an officer may use force.⁶⁷

Since the use of force, and the perception that the police use excessive force and use it frequently, is such a major issue in police–community relations, reducing

the use of force through the use of de-escalation can be a major step in the direction of building community trust in the police. Law enforcement participants at a Police Executive Research Forum meeting explained how de-escalation can be very effective in dealing with mentally ill people and that de-escalation can reduce uses of force and help to improve community relations.⁶⁸ The President's Task Force Report on 21st Century Policing, meanwhile, strongly recommended that police "training on use of force should emphasize de-escalation ... where appropriate."⁶⁹

DISCRIMINATION IN ARRESTS?

Allegations of race discrimination in arrests have been a controversy in American policing for decades. Civil rights advocates charge that police arrest people of color without probable cause and in cases where whites are not arrested for the same offense. FBI data on arrests clearly indicate racial disparities in arrests for some crimes, especially robbery, but not for all crimes. African Americans, for example, were 56 percent of all people arrested for robbery in 2014, but only 30 percent of those arrested for burglary and 13 percent of those arrested for drunk driving.⁷⁰

The question of whether race is a factor in arrests is a complex matter, because the likelihood of arrest is shaped by several factors: the seriousness of the offense, the strength of the evidence, the preference of the crime victim, the relationship of the victim to the offender (especially if they are married or have an ongoing relationship vs. being strangers), and other factors.⁷¹

Tammy Rinehart Kochel, David B. Wilson, and Stephen D. Mastrofski undertook a systematic review of all available studies of police arrests. They found 40 studies, reaching back into the 1960s, that met the highest standards of research, including controls for all relevant variables in arrest decisions. In the end, they found that "race matters," and that there is "a clear pattern of evidence" that "minorities and Blacks have higher odds of arrest" than whites. On average, the probability of an African American was 30 percent higher than for a white person. The race effect existed even when they controlled for the seriousness of the crime (a factor they hypothesized might even out the likelihood of an arrest).⁷²

One underlying cause of racial disparities in arrests involves aggressive anti-crime programs by police in high-crime neighborhoods, which are typically predominantly African American or Hispanic. Programs such as a heavy police presence in certain neighborhoods or aggressive stops and frisks have a number of destructive effects. One is the sense of harassment on the part of young African-American men in the community. As one African-American teenager on Chicago's South Side explained, "I'll just be walking with my friends or something . . . And then they [the cops] pull up and yell 'Get on the car! Or, Get on the wall! [meaning line up with your hands on the patrol car or a wall] Spread your legs. Put your hands up.'⁷³ Another is the cumulative effect of arrests on subsequent decisions in the criminal justice system. Kimberly Kempf Leonard's observations about juvenile justice apply to the adult justice system as well: there is a "cumulative effect that may grow like a downhill snowball," with the result that "early-stage decisions create an inequity" that "influence[s] decisions at subsequent stages."⁷⁴

High levels of arrests in a community have a destructive community effect, making arrest and imprisonment seem “normal.” The Sentencing Project in 2013 estimated that one in three African-American males can expect to go to prison at some point in his lifetime. This compared with 1 in 6 Hispanic males and 1 in 17 white males.⁷⁵ For these reasons, the President’s Task Force on 21st Century Policing recommended that police departments “should consider the potential damage to public trust when implementing crime fighting strategies.”⁷⁶

The demeanor of a person on the street, particularly where an officer perceives disrespect, has an important impact on arrest patterns. As we have already mentioned, observational studies of police arrest patterns have consistently found that officers’ decisions to arrest are determined largely by *situational factors*: the seriousness of the crime, the strength of the evidence, the preference of the victim for arrest, the relationship of the victim and the suspect, and also the demeanor of the suspect. Donald Black found that African Americans are more likely to be disrespectful to the officer than whites and therefore more likely to be arrested.⁷⁷ Christy Lopez, meanwhile, characterizes demeanor-based arrests as “contempt of cop”: the officer makes an arrest for disorderly conduct, for example, because he or she regards the perceived disrespect as contempt for his or her authority as a police officer. And finally, as David Kennedy argues, the higher levels of disrespect by young African-American men are rooted in the shared community “narrative” of police–community relations problems.⁷⁸

Arrests and the War on Drugs

The war on drugs is the most extreme case of race discrimination in arrests, and it has resulted in an enormous prison population, which Michelle Alexander has

FOCUS ON AN ISSUE

The Scandal of Ferguson: Arrests as a Revenue Source

The word “Ferguson” became a household word in America because of the fatal shooting of Michael Brown in Ferguson, Missouri, on August 9, 2014, and the protests and violence that followed. When the U.S. Justice Department investigated the incident, it uncovered a deeper scandal that was at the heart of the conflict between the African-American community and the Ferguson police.

The Justice Department report found that “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs.” City

officials applied direct pressure on the police to write tickets in order to raise funds to support city government operations. In March 2010, for example, the Finance Director wrote the chief of police to warn that “unless ticket writing ramps up significantly,” the city would face a budget crisis.⁷⁹

The pressure to raise funds, the Justice Department concluded, had “a profound effect” on the police department’s operations, shaping “patrol assignments and schedules” in the direction of “aggressive enforcement,” with little concern about

(Continued)

effective public safety. Officers on the street responded to the pressure with arrests for minor or false charges. The report cited one case where eight separate arrest charges included not wearing a seat belt even though the car was parked, using a short version of his name ("Mike") instead of his full legal name ("Michael"), providing an address that was legitimate but different from the one on his driver's license, and others.

The result of Ferguson's revenue-generating approach to policing "undermine[d] community trust and cooperation." It seems evident that the lack of trust and anger toward the police were a major

part of the fuel that exploded in the protests that followed Michael Brown's fatal shooting.

Many observers believe that other small towns in America have a policy of writing tickets to generate revenue for the city. In that regard, Ferguson, Missouri, is only one example of a broader misuse of the police for purposes having nothing to do with public safety.

SOURCE: U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (March 4, 2015), p. 3. https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf.

labeled "mass incarceration."⁸⁰ A 2013 ACLU report found that between 2001 and 2010 there were over 8 million arrests for marijuana possession in the United States, which accounted for half of all drug arrests. African Americans were 3.73 times more likely than whites to be arrested for marijuana possession. The pattern in marijuana arrests, moreover, was nationwide and not confined to particular cities or regions.⁸¹

The enormous disparity in arrests for drug possession is not consistent with patterns of marijuana usage. The 2014 survey of drug use by the Monitoring the Future project found that reported marijuana use by 12th-grade high school seniors was nearly identical for whites (35.1 percent all students), African Americans (35.9 percent), and Hispanics (37.1 percent).⁸² No national survey of drug use has found a significant racial disparity between usage by whites and African Americans that approaches the 3.73 disparity found in arrests.

The ACLU report added that the enormous racial disparity in marijuana arrests imposed "a tremendous human and financial cost" on those arrested, a cost that can "linger for years, if not a lifetime."⁸³ As Kimberly Kemp-Leonard argues, an arrest can "snowball" and result in adverse effects later in the criminal justice system.⁸⁴ A conviction can affect a person's sentence in a subsequent offense, where prior criminal history is taken into account. An arrest record can affect chances of employment or housing. If one group is disproportionately arrested, their employment opportunities will be adversely affected to the same degree. In addition, Justice Department surveys of state criminal history information systems have consistently found that many do not include information on the final disposition of cases. As a result, someone whose case was dismissed, or who was acquitted, will still have an official arrest record with the implication of a conviction.⁸⁵

The argument in the ACLU report is supported by a longitudinal study of drug arrests by Ojmarrh Mitchell and Michael S. Caudy, using data from 13 waves of data from the National Longitudinal Survey of Youth (NLS), beginning in

1997. Their study found that racial disparities in arrests were not due to reported differences in drug usage or to different patterns in drug purchasing (from strangers vs. friends) or patterns in use (public places vs. private places). Instead, the racial disparities were explained by "racial bias in law enforcement," meaning the strategic and tactical decisions by police departments and officers about how to conduct the war on drugs.⁸⁶

TRAFFIC STOPS: RACIAL PROFILING

Robert Wilkins, an African-American attorney, was stopped by the Maryland state police on Interstate 95 and subjected to a prolonged detention and illegal search. To support Wilkins's legal challenge to the stop, his lawyers sponsored observational research on traffic and enforcement patterns on I-95. The research found that African Americans did not speed on I-95 at a higher rate than white drivers but constituted 73 percent of all drivers stopped for possible violations. Even worse, they represented 81 percent of all drivers whose cars were searched after being stopped.⁸⁷

FOCUS ON AN ISSUE

The Chicago Gang Ordinance

In an effort to control gangs and gang-related crime, the city of Chicago enacted a Gang Congregation Ordinance in 1992. The story of the law is an excellent example of a "crackdown" approach to crime fighting: a policy designed to "get tough" with crime that in practice resulted in massive arrests of people of color.

The Chicago gang ordinance made it a crime for a known "gang member" to "loiter" on the street with one or more people with "no apparent purpose." In enforcing the law, Chicago police officers had to "reasonably believe" the person was a gang member, order the person to disperse, and make an arrest if the person did not disperse. Violations could be punished by a fine of \$500, six months in jail, and/or 120 days of community service.⁸⁸

In three years, the Chicago police issued 8,000 dispersal orders and arrested

42,000 people. Enforcement of the law fell heavily on the African-American and Hispanic communities in Chicago. The police department enforced it only in areas where it believed gangs were a problem, but it did not inform the public about which areas they were. The basic question was whether the law gave the police too much discretion in enforcing the law.

The Supreme Court ruled the Chicago Gang Ordinance unconstitutional in the case of *Chicago v. Morales* (1999), concluding that it was unconstitutionally vague, because it failed to "give the ordinary citizen adequate notice of what is forbidden and what is permitted." The definition of loitering was vague and did not distinguish between standing on the street for a good purpose (waiting for a friend) or a bad purpose (planning a crime). There was also no *mens rea*

(Continued)

requirement: the police did not have to show that a person had criminal intent. Almost comically, the law did not apply to people who were *walking* and excluded specific acts that are the most intimidating kinds of conduct: for example, approaching someone in a possibly threatening manner. Finally, the law violated the First Amendment right of freedom of association, which includes the right to freely travel in public places.

The Chicago gang ordinance also raised questions about the lists of gang members that are maintained by police departments. The Chicago law authorized officers to enforce the law against people it “reasonably believed” to be gang members. But how does an officer reasonably know that a young man on the street is a gang member? Is there an official gang list, or is the officer making a subjective judgment

on the spot? If the department does have a gang list, how was it compiled? Who provided the information? Was the information verified? If a young man dropped out of a gang he belonged to, was he still listed as a “gang member”? How do you ever get off the list? In many cities, there have been controversies over the arbitrary and discriminatory uses of police department gang lists.⁸⁹

FURTHER READING

- Chicago v. Morales*, 527 U.S. 41 (1999).
 Malcolm Klein, *The American Street Gang* (New York: Oxford, 1995).
 Charles M. Katz, “The Establishment of a Police Gang Unit: An Examination of Organizational and Environmental Factors,” *Criminology* 39 (2001), pp. 37–75.

The Wilkins case focused national attention on racial disparities in traffic enforcement and helped to give it a name: *racial profiling*, defined as the use of race or ethnicity as part of a profile of criminal suspects, with the result that African-American and Hispanic drivers are stopped either entirely or in part because of their race or ethnicity and not because of any illegal activity. The term *driving while black* is also used to describe this practice. A 2014 poll found that 70 percent of Americans disapproved of racial profiling (in an earlier 2004 poll 50 percent of white Americans believed that racial profiling exists, compared with 67 percent of African Americans and 63 percent of Hispanics). Interestingly, the 2014 poll found that while 78 percent of Americans had a “favorable” view of the police, 45 percent believed that officers are not held accountable for their conduct. The issue of profiling is not confined to traffic enforcement. All racial and ethnic groups also believe that racial profiling is widespread in shopping malls and stores.⁹⁰

Profiling Contexts

Racial profiling occurs in at least three different contexts. One context is the *war on drugs*, where officers are targeting African Americans or Hispanics in the belief that they are very likely to be engaged in drug trafficking. This approach represents a profile of criminal suspects based on racial and ethnic stereotypes. The ACLU argues that the Drug Enforcement Administration (DEA) encouraged racial profiling by state and local departments through its “Operation Pipeline.” DEA training materials, the claim, stereotype African Americans and Hispanics as drug traffickers.⁹¹

A second context involves stopping citizens who appear to be *out of place*, such as an African American in a predominantly white neighborhood or a white person in a predominantly African-American neighborhood. Police actions in this context involve racial stereotypes about who “belongs” in a particular area. It ignores the possibilities that, for example, an African American in a predominantly white neighborhood may live there, may have friends who live there, or may be there on a legitimate business call (e.g., an insurance salesperson calling on a customer). Similarly, the white person in a predominantly African-American neighborhood might be there for similar reasons: to see a friend, a classmate, or a teammate. In a study of traffic stops in a predominantly white community bordering a largely African-American city, Albert J. Mechan and Michael J. Ponder found that the “proactive surveillance” of African-American drivers “significantly increases as African Americans travel farther from ‘black’ communities and into white communities.”⁹² Epp et al. in their study of traffic stops in the Kansas City, Missouri, metropolitan area found that “investigatory stop especially target African Americans in Kansas City’s white suburbs.”⁹³

A third context involves a *crackdown on crime*. A police department may have an aggressive anticrime policy that emphasizes traffic stops or stops and frisks of people on the street. In the next section (pp. 176), we will discuss the New York City stop and frisk program that a federal court found to be a violation of the Equal Protection Clause of the Fourteenth Amendment because of the huge disparities in African-American and Hispanic men that were stopped.⁹⁴

The Data on Traffic Enforcement

The racial profiling controversy led to the first significant research on police traffic enforcement. National data are collected by the Bureau of Justice Statistics Police-Public Contact Survey (PPCS). The surveys have yielded two basic findings. First, traffic stops are the most common form of contact between the police and the public. Second, there are racial and ethnic disparities existing in contacts with the police, searches, arrests, and uses of force.

The 2011 PPCS found that 15 percent of Native American drivers reported having been stopped by the police, compared with 12.8 percent of African American, 10.4 percent of Hispanic, 9.8 percent of white drivers, and 9.4 percent of Asian American drivers. Disparities also existed among those who were ticketed: 8 percent of African American, 6.2 percent of Hispanic, and 4.8 percent of white drivers. The greatest disparities involved searches by the police: 6.6 percent of Hispanic, 6.3 percent of African American, but only 2.3 percent of white drivers were searched.⁹⁵

As Lorie Fridell’s report *By the Numbers* explains in detail, racial and ethnic disparities in traffic stops pose a difficult question with respect to whether the disparities represent discrimination.⁹⁶ (See our discussion of the Discrimination-Disparity Continuum in Chapter 1, pp. 28.) Disparities can be explained by a number of different factors. The resident population of a city or county does not reflect the racial composition of the people who are actually driving. There are differences in who actually drives. The Monitoring the Future survey found similar racial differences. In 2009, 34.1 percent of African American

TABLE 4.3 Traffic Stops by Race and Ethnicity

	Percentage of Drivers in the Racial Group Stopped	Percentage of Those Stopped Who Were Searched	Percentage Who Felt The Stop Was Legitimate
White	10	2.3	83.6
African American	13	6.3	67.5
Hispanic	13	6.6	73.6

SOURCE: Bureau of Justice Statistics, *Police Behavior during Traffic and Street Stops*, 2011 (Washington, DC: Department of Justice, 2015).

high school students responded that they drove “not at all,” compared with only 13.6 percent of whites.⁹⁷ Among those who do drive, there are significant differences in driving habits. Whites have the highest rates of reported driving while impaired by alcohol (which is likely to increase the chances of being stopped by the police), while African Americans report a comparatively low rate.⁹⁸

A best method for studying traffic stops is through direct observations of traffic on particular roadway and comparing the racial and ethnic composition of those observed speeding compared with those who are stopped by the police. The direct observation method is very expensive, however, and is rarely used. An alternative method involves *peer officer comparisons*, or *internal benchmarking*. Comparing officers working similar assignments (e.g., a high-crime area on the same shift), it is possible to identify those officers who stop more African-American or Hispanic drivers than their peers.

Determining whether traffic stop disparities represent illegal discrimination depends on how we look at the issue. Official data on aggregate traffic stops do not allow us to determine whether an *individual* traffic stop was motivated by racial or ethnic bias. Official data on racial or ethnic *patterns* of traffic stops can, however, be used to determine that a department is guilty of discrimination. A mere disparity is not sufficient. The data have to be sufficiently powerful to convince a judge that an illegal pattern of discrimination exists. That happened in the case of the New York City stop and frisk program (see pp. 176) where a U.S. District Court judge found the statistical evidence powerful enough to rule the program an unconstitutional violation of the Fourteenth Amendment.

“A Deep Racial Chasm”: The Experience of Traffic Stops

In a study of traffic stops in the Kansas City, Missouri, metropolitan area, using both qualitative and quantitative methods, Epp et al. found “a deep racial chasm in the experience of traffic stops.”⁹⁹

Traffic stops, they remind us, are the common experience with law enforcement for all Americans. But there is a vast difference in the kind of stops white and African Americans experience, how they are treated in stops, and how they interpret that experience. There are two basic kinds of stops: traffic safety stops, mainly for speeding or suspected drunk driving, and investigatory stops, where the purpose is to investigate the driver, for possible possession of a weapon or dr

or an outstanding warrant. Most traffic safety stops are nondiscretionary: the car is dangerously speeding or weaving. Investigatory stops are highly discretionary, made at the choice of the officer. Typically, the pretext of a minor violation is used for the stop: a burned out tail light, or failure to signal for a lane change, for example.¹⁰⁰

Epp and his colleagues found that investigatory stops are at the heart of racial profiling controversy. African Americans experience far more investigatory stops than whites. Forty percent of African Americans under the age 25 in their study were likely to be stopped in any year, compared with only 13 percent of whites. In fact, African-American women were more likely to be stopped (about 17 percent) than white men.¹⁰¹

Investigatory stops are far more intrusive than traffic safety stops, and Epp and his colleagues found that they are “deeply resented” by African Americans. The officer is looking for something incriminating about *you* and is not concerned with your driving. In the case of traffic safety stops, people of both races typically concede that they were speeding; it’s not about you, it’s your driving. Investigatory stops more often lead to a search and even possible arrest. And because it is about *you*, investigatory stops are seen as “deeply unfair.” And for this reason, investigatory stops have a powerful effect in undermining trust in the police. The personal experience of being singled out as a suspicious person is deeply alienating. Personal experiences, meanwhile, are compounded by knowledge of similar experiences of friends. Epp et al. found that 37 percent of the African Americans they surveyed had heard a story of police disrespect, compared with only 15 percent of whites. The overall experience is one of “ongoing, pervasive surveillance.”¹⁰²

Epp et al. argue that investigatory stops are an *institutionalized* practice: the product of an organizational decision to use traffic stops as a crime-fighting strategy. The practice is supported by the endorsement of law enforcement professional associations, a department policy choice, and the training-provided officers. Investigatory stops are a classic example of institutionalized discrimination in our Discrimination-Disparity Continuum, which we discussed in Chapter 1 (pp. 28). It is not a matter of bad people (in this case, patrol officers) making bad decisions; it is a matter of an *organizational policy choice* made for what are believed to be a good reason: fighting crime.

Pulled Over makes a powerful case for the argument that the impact of investigatory traffic stops goes far beyond the criminal justice system. As the book’s subtitle indicates, stops “define race and citizenship.” A pattern of investigatory stops, which involve suspicion about *you*, and not just your driving, “convey[s] powerful messages about citizenship and equality.”¹⁰³ The message is that you are not a full member of our society. The sense of constant surveillance and being the object of suspicion has a profound alienating impact. It is almost impossible to gauge the effect on peoples’ commitment to American society and its institutions, including a commitment to law-abiding behavior.

Legitimate and Illegitimate Use of Race and Ethnicity in Policing: The PERF Model Policy

The racial profiling controversy focused attention on the question of when police officers can legitimately use race or ethnicity in a traffic stop, making an arrest,

or taking some other police action. Obviously, if a robbery victim describes the robber as a tall Hispanic wearing a Los Angeles Dodgers baseball jersey and baseball cap, the police are justified in looking for a Hispanic suspect dressed that way. What is not permissible is stopping *all* Hispanic men.

To guide police officers in the proper use of race and ethnicity in traffic stops and other police actions, the Police Executive Research Forum issued a model policy in its report, *Racially Biased Policing: A Principled Response*.¹⁰⁴ (See Box 4.2.) It clearly states that race cannot be the *sole or even the primary factor* in determining whether to stop a citizen. Officers may, however, take race or ethnicity into account when it is information related to a "specific suspect or suspects" that links the suspect or suspects to a particular crime. This information, moreover, must come from a "trustworthy" source. In practice, the police can use race, for example, when they have a credible report of a robbery committed by a young African-American male wearing a baseball cap and a red jacket. If they have a description of the suspect's vehicle, they can stop similar vehicles. They cannot, however, stop all African-American men.

The PERF policy also recommends specific steps that police officers should take to help reduce the perception of bias. Officers should "be courteous and professional" in a traffic stop, "state the reason for the stop as soon as practical," "answer any questions the citizen may have," "provide name and badge number when requested," and "apologize and/or explain if he or she determines that the reasonable suspicion was unfounded." Procedural justice research (p. 175) has found that how the police act has a major impact on citizen attitudes toward police.¹⁰⁵

Eliminating Bias in Traffic Enforcement

Several strategies have been developed to combat racial and ethnic bias in traffic stops. The traditional strategy of law enforcement organizations involves combination of *exhortation and training*. Many police chief executives have issued statements that race discrimination is prohibited. Some have adopted the PERF Model Policy as their own department policy. Such statements are an important function of leadership. Departments have also offered specific training on the proper use of race in traffic stops. These steps, while important, are just a first step in controlling officer actions on the street.

Another strategy, favored by civil rights groups, has been to demand that law enforcement agencies *collect data on all traffic stops*. Several states passed laws requiring data collection, and some departments collected data voluntarily. A federal data collection law has been pending in Congress for several years. But as we have discussed (pp. 171), traffic stop data are difficult to interpret in terms of whether a clear pattern of discrimination exists.¹⁰⁶

A third strategy involves law enforcement agencies adopting *policies and procedures* governing how officers conduct traffic stops. We have already discussed this approach with respect to controlling the use of deadly force (pp. 156) and the use of excessive force (pp. 161). With respect to traffic stops, this approach requires departments to have specific policies on traffic enforcement and to require officers to document each stop in an official report. Typically, reports include the reason for the stop, the race or ethnicity of the driver and any passengers, a

**Box 4.2 Excerpts from the Police Executive Research Forum (PERF)
Recommended Policy on Traffic Stops**

A. Policing Impartially

1. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests, nonconsensual searches, and property seizures.

Except as provided below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

2. Except as provided above, race/ethnicity shall not be motivating factors in making law enforcement decisions.

SOURCE: Police Executive Research Forum, *Racially Biased Policing: A Principled Response* (Washington, DC: Author, 2001), pp. 51–53.

the action taken by the officer (warning, ticket, search, etc.). The next section describes a success story in the use of this approach.

How Formal Policies Can Reduce Bias in Stops and Searches:

The Case of the Customs Bureau

The U.S. Customs Bureau represents a case study in how formal policies can effectively control racial bias. A 2000 report on the Customs Bureau found significant disparities in stops and searches of passengers entering the United States. African-American women were more likely to be searched than either white women or African-American males, even though they were less likely to be found possessing contraband. Customs agents had almost unlimited discretion to choose who to search, and the guidelines for identifying suspicious people were extremely vague.²⁰⁷

In response, the Customs Bureau developed a short and more specific *list of indicators* that could justify a stop and search and a requirement that agents obtain *supervisors' approval* for particular kinds of searches. The result was a much lower number of searches and a higher "hit rate" (the percentage of searches that found contraband). These changes reduced the number of unnecessary searches where no contraband was found, most of which involved people of color. In short, the Customs Bureau was "working smarter": instead of indiscriminate searches that are unproductive and offend many innocent people, searches were better targeted toward possible suspects.