

Like racist police, racist policies need to go

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Like Vida B. Johnson, I was [outraged at the t-shirt worn by a Metropolitan Police Department officer](#) that glorified the use of “jump-out cars” and contained a common white supremacist symbol. Police and political leadership should actively identify and root out white supremacists from police departments throughout the country. At the same time, community leaders should examine policies that have disparate racial impacts in communities of color, even though those policies are facially color-blind or race neutral. Even without the taint of explicit white supremacy on the MPD officer’s t-shirt, the policy that produces jump-out cars in D.C. is racially problematic by itself. Although not publicly discussed as “jump outs,” the D.C. Metropolitan Police has been taken to court over the heavy-handed tactics associated with its Gun Recovery Unit (GRU).

The GRU stops and searches individuals—usually young black men in Southeast D.C.—to look for weapons. (In D.C., with very few exceptions, it is illegal to carry a concealed firearm outside of the home, so the possession of a weapon concealed on a person is presumptively criminal).[1] Under [Terry v. Ohio](#) (1968), an officer must have an articulable suspicion a crime is ongoing or about to be committed before he can stop, question, and pat an individual down to check for weapons or, alternatively, the officer may search a person if he gains consent from the individual to be searched. Judge Janice Rogers Brown of the D.C. Circuit Court of Appeals questioned the legitimacy of that framework in practice, placing the GRU’s standard operating procedure not in the poorer, mostly black neighborhoods of Southeast D.C., but in a [posh, predominantly white residential and shopping district](#):

[T]ry to imagine this scene in Georgetown. Would residents of that neighborhood maintain there was no pressure to comply, if the District’s police officers patrolled Prospect Street in tactical gear, questioning each person they encountered about whether they were carrying an illegal firearm? Nothing about the Gun Recovery Unit’s modus operandi is designed to convey a message that compliance is not required.

...

With the guise of voluntary consent stripped away, the reality of the District’s regime is revealed. It is a rolling roadblock that sweeps citizens up at random and subjects them to undesired police interactions culminating in a search of their persons and effects.[2]

Although Judge Brown did not mention race at all in her concurring opinion, the *de facto* racial segregation that separates the two places is clear to anyone familiar with D.C. neighborhoods. If this were tried in a white neighborhood, she implies, the practice would be abandoned and the department might even be sued.

And while the defenders of the practice would argue that Georgetown does not face the homicide and violent crimes affecting Southeast, it’s too easy to justify separate and unequal policing under the guise of solving a legitimate policy problem. While it is entirely fair to say that more crime

justifies a greater police presence in a segment of a city, that crime does not—or, rather, *should* not obviate the constitutional rights of the people who live in that area. If statistics showed there were more child pornography producers and distributors in white neighborhoods, the police would not be justified going door to door to intimidate presumptively innocent residents to get consent to search their computers to combat child pornography. Residents would be outraged to be treated as criminal suspects and intimidated to surrender their rights. Yet the GRU eviscerates Fourth Amendment protections for young black men walking down the street as policy, irrespective of any racial prejudice by the officers.

This sort of practice is not just a D.C. problem. Investigatory traffic stops are used across the country in order to find contraband and cash in cars travelling on American roads. Although traffic stops are a regular occurrence, research indicates there are two different types of stops and the difference between those stops has broad racial implications. In their book, [Pulled Over](#), Charles R. Epp, Steven Maynard-Moody, and Donald Haider-Markel use data to show that black motorists in Kansas are more likely to be stopped by police for pretextual causes—minor infractions with little or no public safety implications, like a burned-out license plate light—with the ultimate goal of being searched for contraband.

The respondents who were pulled over and subjected to the searches reported that, for the most part, the officers were polite and professional throughout the stops. The professionalism that has been stressed to officers in recent years to decrease hostility in police encounters does not overcome the drivers' perceived illegitimacy of the stop. Thus, focusing on individual officers and possible bias misses the broader impact of the policy on local minority communities. Findings imply that these pretextual investigatory stops of minorities have negative effects on minority communities such as reducing respect for police and civic institutions as well as undermining the drivers' sense of equal place in society, regardless of how polite the officers were. Sometimes the policies themselves should be examined and discontinued.

While it is crucially important that racist officers are found out and dismissed from their police departments, some of the more pervasive problems affecting minority communities are the policies officers are asked to carry out. Dubbing today's criminal justice system "The New Jim Crow" may be a helpful comparison to understand the scale of the damage done to African-American communities by mass incarceration, but I fear of over-reliance on the narrative of an intentional suppression of black people by malicious police and profiteers. The focus on explicit racism threatens to overshadow racially biased policies that can erode the fabric of the communities police are trying to protect. Too often in law enforcement, and government generally, the damage done to marginalized communities stem not from malice, but the unintended consequences of well-intended policies.

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Notes:

[1] A [recent decision in the U.S. Court of Appeals for the D.C. Circuit](#) allowed the District to start issuing concealed carry permits to all qualified applicants, but this is likely to be stayed and held over until an appeals court hearing and decision en banc or on appeal to the U.S. Supreme Court. For the purposes of this post and as a matter of reality for District residents and police, the presumptive criminality of concealed possession is accurate.

[2] *United States v. Gross*, 784 F.3d 784 (D.C. Cir. 2015) (Brown, J. concurring at 790–791).