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Hentoff: 'Teachable moment' missed lesson on free speech

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GHS

Posted Aug 06, 2009 @ 12:19 AM

The "media frenzy" - as President Obama called it - over Sgt. James Crowley's arrest of Harvard professor Henry Louis Gates Jr. needs to become more than a "teachable moment," in the president's phrase. But not only about interactions among blacks and white police. Widely overlooked in this frenzy is a constitutional lesson. Is there a law forbidding angry nonviolent speech directed at a police officer?

John Timoney, Miami's police chief, is a hard-line, law-and-order cop whom I've criticized for his mass arrest of nonviolent protesters - when he was police chief in Philadelphia - without a flicker of probable cause. But I respect what he told Maureen Dowd of The New York Times (July 26) about Gates' arrest:

"There's a fine line between disorderly conduct and freedom of speech. It can get tough out there, but I tell my officers, 'Don't make matters worse by throwing handcuffs on someone. Bite your tongue ...'"

Moreover, as Ronald Hampton, executive director of the National Black Police Association, said after the handcuffing of Henry Louis Gates: "Black men's experience with law enforcement in this country is very different than that experience of whites" (National Public Radio, July 24).

In July of last year, a New York Times/CBS News poll asked: "Have you ever felt you were stopped by the police just because of your race or ethnic background?" Yes, said 66 percent of black men. Also responding affirmatively were 9 percent of white men (New York Times, July 24).

But what about this particular arrest, which has ignited a continuing national debate? The Massachusetts American Civil Liberties Union affiliate reminds us (Slate.com, July 22) claiming racial bias while protesting an arrest is political speech, the core of the First Amendment - and exercising political speech is not disorderly conduct. That was the crime that Gates was charged with when arrested. The Cambridge Police Department, while standing behind Crowley, dropped that charge in the national gust of publicity, and also, I believe, the department knew it would not stand up in court.

Almost lost in the frenzy was Atlanta police officer M. Tate (he wouldn't give his first name) who told the New York Times (July 24) how his police department has trained him not to lose his cool when subjected to angry name-calling. An arrest he said is justified when:

"The set of circumstances ... will lead a reasonable and prudent person to believe that a crime has or is about to be committed and that the person in question is involved in a significant manner." Handcuffs are not warranted, he added, by anything short of that.

Yet Gates' arresting officer, Crowley, has - for the past five years - been training officers at the Lowell Police Academy in how not to engage in racial profiling. But by the time he handcuffed Gates in Cambridge, Crowley knew Gates was in his own house and there was no burglary in progress. If Crowley wasn't racially profiling Gates - as the professor believes he was (New York Daily News, July 25, lead editorial) - then he busted him for political speech.

The sergeant needs more training.

Bob Herbert reports (New York Times, Aug. 1) only five or six minutes elapsed between police alert to a possible break-in and the handcuffing of nonviolent Gates.

What was Crowley teaching the Lowell police?

While Obama has been criticized for increasing the media frenzy by charging that Crowley acted "stupidly" (a word he has recanted), the president did otherwise make sense:

"I think we know, separate and apart from this incident ... that there's a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately."

This reporter, having covered the police in New York City since 1958, can further define what Obama refers to as disproportionate police stops of blacks.

In May of this year, the New York Civil Liberties Union (NYCLU) reported, based on police data, that New York City Police Department officers "stopped and interrogated New Yorkers 171,094 times between January and March" - and more than 151,000 of those individuals were sent on their way without charges. Approximately 89,000 of those stopped were black, 56,000 were Latino, and 16,000 were white.

Donna Lieberman, the head of the NYCLU, added: "These New Yorkers' personal information is now stored in an NYPD database."

"The NYPD is, in effect, building a massive database of black and brown New Yorkers," said NYCLU Associate Legal Director Christopher Dunn. Based on what information on those who are not charged? Their color!

Not incidentally, Barack Obama, when he was an Illinois state senator, sponsored legislation to track racial breakdown of drivers stopped by the police. The term, "Driving While Black," is familiar to blacks around the country protesting "disproportionate" police stops on the road and in their streets.

Newsday (July 30) quotes 44-year-old Julian Gobourne, black, an information technologist for a bank, that "whites don't understand racial profiling because white people don't experience it negatively."

Accordingly, a July 29 Wall Street Journal/NBC poll disclosed that 4 percent of blacks blamed Mr. Gates for the notorious arrest while 30 percent targeted Crowley. Among white respondents, 32 percent placed responsibility for the arrest on Gates and 7 percent blamed Crowley.

If this "teachable moment" is intended to show how far we still have to go to enter a post-racial society, it has succeeded. To be continued.

In another context, Winston Churchill urged: "Never ever give up!" Nor should we to ensure the Constitution's equal protection of the laws.

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