

# Procedural justice and pretextual stops

## SUMMARY

This is a summary of an essay published by Jonathan Blanks in the Case Western Reserve Law Review. Click here to read the full essay: <http://object.cato.org/sites/cato.org/files/articles/blanks-cwrlr-v66n4.pdf>

**One focus of procedural justice is how police act when they engage with the community, but why they engage could matter even more.** Jonathan Blanks, writing in the Case Western Reserve Law Review, argues that certain types of legal police engagement, no matter how friendly or polite, may still undermine procedural justice. Blanks explains this concept through the example of the pretextual stop, which he says fundamentally violates trust and good faith between police and community.

Pretextual stops erode trust for two reasons, according to Blanks. First, “the stop itself is based on an officer’s hunch that very often has a racial component”—whether real or perceived. Though an officer may try to establish *standing* and gain *trust* during the stop, the *neutrality* of the stop is violated by the reasoning the officer used to initiate the stop. Second, these stops are defined by dishonesty and an “illusion of consent,” because “police officers only try to gain consent to search a car when the officers lack the probable cause to suspect criminal activity.” There is an understand-

ing, particularly among minorities, that rejecting a request for a search comes with risks—handcuffing, agitation, or possible violence—and that the search may occur even without consent. When officers identify specific people for pretextual stops and then use pressure or deception to conduct a search, it “shifts an officers’ role from protector and public servant in a position of trust to antagonist and interrogator—even if he is doing so politely.”

This argument is supported by data from traffic stops in Kansas City. Blanks cites research that shows that despite the fact that blacks have higher distrust of police, whites and blacks deemed traffic stops equally fair when they had “unambiguously” violated the law. However, when officers stopped motorists for minor infractions and proceeded to question them and request to search the vehicle, it resulted in hostility and resentment among all races, but particularly among African-American and Latino drivers (who were also disproportionately stopped for investigatory purposes). Drivers’ evaluation of the stop didn’t depend on whether offi-

cers were polite or respectful: the reason for and actions of the stop mattered.

The larger argument, however, applies to all forms of engagement. “An overemphasis on kindness and courteousness may discount the impact of the decisionmaking that led to the initial contact or encounter with police in the first place,” Blanks writes. “Procedural justice may be a partial remedy to heal the relationships between black communities and the police, but police agencies and legislators will need to reorient law enforcement priorities and strategies to better serve the communities that need their protection the most.” To him, that means changing the incentives—monetary, occupational, and political—that encourage stops and other strategies that carry “longer-term social costs” but only “fleeting gains from the arrests they enable.”

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