

The Cop's-Eye View of the Gates' Arrest

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By Peter Moskos

Apparently even Henry Louis Gates Jr. isn't immune to being arrested for "contempt of cop." Discretionary arrests for minor charges happen all the time. It's only rare when it happens to somebody of Professor Gates' stature and becomes national news.

If you're a police officer and run into the director of Harvard's W.E.B. Du Bois Institute for African and African American Research - even if he is rude to you - best to let it slide. Really.

In my book *Cop in the Hood*, I described how officers can invite a person outside in order to arrest him for disorderly conduct. I gave the hypothetical of a domestic dispute: "Though the officer believes this argument will continue and perhaps turn violent, there is no cause for arrest. Police may not order a person from his or her home. But an officer can request to talk to the man outside his house. At this point the officer might say, 'If you don't take a walk, I'm going to lock you up.' The man, though within his rights to quietly reenter his house and say goodnight to the police, is more likely to obey the officer's request or engage the police in a loud and drunken late-night debate. ... If a crowd gathers or lights in neighboring buildings turn on, he may be arrested for disorderly conduct."

The parallels with Cambridge Police Sgt. James Crowley's arrest report are striking: "I told Gates that I was leaving his residence and that if he had any other questions regarding the matter, I would speak with him outside. ... I again told Gates that I would speak with him outside. ... His reply was 'Ya, I'll speak with your mama outside.' ... [Gates followed me outside and] continued to yell at me, accusing me of racial bias and continued to tell me that I had not heard the last of him. ... I warned Gates the he was becoming disorderly. Gates ignored my warning and continued to yell, which drew the attention both of the police officers and citizens, who appeared surprised and alarmed by Gates's outburst."

Every police/public confrontation ends up in one of three ways: the suspect 1) leaves the scene, 2) defers to police authority, or 3) gets locked up. Mr. Gates couldn't do the first option, he refused to do the second, so he virtually begged for number three. It was certainly wrong, in this situation, to arrest Mr. Gates. But can it ever be right to cuff somebody for "contempt of cop"? The short answer is: yes.

Police don't often tell their side, and when they do, they're overly dismissive of those who haven't walked in their shoes. But there are reasons that police react in the way the cop in the Gates case reacted.

MIT sociologist John Van Maanen notes that police categorize people into three groups: "suspicious persons" (criminal suspects), "know-nothings" (most citizens) and "a----s" who question police authority. These categories are fluid. Mr. Gates very quickly went from suspicious to know nothing to the police definition of that third category. Today the power of arrest defines the role of police in society, and the "a-----" gets taken in.

As police are almost always outnumbered, personal safety depends on a little bravado and a little bit of bluff. When I was a police officer in Baltimore, and somebody hanging out on the corner mumbled he was going to "get me," he had to be confronted with swift, certain and appropriate deterrence. If there was a threat to my face, jail was automatic. If somebody said he was going to kick my ass, he probably could.

Police have a strong, justifiable need to control the situation. I didn't want to be loved. I didn't mind being feared. Respected was OK. But all that really mattered was to be obeyed. To have authority, police need a legal, all-purpose charge to arrest people when nothing else will do. In Baltimore, it was loitering. In New York (and, I suspect, Cambridge), it's disorderly conduct. Police also need smart officers to not abuse their discretion.

Verbal charges of racism make it all more difficult. Police can't do their job without being called racist. When I was on patrol in Baltimore and it happened to me, I would usually just roll my eyes. But if I was doing a car stop and planning to give a warning, everything would change if the driver brought up race. I would automatically write a ticket for whatever I stopped the car for. And it wasn't race. Police are paranoid of the seemingly arbitrary and capricious powers of internal affairs. If an officer gets asked (sometimes months later), "Why did you stop that car?" a ticket becomes proof that the officer was acting lawfully. From the police perspective, such action is less payback than C.Y.A.

But the rules are different when dealing with upper-class intellectuals. Some of what police are paid to do is judge a situation in its totality and defuse things accordingly. The officer, to the extent he was doing his job, was right. But putting cuffs on Mr. Gates was just dumb. Professor Gates, while not on his best behavior, was no threat to that officer. His verbal explosion should have been ignored.

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