

Review finds no links to race, arrests

Cambridge cases involved angry outbursts

By Rochelle Sharpe and Maggie Mulvihill, New England Center For Investigative Reporting | June 17, 2010

When Henry Louis Gates Jr., a prominent Harvard professor of African-American studies, was arrested for disorderly conduct by a white Cambridge police officer last summer, President Obama led a chorus of critics denouncing the local Police Department.

Gates, who is African-American, described his arrest as a “teaching moment” about race relations in America.

His case drew national attention to the relationship between policing and race. Obama wound up hosting Gates and the officer who arrested him for a so-called beer summit at the White House. And the arrest, for some, raised the question of whether officers disproportionately arrest blacks for disorderly conduct, considered one of the most discretionary and most abused charges in the nation’s criminal justice system.

But a review of the Cambridge department’s handling of disorderly conduct cases from 2004 to 2009 finds no evidence of racial profiling. Instead, the analysis by the New England Center for Investigative Reporting finds that the most common factor linking people who are arrested in Cambridge for disorderly conduct is that they were allegedly screaming or cursing in front of police.

Of the 392 adults arrested for disorderly conduct, 57 percent were white, and 34 percent were black. That racial breakdown almost exactly mirrored the racial composition of the population that Cambridge police investigated for disorderly conduct, the center’s analysis shows.

Cambridge is 68 percent white and 12 percent black, the latest US Census data show. But multiple racial profiling specialists said the fairest way to analyze the Cambridge Police Department’s conduct was to compare the racial makeup of those charged to that of those investigated and not to the racial makeup of the overall population.

The most striking conclusion of the review of Cambridge police data is that the majority of those arrested for disorderly conduct were allegedly yelling, often screaming obscenities, in front of police before the handcuffs snapped shut. More than 60 percent of the disorderly arrests reviewed by center involved some sort of allegedly inflammatory speech, such as talking back to the police, more commonly known as “contempt of cop.”

A substantial minority of those arrested for the crime also shared another trait: 17 percent of them were homeless.

Civil rights advocates around the nation are increasingly concerned that disorderly conduct charges are being used to muzzle free speech.

“Disorderly is often used when people do something to [anger] the cops,” said Daniel Beck, a veteran criminal defense lawyer

in Cambridge. "Sometimes, they're just being a drunken jerk yelling," he said. "Often, they're challenging the cops' authority."

Last month, the American Civil Liberties Union sued the Pennsylvania State Police, arguing that officers had wrongly charged hundreds of people with disorderly conduct for swearing. The case is pending. And a Washington, D.C. lawyer, who was arrested for disorderly conduct last summer after allegedly shouting "I hate police" to a group of officers, is seeking to get his arrest expunged.

Last fall, meanwhile, a man won a \$50,000 settlement from the city of Pittsburgh, after he got into a dispute with a police officer over a parking space and made an obscene gesture.

In Cambridge, Nancy J. Berberena said she was arguing with a Cambridge officer when she was arrested for disorderly conduct in 2008. Berberena, 39, was distraught with the way the officer was questioning her son because he resembled a suspect in another crime. She said the officer swore at her, telling her to keep quiet, and pointed his finger close to her face.

When she returned both the curse and finger-pointing, she was arrested for assault and battery on a police officer and disorderly conduct. She denies she did either.

"We were trying to protect ourselves with words," Berberena said.

Both charges were later dismissed by the prosecutor, court records show.

The Gates controversy began last July, when Crowley arrested Gates for disorderly conduct outside his home, after responding to a dispatcher's call about a potential break-in at the house. According to the police report, Gates became uncooperative during the incident. "Is this how you treat a black man in America?" Gates recalled saying at the time.

When Crowley asked to speak with him outside his home, Gates replied, "Ya, I'll speak with your mama outside," according to the police report.

Cambridge Police Commissioner Robert C. Haas, who declined to comment on the Gates case, said that speech is never the sole basis for an arrest.

"You have a situation where you are trying to stop behavior, and entangled in that behavior you have people saying things," he said. "It's the behavior officers are trying to deal with, and it's the behavior that officers are trying to stop that they believe really creates social disharmony. They have an obligation to stop it."

Haas called the Gates incident "a major crisis" for his department. He said his department conducted a study of its use of disorderly conduct charges between 2004 and 2008. The analysis, which also concluded race was not an issue, will be posted on the department's website.

Sergeant James Crowley, who arrested Gates, said in a written statement that the findings clear him and his department of racism. "I have never and will never use race to affect how I do my job," he said.

Specialists cautioned that the findings do not prove Gates was wrong in raising the race issue, saying that it is not possible to determine from a statistical analysis whether conscious or unconscious bias played a role in the interaction between Gates and Crowley.

“Race can still play a role in any particular encounter between a police officer and a citizen, even if we find a clean bill of health on the numbers for Cambridge and disorderly conduct enforcement,” said David A. Harris, a leading authority on racial profiling who teaches at the University of Pittsburgh School of Law.

Gates declined to comment for this report, referring questions to his lawyer, Harvard Law professor Charles Ogletree.

Ogletree is promoting a new book about racial injustice, entitled “The Presumption of Guilt: The Arrest of Henry Louis Gates Jr. and Race, Class, and Crime in America.” In it, he compares the Gates arrest to the 1991 beating of Rodney King in Los Angeles, which led to race riots.

In an interview, Ogletree said he did not request any arrest data from the Cambridge police nor did he interview police officials or Crowley.

“This is not about data and Cambridge,” he said.

In almost every way, the Gates case was an aberration for the Cambridge Police Department, records show.

Gates, 59, was one of the 10 oldest people arrested for disorderly conduct in the last five years in Cambridge. He was one of fewer than two dozen people arrested at their homes. And he was the only person arrested by Crowley for disorderly conduct between 2004 and 2009.

The Gates arrest prompted changes at the Cambridge Police Department. Now, every time officers charge someone with disorderly conduct, they must thoroughly document why they made the arrest. Officers are also receiving training intended to make them more aware of how they react when citizens get angry at them.

Two other reviews sparked by the Gates arrest are underway in Cambridge. This summer, a 12-member committee of law enforcement specialists and academics from around the country plans to release its analysis of “lessons learned” from the incident.

And the city’s Police Review Advisory Board, a civilian oversight review board, has completed a preliminary investigation of the incident but has not yet released its findings.

The New England Center for Investigative Reporting is a nonprofit investigative reporting newsroom based at Boston University’s College of Communication. Center codirector Joe Bergantino contributed to this report, as did BU students Sarah Favot, Christine Savage, Jaime Lutz, and Sydney Lupkin. ■