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The Violence of Nosy Questions

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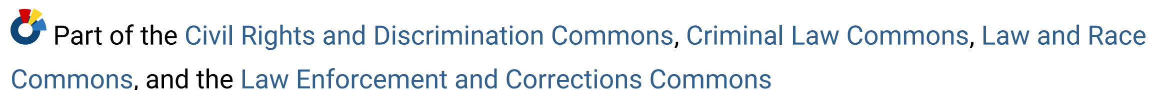

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THE VIOLENCE OF NOSY QUESTIONS

JEANNINE BELL*

ABSTRACT

This Essay examines a little-studied aspect of police procedure: police officers' unfettered power to ask questions of motorists. The questions officers ask after they have stopped a car can run the gamut from questions about the nature of the motorist's travel plans to nosy personal questions. Such questions are often intrusive, and drivers report feeling degraded by having to answer them. This Essay argues that these questions should be regulated because giving officers complete control over what they ask motorists provides a significant space for racial discrimination in policing, creates resentment, and encourages minorities to distrust the police.

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INTRODUCTION

Where are you from? What are you doing here? Where are you headed? Do you have any weapons on you? Can I take a look inside your car? How long have you been here? What do you do for a living? These are nosy questions—questions unrelated to the matter at hand, and the person asking the questions really does not need to know the answers. Individuals confronted with such probing inquiries are likely to find them intrusive or embarrassing. Though it is normally most people's impetus to resist or deflect such lines of inquiry, the Supreme Court has empowered one group of individuals to demand responses to nosy questions—police officers. The law has transformed contemporary policing into a space where police officers are empowered to ask any citizen all sorts of nosy questions that are clearly fishing expeditions—entirely unrelated to the reason for which the individual has been stopped.

Though citizens may find such questions intrusive, *Graham v. Connor*[1] provides a cautionary tale regarding citizens' abilities to resist such inquiries. *Graham* involved the most innocent of victims. Dethorne Graham, a diabetic, asked his friend William Berry to drive him to a convenience store so he could purchase orange juice to avert a diabetic reaction.[2] The convenience store had a long line, so Graham elected to leave without purchasing anything. M.S. Connor, a police officer, saw Graham quickly enter and leave and found this behavior suspicious. Connor made an investigative stop of Berry's car. In response to Connor's questions about the convenience store, Berry indicated that Graham was having a "sugar reaction."[3] While Connor was at his car calling for backup, Graham exited the car, ran around it twice, and sat down on the curb, eventually fainting. One of the officers who responded cuffed Graham's hands tightly behind his back. Several other officers lifted Graham's prostrate body from behind, carried him to Berry's car, and dropped his body face down on the automobile's hood.[4] In response to Graham's request that officers look in his wallet for the diabetic decal he carried, one officer responded, "Shut up!" and slammed Graham's face against the car hood.[5] Next, Graham was roughly carried to the back of a police squad car and thrown in the back headfirst.[6] He was released when officers learned that nothing untoward had occurred at the convenience store.[7]

As a result of his encounter with the police, Graham sustained multiple injuries. His foot was broken, his wrists were cut, his forehead was bruised, and

[1] 490 U.S. 386 (1989).

[2] *Id.* at 389.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

he developed longstanding ringing in his ears.[8] In response to his 42 U.S.C. § 1983 claim against the officers, the Supreme Court evaluated whether the officers involved had used excessive force against Graham during the stop. Ultimately, despite Graham's injuries and obvious innocence, it was not clear to the Court that the officers had used unreasonable force. Justice Rehnquist noted that claims of excessive force must be evaluated using an objective standard recognizing that officers must make quick, in-the-moment decisions as situations change.[9] As Justice Rehnquist noted, quoting *Johnson v. Glick*,[10] "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment."[11] By focusing on the "evolving situation" that investigatory stops can be and turning a blind eye to the officers' unnecessarily cruel behavior toward someone who they had been told was ill, the Court's decision in *Graham* gives law enforcement officers a substantial grant of discretion. Because of the extraordinary facts in *Graham*—a diabetic experiencing insulin shock failed to respond to police and was treated roughly—one logical extension of *Graham* is that if a citizen fails to respond to a police officer's questions for any reason at all, the police officer can continue the fishing expedition, even if the citizen is entirely innocent and the officer's actions cause physical harm to the citizen.

This Essay questions the wisdom of the Court's decision to turn a blind eye to nosy questions. Part I begins with an exploration of officers' use of these questions and the rationale behind these fishing expeditions, followed by an analysis of the doctrinal support for officers' ability to make such inquiries. This Essay argues that such questions stem from the ability of police officers to make investigatory stops. Part II draws attention to the danger of this line of questioning, arguing that such questions encourage the police to racially discriminate and to engage in violent behavior. Part III highlights a case in which the Oregon Supreme Court determined that police officers' questions during a traffic stop should be regulated. This Essay concludes with a call to the courts to help restore trust, preserve citizen dignity, and decrease disruption to police by curtailing investigatory stops and consequently decreasing (if not eliminating altogether) the intrusive and embarrassing practice of nosy questions.

I. COPS' NOSY QUESTIONS

A. *The Inquiries: What Do Cops Ask?*

Violent confrontations can begin with nosy questions. Take for instance the 2015 encounter between Brian Encinia, a white police officer, and Sandra Bland, a black woman. Encinia stopped Bland for a minor traffic violation. The exchange below is part of the transcript of Encinia's initial encounter with

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[8] *Id.* at 390.

[9] *Id.* at 395-97.

[10] 481 F.2d 1028 (2d Cir. 1973), *abrogated by Graham*, 490 U.S. 386 (1989).

[11] *Graham*, 490 U.S. at 396 (citation omitted) (quoting *Glick*, 481 F.2d at 1033).

Bland, recorded by the officer's dash cam, as soon as he approached her car. Nosy questions are italicized for emphasis.

> ENCINIA: Hello ma'am . . . . [T]he reason for your stop is because you failed to signal the lane change. Do you have your driver's license and registration with you? *What's wrong? How long have you been in Texas?*
>
> BLAND: Got here just today.
>
> ENCINIA: OK. Do you have a driver's license? [*Pause.*] *OK, where you headed to now*?[12]

The first nosy question Encinia asks—"What's wrong?"—is the least pernicious. He may have gotten the sense from Bland's demeanor that something was wrong and wanted to respond to it. Though it appears not to have been motivated by a desire to investigate Bland, there are two indications that Encinia's question likely wasn't motivated by concern for her well-being, either. First, Encinia did not wait for a response before asking an unrelated follow-up question. Second, following Bland's nonresponse, Encinia showed little concern for trying to address any of Bland's (uncommunicated) potential problems. Encinia next asks Bland how long she had been in Texas and where she was next headed. The follow-up is clearly a nosy question of the most intrusive variety—these questions are entirely unrelated to the reason for the stop, which was a traffic stop for failure to signal.

Though police may see nosy questions like the ones in Encinia and Bland's exchange as harmless and part and parcel of their jobs, another way of viewing these questions is as purely nosy fishing expeditions for any potential evidence to indict the citizen. While officers may view such questions as innocuous, these questions intrude upon "the privacy and personal security of individuals" because they are entirely disconnected from the reason for the stop.[13] In the example above, Encinia told Bland that the reason for the stop was for failing to use a turn signal. Questions related to the stop might have been: "Why didn't you use your turn signal? Is your turn signal broken?" Furthermore, the two questions that Encinia did ask—"How long have you been in Texas?" and "Where you headed to now?"—are personally intrusive.

The mere asking of such questions by a police officer—a government official with a badge and gun—is sharply reminiscent of the ways in which South

[12] Ryan Grim, *The Transcript of Sandra Bland's Arrest Is as Revealing as the Video*, HUFFPOST (July 22, 2015, 11:10 PM), https://www.huffpost.com/entry/sandra-bland-arrest-transcript_n_55b03a88e4b0a9b94853b1f1 [https://perma.cc/4KL5-ZZEE] (emphases added).

[13] United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976), citing United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (involving border patrol stop and questioning of motorists at designated checkpoint).

Africa's apartheid-era policer officers enforced pass laws.[14] Additionally, the timing of Encinia's questions adds insult to injury. As noted above, Bland was stopped simply for failing to signal—a very minor violation; nevertheless, she was asked to respond to a number of unrelated personal questions.[15]

Encinia's questions are not only clearly intrusive and indicative of a lack of respect for Bland but more importantly such questions also negatively—and unsurprisingly—shape exchanges between drivers and police officers. The remainder of Bland's interaction with Encinia picks up after Encinia went to his police cruiser for several minutes before returning to Bland's vehicle:

> ENCINIA: OK, ma'am. [*Pause.*] You OK?
>
> BLAND: I'm waiting on you. This is your job. I'm waiting on you. When're you going to let me go?
>
> ENCINIA: I don't know, you seem really irritated.
>
> BLAND: I am. I really am. I feel like it's crap what I'm getting a ticket for. I was getting out of your way. You were speeding up, tailing me, so I move over and you stop me. So yeah, I am a little irritated, but that doesn't stop you from giving me a ticket, so [*inaudible*] ticket.
>
> ENCINIA: Are you done?[16]

The exchange continues in this manner for several more minutes with Encinia eventually asking Bland to put out her cigarette.[17] After she refuses to put out the cigarette, he asks her to step out of her car. When she refuses, he tells her that he is going to yank her out of the car before reaching inside. A few sentences later, he tells her that she is under arrest:

> ENCINIA: I said get out of the car!
>
> BLAND: Why am I being apprehended? You just opened my —
>
> ENCINIA: I'm giving you a lawful order. I'm going to drag you out of here.
>
> BLAND: So you're threatening to drag me out of my own car?
>
> ENCINIA: Get out of the car!

---

[14] From the 1930s through the 1960s, South Africa had an internal passport system designed to restrict the movement of black South Africans, requiring them to remain in particular areas. Police officers were empowered to stop citizens at any time and ask for their passports, and violators of these "pass" laws were subject to arrest and prosecution. *See* Keith Shear, *At War with the Pass Laws? Reform and the Policing of White Supremacy in 1940s South Africa*, 56 HIST. J. 205, 207 (2013) (describing pass laws that "entitled the police at any time to demand that Africans show them a properly endorsed document or face arrest, [which] hindered Africans' freedom of movement, restricted where they could reside, and tied them to their white employers, underpinning a system of cheap labour and humiliating subjection").

[15] Grim, *supra* note 12.

[16] *Id.*

[17] *Id.*

BLAND: And then you're going to [crosstalk] me?

ENCINIA: I will light you up! Get out! Now! [*Draws stun gun and points it at Bland.*]

. . . .

BLAND: For a fucking failure to signal. My goodness. Y'all are interesting. Very interesting.

. . . .

BLAND: [*Cries.*] For a fucking traffic ticket, you are such a pussy. You are such a pussy.[18]

Bland was arrested for suspicion of assaulting a public servant. She was found hanging in her jail cell three days after her arrest.[19] Encinia later claimed that he feared for his personal safety at multiple times during the encounter with Bland.[20] He was fired by the Texas Department of Public Safety for lying on his report.[21]

Encinia's own post hoc description of the stop suggests that the stop had nothing to do with the reason he provided to Bland. Encinia described the stop as being based on a hunch that Bland was suspicious.[22] Taking together Encinia's "hunch" and the nosy questions he asked of Bland raises the question of whether this stop was really for investigatory purposes. Even if Encinia was less than forthcoming about his real reason for stopping Bland, the stop was legally permissible under the Fourth Amendment because the Supreme Court has held that pretextual stops are constitutional.[23]

Though it began with a minor traffic violation, the encounter between Bland and Encinia had tragic consequences.[24] In September 2016, Bland's mother

[18] *Id.*

[19] *Id.*

[20] Brian Collister, *Trooper Fired for Sandra Bland Stop: "My Safety Was in Jeopardy*,*"* TEX. TRIB. (Sept. 16, 2017, 12:00 AM), https://www.texastribune.org/2017/09/16/trooper-fired-sandra-bland-stop-my-safety-was-jeopardy/ [https://perma.cc/2GRZ-VU95].

[21] *Id.*

[22] *Id.*

[23] *See* Whren v. United States, 517 U.S. 806, 813 (1996) ("We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.").

[24] Tim Elfrink, *'Open Up the Case, Period.': Sandra Bland's Family Demands Answers over New Video of Her Arrest*, WASH. POST (May 7, 2019, 4:32 AM), https://www.washingtonpost.com/nation/2019/05/07/open-up-case-period-sandra-blands-family-demands-answers-over-new-video-her-arrest/.

settled a wrongful death lawsuit against the Texas Department of Public Safety and Waller County for $1.9 million.[25]

II. The Danger of Nosy Questions

A. *Wide Open Spaces for Police Discretion*

Nosy questions are the Wild West of constitutional criminal procedure. In sharp contrast to how the Supreme Court has treated these particular types of questions, the Court has carefully regulated police officers' interactions with citizens in almost all other areas of Fourth Amendment jurisprudence. The Constitution dictates that searches and seizures be reasonable.[26] Thus, police stops are heavily regulated.

Beginning with *Terry v. Ohio*,[27] the Supreme Court has held that police officers must have reasonable suspicion to stop an individual.[28] The Supreme Court has refined what it means to be stopped and whether an individual has been officially detained, defining a "seizure" for Fourth Amendment purposes as the use of "physical force or a show of authority" to restrict a person's "freedom of movement."[29] Because the Court has defined the stop as the intrusion that matters, other interactions that do not rise to the level of a stop are irrelevant from a constitutional perspective.[30] This means that all questions directed at an individual who has not been "stopped" are fair game, and simply approaching an individual and asking questions does not mean that this person has been stopped for the purposes of the Fourth Amendment. In *United States v. Mendenhall*,[31] the Supreme Court made clear that police are allowed to "encounter" individuals and ask them questions.[32] In this case, Drug Enforcement Agency ("DEA") agents observed Sylvia Mendenhall at the Detroit Metropolitan Airport and approached her because they suspected her of

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[25] Johnathan Silver, *Sandra Bland's Family Settles Wrongful Death Lawsuit, Lawyer Says*, TEX. TRIB. (Sept. 15, 2016, 8:00 AM), https://www.texastribune.org/2016/09/15/sandra-blands-family-settles-wrongful-death-lawsui/ [https://perma.cc/425-Q78V].

[26] U.S. CONST. amend. IV.

[27] 392 U.S. 1 (1968).

[28] *Id.* at 21.

[29] United States v. Mendenhall, 446 U.S. 544, 553 (1980); *see also, e.g.*, *Terry*, 392 U.S. at 19 (rejecting notions that "Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search'").

[30] *Mendenhall*, 446 U.S. at 553.

[31] 446 U.S. 544 (1980).

[32] *See id.* at 553 ("[C]haracterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices.").

being a drug courier.[33] The DEA agents asked for her ticket and identification. After she surrendered her documents, the agents noted that her ticket and identification were in different names.[34] They asked her to accompany them to a DEA office for further questioning. In the office, a DEA agent asked to search Mendenhall's purse and then asked her to disrobe, but "told her that she had the right to decline the search if she desired."[35] She balked at the latter request, saying she had a plane to catch. Agents told Mendenhall that she would be fine if she had nothing to hide, and so she began to disrobe. Mendenhall eventually handed over two packets of drugs that were hidden in her undergarments.[36] The Court ultimately found that because Mendenhall technically retained the right to disregard the agents' questions and still had a right to leave throughout the encounter, the encounter did not rise to a stop—or "seizure"—and thus the line of questioning did not violate her constitutional rights.[37] Only once an individual is actually "seized" will courts become concerned over questions such as those seen in *Mendenhall*. Even then, the courts' inquiry ignores the content of these questions unless the questioning impacts how long the citizen is being detained, though some courts have begun to consider the content of the questions as they relate to the reason for the stop.[38]

B. *Discrimination and Discretion*

One of the biggest problems with creating a space that allows unfettered police discretion is the problem of discrimination. There is significant evidence of police discretion in investigatory stops being aimed at racial and ethnic minorities.[39] Empirically, a rich history of research suggests that police officers around the country make discriminatory stops based on race. Surveying this research, social scientists Charles R. Epp, Steven Maynard-Moody, and Donald Haider-Markel describe the pervasiveness of racial discrimination in investigatory stops throughout the United States in their book, *Pulled Over: How Police Stops Define Race and Citizenship*.[40] Racial discrimination in police stops, they noted, has been found in every type of police department:

[33] *Id.* at 547-48.

[34] *Id.* at 548.

[35] *Id.* at 548-49.

[36] *Id.* at 549.

[37] *Id.*

[38] *See* discussion *infra* Section III.A.

[39] *See, e.g.*, PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN 93-96 (2017) (citing data showing that "African American men are the primary targets of stop-and-frisk policing in Chicago, Boston, Newark, and Philadelphia"); CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 52-73 (2014) (discussing who is stopped by police and why, arguing that officers' racial biases are "activated by and in the practice of making investigatory stops").

[40] *See* EPP, MAYNARD-MOODY & HAIDER-MARKEL, *supra* note 39, at 22.

> Numerous studies have found racial disparities in police stops throughout the country: in the dense multiracial and multiethnic coastal cities of Los Angeles and New York City, but also the large Midwestern sprawls of Wichita, Kansas, and St. Louis, Missouri; in progressive, reform-oriented police departments like those in some of the Kansas City jurisdictions, but also traditional "political" departments like that of Boston; on major interstate highways in Maryland and New Jersey but also rural highways in Louisiana.[41]

The ubiquity of discrimination suggests that racial disparity in police stops is inextricably tied to the institution of American policing. No police department in any area of the country, regardless of the type or size of the department, has been able to effectively eliminate racial profiling.

Other, more comprehensive analyses of racial disparities in police stops support this proposition. The Stanford Open Policing Project, originally launched in 2015, examines possible racial bias in policing using an interdisciplinary team of statisticians, computer scientists, and journalists.[42] Researchers with the Project filed public records requests in each state to get the details of each stop carried out by the police over a ten-year period.[43] Although only thirty-one states complied with the request, as of 2017, the Project amassed a collection of 100 million records.[44] The Project's data showed that officers elected to search black and Hispanic drivers' cars on the basis of less evidence than those of white drivers.[45] Like other research showing the pervasiveness of the problem, the Project noted, "This double standard was widespread, not confined to any one state or geographic region."[46]

This discrimination in policing extends to the use of nosy questions as well. One of the closest examinations of investigatory stops was performed by Epp and his colleagues. Their book was based on surveys of more than 2000 individuals in the Kansas City area.[47] It focused closely on the interactions that individuals have with police officers. Epp and his coauthors identified two types of discretionary stops: traffic-safety stops and investigatory stops.[48] They found

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[41] *Id.*

[42] Sharad Goel & Cheryl Phillips, *Police Data Suggests Black and Hispanic Drivers Are Searched More Often than Whites*, SLATE (June 19, 2017, 12:38 PM), https://slate.com/technology/2017/06/statistical-analysis-of-data-from-20-states-suggests-evidence-of-racially-biased-policing.html [https://perma.cc/QM2C-53YV].

[43] *Id.*

[44] *Id.* ("The remaining 19 had a variety of responses: Some didn't collect the data in electronic form or didn't record the race of stopped drivers; others didn't reply to our requests for information.").

[45] *Id.*

[46] *Id.*

[47] *See* EPP, MAYNARD-MOODY & HAIDER-MARKEL, *supra* note 39, at 20.

[48] *Id.* at 14-15.

that, in traffic-safety stops, officers primarily use their discretion to enforce traffic laws and their racial biases are not triggered.[49]

Conversely, the purpose and racial distribution of investigatory stops are different than those of traffic-safety stops. Whereas traffic-safety stops are triggered by violations of the traffic law, investigatory stops are triggered by an officer's suspicion of criminal activity.[50] Though traffic-law enforcement may be offered to a driver (or to a court) as a justification, investigatory stops "are made not to enforce traffic laws or vehicle codes but to investigate the driver."[51] Epp and his coauthors find that officers' racial biases are "activated by and in the practice of making investigatory stops," as police target black citizens, particularly young black men.[52] Thus, racial disparities in police stops are concentrated in investigatory stops.[53]

Police carry out investigatory stops in an entirely different manner than traffic-safety stops. Officers are typically brief and circumspect in traffic-safety stops.[54] In investigatory stops, however, officers are rarely succinct. Instead, they are probing and often "ask questions, look about the car's interior, prolong the encounter while looking for anomalies and evidence of wrongdoing, and, if suspicious, search the vehicle."[55] Officers' conduct during investigatory stops is often both physically intrusive and emotionally intrusive; they often make use of handcuffs and ask intrusive questions.[56]

Black drivers are not fooled by proffered pretextual traffic-safety justifications for investigatory stops—Professor Epp and his colleagues' research reveals that black drivers notice and resent the intrusion.[57] The discriminatory nature of police practices during stops is especially clear when comparing Epp and his colleagues' interviews of black drivers and white drivers. When white drivers were asked about police stops, most described a fairly brief encounter, ending with either a ticket or a warning.[58] Black drivers, by contrast, "poured forth story after story of demeaning stops, often rendered in excruciating detail."[59] For black drivers, the experience of being stopped by the police is one of lasting humiliation.

[49] *Id.* at 13-14.
[50] *Id.* at 8.
[51] *Id.*
[52] *Id.* at 53.
[53] *Id.* at 13.
[54] *Id.* at 78.
[55] *Id.* at 78-79.
[56] *Id.* at 11.
[57] *Id.* at 10.
[58] *Id.* at 112-13.
[59] *Id.* at 113.

III. THE REGULATION OF NOSY QUESTIONS

What might police departments do to ease black citizens' humiliation during police stops? This is a difficult question, because nosy questions are part and parcel of policing practices. Police ask intrusive questions and make investigatory stops because they are trained to do so.[60] Often this behavior goes unexamined. In the vast majority of stops where nosy questions are asked—police pull over some 50,000 drivers on a typical day—the driver simply bears the insult and the indignity of nosy questions.[61] In other words, the situation ends far less tragically than it did in Bland's case.[62]

A. State v. Arreola-Botello

Perhaps because most nosy questions go unexamined, courts generally consider the intrusion of such questions to be de minimis so long as the individual has been legally stopped. That doesn't have to happen. In the Oregon Supreme Court case *State v. Arreola-Botello*,[63] the court decided to more closely scrutinize the questions asked by officers.

Arreola-Botello stemmed from the 2015 arrest of Mario Arreola-Botello by Oregon police officer Eric Faulkner.[64] Faulkner arrested Arreola-Botello for failing to signal a turn. After Faulkner walked to Arreola-Botello's car, he demanded that Arreola-Botello surrender his driver's license, vehicle registration, and proof of insurance.[65] Arreola-Botello turned over his license immediately but was unable to produce his registration and proof of insurance as quickly. While Faulkner waited for the other documents, he asked for consent to search Arreola-Botello's car, to which Arreola-Botello responded, "Sure, okay."[66] As Officer Faulkner looked in the car, he observed a small bundle of what he believed to be methamphetamines on the car floor. Officer Faulkner then arrested Arreola-Botello.[67]

Before trial, Arreola-Botello moved to suppress the evidence on the grounds that Faulkner "had violated his constitutional rights by unlawfully expanding the scope of the lawful traffic stop into matters unrelated to the purpose of the stop, such as whether [Arreola-Botello] possessed drugs."[68] The trial court rejected

[60] *Id.* (asserting that investigatory stops are planned intrusions).

[61] Goel & Phillips, *supra* note 42.

[62] *See supra* text accompanying note 19.

[63] 451 P.3d 939 (Or. 2019) (en banc).

[64] Alex Zielinski, *A New Ruling by Oregon's Highest Court Could Curb the Over-Policing of Black Portlanders*, PORTLAND MERCURY (Dec. 19, 2019), https://www.portlandmercury.com/news/2019/12/19/27664136/a-new-ruling-by-oregons-highest-court-could-curb-the-over-policing-of-black-portlanders [https://perma.cc/VWZ3-RD6P].

[65] *Arreola-Botello*, 451 P.3d at 941.

[66] *Id.*

[67] *Id.*

[68] *Id.*

this argument because it characterized the time when Officer Faulkner was waiting for registration as an "unavoidable lull" in the traffic stop.[69] As an unavoidable lull, it was constitutionally invisible and therefore acceptable to the court. On appeal, Arreola-Botello argued that the trial court should have suppressed the evidence because Faulkner's line of questioning—specifically his request to search Arreola-Botello's vehicle—"unlawfully expanded the scope of the traffic stop."[70] The appeals court rejected this argument.[71]

The Oregon Supreme Court approached the case differently. The court's opinion began by noting the statutory and constitutional limitations on an officer's authority to investigate unrelated crimes during a traffic stop.[72] The key issue for the court in *Arreola-Botello* was whether nosy questions—questions unrelated to the purpose of this stop—could be permitted.[73] Several precedential Oregon decisions touched on these issues. For instance, in *State v. Rogers*,[74] where police questioning was at issue, the state argued that police questioning unrelated to a traffic stop or a request for consent to search during a traffic stop was only a de minimis intrusion.[75] In another earlier case, *State v. Watson*,[76] while waiting for the driver's license check during a minor traffic violation stop, the officer asked the driver whether it was true that he was dealing small amounts of marijuana and asked for consent to search the vehicle.[77] Watson denied that this was the case, but another officer arrived on the scene and reported an odor of marijuana, which he believed to be emanating from the car.[78] The officer searched the car based on probable cause and the defendant was arrested.[79] The Oregon Supreme Court ultimately held that investigatory activities have to be reasonably related to the traffic stop.[80]

In *Arreola-Botello*, the Oregon Supreme Court reasoned that the justification for a traffic stop delineates the lawful bounds of the stop.[81] The state argued that Arreola-Botello's rights under the Oregon Constitution were not violated

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[69] *Id.*

[70] *Id.* at 942.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] 227 P.3d 695 (Or. 2010) (en banc).

[75] *Id.* at 700 ("Focusing on the scope and length of the questioning at issue, the state proposes a rule that police questioning that is unrelated to a traffic stop, or a request for consent to search during a lawful traffic stop, will not constitute an unconstitutional seizure if that questioning creates only a *de minimis* delay during an otherwise lawful stop.").

[76] 305 P.3d 94 (Or. 2013) (en banc).

[77] *Id.* at 98.

[78] *Id.* at 99.

[79] *Id.*

[80] *Id.* at 104.

[81] State v. Arreola-Botello, 451 P.3d 939, 948 (Or. 2019) (en banc).

because the officer's request for consent to search the defendant's vehicle didn't impose additional restraint beyond the stop itself.[82] The state also argued that, because a request for consent to search during a legal stop does not further restrict a defendant's liberty, such restrictions have no significance.[83] The court disagreed with both of these lines of reasoning and stated that the salient issue involved the scope of the officer's inquiry. Specifically, the court looked at whether the officer who seized the defendant was limited in the inquiries he could make during the stop.[84]

The court insisted that there are limits not only on when a stop may be made but also on the purpose for which it may be conducted.[85] The court explained:

> A stop that is reasonable for limited investigatory purpose is not necessarily reasonable for all purposes, and we see no reason to distinguish between the activities that law enforcement officers conduct during such a stop and the questions that they ask; both must be reasonably related to the purpose that permits the officer to stop an individual in the first place.[86]

In other words, the officer's questions in *Arreola-Botello* were not irrelevant. They mattered. In insisting on a threshold of reasonableness, the court required officers to at least in some way tie the questions asked during the stop to the reason for the stop. The marker of whether a stop was reasonable was not just the duration of the stop but rather the totality of the circumstances. An "unavoidable lull" in activities during the stop did not, according to the court, create an opportunity for the officer to ask unrelated questions.[87]

CONCLUSION

Why is it so important to regulate nosy questions as the Oregon Supreme Court has? First, and perhaps most importantly, nosy questions poison the relationship between police officers and people of color. We see this in the degrading interaction between Officer Brian Encinia and Sandra Bland. Encinia's investigatory stop, followed by nosy personal questions entirely unrelated to the reason for the stop, incensed Bland and may have led to less compliance. Though Bland's reaction may have been imprudent given the power imbalance between officer and driver, it is also understandable. It is insulting for an innocent person to be stopped for a minor traffic violation and then treated as if they have done something deeply criminal. The encounter between Encinia and Bland devolved unsurprisingly, given Encinia's probing, unrelated, nosy questions.

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[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.* at 948-49.
[87] *Id.* at 949.

We should regulate nosy questions because they are an intrusive affront to individual dignity and privacy, particularly to racial and ethnic minorities who have been subjected to discriminatory policing practices. To ask black and Latino drivers to ignore the insult of discriminatory policing practices simply adds insult to injury.

The police also have a stake in eliminating nosy questions. As the tragic case of Sandra Bland demonstrates, an officer's line of inquiry plays a significant role in facilitating compliance during a stop and subsequently impacts the level of trust that black and Latino citizens have in the police. It is far more difficult to achieve compliance (to say nothing of gaining assistance in fighting crime) if the people from whom the police are trying to secure cooperation are angered by their behavior.

In *Arreola-Botello*, the Oregon Supreme Court offered a route to excise the practice of nosy questions, ruling that questions asked during the stop must be reasonably related to the reason for the stop.[88] This is not the only solution, however. One simple way of beginning to restore trust between black and Latino communities and the police is to regulate the use of investigatory stops. Because police officers' suspicions in investigatory stops often lead to unrelated nosy questions, police officers making fewer investigatory stops are less likely to engage in unreasonable and unrelated nosy questioning.

[88] *Id.* at 948.