VOLUME 18, ISSUE 3, PAGES 45–65 (2017)

Criminology, Criminal Justice, Law & Society

CRIMINOLOGY, CRIMINAL JUSTICE, LAW & SOCIETY

E-ISSN 2332-886X
Available online at
https://scholasticahq.com/criminology-criminal-justice-law-society/

Reforming Stop-and-Frisk

Henry F. Fradella and Michael D. White

Arizona State University

ABSTRACT AND ARTICLE INFORMATION

Although stop-and-frisk has a long history as a policing tactic rooted in particularized, reasonable suspicion of criminal activity, several U.S. jurisdictions morphed stop-and-frisk into a broad and sometimes aggressive crime-control strategy. The recent experiences in many jurisdictions demonstrate a strong disconnect between constitutionally sanctioned principles and policing practice. Arguably, stop-and-frisk has become the next iteration of a persistent undercurrent in racial injustice in American policing. Although stop-and-frisk has a legitimate place in 21st-century policing, changes must be made to prevent officers from engaging in racially biased or otherwise improper and illegal behavior during stops of citizens. Recommended reforms include better selection of police personnel during recruitment, improved training, clearer administrative policies, enhanced supervision of officers with corresponding accountability mechanisms, and external oversight.

ADAPTED FROM:

Fradella, H. F., & White, M. D. (2017). Stop-and-frisk. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 2, pp. 51–81). Phoenix, AZ: Academy for Justice.

Keywords:

policing, stop-and-frisk, race and justice, criminal justice policy reform

In 1968, the U.S. Supreme Court decided the landmark case of *Terry v. Ohio* (1968). In the interest "of effective crime prevention and detection," the Court built on an English common law tradition justifying a *stop* when it held that "a police officer may, in appropriate circumstances and in an

Corresponding author: Henry F. Fradella, Arizona State University, Mail Code 4420. 411 North Central Avenue, Suite 600, Phoenix, AZ 85004-0685, USA. Email: Hank.Fradella@asu.edu.

appropriate manner, approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest" (*Terry v. Ohio*, 1968, p. 22). Moreover, during that encounter, an officer might also be justified in conducting a *frisk* for the reasons Chief Justice Earl Warren summarized as follows:

> [T]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man, in the circumstances, would be warranted in the belief that his safety or that of others was in danger. (*Terry v. Ohio*, 1968, p. 27)

More than 40 years after *Terry v. Ohio* was decided, U.S. District Judge Shira Scheindlin presided over two cases in which residents of New York City alleged that *Terry*'s "stop-and-frisk"[1] authority had been seriously abused by New York City Police Department (NYPD) officers (*Daniels v. City of New York*, 1999; *Daniels v. City of New York*, 2001; *Floyd v. City of New York*, 2008; *Floyd v. City of New York*, 2013; *Ligon v. City of New York*, 2013). When she ruled that the NYPD had violated New Yorkers' Fourth and Fourteenth Amendments to the U.S. Constitution, Judge Scheindlin said that, "[t]he City acted with deliberate indifference toward the NYPD's practice of making unconstitutional stops and conducting unconstitutional frisks. Even if the City had not been deliberately indifferent, the NYPD's unconstitutional practices were sufficiently widespread as to have the force of law" (*Floyd v. City of New York*, 2013, p. 562).[2]

Although the NYPD's aggressive approach to stop-and-frisk may have garnered the most attention, the strategy generated similar controversies in other jurisdictions throughout the United States (White & Fradella, 2016). On one hand, *Terry* stops are constitutionally permissible and are grounded in a historical and legal tradition dating back hundreds of years. Moreover, few people would disagree that law enforcement officers should be able to be take action to protect themselves under circumstances reasonably indicating that they, or others, may be in danger.

On the other hand, the events in New York and other jurisdictions reveal gross overuse and misuse of stop-and-frisk resulting not only in violations of citizens' constitutional rights, but also in strained police-community relationships; damage to police legitimacy; and significant emotional, psychological, and physical consequences to citizens, especially those of racial or ethnic minority backgrounds. Indeed, the line between a sound, constitutionally approved police practice and racial profiling has become so blurred that some city and police leaders have faced media scrutiny and backlash from citizens when they consider adopting a stop-and-frisk program (Harris, 2017; Jablonski, 2014). But stop-and-frisk can be reformed.

First, an officer's decision to detain a person temporarily on suspicion of criminality must be viewed as an exercise of police discretion. The policing literature suggests that effective hiring practices, proper training, clear administrative guidance, and sufficient supervisory oversight can all help to properly control police discretion so that it is exercised in a fair and just manner. But unlike some other discretionary decisions that the law neither explicitly requires nor prohibits, an officer's decision to stop someone, along with the subsequent decision to pat down the person for weapons, are both constrained by law. Thus, and to the second point, the tactic must be used in a manner that satisfies the constitutional standards regarding reasonable suspicion.[3] And third, stop-and-frisk must be employed with sensitivity to citizens' concerns. Thus, assessment of the tactic should occur through a procedural justice lens.

The Origins of Stop-and-Frisk Authority

English constables and "watchmen" were permitted to detain "night-walkers"—suspicious people encountered at night (Ronayne, 1964). Indeed, those on the night watch could legally "arrest such as pass by until the morning, and if no suspicion, they are then to be delivered [released], and if suspicion be touching them, they shall be delivered to the sheriff" (Hale, 1736, p. 96; see also *Lawrence v. Hedger*, 1810). Even private citizens had the authority to detain and question suspicious "night-walkers" (Hawkins, 1824).

Uniform Arrest Act

In 1939, the Interstate Commission on Crime authorized a study to examine how arrests were made across the United States. The study examined the feasibility of creating a model law that states could adopt to harmonize arrest practices across the country and to bring the actions of police into alignment with constitutional standards (Warner, 1942). Once drafted, that model law became known as the Uniform Arrest Act. Its provisions dealt with nine types of police-initiated contacts with citizens, the first two of which were "[q]uestioning and detaining suspects" and

"[s]earching suspects for weapons" (Warner, 1942, p. 317). Section 2 of the Uniform Arrest Act provided: "A peace officer may stop any person abroad whom he has reasonable ground to suspect is committing, has committed or is about to commit a crime. … The total period of detention provided for by this section shall not exceed two hours" (Warner, 1942, pp. 320–321). Additionally, Section 3 of the Act stated that an officer was permitted to conduct a "search for a dangerous weapon … whenever he has reasonable ground to believe [a person stopped or detained for questioning] … possesses a dangerous weapon" (Warner, 1942, p. 325).

In 1941, the legislatures of New Hampshire and Rhode Island adopted the Uniform Arrest Act as the laws of their states (1941 N.H. Laws 242, ch. 163; 1941 R.I. Pub. Laws 21, ch. 982). Delaware followed suit in 1951 (48 Del. Laws 769, ch. 304, 1951). Other states enacted statutes authorizing stop-and-frisk practices that were not consistent with the Uniform Arrest Act (Ronayne, 1964). As a consequence, considerable variation persisted across states with regard to stop-and-frisk authority.

Terry, *Sibron*, and *Peters*

Prompted by the need to clarify the scope of permissible conduct during stop-and-frisk procedures, the U.S. Supreme Court issued three landmark rulings in 1968 that set federal constitutional benchmarks for stop-and-frisk within the framework of the Fourth Amendment: *Terry v. Ohio* and the companion cases of *Sibron v. New York* and *Peters v. New York*.[4] Collectively, these rulings afforded police the discretion to stop citizens based on reasonable suspicion. This standard of proof required more than a mere hunch, but less evidence than probable cause; it is satisfied when a law enforcement officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" a brief, limited stop to investigate whether criminal activity is afoot (*Terry v. Ohio*, 1968, p. 21). These cases also made clear that law enforcement officers may superficially "pat down" a suspect if there is reasonable suspicion to believe the suspect is armed. Such frisks are limited to cursory inspections for weapons and, therefore, may not involve a "general exploratory search for whatever evidence of criminal activity he might find" (*Terry v. Ohio*, 1968, p. 30).

Justice William Douglas wrote the lone dissenting opinion in *Terry*. He rejected the notion that the Reasonableness Clause of the Fourth Amendment could provide a basis to support stop-and-frisk outside the usual probable cause standard (*Terry v. Ohio*, 1968, pp. 35–39). Indeed, Douglas presciently cautioned that the reasonable suspicion standard—one so low that it would not justify a magistrate issuing a warrant—would not ring a "bell of certainty" (*Terry v. Ohio*, 1968, p. 37). Rather, such a low and amorphous standard would be a blank check for law enforcement officers to exercise nearly unbridled discretion without regard to constitutional protections:

> To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment. Until the Fourth Amendment, which is closely allied with the Fifth, is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched (*Terry v. Ohio*, 1968, p. 38–39).

Perhaps as reaction to the concerns Douglas raised in his dissent in *Terry*, Chief Justice Earl Warren's majority opinion in the case was written very cautiously and narrowly (Sundby, 1988). The opinion could have been applied in a manner limited to police safety stops. But through subsequent cases—most notably *Adams v. Williams* (1972) and *Delaware v. Prouse* (1979)—*Terry* gradually was interpreted as granting police expansive "stop" authority to conduct broader, more general investigative detentions than night-walker statutes which, by the terms, were confined to night-time detentions to prevent breaches of the peace (Ronayne, 1964, pp. 213–215).[5] Moreover, those who made arrests under night-walker statutes were subject to liability for false imprisonment if the overnight detention was not justified. As Rosenthal noted, "[u]nder the contemporary qualified immunity doctrine, in contrast, officers face no personal liability even if they violate Fourth Amendment standards, as long as their judgment under the circumstances is considered reasonable" (Rosenthal, 2010, p. 333). Courts assess the validity of stop-and-frisks under the reasonable suspicion standard by considering "the whole picture"—all of the facts known under the "totality of the circumstances" (*United States v. Cortez*, 1981, p. 417). Importantly, judges are supposed to defer to the professional judgment and experience of police when assessing the totality of the circumstances (*United States v. Cortez*, 1981, pp. 421–422).

Stop-and-Frisk Beyond *Terry* and It Progeny

Throughout the 1980s, the Court exempted several classes of stops from the usual requirements of

Terry.[6] For example, in *United States v. Mendenhall* (1980), the Court ruled that a stop had not occurred when federal agents approached the defendant in the open concourse area of an airport. Because the agents neither wore uniforms nor displayed weapons, and because they requested—but did not demand—to see the defendant's ticket and identification, the Court reasoned that the encounter did not constitute a stop that qualified as a seizure for Fourth Amendment purposes. Rather, the stop was deemed a voluntary and cooperative encounter because at no time should a reasonable person in the defendant's situation have ever felt that she could not leave (*United States v. Mendenhall*, 1980, pp. 554–555). Then, in *I.N.S. v. Delgado* (1984), the "free to leave" test morphed into something even more restrictive on personal liberty: free to continue working and moving about a factory while armed agents wearing badges roamed the premises questioning people about their immigration status. The Court further narrowed *Terry* in *Florida v. Bostick* (1991) when it clarified that law enforcement officers have the authority to stop and ask basic investigatory questions—including requests to examine identification or to search luggage of bus passengers—without there being a seizure for Fourth Amendment purposes "as long as the police do not convey a message that compliance with their requests is required" (p. 435). In short, *Bostick* interpreted *Mendenhall*'s free-to-leave test by narrowing the inquiry to one of coercive police tactics through shows of authority from the perspective of a "reasonable, innocent person" (*Florida v. Bostick*, 1991, p. 438).

In other cases, the Supreme Court extended the authority of police to conduct frisks. Consider that in *Michigan v. Long* (1983), the Court permitted the police to conduct a brief search of the passenger compartment of a car to look for hidden weapons.

Perhaps most importantly, the Court has partially retreated from *Sibron*'s holding that reasonable suspicion needed to be based on more than just hunches. In *Alabama v. White*, the Court upheld a stop of a vehicle based on an anonymous tip even though there was no indication of the reliability of the tip (1990). At first blush, *Alabama v. White* (1990) might not appear to have retreated from *Sibron*'s holding since an anonymous tip is more than a hunch, but it paved the way for the decision in *Michigan Department of State Police v. Sitz* (1990), which authorized sobriety checkpoints at which police stopped drivers *without any* particularized suspicion of driving while impaired.[7] *Illinois v. Wardlow* (2000) approved an inference of suspicion from flight—an inference that logically extends to any type of evasive behavior (for a review of cases, see Ferguson & Bernache, 2008). *Whren v. United States* (1996) upheld pretextual stops, thereby allowing police to conduct stops for minor infractions so they could investigate other, more serious crimes. And because *Minnesota v. Dickerson* (1993) approved of the so-called "plain feel" exception, police likely have an incentive to frisk people even when they do not actually fear the presence of a weapon,[8] but rather hope to feel some drugs in the pat-down—a seemingly permissible pretext in light of *Whren* (see Chin & Vernon, 2015; Levit, 1996). Notably, Justice Antonin Scalia wrote a concurring opinion in *Dickerson* in which he expressed doubts about the constitutionality of *Terry* as applied "frisks" because it exceeded the scope of authority granted to watchmen under English night-walker statutes. Scalia expressed doubt that "the fiercely proud men who adopted our Fourth Amendment would have allowed themselves to be subjected, on mere suspicion of being armed and dangerous, to such indignity" (*Minnesota v. Dickerson*, 1993, p. 381, Scalia, J., dissenting). In other words, where we are today with stop-and-frisk authority under *Terry* is not necessarily a preordained constitutional conclusion.

In short, Fourth Amendment jurisprudence has steadily expanded stop-and-frisk authority since the early 1980s. Notably, this expanded authority increased the risk that officers would employ racial, ethnic, and socioeconomic class stereotypes as part of a calculus of suspicion to initiate stop-and-frisks. The expansion of this authority, and the increased risk of racial profiling, is especially problematic when considering the persistent undercurrent of racial injustice throughout nearly two centuries of American policing—an undercurrent that is even evident in the *Terry* decision itself. Consider that in his opinion in *Terry*, Chief Justice Warren noted that stop-and-frisk activities by police contributed to racial strife:

> We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk"—as it is sometimes euphemistically termed—suspicious persons. (*Terry v. Ohio*, 1968, pp. 9–10)

The opinions in *Terry*, however, omitted or glossed over several important facts relevant to the racial issues underlying the case. Indeed, nowhere in any of the opinions in *Terry* does any justice mention

that both Terry and his co-defendant, Chilton, were Black men (Barrett, 1998). Nor does any justice mention that a third man, Katz—a White man whom a police officer observed interacting with Terry and Chilton—was not charged; he was held as a "suspicious person" and released after two days (Barrett, 1998, p. 1465). According to the transcript of the trial court's suppression hearing in *Terry*, Officer McFadden testified that when he saw the men standing on the street, "they didn't look right to [him] at the time" (Barrett, 1998, p. 1456). Jones-Brown and Maule (2010) suggested that McFadden's attention may have been drawn to the men on account of their race. This conclusion is bolstered by a number of ambiguities and inconsistencies in McFadden's account of the case. As Katz (2004) noted, McFadden could not explain why he was initially suspicious of the men; he repeatedly changed the number of trips the men made up and down the street; and he expressed uncertainty regarding the type of store into which the men were looking. Thus, the reasonableness of the initial stop appears to be more open to debate than the *Terry* decision suggests. The failure of the Court to address the questionable reasonableness of the stop in *Terry* illustrates how the very foundation of the reasonable-suspicion standard in American constitutional law masks racially disparate stop-and-frisk practices with the cloak of race-neutrality (McAffee, 2012; Maclin, 1998; for an in-depth discussion of how racial stereotypes contribute to police officer suspicion in the stop-and-frisk context, see Fradella, Morrow, & White, 2016).

A Review of the Literature Documenting the Rise and Impact of "SQF"

Terry and its progeny clearly constitutionally sanctioned stop-and-frisk as a policing tactic. But stop-and-frisk morphed into an aggressive crime-control strategy quite different from the tactic outlined in *Terry*, largely as a result of policing activities in New York City. We differentiate the tactic of stop-and-frisk under *Terry* from the New York City "Stop, Question, and Frisk" (SQF) strategy by capitalizing the latter and referring to it by the acronym "SQF."

The Rise of SQF in New York City

Like many cities across the United States, New York experienced a major spike in violence, crime, and disorder in the 1980s (Lardner & Reppetto, 2000). Much of the violence in New York was driven by the emergence of crack cocaine and competition for the drug market (Fryer, Heaton, Levitt, & Murphy, 2013). Homicides climbed steadily from 1,392 in 1985 to 2,262 in 1990 (White, 2014). At the same time, the city and subway system were struggling with rampant social and physical disorder (Kelling & Coles, 1996). Marijuana, heroin, cocaine, and crack cocaine were regularly and openly being sold on street corners, blocks, and city parks (Johnson, Golub, & McCabe, 2010). Kelling and Coles (2010) estimated that "[a]pproximately 1,200 to 2,000 persons a night" were sleeping in the subway system (pp. 117–118).

The New York Transit Authority appointed William Bratton as chief of the transit police to address crime and disorder in the subway system ("The Life and Times," 2013). Chief Bratton partnered with criminologist George Kelling to develop an enforcement strategy based on Wilson and Kelling's "broken windows" theory (Kelling & Wilson, 1982, p. 29). [9] This broken-windows based strategy targeted low-level offenses (e.g., turnstile jumping), as well as social and physical disorder through frequent arrests and removals from the subway system (Joanes, 2000). Over the next two years, the level of disorder dropped dramatically, and felony offenses declined by 30% (Joanes, 2000).

New York City Mayor Rudolph Giuliani appointed William Bratton to become the commissioner of the NYPD in 1994, and Bratton immediately began implementation of a broken-windows based strategy throughout New York (Mitchell, 1993). Under Bratton (January 1994–April 1996) and his successors Howard Safir (April 1996-August 2000), Bernard Kerik (August 2000–January 2002), and Raymond Kelly (January 2002–January 2014), SQF emerged as one of the primary strategies not only to achieve order-maintenance by targeting disorder and quality-of-life offenses (e.g., replicating the subway strategy on a larger scale), but also as a means of reducing gun violence through the seizure of illegal firearms and through the intensive investigation of gun-related incidents (White, 2014). Importantly, the aggressive manner in which NYPD officers used SQF to achieve these ends ignored the principles of community policing, causing community resentment, rather than fostering police-community collaboration. This, in turn, contributed to critics charging that the NYPD over-enforced quality-of-life infractions through a zero-tolerance approach because officers could easily justify the stops under the reasonable suspicion standard (Fagan & Davies, 2000; Waldeck, 1999). Nonetheless, the aggressive use of SQF as a department-wide strategy had the endorsement of Mayor Rudolph Giuliani (1994–2001) and Mayor Michael Bloomberg (2002–2013). Thus, SQF enjoyed political support for a considerable period of time and under two successive administrations that spanned nearly 20 years.

The NYPD's use of SQF increased steadily in the late 1990s into the 21st century. In 2003, for example, NYPD officers conducted more than 160,000 SQFs

(New York City Police Department, 2017; New York Civil Liberties Union, 2017). In 2003, the NYPD implemented "Operation Impact," a hot-spots strategy where police commanders identified 24 high-crime "Impact Zones" that would be targeted with "saturation foot patrol in combination with resources from a variety of departmental divisions" (Weisburd, Telep, & Lawton, 2014, pp. 136–137). SQF activity increased dramatically over the next several years, peaking at more than 685,000 in 2011 (N.Y. Civil Liberties Union, 2017). As the frequency of stops increased, critics attacked the strategy's low rates of return. Jones-Brown and colleagues (2010) found that of the 540,320 stops in 2008, just 6.0% (32,206 stops) resulted in an arrest and an additional 6.4% (34,802 stops) resulted in a summons; thus, the percentage of "innocent stops"—those not resulting in summons or arrest—accounted for roughly 87.6% (pp. 10–11). Similarly, the percentage of stops resulting in the recovery of a gun dropped from 0.39% in 2003—627 guns recovered out of a total of 160,851 stops, representing only one gun recovered per 257 stops—to 0.15% in 2008—824 guns recovered out of a total of 540,320 stops, representing only one gun recovered per 656 stops (Jones-Brown, Gill, & Trone, 2010, p. 10–13). Furthermore, SQFs became an increasing basis for citizen complaints, rising from a quarter (24.6%) of all complaints filed against the police in 2004 to a third (32.7%) of all complaints in 2008 (Jones-Brown, Gill, & Trone, 2010, p. 14).

As the use of SQF expanded dramatically, the NYPD drifted away from the central tenets of broken-windows theory, and the program devolved into a strictly zero-tolerance approach against social disorder such as public drunkenness, vandalism, loitering, panhandling, prostitution, and the like (Waldeck, 1999, p. 1273-1274). In other words, rather than focusing on the "amelioration" of disorder in partnership with the community, the NYPD focused on the "interdiction" of disorder without regard to community policing practices (Fagan & Davies, 2000, p. 468). These efforts led the NYPD to implement a set of practices that encouraged the aggressive pursuit of individuals through SQF, rather than mutually beneficial interactions with law-abiding citizens (Waldeck, 1999). This zero-tolerance mentality compounded the police department's disconnect from the community, especially by de-emphasizing informal interactions between police and the community in the manner advocated by both community policing principles and broken-windows theory (White, Fradella, & Coldren, 2015).

Crime-Control Benefits of SQF

During the time that the NYPD implemented its order-maintenance strategy to target disorder, illegal gun carrying, and crime—with SQF as a central feature—the city witnessed a large, prolonged drop in recorded crime. "From its peak in 1990 until 2000, violent crime in the city dropped about 60.3%, and property crime declined 63.7%. … Between 2001 and 2010, violent crime dropped 37.2% and property crime declined 37.0%" (Weisburd, Telep, & Lawton, 2014, p. 130). These declines in crime in New York City were at a level constituting roughly twice the national average (Weisburd, Telep, & Lawton, 2014; Zimring, 2012). The drop in homicides was even more pronounced. In 2007, there were 496 homicides in New York, down from 2,245 in 1990 (Mitchell, 2008; Rosenfeld, Fornango, & Rengifo, 2007).

Proponents of SQF, such as former NYPD Commissioner Raymond Kelly ("New York Police Commissioner," 2013) and former New York City Mayor Michael Bloomberg (2013), argue that these statistics are evidence that the strategy is effective. But whether SQF caused or contributed to the crime decline in New York City is a hotly contested proposition (for full treatment of this question, see the 2014 special issue of *Justice Quarterly* on the New York City crime decline). Several studies suggest a causal connection, although some of these studies have been criticized for their methodological limitations. Corman and Mocan (1999), for example, reported that misdemeanor arrests were associated with declines in robbery, motor-vehicle theft, and grand larceny, but not homicide, assault, burglary, and rape. Similarly, Kelling and Sousa (2011) found that misdemeanor arrest levels were significantly associated with reductions in violent crime, while controlling for several relevant community factors. Smith and Purtell (2007) found that Operation Impact had a significant effect on crimes-against-persons in Impact Zones. Smith and Purtell also examined the effects of SQF on crime in New York, and they found that there was a significant inverse relationship between stop rates and robbery, burglary, motor-vehicle theft, and homicides rates. Zimring (2012) argued that New York's crime decline from 1990 through 2009 was largely attributable to the NYPD's policing practices, although he emphasized that he could not disentangle stop-and-frisk from other changes in policing that occurred at about the same time.

Conversely, there are a number of more recent studies—many of which used more sophisticated quantitative methods than the first wave of empirical research on the impact of SQF on crime New York City—that indicate the relationship between SQF and the crime decline in New York City is modest at best (Cerdá, Tracy, Messner, Vlahov, Tardiff, & Galea, 2009; Cerdá, Messner, Tracy, Vlahov, Goldmann, Tardiff, & Galea, 2010; Rosenfeld, Fornango, &

Rengifo, 2007, p. 375–377). For instance, Rosenfeld and Fornango (2014) found that police stops did not decrease robbery and burglary rates. In a re-analysis of Kelling and Sousa's data, Harcourt and Ludwig (2006) found no significant relationships between policing minor disorder offenses and New York City's crime decline. MacDonald and colleagues (2016) conducted a comprehensive examination of the crime effects of Operation Impact, with a specific focus on SQF. They concluded that "saturating high crime blocks with police helped reduce crime in New York City, but that the bulk of the investigative stops did not play an important role in the crime reductions. The findings indicate that crime reduction can be achieved with more focused investigative stops" (p. 1). This conclusion is bolstered by recent New York City crime data. Although the number of stops conducted by NYPD officers declined by more than 90% between 2011 (the height of the SQF program) and 2014 (the year after SQF was discontinued as part of the settlement of the lawsuits in which the NYPD's use of SQF was found to be unconstitutional), the quality of those stops has increased and the crime rate has continued to decrease:

> The percentage of stops resulting in arrest has more than doubled. The percentage of stops where weapons and contraband were seized remain low, but those percentages have doubled or tripled compared to the 2011 rates. In short, the NYPD has altered its day-to-day practices with regard to stop-and-frisk, to the benefit of thousands of New Yorkers. And importantly, the reforms in the NYPD's stop-and-frisk program coincided with continued declines in crime and violence in New York, especially homicides, which declined by 35% from 2011 to 2014 (White et al., 2016).

Notably, the decrease in the overall crime rate and the homicide rate, in particular, has continued: 2016 formed a record low for homicides in New York, down approximately 4% from 2015 (New York City Police Department, 2017b).

The Social Costs

Regardless of the impact on crime, there is considerable evidence demonstrating that the NYPD's SQF program exacted significant social costs that were disproportionately experienced by members of racial and ethnic minority groups. By the end of the 1990s, SQF had become a point of contention among ethnic minorities. A Vera Institute of Justice study (Fratello, Rengifo, Trone, & Velazquez, 2013) examined the experiences of more than 500 people who had been stopped by the NYPD:

- 44% of young people surveyed indicated they had been stopped repeatedly—nine times or more.
- Less than a third—29%—reported ever being informed of the reason for a stop.
- 71% of young people surveyed reported being frisked at least once, and 64% said they had been searched.
- 45% reported encountering an officer who threatened them, and 46% said they had experienced physical force at the hands of an officer.
- One out of four said they were involved in a stop in which the officer displayed his or her weapon.
- 61% stated that the way police acted toward them was influenced by their age.
- 51% indicated that they were treated worse than others because of their race and/or ethnicity (p. 34).

The racial focus of SQF was acknowledged and minimized by New York City and NYPD leaders (Kelly, 2013). Former Mayor Michael Bloomberg stated publicly that, according to the department's statistics on violent-crime suspects, "we disproportionately stop whites too much and minorities too little" (Fermino, 2013, para. 5).[10] In 2013, an officer in the 40th precinct recorded his commanding officer directing him to stop "the right people, at the right time, at the right location," described as Black males between the ages of 14 and 21 (Rayman, 2013, para. 7). The Center for Constitutional Rights ([CCR], 2012) interviewed 54 people who had been subjected to SQF in order to paint a clearer picture of the "human impact" of the program. The CCR concluded:

> These interviews provide evidence of how deeply this practice impacts individuals and they document widespread civil and human rights abuses. … The effects of these abuses can be devastating and often leave behind lasting emotional, psychological, social, and economic harm. … Residents of some New York City neighborhoods describe a police presence so pervasive and hostile that they feel like they are living in a state of siege (p. 1).

The overt racially charged statements by city and police leaders, along with clear racial

disproportionality in the administration of the SQF program, illustrates the persistent undercurrent of racial injustice in New York City policing. Unfortunately, though, New York is not the only U.S. city with such problems. Allegations of widespread unconstitutional SQF practices have been made in many jurisdictions, including Philadelphia, Pennsylvania; Newark, New Jersey; Miami Gardens, Florida; and Chicago, Illinois, just to name a few that resulted in either class-action civil litigation or in-depth media investigations (American Civil Liberties Union of Illinois, 2014; Brennan & Lieberman, 2014; Ofer & Rosmarin, 2014; see also *Bailey v. City of Philadelphia*, 2010; 2011, 2013). As was the case in New York, both Fourth Amendment (i.e., stops are being made without reasonable suspicion) and Fourteenth Amendment (i.e., racial profiling) concerns permeated policing practice in spite of the low "hit rates" such strategies yielded (Fagan, 2017; Harris, 2017; Richardson, 2017).

Also consider the highly publicized deaths of Eric Garner, Michael Brown, and Freddie Gray—all of which stemmed from *Terry* stops (Richardson, 2017). On July 17, 2014, NYPD officers approached Eric Garner on a street corner in Staten Island because they suspected that he was selling unlicensed cigarettes (Duncan, 2014). The incident was captured on a bystander's cell phone. After brief questioning, officers attempted to take Garner, a 400-pound man, into custody. During the struggle, Officer Daniel Pantaleo applied a chokehold and Garner can be heard stating nearly a dozen times that he cannot breathe. Garner lost consciousness after the struggle; he was pronounced dead an hour later. Five months later, a grand jury refused to indict Officer Pantaleo, sparking waves of protests (Duncan, 2014; Goodman & Baker, 2014).

On August 9, 2014, Ferguson police officer Darren Wilson observed Michael Brown and Dorian Johnson walking in the middle of the street. There is no video of the incident and the facts are disputed, but what is clear is that the initial stop of Brown and Johnson led to a struggle between Wilson, who was still seated in his patrol car, and Brown, who was next to the car (Pearce, 2014). Physical evidence supports Officer Wilson's assertion that there was a struggle over Wilson's gun and that one shot was fired while he was still in his car (U.S. Department of Justice, 2015). Wilson got out of the patrol car and fired several more shots that killed Michael Brown. Officer Wilson claimed that Brown had turned and was charging at him. Other testimony indicated that Brown had his hands up and was posing no threat to Wilson (U.S. Department of Justice, 2015). Protests and civil disorder began shortly after Brown's death and continued for several days. On August 16, 2014, Missouri Gov. Jay Nixon declared a state of emergency in Ferguson. On November 24, 2014, a grand jury declined to indict Officer Wilson for Michael Brown's death (Davey & Bosman, 2014).

On April 12, 2015, Baltimore police officers attempted to stop and question Freddie Gray. Gray fled from the officers, but he was quickly taken into custody and arrested for possessing an illegal switchblade. During his transport in a police van, Gray slipped into a coma and died several days later on April 19 (Graham, 2015). Autopsy findings indicate that Gray died from injuries to his spinal cord (Fenton, 2015). Though there are questions about whether force was used during the arrest, Baltimore Police Commissioner Anthony Batts acknowledged that Freddie Gray was not properly secured during the van transport. Protests and civil disorder erupted after Gray's death. On May 1, 2015, six officers were charged with Freddie Gray's death by the State Attorney's Office, and on May 21, 2015, a grand jury indicted the six officers (Pérez-Peña, 2015). A mistrial was declared in the first trial of one of the officers after the jury failed to reach a unanimous verdict (Fenton & Rector, 2015). Three other officers were acquitted in separate bench trials between May and July of 2016, which, in turn, led the state to drop the charges against all of the remaining officers (Rector, 2016).

The numerous allegations of racial profiling that have emerged in the wake of stop-and-frisk programs, and the deaths of Eric Garner, Michael Brown, and Freddie Gray, demonstrate the persistent undercurrent of racial injustice in American policing. Moreover, the perceived discriminatory treatment of racial and ethnic minorities during SQF adversely affects citizen trust and faith in the police. This problem is likely to be exacerbated as the expanding interpretation of the Second Amendment results in so many citizens legally carrying firearms (*McDonald v. City of Chicago*, 2010; see also Bellin, 2015; Zimring, 2017), a fact which, in turn, can combine with implicit bias to create a suspicion profile that targets young men of racial and ethnic minority backgrounds (Fradella et al., 2016).

Research strongly demonstrates that procedural justice—or the manner in which police are perceived to treat citizens—is crucial to achieving police legitimacy (Eck & Rosenbaum, 1994; Tyler, 2006). Furthermore, the President's Task Force on 21st Century Policing (2015) recently concluded that "[t]rust between law enforcement agencies and the people they protect is essential in a democracy" (p. 1). To foster trust and legitimacy, police officers must be impartial and consistent in their decisions, and must treat all people with dignity, fairness, and respect. The community policing and police legitimacy frameworks provide an important lens for

consideration of the role of stop-and-frisk going forward.

Assessment: Ways to Fix Stop-and-Frisk

Aggressive SQF strategies (i.e., those enacted department-wide through either formal or informal policies) have no place in 21st-century policing. Not only do such broad strategies lend themselves to racial and ethnic profiling along the lines of which occurred in New York City, but they also damage police-community relations in ways that stray from the tenets and aims of broken-windows theory. But stop-and-frisk as a particularized tactic—one that is judiciously employed by individual police officers when objective circumstances give rise to reasonable suspicion of criminal activity—can help prevent crime if the practice is viewed as an exercise in police discretion. With that in mind, we offer suggestions for reforming stop-and-frisk as a tactic using the vast literature on the control of police discretion.

Ideally, an officer witnesses something that generates reasonable suspicion (i.e., bulge in the waistband, behavior suggesting potential criminal activity), and then initiates a stop. This decision to stop a civilian, and consequently to conduct a frisk (or even a search), is based in officers' discretionary authority. Many influences impact the development of individual police officer discretionary behaviors, including their training, expertise, and overall field experience. Stop-and-frisks that are discriminatory or otherwise fail to meet the constitutionally required threshold are of main concern and generate controversy surrounding police-initiated stops of citizens.[11] Therefore, it is important to explore how police departments can control their officers' decisions to initiate stops of citizens, to ensure that such stops meet constitutional standards and do not violate citizens' rights, and to mitigate the potential for police misconduct.

For more than 40 years, researchers have investigated how to impact officers' situational decision-making during encounters with citizens. These efforts have explored predictors of a range of behaviors, including arrest, use of force (including deadly force), decisions to conduct automobile pursuits, and use of canines. One empirically evident fact is that combating police misconduct is complex and goes far beyond quick fixes (e.g., increased training) or removing a few "bad apples" that consistently make poor decisions (Skolnick & Fyfe, 1993). Additionally, various aspects of police culture can further inhibit attempts to stem police misconduct at the department level. Research has consistently demonstrated the powerful nature of the informal police culture, particularly with regard to how it can shape officer behavior in the field, and how difficult it is to change (Skolnick, 1966).

Clearly, the challenges surrounding these are daunting and they must be addressed in the context of the larger historical backdrop of racial injustice in American policing. However, the larger body of research on police discretion offers numerous lessons that can guide effective reform. Police departments should consider adopting changes reflective of the following recommendations in order to prevent their officers from engaging in racially biased or otherwise improper and illegal behavior during stops of citizens: recruitment, training, administrative policies, supervision with corresponding accountability, and external oversight.

A Careful Selection of Personnel

In 1967, the President's Commission on Law Enforcement and the Administration of Justice established standards for the screening of police recruits. As a result, law enforcement agencies have implemented processes to screen out applicants ill-suited for the profession due to concerns over mental health, criminal history, poor credit, troubling interpersonal relationships, and other "red flags," especially through the use of thorough background checks (Fyfe & Kane, 2005; Mui, 1977). The screening-out process typically occurs within the context of concerns over corruption and brutality, but the lessons are equally relevant for abuse of discretion in stop-and-frisk.

A screening-in process is also important. Despite the limited success of efforts to identify predictors of good policing, relevant personal attributes certainly include good judgment, an even temperament, respect and appreciation for diversity, creativity and problem-solving skills, ability to think on one's feet and handle pressure, and leadership skills (Grant & Grant, 1995). Additionally, scholars have noted a need for a college education to develop the relevant skills to be an effective police officer and reduce the likelihood of misconduct (Harris, 2014). One recent study found that departments with an associate's degree requirement for applicants experienced fewer citizen complaints of police use of force and fewer citizen assaults on their officers (Shjarback & White, 2016). Officers who possess empathy, moral acceptance of coercive authority, protection of the vulnerable, and problem-solving, what some have called good craftsmanship, will be less likely to engage in racially biased and otherwise improper behavior during encounters of any kind with citizens (Bittner, 1967). Therefore, departments should carefully and aggressively seek out these characteristics (White & Fradella, 2016).

Training

Careful recruit selection must be followed with effective training in the police academy, as well as later through field and in-service training. At the academy, the goal of training is to provide officers with the basic skills and knowledge necessary to become a police officer. Cadets must receive a clear message at this early stage that racially biased stop-and-frisks are inappropriate, illegal, and will not be tolerated. Following graduation from the academy, officers are typically assigned to a veteran officer for a period of field training. This is a formative stage of a police officer's career, and it is critically important for field-training officers to impart the message that racially biased *Terry* stops are not consistent with the principles of good policing. The final form of training, called "in service," where officers periodically receive additional training while on the job, can be used to "refresh" officers on ethical issues, such as avoiding discriminatory decision-making, and to resend the message that the department leadership denounces racial bias and expects the same from its officers.

Properly trained officers are less likely than poorly trained officers to engage in unconstitutional stop-and-frisk practices. Fyfe's work exploring the impact of training on violence provides several suggestions for successful training practices, including that it should be: realistic—adult learning, role plays, instruction by legal experts, and coverage of implicit bias and its effect on the suspicion heuristic (Banaji & Greenwald, 2016; Fradella et al., 2016; Levinson & Smith, 2012); continuous; tailored to the department and the community; and focused on the means or process, not just the ends, such as avoiding the split-second syndrome (Fyfe, 1995). Similarly, Bayley and Bittner stated that learning can be "accelerated and made more systematic" by relevant training that brings the reality of police work into the academy (Bayley & Bittner, 1984, p. 53). Fyfe's (1995) arguments on the importance of training are persuasive:

> The development of successful boxers, diplomats, combat soldiers, and trial lawyers demonstrates that maintaining one's temper under stressful and confrontational conditions is a skill that can be taught. At the broadest level, police training designed to do so may involve providing students with what Muir called *understanding*—a nonjudgmental sense that people's behavior, no matter how bizarre or provocative, may usually be explained by factors that go beyond the dichotomy of good and evil. … Even if genuine *understanding*, as defined by Muir, cannot be imparted to individuals who bring extremely narrow views to policing, officers can be made to know in training that they simply will not be permitted to act out their prejudices through violent, or even discourteous conduct (p. 174).[12]

By adopting evidenced-based training policies, law-enforcement agencies can create an environment of intolerance toward unconstitutional stop-and-frisk practices, other forms of police misconduct, and better meet the needs of their respective communities (White & Fradella, 2016).

Administrative Policy

Administrative guidance in the form of policies, rules, and procedures communicates to officers what a police department expects, what is considered acceptable, and what will not be condoned (Kappeler, Sluder, & Alpert, 1998). An administrative-rulemaking framework that has three basic components helps to ensure accountability with regard to critical incidents, such as use of force (Walker & Archbold, 2014). First, agencies should develop written policies that specify what is (and what is not) appropriate behavior during given circumstances. Second, agencies should require officers to write a written report following a critical incident. Third, agencies should require supervisory review of critical-incident reports to ensure the officer acted within policy and law.

The adoption of clearly articulated policies governing police stops of citizens, with specific prohibitions of racial profiling, is absolutely crucial for controlling police behavior (Friedman & Ponomarenko, 2015, 2017).[13] The body of research that highlights police departments' success in managing officer discretion across a wide range of police actions provides an important backdrop for consideration of stop-and-frisk practices. Supervisory review and accountability is especially critical for stop-and-frisk because the practice generally does not reach the level of being classified as a critical incident. The "invisible" nature of such stops presents a unique challenge for effective discretionary control and guidance. That said, it is well established that officers' behavior changes when they know that violations of policy will have consequences. In plain terms, officers seek to avoid behavior that will get them into administrative trouble. This has been demonstrated across a range of officer field behaviors, particularly with use of deadly force and automobile pursuits, and it applies equally well to stop-and-frisk (Albert, 1997; Fyfe, 1988; White & Fradella, 2016).

Supervision and Accountability

Supervision of police officers is a critical department task that serves as a foundational element in the agency's effort to control officer field behavior, including stop-and-frisk practices (The Mollen Commission, 1994; Weisburd, Greenspan, Hamilton, Williams, & Bryant, 2000).[14]Key principles of effective police supervision include proper span of control (8-10 officers per sergeant), proper training (good supervision can and should be taught), and holding supervisors accountable for the behavior of their subordinates (Kappeler et al., 1998; Skolnick & Fyfe, 1993). The International Association of Chiefs of Police (1989) stated that "many officers face temptations every day … management has the capacity and control to reinforce high integrity, detect corruption, and limit opportunities for wrongdoing" (p. 53). These words apply to *Terry* stops as well as they do for other forms of police field behavior. Simply put, if officers believe they will be caught and punished for unconstitutional stop-and-frisk behaviors, they will be less likely to engage in those activities (Klockars, Ivkovich, Harver, & Haberfeld, 2000). Technology like body-worn cameras (BWCs) offer a unique opportunity for police departments to track and monitor officers through systematic (or at least periodic) review of BWC footage (White, 2014; White & Fradella, in press). For example, supervisory authority to review BWC footage could be structured in a number of ways to enhance accountability. Review authority could be limited to a specific set of encounters, circumstances, or officers (e.g., all use-of-force encounters; only probationary officers). Supervisory authority could also be random or systematic, where a sergeant is required to review some number of randomly selected videos per month for each officer. Finally, supervisor authority to review BWC footage of officers could be broad and unfettered (e.g., sergeant has authority to review any video at any time). Supervisor authority to examine BWC footage that captures stop-and-frisk activities could be included in any of the aforementioned review protocols (White & Fradella, 2016).

External Oversight

The auditor model of oversight offers great promise as a reform and accountability mechanism. Under this model, one individual (or office) with some degree of legal and/or policing expertise serves as a full-time independent auditor. Auditors are typically permanent positions created by local or state law, and in the vast majority of cases, they have much greater authority than the more traditional citizen oversight board (Walker & Archbold, 2014). Specific functions of an auditor include a range of activities such as auditing the complaint process, auditing police operations (which can include review of BWC footage), policy review, community outreach, and contributing to transparency by publishing reports that detail the activities of the auditor (Walker & Archbold, 2014). External oversight through an independent auditor provides a critically important check on police officers' discretionary decision-making (White & Fradella, 2016). For an auditor to be particularly useful, we echo David A. Harris' (2017) suggestion that the police compile data on every pedestrian stop, including: (1) a description of the time, place, and length of the stop; (2) the race or ethnic group of the person stopped as perceived by the officer; (3) the behavior witnessed by the officer that led to the stop; (4) whether a frisk was performed; (5) whether the frisk revealed a weapon and the type of weapon; (6) whether the frisk revealed other contraband and the type of contraband; and (6) whether a warning, citation or arrest occurred, and for what offense.

Recommendations

There is little consensus on the crime-control effects of SQF in New York City or similar programs elsewhere. Although New York experienced a significant crime decline that coincided with numerous changes in the NYPD under William Bratton's leadership—one of which was increased use of SQF—crime declined in many other places that did not employ aggressive use of stop-and-frisk. Moreover, the NYPD's overuse and misuse of stop-and-frisk violated the constitutional rights of thousands of New Yorkers. The unconstitutional SQF program produced severe collateral consequences that negatively affected the emotional and physical well-being of thousands of New Yorkers; caused significant damage to the NYPD's relationship with members of racial and ethnic minority groups in neighborhoods throughout the city; and seriously impaired the NYPD's ability to effectively fight crime in those neighborhoods. Unfortunately, the experiences in New York were witnessed in other jurisdictions that also overused and misused stop-and-frisk.

Terry stops were intended to be used as an individualized crime-investigation tactic that police could employ in response to suspect behaviors that generated reasonable suspicion of criminal activity (Meares, 2015). But the SQF program in New York City expanded far beyond these original intentions into a pervasive, department-wide surveillance program that sought to generate deterrence through fear of being stopped. A program designed in this manner is at great risk of producing unconstitutional behavior on the part of the police (Bellin, 2014). Moreover, the deployment of an NYPD-like SQF program in

communities where the racial-injustice undercurrent is strong will undoubtedly exacerbate tensions between police and minority citizens, and will quickly erode the limited reserves of police legitimacy. When police-minority community relations reach this level, they represent a powder keg that will explode in the wake of a controversial arrest, use of force, or citizen death. Michael Brown in Ferguson and Freddie Gray in Baltimore demonstrate this tragic point.

1. Because stop-and-frisk is, in its most basic form, an exercise in discretion, the literature on effective police discretion control offers lessons for reforming stop-and-frisk activities. Those lessons are grounded in careful recruit selection, training, administrative policy, supervision, accountability, and external oversight. In particular, an auditor can assess the legality of stops and can engage with citizens to assess the potential for collateral consequences.
2. Technology also offers potential to control officer decision-making during stop-and-frisk activities. For example, *big data*—"vast troves of information that can be used by police such as databases that capture criminal and driving history, biometric data, employment and housing records, spending habits, and a wide range of other individually-specific behaviors or attributes"— could be harnessed in ways that satisfy the Fourth Amendment's requirements for particularized suspicion justifying a *Terry* stop (White & Fradella, 2016, p. 178; see also Ferguson & Bernache, 2008; Polansky & Fradella, in press; Slobogin, 2017). And BWC footage can be reviewed by first-line supervisors, training units, internal affairs units, or by external auditors. The technology also represents an opportunity for police departments to demonstrate accountability and transparency to their communities.
3. Finally, stop-and-frisk, if used justly and selectively (and not as a widespread deterrence-based program), can be successfully applied within a number of contemporary policing frameworks that stress procedural justice, such as community-oriented policing and problem-oriented policing. Procedural justice involves treating people with dignity and respect; giving individuals "voice" during encounters (an opportunity to tell their side of the story); being neutral and transparent in decision-making; and conveying trustworthy motives (Mazerolle, Bennett, Davis, Sargeant, & Manning, 2012). Stop-and-frisk activities should be examined critically in terms of legal standards (was there articulable reasonable suspicion?) and in terms of procedural justice standards. During a stop-and-frisk, was the citizen treated with dignity and respect? Was the citizen given an opportunity to tell his or her side of the story? Was the officer neutral and transparent? Did the officer convey trustworthy motives? Police departments that benchmark their stop-and-frisk practices along these standards, while applying the lessons described above, will achieve police legitimacy in the eyes of their citizens and will emerge as leadership organizations in 21st-century policing.

References

48 Del. Laws 769, ch. 304 (1951) [codified as amended in DEL. CODE ANN. tit. 11, §§ 1901–1912 (1953)].

1941 N.H. Laws 242, ch. 163 [codified as amended at N.H. REV. STAT. ANN. §§ 594:1–594:23 (1955)].

1941 R.I. Pub. Laws 21, ch. 982 [codified as amended at R.I. GEN. LAWS ANN. §§ 12-7-1 to 12-7-17 (1956)].

Adams v. Williams, 407 U.S 143 (1972).

Alabama v. White, 496 U.S. 325 (1990).

Alpert, G. P. (1997, May). *Police pursuit: Policies and training*. National Institute of Justice: Research in Brief. Retrieved from https://www.ncjrs.gov/pdffiles/164831.pdf

American Civil Liberties Union of Illinois. (2015). *Stop and frisk in Chicago*. Chicago, IL. Retrieved from https://www.aclu-il.org/sites/default/files/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf

Bailey v. City of Philadelphia [Complaint], No. 2:10-cv-05952, 2010 WL 4662865 (E.D. Pa. Nov. 4, 2010). Retrieved from https://www.clearinghouse.net/chDocs/public/PN-PA-0013-0001.pdf

Bailey v. City of Philadelphia [Settlement Agreement], No. 10-5952 (E.D. Pa. June 21, 2011). Retrieved from https://www.clearinghouse.net/chDocs/public/PN-PA-0013-0002.pdf

Bailey v. City of Philadelphia [Plaintiffs' Third Report to Court and Monitor], No. 10-5952 (E.D. Pa. Mar. 19, 2013). Retrieved from https://www.clearinghouse.net/chDocs/public/PN-PA-0013-0003.pdf

Banaji, M. R., & Greenwald, A. G. (2016). *Blind spot: Hidden biases of good people*. New York, NY: Bantam Books.

Barbaro, M., & Chen, D. W. (2013, Nov 5). De Blasio is elected New York City mayor in landslide. *The New York Times*. Retrieved from http://www.nytimes.com/2013/11/06/nyregion/de-blasio-is-elected-new-york-city-mayor.html

Barrett, J. Q. (1998). Appendix B: *State of Ohio v. Richard D. Chilton* and *State of Ohio v. John W. Terry*: The suppression hearing and trial transcripts. *St. John's Law Review*, *72*(3), 1387–1524.

Bayley, D. H., & Bittner, E. (1984). Learning the skills of policing. *Law and Contemporary Problems, 47*(4), 35–59. doi: 10.2307/1191686

Bellin, J. (2014). The inverse relationship between the constitutionality and effectiveness of New York City "stop and frisk." *Boston University Law Review*, *94*, 1495–1550.

Bellin, J. (2015). The right to remain armed. *Washington University Law Review, 93*(1), 1–43.

Bittner, E. (1967). The police on Skid Row: A study of peace keeping. *American Sociological Review*, *32*(5), 699–715. doi: 10.2307/2092019

Bloomberg, M. R. (2013, August 18). 'Stop and frisk' keeps New York safe. *Washington Post*. Retrieved from https://www.washingtonpost.com/opinions/michael-bloomberg-stop-and-frisk-keeps-new-york-safe/2013/08/18/8d4cd8c4-06cf-11e3-9259-e2aafe5a5f84_story.html

Brennan, A., & Lieberman, D. (2014, May 9). Florida City's "stop and frisk" nabs thousands of kids, fines 5-year-olds "suspicious." *Fusion*. Retrieved from http://fusion.net/story/5568/florida-citys-stop-frisk-nabs-thousands-of-kids-finds-5-year-olds-suspicious/

Center for Constitutional Rights. (2012). *Stop and frisk: The human impact*. Retrieved from http://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf

Cerdá, M., Tracy, M., Messner, S. F., Vlahov, D., Tardiff, K. J., & Galea, S. (2009). Misdemeanor policing, physical disorder, and gun-related homicide: A spatial analytic test of "broken-windows" theory. *Epidemiology*, *20*(4), 533–541. doi: 10.1097/EDE.0b013e3181a48a99

Cerdá, M., Messner, S. F., Tracy, M., Vlahov, D., Goldmann, E., Tardiff, E. J., & Galea, S. (2010). Investigating the effect of social changes on age-specific gun-related homicide rates in New York City during the 1900s. *American Journal of Public Health*, *100*(6), 1107–1115. doi: 10.2105/AJPH.2008.158238

City of Indianapolis v. Edmond, 531 U.S. 32 (2000).

Chin, G. J., & Vernon, C. J. (2015). Reasonable but unconstitutional: Racial profiling and the radical objectivity of *Whren v. United States*. *George Washington Law Review*, *83*(3), 882–943.

Corman, H., & Mocan, N. (2005). Carrots sticks, and broken windows. *The Journal of Law and Economics*, *48*(1), 235–266.

Daniels v. City of New York [Complaint], 1:99-cv-01695-SAS (S.D.N.Y. Mar. 8, 1999).

Daniels v. City of New York, 138 F. Supp. 2d 562 (S.D.N.Y. 2001).

Davey, M., & Bosman, J. (2014, November 24). Protests flare after Ferguson police officer is not indicted. *New York Times*. Retrieved from http://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html

Davis, R. C. & Mateu-Gelabert, P. (1999). *Respectful and effective policing: Two examples in the South Bronx*. Retrieved from http://archive.vera.org/sites/default/files/resources/downloads/respectful_policing.pdf

Delaware v. Prouse, 440 U.S. 648 (1979).

Dudley, E. C., Jr. (2012). *Terry v. Ohio*, The Warren Court and the Fourth Amendment: A law clerk's perspective. *St. John's Law Review*, *72*(3), 891–903.

Duncan, J. (2014, Dec 6). Eric Garner case: Video of chokehold's aftermath raises new questions. *CBS News*. Retrieved from http://www.cbsnews.com/news/second-tape-of-nypd-chokehold-raises-new-questions-in-eric-garner-case/

Eck, J. E., & Rosenbaum, D. (1994). The new police order: Effectiveness, equity, and efficiency in community policing. In D. Rosenbaum (Ed.), *The challenge of community policing: Testing the promises* (pp. 3–23). Thousand Oaks, CA: Sage.

Fagan, J. (2017). Race and the new policing. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 2, pp. 83–116). Phoenix, AZ: Academy for Justice.

Fagan, J., & Davies, G. (2000). Street stops and broken windows: *Terry*, race and disorder in New York City. *Fordham Urban Law Journal*, *28*(2), 457–504.

Fenton, J. (2015, June 24). Autopsy of Freddie Gray shows 'high-energy' impact. *The Baltimore Sun*. Retrieved from http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-freddie-gray-autopsy-20150623-story.html

Fenton, J., & Rector, K. (2015, December 16). Mistrial declared in trial of Officer William Porter in death of Freddie Gray. *Baltimore Sun*. Retrieved from http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-porter-trial-jury-wednesday-20151216-story.html

Fermino, J. (2013, June 28). Mayor Bloomberg on stop-and-frisk: It can be argued 'we disproportionately stop Whites too much. And minorities too little. *New York Daily News*. Retrieved from http://www.nydailynews.com/new-york/mayor-bloomberg-stop-and-frisk-disproportionately-stop-whites-minorities-article-1.1385410

Ferguson, A. G., & Bernache, D. (2008). The "high-crime area" question: Requiring verifiable and quantifiable evidence for Fourth Amendment reasonable suspicion analysis. *American University Law Review*, *57*, 1587–1644.

Florida v. Bostick, 501 U.S. 429 (1991).

Floyd v. City of New York, [Complaint], 08-cv-01034-SAS (S.D.N.Y. Jan. 31, 2008). Retrieved from http://ccrjustice.org/files/Floyd_Complaint_08.01.31.pdf

Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

Foote, C. (1956). Vagrancy-type law and its administration. *University of Pennsylvania Law Review*, *104*(5), 603–650.

Fradella, H. F., Morrow, W. J., & White, M. D. (2016). *Terry* and SQF viewed through the lens of the suspicion heuristic. *Criminal Law Bulletin*, *52*(4), 871–922.

Fratello, J., Rengifo, A. F., Trone, J., & Velazquez, B. (2013). *Coming of age with stop and frisk: Experiences, perceptions, and public safety implications*. Retrieved from http://archive.vera.org/sites/default/files/resources/downloads/stop-and-frisk_technical-report.pdf

Friedman, B., & Ponomarenko, M. (2015). Democratic policing. *New York University Law Review*, *90*, 101–183.

Fryer, R. G., Jr., Heaton, P. S., Levitt, S. D., & Murphy, K. M. (2013). Measuring crack cocaine and its impact. *Economic Inquiry*, *51*(3), 1651–1681. doi: 10.1111/j.1465-7295.2012.00506.x

Fyfe, J. J. (1988). Police use of deadly force: Research and reform. *Justice Quarterly*, *5*(2), 165–205. doi: 10.1080/07418828800089691

Fyfe, J. J. (1989). Police/citizen violence reduction project. *FBI Law Enforcement Bulletin*, *58*, 18–25.

Fyfe, J. J. (1995). Training to reduce police-civilian violence. In W. A. Geller & H. Toch (Eds.), *And justice for all: Understanding and controlling police abuse of force* (pp. 163–175). Washington, DC: Police Executive Research Forum.

Fyfe, J. J., & Kane, R. J. (2005). *Bad cops: A study of career-ending misconduct among New York City police officers*. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/215795.pdf

Goodman, J. D., & Baker, A. (2014, December 3). Wave of protests after grand jury doesn't indict officer in Eric Garner chokehold case. *New York Times*. Retrieved from http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html

Graham, D. A. (2015, April 22). The mysterious death of Freddie Gray. *The Atlantic*. Retrieved from http://www.theatlantic.com/politics/archive/2015/04/the-mysterious-death-of-freddie-gray/391119/

Grant, J. D., & Grant, J. (1995). Officer selection and the prevention of abuse of force. In W. A. Geller & H. Toch (Eds.), *And justice for all: Understanding and controlling police abuse of force* (pp. 151–162). Washington, DC: Police Executive Research Forum.

Hale, M. (1736). *Historia placitorum coronae* [*The history of the pleas of the crown*]. Retrieved from https://archive.org/details/historiaplacitor02hale

Harcourt, B. E., & Ludwig, J. (2006). Broken windows: New evidence from New York City and a five-city social experiment. *The University of Chicago Law Review, 73*, 271–320.

Harris, C. J. (2014). The onset of police misconduct. *Policing: An International Journal of Police*

Strategies & Management, *37*(2), 285–304. doi: 10.1108/PIJPSM-01-2012-0043

Harris, D. A. (1994). Factors for reasonable suspicion: When Black and poor means stopped and frisked. *Indiana Law Journal*, *69*(3), 659–688.

Harris, D. A. (2017). Racial profiling. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 2, pp. 117–152). Phoenix, AZ: Academy for Justice.

Hawkins, W. (1716). *A treatise of the pleas of the Crown* (8th ed.). London, England: S. Sweet.

HeadsUp Blog. (2013, Aug 12). Stopses and friskes. Retrieved from http://headsuptheblog.blogspot.com/2013/08/stopses-and-friskses.html

Illinois v. Wardlow, 528 U.S. 119 (2000).

I.N.S. v. Delgado, 466 U.S. 210 (1984).

International Association of Chiefs of Police. (1989*). Building integrity and reducing drug corruption in police departments*. Retrieved from http://trove.nla.gov.au/work/20263281?selectedversion=NBD22159375

Jablonski, R. (2014, July 23). Cleveland Councilman Zack Reed proposes instituting version of 'stop and frisk' policy in Cleveland Police. *Cleveland.com*. Retrieved from http://www.cleveland.com/metro/index.ssf/2014/07/cleveland_councilman_zack_reed_6.html

Johnson, B. D., Golub, A., & McCabe, J. E. (2010). The international implications of quality-of-life policing as practiced in New York City. *Police Practice and Research: An International Journal*, *11*(1), 17–29. doi: 10.1080/15614260802586368

Joanes, A. (2000). Does the New York City Police Department deserve credit for the decline in New York City's homicide rates? A cross-city comparison of policing strategies and homicide rates. *Columbia Journal of Law and Social Problems*, *33*, 265–311.

Jones-Brown, D., Gill, J., & Trone, J. (2010). *Stop, question & frisk policing practices in New York City: A primer*. Retrieved from http://static.prisonpolicy.org/scans/PRIMER_electronic_version.pdf

Jones-Brown, D., & Maule, B.A. (2010). Racially biased policing: A review of the judicial and legislative literature. In S. K. Rice & M. D. White (Eds.), *Race, ethnicity, and policing: New and essential readings* (pp. 140–173). New York, NY: New York University Press.

Kappeler, V. E., Sluder, R. D., & Alpert, G. P. (1998). *Forces of deviance: Understanding the dark side of policing*. Long Grove, IL: Waveland Press.

Katz, L. R. (2004). *Terry v. Ohio* at thirty-five: A revisionist view. *Mississippi Law Journal*, *74*, 423–200.

Kelling, G. L., & Coles, C. M. (1996). *Fixing broken windows: Restoring order and reducing crime in our communities*. New York, NY: Touchstone.

Kelling, G. L., & Sousa, W. H., Jr. (2001). Do police matter? An analysis of the impact of New York City's police reforms. *Manhattan Institute*. Retrieved from http://www.manhattan-institute.org/pdf/cr_22.pdf

Kelling, G. L., & Wilson, J. Q. (1982, March). Broken windows: The police and neighborhood safety. *Atlantic Monthly*. Retrieved from https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465

Kelly, R. (2013, July 22). The NYPD: Guilty of saving 7,383 lives. *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424127887324448104578616333588719320

Klockars, C. B., Ivkovich, S. K., Harver, W. E., & Haberfeld, M. R. (2000). *The measurement of police integrity*. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/181465.pdf

Lawrence v. Hedger, 3 Taunt. 14, 128 Eng. Rep. 6 (C.P. 1810).

Lardner, J., & Reppetto, T. (2000). *NYPD: A city and its police*. New York, NY: Henry Holt.

Levinson, J. D., & Smith, R. J. (2012). *Implicit racial bias across the law*. New York, NY: Cambridge University Press.

Levit, J. K. (1996). Pretextual traffic stops: *United States v. Whren* and the death of *Terry v. Ohio*. *Loyola University Chicago Law Journal*, *28*, 145–187.

"Life and Times of Incoming NYPD Commissioner William Bratton, The." (2013, December 5). *New York Daily News*. Retrieved from http://www.nydailynews.com/news/politics/timeline-new-nypd-commissioner-bratton-article-1.1538689

Ligon v. City of New York, 538 F. Appx. 101 (2d Cir. 2013).

Ligon v. City of New York, 743 F.3d 362 (2d Cir. 2014).

MacDonald, J., Fagan, J., & Geller, A. (2016). The effects of local police surges on crime and arrests in New York City. *PLoS ONE, 11*(6). Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2614058

Maclin, T. (1998). Terry v. Ohio's Fourth Amendment legacy: Black men and police discretion. *St. John's Law Review*, *72*(3-4), 1271–1321.

Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2012). *Legitimacy in policing*. Retrieved from https://www.campbellcollaboration.org/library/legitimacy-in-policing-a-systematic-review.html

McAffee, T. B. (2012). Setting us up for disaster: The Supreme Court's decision in *Terry v. Ohio*. *Nevada Law Journal*, *12*, 609–625.

McDonald v. City of Chicago, 561 U.S. 742 (2010).

Meares, T. L. (2015). Programming errors: Understanding the constitutionality of stop-and-frisk as a program, not an incident. *University of Chicago Law Review*, *82*, 159–179.

Michigan v. Long, 463 U.S. 1032 (1983).

Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990).

Minnesota v. Dickerson, 508 U.S. 366 (1993).

Mitchell, A. (1993, December 3). Giuliani appoints Bostonian to run New York's Police. *New York Times*. Retrieved from http://www.nytimes.com/1993/12/03/nyregion/giuliani-appoints-bostonian-to-run-new-york-s-police.html

Mitchell, C. (2008, January 7). The killing of murder. *New York Magazine*. Retrieved from http://nymag.com/nymag/features/42603/

Mollen Commission, The. (1994). *Anatomy of failure, a path for success: The report of the commission to investigate allegations of police corruption and the anti-corruption procedures of the New York City Police Department*. Retrieved from https://archive.org/download/MollenCommissionNYPD/4%20-%20Mollen%20Commission%20-%20NYPD.pdf

Muir, W. K. (1977). *Police: Streetcorner politicians*. Chicago, IL: The University of Chicago Press.

New York City Police Department. (2017a). *Stop, question and frisk data, 2003-2016* [Data set]. Retrieved from http://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page

New York City Police Department. (2017b). *Citywide seven major felony offenses, 2000-2016*. Retrieved from http://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/seven-major-felony-offenses-2000-2016.pdf

New York Civil Liberties Union. *Stop-and-frisk data*: *Annual stop-and-frisk numbers*. Retrieved from http://www.nyclu.org/content/stop-and-frisk-data

"New York Police Commissioner Ray Kelly calls stop-and-frisk decision 'disturbing and offensive.'" (2013, August 12). *New York Daily News*. Retrieved from http://www.nydailynews.com/news/politics/new-york-police-commissioner-ray-kelly-comments-stop-and-frisk-decision-article-1.1424689

Ofer, U., & Rosmarin, A. (2014). *Stop-and-frisk: A first look*. Newark NJ: American Civil Liberties Union of New Jersey. Retrieved from https://www.aclu-nj.org/files/8113/9333/6064/2014_02_25_nwksnf.pdf

Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

Pearce, M. (2014, November 24). What happened in Michael Brown shooting in Ferguson, Mo.? *Los Angeles Times*. Retrieved from http://www.latimes.com/nation/la-na-back-story-ferguson-shooting-story.html

Pérez-Peña, R. (2015, May 21). Six Baltimore officers indicted in death of Freddie Gray. *New York Times*. Retrieved from http://www.nytimes.com/2015/05/22/us/six-baltimore-officers-indicted-in-death-of-freddie-gray.html

Polansky, J., & Fradella, H. F. (In press). Does 'precrime' mesh with the ideas of U.S. justice? Implications for the future of predictive policing. *Cardozo Public Law, Policy, and Ethics Journal*, *15*.

Ponomarenko, M., & Friedman, B. (2017). Democratic accountability and policing. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 2, pp. 5–26). Phoenix, AZ: Academy for Justice.

President's Commission on Law Enforcement and Administration of Justice. (1967). *Task force*

report: The police. Retrieved from https://www.ncjrs.gov/pdffiles1/Digitization/147374NCJRS.pdf

President's Task Force on 21st Century Policing. (2015). *Final Report of the President's Task Force on 21st Century Policing.* Retrieved from https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Rayman, G. (2013, March 22). New NYPD tapes introduced in stop and frisk trial. *Village Voice*. Retrieved from http://www.villagevoice.com/news/new-nypd-tapes-introduced-in-stop-and-frisk-trial-6721026

Rector, K. (2016, July 27). Charges dropped, Freddie Gray case concludes with zero convictions against officers. *Baltimore Sun*. Retrieved from http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-miller-pretrial-motions-20160727-story.html

Richardson, L. S. (2017). Police use of force. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 2, pp. 185–208). Phoenix, AZ: Academy for Justice.

Ronayne, J. A. (1964). The right to investigate and New York's "stop-and-frisk" law. *Fordham Law Review*, *33*(2), 211–238.

Rosenfeld, R., & Fornango, R. (2014). The impact of police stops on precinct robbery and burglary rates in New York City, 2003–2010. *Justice Quarterly*, *31*(1), 96–122. doi: doi.org/10.1080/07418825.2012.712152

Rosenfeld, R., Fornango, R., & Rengifo, A.F. (2007). The impact of order-maintenance policing on New York City homicide and robbery rates: 1988-2001. *Criminology*, *45*(2), 355–384. doi: 10.1111/j.1745-9125.2007.00081.x

Rosenthal, L. (2010). Pragmatism, originalism, race, and the case against *Terry v. Ohio*. *Texas Tech Law Review*, *43*, 299–356.

Shjarback, J. A., & White, W. D. (2016). Departmental professionalism and its impact on indicators of violence in police-citizen encounters. *Police Quarterly*, *19*(1), 32–62. doi: 10.1177/1098611115604449

Sibron v. New York/*Peters v. New York*, 392 U.S. 40 (1968).

Skolnick, J. H. (1996). *Justice without trial: Law enforcement in a democratic society*. New Orleans, LA: Quid Pro.

Skolnick, J. H., & Fyfe, J. J. (1993). *Above the law: Police and the excessive use of force*. New York, NY: The Free Press.

Slobogin, C. (2017). Policing, databases, and surveillance. *Criminology, Criminal Justice, Law & Society*, *18*(3), 69–83).

Smith, D. C. (2012, July 19). Stop and frisk has lowered crime in other cities. *New York Times*. Retrieved from http://www.nytimes.com/roomfordebate/2012/07/17/does-stop-and-frisk-reduce-crime/stop-and-frisk-has-lowered-crime-in-other-cities

Smith, D. C., & Purtell, R. (2007). *An empirical assessment of NYPD's "operational impact": A targeted zone crime reduction strategy*. Retrieved from http://wagner.nyu.edu/files/faculty/publications/impactzoning.doc

Stelzner, L. G. (1979–80). The Fourth Amendment: The reasonableness and warrant clauses. *New Mexico Law Review*, *10,* 33–49.

Sundby, S. E. (1988). A return to fourth amendment basics: Undoing the mischief of *Camera* and *Terry*. *Minnesota Law Review*, *72*, 383–448.

Terry v. Ohio, 392 U.S. 1 (1968).

Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *The Annual Review of Psychology*, *57*, 375–400. doi: 10.1146/annurev.psych.57.102904.190038

United States v. Cortez, 449 U.S. 411 (1981).

United States v. Mendenhall, 446 U.S. 544 (1980).

U.S. Department of Justice. (2015, March 4). *Report regarding the criminal investigation into the shooting death of Michael Brown by Ferguson, Missouri police officer Darren Wilson*. Retrieved from https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf

Waldeck, S. E. (1999). Cops, community policing, and the social norms approach to crime control: Should one make us more comfortable with the others? *Georgia Law Review*, *34*, 1253–1310.

Walker, S., & Archbold, C. A. (2014). *The new world of police accountability* (2nd ed.). Thousand Oaks: CA: Sage.

Warner, S. B. (1942). The Uniform Arrest Act. *Virginia Law Review*, *28*(3), 315–347.

Weisburd, D., Greenspan, R., Hamilton, E. E., Williams, H., & Bryant, K. A. (2000). *Police attitudes toward abuse of authority: Findings from a national study*. Retrieved from https://www.policefoundation.org/publication/police-attitudes-toward-abuse-of-authority-findings-from-a-national-study/

Weisburd, D., Telep, C. W., & Lawton, B. A. (2014). Could innovations in policing have contributed to the New York City crime drop even in a period of declining police strength? The case of stop, question and frisk as a hot spots policing strategy. *Justice Quarterly*, *31*(1), 129–153. doi: 10.1080/07418825.2012.754920

White, M. D. (2014). *Police officer body-worn cameras: Assessing the evidence*. Retrieved from https://ric-zai-inc.com/Publications/cops-p289-pub.pdf

White, M. D. (2014). The New York City Police Department, Its crime control strategies and organizational changes, 1970–2009. *Justice Quarterly*, *31*(3), 74–95. doi: 10.1080/07418825.2012.723032

White, M. D., Fradella, H. F, Morrow, W. J., & Mellom, D. (2016). Federal civil litigation as an instrument of police reform: A natural experiment exploring the effects of the *Floyd* ruling on stop-and-frisk activities in New York City. *Ohio State Journal of Criminal Law*, *14*, 9–66.

White, M. D., & Fradella H.F. (2016). *Stop and frisk: The use and abuse of a controversial policing tactic*. New York, NY: New York University Press.

White, M. D., & Fradella, H. F. (In press). The intersection of law, policy, and police body-worn cameras: An exploration of critical issues. *University of North Carolina Law Review*.

White, M. D., Fradella, H. F., & Coldren, J. R., Jr. (2015, Aug 11). Why police (and communities) need 'broken windows.' *Crime Report*. Retrieved from http://thecrimereport.org/2015/08/11/2015-08-why-police-and-communities-need-broken-windows/

Whren v. United States, 517 U.S. 806 (1996).

Zimring, F. E. (2012). *The city that became safe: New York's lessons for urban crime and its control*. New York, NY: Oxford Press.

Zimring, F. E. (2017). Firearms and violence. In E. Luna (Ed.), *Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform* (Vol. 1, pp. 167–186). Phoenix, AZ: Academy for Justice.

Acknowledgements

The authors gratefully acknowledge New York University Press for their gracious permission to distill and build upon their book *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic* (2016) for this article. The authors also thank Megan Verhagen and Kyle Meditz Ernst for their assistance with assembling this article. Finally, the authors deeply appreciate the insightful feedback we received on previous drafts of this paper from Albert W. Alschuler, Susan Bandes, Karen Henning, Delores Jones-Brown, Erik Luna, Michael Scott, and Scott Sundby.

About the Authors

Henry F. Fradella is a Professor in and Associate Director of the School of Criminology and Criminal Justice at Arizona State University, where he also holds affiliate appointments as a professor of law and psychology. He holds a B.A. in psychology, a master's in forensic science, a law degree, and Ph.D. in justice studies. He researches the historical development of substantive, procedural, and evidentiary criminal law; the evaluation of law's effects on human behavior; the dynamics of legal decision-making; and the nature, sources, and consequences of variations and changes in legal institutions or processes. He is the author or co-author of nine books including *Stop and Frisk: The Use and Abuse of a Controversial Police Tactic* (New York University Press); *Sex, Sexuality, Law, and (In)Justice* (Routledge); *Mental Illness and Crime* (Sage); *The Foundations of Criminal Justice* (Oxford University Press); *Defenses of Excuse in American Law* (Academica); and four textbooks published by Cengage. Dr. Fradella has also authored or co-authored more than 85 articles, book chapters, reviews, and scholarly commentaries that have appeared in outlets such as the *American Journal of Criminal Law*; *Criminal Justice Policy Review*; *Criminal Law Bulletin*; *Criminology and Public Policy*; *Federal Courts Law Review*; *Journal of Contemporary Criminal Justice*; *Journal of Criminal Justice Education*; and the *Ohio State Journal of Criminal Law*. A fellow and past-president of the Western Society of Criminology (WSC), Dr. Fradella current serves as the executive director of the WSC. From 2014–2017, Fradella served as the co-editor of *Criminology, Criminal Justice, Law & Society*.

Michael D. White is a Professor in the School of Criminology and Criminal Justice at Arizona State University, where he also serves as the Associate Director of ASU's Center for Violence Prevention and

Community Safety, as well as the Director of the doctoral program. He is a Senior Subject Matter Expert for the Bureau of Justice Assistance's Smart Policing Initiative and he is Co-Director of Training and Technical Assistance for the U.S. Department of Justice Body-Worn Camera Policy and Implementation Program. He received his Ph.D. in Criminal Justice from Temple University in 1999. Prior to entering academia, Dr. White worked as a deputy sheriff in Pennsylvania. His primary research interests involve the law enforcement, including police use-of-force, law enforcement technologies, and police misconduct. He has published 55 peer-reviewed journal articles that appear in leading journals, including *Justice Quarterly*, *Criminology and Public Policy*, *Criminal Justice and Behavior*, *Applied Cognitive* Psychology, *Crime & Delinquency*, *Policing: An International Journal of Police Strategies and Management*, *Journal of Criminal Justice*, *Police Practice and Research: An International Journal*, *Journal of Experimental Criminology*, *Justice Policy Journal*, *Police Quarterly*, *Criminal Justice Policy Review*, the *Ohio State Journal of Criminal Law*, and the *Criminal Law Bulletin*. He is the co-author of two scholarly books: *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic* (NYU Press 2016), and *Jammed Up: Bad Cops, Police Misconduct, and the New York City Police Department* (NYU Press 2013). He also is the author of two textbooks: *Race, Ethnicity and Policing: New and Essential Readings* (NYU Press, 2010) and *Current Issues and Controversies in Policing* (Allyn & Bacon, 2007).

Endnotes

[1] The authors are aware of the fact that the punctuation of the phrase *stop-and-frisk* varies considerably by style guide. The Associated Press, for example, calls for the words to be in quotations when used as a subject or object noun phrase, while separating the words with hyphens when used as compound modifier. But even the Associated Press is wildly inconsistent in how their style guide is actually used (see HeadsUp, 2013). For the sake of consistency and readability, we hyphenate the phrase stop-and-frisk all the time when referring to the tactic as sanctioned by *Terry* and its progeny. In contrast, we differentiate how the practice was used as a widespread crime control strategy in New York City and elsewhere by referring to it as "Stop, Question, and Frisk" ("SQF").

[2] The authors note that Judge Scheindlin was eventually removed from the case by the U.S. Court of Appeals for the Second Circuit. Importantly, however, the appellate court did not make any changes to her findings of fact or conclusions of law. And although the appeal was settled before resolution on its merits, it is clear that Judge Scheindlin's perceptions of the NYPD's use of stop-and-frisk as an aggressive, city-wide strategy for fighting crime were shared by many New Yorkers. Among other things, William de Blasio was elected mayor in a landslide after having run on platform to end the strategy (see Barbaro & Chen, 2013).

[3] It should be noted that stop-and-frisk at the incident (or tactical) level is governed by law. This should be distinguished from SQF policies that are enacted at the departmental (or strategic) level. The former requires that we examine whether the suspect's civil liberties were violated and whether the officer made a wise investigative and personal safety decision. The latter requires that we examine whether the general policy/strategy of encouraging officers to stop and frisk lots of people—presumably in furtherance of a crime control/crime prevention goal—is (a) an effective strategy; (b) a constitutionally permissible strategy; (c) a procedurally just strategy; and (d) the optimal strategy for achieving the particular objective. Thus, for example, as will be explained in this chapter, the problem in New York City was not just that many police officers did not seem to understand the constitutional standards governing stop-and-frisk as a tactic, but also that NYPD command staff pressed officers to engage in SQF on a massive, proactive basis as a strategic approach to controlling certain forms of crime.

[4] The Court may have also motivated, in part, by concerns about how vagrancy and loitering laws contributed to police infringements on constitutionally protected liberty interests (Foote, 1956; see also *Papachristou v. City of Jacksonville*, 1972 [invalidating a vagrancy ordinance on vagueness grounds].

[5] Our arguments for reform advocate reining-in police discretion so that the practice of stop-and-frisk brings *Terry* back to its more limited, cautious roots.

[6] At first blush, the cases discussed in the remainder of this section may appear to lack a common thread other than expanding stop-and-frisk authority. But there is a theoretical connection between *Terry* and these cases if *Terry* is viewed as having accomplished more than authorizing stop-and-frisk under the Fourth Amendment. Indeed, *Terry* severed the Reasonableness Clause from the Warrant Clause, thereby carving-out swathes of

police conduct exempt from both the requirements of probable cause and a warrant (Dudley, 2012; Stelzner, 1979–1980). Thus, all of the cases highlighted in the remainder of this section were decided with regard to a balancing test aimed at "reasonableness" divorced from other Fourth Amendment principles.

7 In *City of Indianapolis v. Edmond* (2000), the Court curtailed law enforcement authority to use drug-sniffing dogs at roadblocks on the grounds that the DUI checkpoints sanctioned in *Sitz* were "designed to serve special needs, beyond the normal need for law enforcement" (p. 37, internal quotations omitted), whereas suspicionless searches using drug-sniffing dogs at roadblocks impermissibly extended into the realm of investigating "ordinary criminal wrongdoing" (p. 38). Nonetheless, *Sitz* remains good law insofar as it permits stops of vehicles at DUI checkpoints without any particularized suspicion of impaired driving.

8 To be clear, we are not suggesting that *Whren* led to *Dickerson*. In *Sibron*, the Court held that the test is whether a reasonable person would find a frisk to be justified under the circumstances, regardless of whether the particular officer conducting the frisk subjectively believed it was justified. *Whren* passed up the opportunity to alter *Sibron* by applying the "reasonableness" analysis to pretextual stops where an officer stops someone in a situation in which no other officer would do so. Because *Whren* failed to find such action unreasonable, our point is that the combination of *Dickerson* and *Whren*—the combination of "plain feel" without the ability to challenge a frisk as being pretextual—created an incentive for law enforcement officers to conduct frisks even when they do not suspect the presence of a weapon.

9 Broken windows theory posits that minor forms of social and physical disorder cause a breakdown in informal social control as citizen investment in an area diminishes. As citizens withdraw from the area, the level of disorder increases and the risk for more serious types of crime to emerge becomes greater. The theory suggests that police focus enforcement efforts on disorder and quality-of-life offenses as a mechanism for reengaging law-abiding citizens' commitment to the area. Under Chief Bratton, the transit police adopted a broken windows-based strategy in the subway system.

10 It should be noted that Bloomberg was essentially making the case that police should be stopping and searching people of various races, ethnicities, genders, and ages in rough proportion to their representation in the known offending population. Conversely, many critics of disparate rates of police stops and other interventions base their criticism on a contrary assumption, namely that police ought to stop people of various demographic groups on the basis of their representation in the general population of that jurisdiction (or perhaps of the relevant neighborhood). The lack of consensus as to which is the proper basis for calculating disparity leads to debates about the propriety of police practices that cannot be resolved. Even if, for the sake of argument, the latter approach were used to measure racial and ethnic disparities (which we do not endorse), that would not necessarily translate into the propriety of police practices premised on that measurement approach. Put differently, even if it were proven that young Black men were disproportionately represented among offenders of certain crimes (a supposition we reject, but offer here only for the sake of argument), that fact would not, in and of itself, justify SQF practices that targeted young Black men. Rather, it would call for consideration of alternate police strategies that could yield the same crime-control benefits without incurring the same police-legitimacy costs.

11 It should be noted that it might be possible to eradicate discrimination in stop-and-frisks and ensure that all stops are conducted in accordance with the Constitution, but nonetheless still have a problem with how people perceive stop-and-frisk as a tactic. That is because stops are inherently intrusive and unpleasant and frisks are even more so. Adherence to the four tenets of procedural justice (voice, transparency, fairness, and impartiality) can help minimize these concerns, but since no one likes being stopped, it very may well be that the public might prefer other approaches to policing that can prevent crime without depending significantly on intrusive and unpleasant police actions. But such solutions are beyond the scope of this chapter and our arguments for reforming stop-and-frisk as a police practice.

12 Notably, Fyfe (1989) put these principles in practice as part of the Metro-Dade Police/Citizen Violence Reduction Project, which culminated in the development of a five-day role-play training program. Results from the project indicate substantial reductions in use of force, officer injuries and citizen complaints after the training program was implemented.

13 As Barry Friedman and Maria Ponomarenko (2015, 2017) suggest, the public has an important role to play in the development of these policies. Public participation in policymaking promotes accountability and increases transparency, both of which can help improve policy legitimacy in eyes of community members.

14 As an example of the importance of supervision with corresponding accountability, Weisburd and colleagues reported that nearly 90% of police officers surveyed agreed that effective supervision prevents misconduct such as racially-biased policing.