



Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic

By Michael D. White and Henry F. Fradella

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In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court sanctioned the police to stop, question, and frisk individuals on suspicion. The opinion by Chief Justice Earl Warren fashioned a new Fourth Amendment standard allowing stops of individuals at less than probable cause. This liberal Court created a practice that, over the next half century, greatly expanded police powers and led the police to use *Terry* stops aggressively. The police use of *Terry* stops has become controversial, with its disparate racial impact on minorities decried and its overall effectiveness questioned. This timely book examines the creation, use, and abuse, of *Terry* stops.

Michael D. White and Henry F. Fradella are criminologists. They want to understand how *Terry* changed police practice and its impact on criminal justice, community policing, and attitudes toward law enforcement in the communities most affected by

it. Their focus is primarily on New York City, although they also discuss other cities. They picked New York City because it has become a case study on its use of “stop, question, frisk” (SQF) tactics to combat crime. White and Fradella examine the various studies done and the litigation surrounding police proactive approaches that too often target minorities. They trace the rise of *Terry* from its common law origins, how the Court circumscribed it to police safety, and how the reach of the case was expanded far beyond the contours of police safety. They conclude that abuses take place when *Terry* is used as a law enforcement initiative, proactively targeting select populations, rather than as a means of investigation. The proactive use of SQF in tandem with “broken windows” policing, meaning addressing all manners of infractions and petty offenses as a means to instill respect for law and order, can have a racial component and exacts a toll on minority relations with the police and the community. Recognizing that *Terry*'s reach is not likely to be rolled back, as courts remain sympathetic to the cop in the street, they conclude that reform must come from policing itself. *Terry*'s reformation must be through “reform school,” where training, data analysis, and new police techniques replace the rough-style crackdowns in minority neighborhoods, which include jumping out of patrol cars and the beating to the punch those thought to be inclined to criminal activities—meaning frequently throwing punches and beating suspects.

One profits from returning to key precedents. In the first chapters, White and Fradella return to *Terry* and the context of the case. They describe the common law origins of the ability of law enforcement to stop and question, the night watch accosting strangers in the community, demanding to know their business. From these antecedents, the authors chart the development of Fourth Amendment jurisprudence, its basic concepts of probable cause and reasonableness, and its state as the 20th century began, with the increasingly perceived need of police to act on suspicion when something was afoot. The modern age required

modern policing, and, starting in the 1930s, legal institutes and committees proposed model codes allowing stops of individuals at something less than probable cause. By the mid-1960s, state legislatures were passing statutes allowing such stops. The rise of the crime rate and the turmoil of the times landed the issue before the Court.

The chapter on *Terry* is worth reading. A beat detective in Cleveland spied suspicious behavior of three African-American men, supposedly casing out a store. He stopped them, searched, and found a gun on John W. Terry. The officer acted on suspicion, but the stop was premised on protecting the officer rather than on preventing crime. Soon, though, *Terry* was used to expand reasonable suspicion and to increase the authority to frisk. The authors argue that the deference to police and the enormous weight given to the individual assessment of the officer on the beat, together with the concerns for police safety and the “war on drugs,” led to the present expansiveness of what is deemed reasonable suspicion. Of course, the issue of race is always in the background. The authors trace the expansion of reasonable suspicion from *Terry* to the present time through key cases. Their study serves as a useful treatise on the subject.

After discussing the legal background in the first half of the book, the authors turn to *Terry* in practice, specifically in New York City. In the 1980s and 1990s, to combat rampant crime, or at least the perception of it, the NYPD adopted the policy of “broken windows policing.” Essentially, the police concentrated in high-crime areas and focused on all manner of offenses. Minor infractions that used to be ignored, such as subway turnstile jumping, littering, even jaywalking, drew attention, with the intention of controlling disorder. The practice was expanded to an even more aggressive SQF approach. This policy gained notice as crime rates declined, and crime-ridden areas became safer. The policy also led to an increased stop-and-then-arrest rate for minorities as they and their neighborhoods were targeted.

Was the policy and its practice successful? As the authors discuss, the data compi-

lations undoubtedly show a decline in crime in New York City and other jurisdictions. However, whether the decline resulted from increased SQF practice or from long-term demographic trends and other sociological factors is debated among social scientists.

Undoubtedly, the authors find, the SQF technique had human costs. As the practice became prone to overuse and misuse, with stops for no reason but the race of the person, the relations between the police and the minority community, especially the African-American community, worsened. The authors look to several studies to argue that SQF resulted in disparate treatment of racial and ethnic minorities, and that these minorities view contact with police as negative and adversarial. This may be too much to lay at the feet of SQF alone. The use of SQF has to be distinguished from its misuse, and other factors—such as harsher sentences, cultural trends, and even the make-up and composition of the police forces themselves—must be taken into account.

SQF has resulted in lawsuits. The authors describe the litigation against the New York City police for their rampant targeting. The litigation resulted in high-profile cases, injunctions, settlements, and a change in approaches with a change in the city's administration. On May 30, 2017, the *New York Times* reported that street stops by the NYPD have “plunged since 2011” and “the racial disparity in stops is narrowing.” Yet questions still exist about the degree of suspicion the police use to stop, question, and frisk in minority neighborhoods. The way that *Terry* stops are made, and the degree of suspicion that gives rise to them, are a result of decades and generations of interactions and will not be easily erased.

As noted, the authors are realistic in recognizing that *Terry* and its progeny cannot be rolled back, and that extensive deference to the police is here to stay. Rather, the authors contend, we must change the police organizations. The last third of the book advocates a way forward. This is the least satisfactory part, which consists of prescriptions to “get along.”

The persistent undercurrent of racial injustice, as witnessed in the number of high-profile shootings by police of minorities and the subsequent prosecutions, highlight the tension. The charting of a course to “community-oriented policing,” with involvement of community leaders, residents, and business owners in the neighborhood

working with the police, sounds wonderful and enlightened. Yet, it also sounds quixotic. It is hard enough to get people involved in the communities as it is, and the police have their own institutions, bureaucracies, and culture. Town hall meetings on a Tuesday night in a church basement will not cut it. Telling everyone to “be nice” and having better education and reform in police recruitment cannot hurt, but these are not game changers. This approach also will take time, as the hard-boiled veterans in the squad rooms still have years to go until retirement. The approach also assumes high-density urban settings, yet crime and despair are now frequently in the suburbs, exurbs, and rural areas. The attention to the opioid crisis in white rural communities highlights the disconnect.

The authors advocate a greater use of intelligence gathering by police rather than the SQF heavy-handed approach. That is, the police gather information from informants and tips and actually investigate rather than just bust people. This approach requires a much greater positive presence in the community and a turn away from the minor infractions approach. There is not much intelligence gathering that goes into jaywalking, turnstile jumping, or breaking windows.

Use of data and technologies, though, will make a difference. The surveillance by security cameras may make many uneasy, but they do record interactions with the community and police. The same is true of body cameras. The authors seem to mistrust such advances, warning of Big Data approaches and government omnipresence, notwithstanding their recommendation of greater intelligence gathering. Yet, such use of surveillance technologies is a good way to catch criminals, observe police actions, and avoid the throwing of young African-American males against the hood of a police cruiser to question them about what they are doing.

Stop and Frisk provides a good summary of how *Terry* and SQF became accepted police practice. Its questioning of whether such practices, combined with “broken windows” policing, really did produce notable crime-control benefits is its most surprising, controversial, and significant conclusion. But its finding that widespread SQF practices have general collateral negative consequences to minority and ethnic individuals is unsurprising and dispiriting. Police forces

and law enforcement must move beyond last century's approaches and develop new ways of making communities safe without overstepping legal rights or engaging in profiling.

Stop and Frisk seems fated to become outdated quickly. Its focus on New York City to such an extent also limits its applicability, although one goes to where the data is. New approaches will soon overtake its prescriptions. For the future of *Terry* as a law enforcement tool, the challenge is to accept SQF as an important technique, relying on reasonable suspicion but drawing back from using SQF as a proactive excuse for widespread dragnets or random stoppings. It therefore becomes all the more important for police, prosecutors, and courts to hold true to legal standards. ☉

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