

In the Shadow of Lady Liberty

One of the things I'd do ... is I would do stop-and-frisk. I think you have to. We did it in New York and it worked incredibly well and you have to be proactive

—Donald Trump, 2016 Presidential Race.

Abstract This chapter highlights key events and court cases that set the legal stage for the stop-and-frisk as we know it today. Although this was a supplemental action, NYPD turned it into a proactive tool for constant use in the fight against crime in the 1990s New York City—which was riddled with crime. With the drop in crime by 2002, the aggressive tactics were still being applied on a large scale, but with meager results as seen in the Brownsville case which led to the question of the true reason for the continued stop-and-frisk tactic. Some believe it was racism, others believe it was quotas—but to what end?

Keywords Stop-and-Frisk • Fourth amendment • NYPD • Terry v. Ohio Reasonable suspicion • Illinois v. Wardlow • High crime area Floyd v. City of New York • Proactive policing • Quality of life • Diallo Precision policing • Civil rights violations • Brownsville • Quota based policing

Over the past decade and a half, NYPD has stopped and temporarily detained over 5.1 million New Yorkers in a proactive and concerted effort to reduce crime by removing weapons and drugs from the streets. Their

actions are guided by a controversial theory called broken windows which posits—the prevalence of more serious crimes can be curtailed by focusing intensely on a less serious misdemeanor, nuisance, or quality of life offenses. Proponents of the stop-and-frisk herald the practice and policies supporting the practice as the primary reason for the abrupt decline in New York City crime rates; such a claim, however, has never been conclusively substantiated. Opponents of the practice, on the other hand, believe it opened the door to state-sanctioned violations of the Fourth Amendment which protects the populace from illegal search and seizures. The Fourth Amendment is meant to protect against arbitrary arrests and is the basis of the law regarding search warrants, stop-and-frisk, safety inspections, wiretaps, and other forms of surveillance that civilians are illegally subjected to (Legal Information Institute 2010). Charges of this type are easy to believe when one considers the fact that nearly 90% of persons stopped are innocent. Opponents also claim the stop-and-frisk opened the door to state-sanctioned discrimination, as carried out by the NYPD, which violates the Fourteenth Amendment. The Fourteenth Amendment addresses many aspects of citizenship, but the most common reference is made to the “equal protection of the laws” clause which is crucial to the protection of civil rights (Legal Information Institute 2010). This particular violation commands relevance as over 84% of those commonly stopped by the NYPD were Black or Hispanic. The stop percentages were annually consistent and held constant throughout the pre-constitutionality ruling life of the stop-and-frisk. This information in conjunction with knowledge of Black and Hispanic arrest rates being equal to, and often less than, their White counterparts added high validity to the claim. Academics focus intensively on this “equity” view because of the overwhelming amount of information indicating bias in the stop-and-frisk data—and therefore contradiction between the actions of the officers and the justification for the practice. The primary contradiction being—if members of each group stopped have a 6% chance of having committed an arrestable offense (the consistent arrest rate within groups), why not stop group members equally if the intent is to reduce crime? The inability of city officials to address this and several other simple questions contributes heavily to the claims of discrimination and racial profiling on behalf of the NYPD.

THE LEGAL BASIS FOR STOP-AND-FRISK

The above arguments relate to the officer's motive in initiating the stop. The stops made by officers are legally sanctioned based on the 1968 *Terry v. Ohio* case which held—officers of the law may legally perform a search for weapons without a warrant and probable cause. It was established that John Terry (petitioner) and two acquaintances were stopped and searched by an officer after he observed them moving in a manner that seemingly indicated they were casing a store for a potential robbery. After approaching and questioning Terry (and company), the officer decided to search him for weapons after a quick pat-down (stated to be performed for the officer's safety). The officer was correct in his suspicions and successfully retrieved a gun in the search. Terry's defense argued that the search violated his Fourth Amendment rights because the officer lacked probable cause. In what would become a precedent-setting move, the court eventually held that an officer can perform a search for weapons without a warrant or probable cause, when the officer has reasonable suspicion that the person may be armed and dangerous (Bloomberg Law n.d.). This 1968 ruling is what gives NYPD the legal foundation to stop (sometimes referred to as "terry stops") and temporarily detain pedestrians. It should be noted that "articulable" was associated with suspicion in the ruling—officers need to be able to articulate the reasons for their suspicion (Goel et al. 2016). The power of articulation is considered stronger than a hunch, but less than probable cause. It should also be noted that the officer had never made an arrest in such a manner prior to Terry—i.e., he had never had the opportunity to observe criminal casing scenarios and had no history with the suspects. In short, the underlying strength of the Terry case—and therefore terry stops or stop-and-frisk—was based on the court's assumptions of the officer's experience and expertise in this particular criminal activity. In some of the proceeding cases, the reduced skepticism and over-indulgence on the perspective of the officer's stop justification commonly failed to take into account performance pressures—such as quotas—and personal biases held by the officer that could have impacted the officer's reasoning for initiating the pedestrian stops (Walton 2014).

While that case re-aligned law enforcement actions to adhere to the US Constitution, another case, in some ways, undermined that stance and this was the 1976 *People of the State of New York v. De Bour*. The De Bour case is considered to be the leading New York case on pedestrian encounters, and it raised the fundamental question of, in the absence of concrete

evidence of criminality, whether or not an officer can approach a private citizen for the purpose of gathering information. The court determined the officer could perform such an act, but—just as in the Terry case—there must be an articulable reason to justify the action. Albeit, the case did introduce terms such as “common law right to inquiry” and “founded suspicion” as a blanket for lowering intrusion and levels of suspicion in “high-crime areas” which seemingly provided support to what could be perceived as frivolous police behavior (15). The lowered standard for contact also allowed police to claim justification if they found contraband or uncovered an offense—during the conversation—after the fact.

Another case central to the controversial NYPD stop-and-frisk policies and practice was the 2000 *Illinois v. Wardlow* case in which it was held that—nervous and evasive behaviors in a “high crime area” are relevant factors in determining the reasonable suspicion necessary for a “terry stop” (Bloomberg Law n.d.). William Wardlow was standing around in an area police considered to be saturated with narcotic trafficking. When Wardlow spotted a police caravan, he fled and was eventually caught—the ensuing chase and search of his person yielded a 38-caliber. Here too, the respondent claimed the cops lacked reasonable suspicion thus making the stop and search illegal. The court held that fleeing the police alone is not sufficient cause for reasonable suspicion (i.e., it is not illegal to avoid cops)—this harkens back to the freedom of movement which is supported by the Privileges and Immunities Clause of the US Constitution (Wilhelm 2010). When flight is supported by additional factors, however, the two combine to substantiate a reasonable articulable suspicion—in Wardlow’s case, it was his presence in a high-crime area (ACLU 2000). While beyond the scope of this text, the “high-crime areas” concept is controversial in its own right and demands its own research venue. The precedent-setting Wardlow case allowed the concept to become a crutch for arguing against unconstitutional stop claims; unfortunately, the Supreme Court failed to clarify the definition of a high-crime area. In this light, the label has considerable sway in “determining the constitutional protections of citizens located in certain neighborhood” (Ferguson and Bernache 2008, 1586). Effectively, being in a space that has been labeled a high-crime area (as deemed by persons who don’t live in said area) confers a measured loss of one’s constitutional rights. Unfortunately, 95% of the census tracts in New York City had stops that were labeled as a high-crime area. In New York City, the use of this

term was used to heavily bolster the justification for stops for 2011 (the all-time high for stop-and-frisks) where it occurred in 60% of the Black stops and 59% of the Hispanic stops. Ironically, the arrest rate for Blacks and Hispanics in these high-crime areas were only 5% and 4%, respectively. Put another way, 95% of the Blacks and 95% of the Hispanics stopped in high-crime areas were innocent of the suspicions of the stopping officers. With such a high level of innocence, this calls into question (and provides a basis for additional research) the application of the term—especially since NYPD has failed to provide parameters on what constitutes a high-crime area (*Floyd v. New York City* 2013). It has been speculated that NYPD has relied on this term as a substitute for when they lack articulable reasonable suspicion for stopping potential suspects (Ferguson and Bernache 2008).

Both the *Illinois v. Wardlow* and *Terry v. Ohio* cases made one thing clear—the ability to articulate suspicion is a fundamental element in the legality of the stop-and-frisk phenomenon. Most people would assume this is how things were done from the start given America’s billing as the land of the free. The 2013 *Floyd v. New York City* case, however, revealed that a large proportion of the minority stops was done so without this key element. What is more, the court findings also indicated that—for well over a decade—the NYPD hierarchy was aware of its officers conducting unwarranted stops, but instead of ending these violations, they sanctioned the violations by expanding the use of stop-and-frisk seven-fold (*Floyd v. New York City* 2013). According to the report, the pressure to increase the number of stops came from above to the commanders at Compstat meetings who, in turn, pressured the deputy inspectors and captains who, in turn, pressured the line officers. Those with high stop counts were rewarded and those with low stop counts were punished—this formed the basis of the *Raymond v. New York City* case filed in 2015 condemning NYPD for the quota-based policing and the frivolous lies by the brass to cover up this anti-American behavior. Furthermore, the report revealed that the “pressure to increase the quantity of stops was not accompanied by attention to the constitutionality of the stops” (64). In effect, no measures were put in place to assess the constitutionality of the officer’s actions. Unfortunately, when officers were found to have violated the rights of the person stopped, “little or no discipline was imposed” to rectify this type of biased behaviors which eventually legitimized these actions (64).

DARKER DAYS IN THE BIG APPLE

The New York City of today is very different than what it was in the 1980s to the mid-1990s—the era was marked by a crack and heroin infestation which caused the homicide rates to soar. During this time of industrial decline, economic stagnation and white flight, drug dealers and prostitutes worked openly virtually everywhere; and by 1990, the number of homicides peaked at 2245 (Sterbenz 2013). In 1995, New Yorkers found themselves in the middle of a mystery as crime rates began to plummet—albeit still higher than what we see today. The mystery revolved around an explanation for the drop, and there were plenty of theories ranging from the decrease in the population of persons found in the crime committing age bracket (16–23) to increased community interest in taking back control over their neighborhoods. When listening to speeches made by the former Mayor and Police Chief of New York City—Rudolf Giuliani and Raymond Kelly—one would assume their initiation of proactive policing strategies, their institution of aggressive policing tactics, and their expansion of “quality of life” offenses deserves all the credit. During the darker days, Giuliani initiated the elite Street Crime Unit which was composed of undercover officers who aggressively patrolled high-crime areas (De La Cruz 2000). This elite unit relied heavily on the power of the stop-and-frisk as legitimized by the 1968 *Terry v. Ohio* ruling. Their aggressive campaign of street searches came under fire after the 1999 shooting death of an unarmed Amadou Diallo. The shooting brought attention to the Street Crime Unit which sparked investigations by several state and federal entities. Reviews revealed that the unit frequently engaged in racial profiling as well as police brutality—the Street Crime Unit was subsequently dissolved in 2002. Unfortunately, the dissolution did not end the aggressive patrolling of the streets—the elite unit was simply decentralized and placed under the supervision of commanders who oversaw patrols in each of the New York City boroughs (Rashbaum and Baker 2002). Thus, the heavy-handed stop-and-frisk tactics—and its associated racial profiling and brutality—used by the elite Street Crime Unit was now put into practice in the precincts of all five boroughs.

Despite their controversial existence, Giuliani credited the elite unit with the drop in crime, but their actions can only explain a small proportion of the drop as the decline began in 1990—long before Giuliani assumed his post (Krauss 1995). Additionally, the decline in crime was a phenomenon being witnessed nationwide. Regardless of the cause, New York City’s

murder rate gradually continued to drop to a historic low in 2016, and current Mayor Bill de Blasio accredits this to an increased focus by NYPD on getting guns off the streets (Ferner 2016). Ironically, the reduction of illegal guns on the streets was the justification for the stop-and-frisk strategies from the start—thus, the question becomes, what was the difference in this conceptualization between political administrations?

THE STOP-AND-FRISK CREDIT CONTRADICTION

Between 2002 and 2011, the number of stops under the stop-and-frisk practice increased by over 600%, but there was no proportional decrease in crime. Across that timeline, the murder rate only decreases by a total of 6%—perhaps a consequence of the continued momentum starting in the early 1990s, in addition to other convening factors such as the decreasing population, the decrease in the crime-prone cohort, the terrorist attack on 9/11, and numerous other factors. The data figures, claims, and causative actions have tended to contradict one another over the years. As stated before, city leaders—such as Bloomberg—have claimed that the dramatic jump from 100,000 frisks a year to 685,000 (between 2002 and 2011) frisks a year was necessary to reduce crime, recover guns, and save lives. The notion that New York City’s murder rate, for 2016, represented a historic low has overwhelmingly been accredited to the hard work of NYPD (Ferner 2016). However, the “historic low” claims came at a time in which the number of stop-and-frisks was “historically” low. Stop-and-frisk entries after the 2013 constitutionality ruling had dropped by 319% in 2014 and another 103% in 2015. This “historic low” for murder rates occurred some 5 years after the stop-and-frisk peak in 2011 which netted over 685,000 stops. According to de Blasio, it was also expected that other aspects of criminality would drop significantly for 2016 which presents a somewhat of a contradiction with the pre-ruling philosophy of the NYPD.

Prior to the 2013 court ruling that found the way in which NYPD enforced the stop-and-frisk policy unconstitutional, the broken windows policing strategy favored arresting low-level offenders in bulk—this supposition is supported by the staggering increase in the number of stops between 2002 and 2011. The dramatic increase, however, was not followed by a proportional decrease in crime rates and virtually no change in arrest rates (they remained at about 5.8–6.2% regardless of the racial/ethnic group). In the post-ruling years, however, a greater drop in

crime was witnessed in an era that was virtually void of the intrusive and humiliating stop-and-frisks practices. What is more, arrest rates from the meager number of stops increased post-ruling period. Mayor de Blasio called the latest strategy in the NYPD bag of tricks “precision policing” and it worked by reducing the tension in community–police relations (Ferner 2016). Indeed, the newest data confirms an increased arrest rate for all groups during the post-ruling period. This presents somewhat of a contradiction to the millions of people who experienced the cold harshness of the broken windows policing that alienated over half of the city’s population under the Bloomberg administration and their broken windows philosophy. The center of this contradiction is found in the form of a question—how can crime be down with less stops being performed as the previous administration claimed more stops were necessary for less crime? The precision policing endorsed by Mayor de Blasio appears to accomplish more by being smart leaving many to wonder about the real objective of the stop-and-frisk policies and practices as sanctioned during the Bloomberg pre-ruling era which was marred by murder, brutality, human, and civil rights violations perpetrated by the NYPD. One of the most blatant examples of the power abuse and the civil rights violations—with meager returns—occurred in a small area of Brooklyn called Brownsville.

The Brownsville Blitz

In 2010, *The New York Times* printed an article written by Rivera et al. (2010) titled, “A Few Blocks, 4 Years, 52,000 Police Stops.” In this article, the authors explained that, when night fell, a “small army” of police would envelop the eight blocks of Brownsville in Brooklyn. The police would stop people they suspect might be carrying guns, stop and “run warrant checks” on kids caught riding their bikes on the sidewalks, and stop and question people entering public housing. Within those eight blocks, the police made 52,000 stops between 2006 and 2010. The number of stops was equivalent to one stop per year for each of Brownsville’s residents (Rivera et al. 2010). What is more, for each of the stops, officers recorded names and relevant information on everyone—whether innocent or guilty—for entry into their SQF database.

The blatant show of force, the constant harassment of the residents, and the 52,000 stops resulted in the net recovery of only “25 guns” and an arrest rate of “less than 1%.” The aggressive style of policing averaged nearly 61 stops per day within this eight-block area. According to the

authors, the day-to-day interactions—in conjunction with the arbitrary stops—often left the residents feeling violated, degraded, and resentful after their encounters with a police force that tormented them on a daily basis. *The New York Times* held interviews with some of the former officers who worked the Brownsville operation, and it was their opinion that the stops were less about proactively preventing crime and more about “feeding the department’s appetite for numbers” (Rivera et al. 2010). Thus, this notion of feeding NYPD’s appetite for numbers rang true for residents as well as some of the officers—but to what end?

Bringing up the Numbers

Despite Blacks and Hispanics showing equal or lower arrest and seizure rates than their White counterparts in the pre-ruling years, the NYPD consistently continued to paint them as targets (Server and Lee 2013). This and other inconsistencies have resulted in numerous charges claiming that the NYPD not only practices racial profiling—but they also engage in quota-based policing (Rose 2015). The quota-based policing would go a long way in explaining the explosion in the number of stops amid a stagnant number of arrests and seizures (Sit et al. 2016). Under the quota system, police officers are directed to meet a specific number of arrest and summonses, and in many instances, they are specifically deployed to certain neighborhoods—like Brownsville—to meet those quotas (Mathias 2014). Several minority officers have come forth in a lawsuit claiming that their superiors ordered them to carry out the illegal quota mandates in their own communities (Algar and Saul 2015). These claims, however, have always been quickly dismissed with a staunch denial by Police Commissioners such as Kelly and Bratton. Fortunately, the latest claim (which has subsequently been proven) came at a time where it had a direct bearing on the lawsuits concerning racial profiling and constitutional violations. The revelation of quota-based policing had a direct impact on the 2013 court decision that declared the stop-and-frisk policy to be unconstitutional. As stated by the presiding judge Shira Scheindlin;

Imposing numerical performance goals for enforcement activities, without providing effective safeguards to ensure the activities are legally justified, could result in an officer taking enforcement action for the purpose of meeting a ‘performance goal’ rather than because a violation of the law has occurred. (Mathias 2014)

In August 2015, an attorney filed a motion with the city to have 850,000 dismissed summonses unsealed as part of a class action suit alleging the NYPD used the quota system (Brown 2015). This suit is expected to reveal the frivolous nature of the summons (to which Blacks and Hispanics comprised 81%) that came out of the stop-and-frisk as the majority were petty infractions such as walking through the park after dark, bicycling on the sidewalk, and even spitting on the street (Ryley et al. 2014).

The officers who filed suit against NYPD for using quotas contend that their refusal to meet the quotas resulted in them being punished in various ways to include—but not limited to—unfair evaluations, career stunting, and in-house chastisement by fellow officers (Saul and Algar 2015). The use of quotas has been acknowledged to be dangerous because it garners less attention and is commanded in subtle ways in patrol briefings. Beyond that, quotas—as well as racial profiling—have tended to ensnarl Blacks and Hispanics into the legal system thus continuing the cycle of inequality (Ossei-Owusu 2016). This statement holds true even if they are innocent as NYPD has constructed the SQF database on all stops keeping the names of those who were cleared of any wrongdoing—an issue just recently settled with the *Lino v. New York City* case (NYCLU 2013). Thus, the question remains—why does the NYPD specifically target minorities? This is a question that I will attempt to answer within the upcoming chapters in this text. Several concepts have been proposed to explain why minority groups are commonly targeted by the police—this includes conflict theory, minority threat hypotheses, and notions of space commodification. I will explore these concepts in the upcoming chapters to help shed light on the intense focus on minority groups.

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