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Terry Stops and Frisks Under the Fourth Amendment

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Research Guides

Terry Stops and Frisks Under the Fourth Amendment

Guide Information

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Overview

A Terry stop, so called because of the 1968 Supreme Court ruling in Terry v. Ohio, refers to police questioning involving a “stop,” and a “frisk.” Previous to tha decision, police contact with citizens was either voluntary or involved an arrest. The Terry case afforded police more investigatory power. A "stop" is a brief detention of one or more citizens by a law enforcement officer, while a frisk is an over-the-clothes pat-down to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. Such encounters are only appropriate when a police officer suspects criminal activity is afoot and seeks to neutralize any threat.

A frisk is a search within the meaning of the Fourth Amendment, but is within Constitutional allowances if a police officer observes unusual conduct which leads him to reasonably suspect criminal activity is taking place and the individuals the officer is dealing with may be armed and dangerous. The Supreme Court in Terry required future courts to make two critical determinations in considering whether a police officer had a basis for initiating a frisk: (1) whether the officers action was justified at its inception and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. Stops and frisks are justified by police and bystander protection. If there is a not reasonable suspicion that criminal activity has been, is being, or is about to be committed and that the individual(s) are armed and dangerous, the officer may only initiate voluntary contact with the individuals, where the individual is free to terminate the interaction and leave. However, if the officer develops reasonable suspicion of criminal activity and weaponry during the conversation, the officer may then initiate a frisk.

The "reasonable suspicion" standard announced in Terry is a more lenient standard than probable cause. The frisk is allowed on the person's outer clothes, but since the reasonable suspicion standard is less stringent than the probable cause standard required for arrest, the search must be strictly circumscribed to the circumstances justifying its initiation. In addition, the officer must be able to articulate facts giving rise to the suspicion; a "hunch" is inadequate. Subsequent courts have grappled with application of the "reasonable suspicion" in the four decades following the Terry decision, slowly carving out rules to fit varying circumstances.

Recently, the stop and frisk procedures have received substantial attention, particularly in New York City where many public figures and elected officials have called for an investigation into the New York Police Department's use of the stop and frisk. Additionally, the recent Occupy Wall Street movement staged a protest against the stop and frisk procedures as a violation of individual liberties, particularly of minorities. The protest attracted some notable individuals, including Carl Dix of the Revolutionary Communist Party. Dix and many others were arrested for their involvement in the protest.

About the Author

Julie Turner is a third-year law student at Georgia State University College of Law. She graduated from the University of Georgia with a Bachelor's Degree in Political Science and a minor in Spanish. This research guide was prepared for Professor Nancy Johnson's Advanced Legal Research class in the Fall of 2011.

Scope

This research guide describes the Court's ruling on how the Terry rule applies to differing circumstances, and the extent to which the search may be conducted. As a result of a generalized rule announced in Terry, courts have been left to work out the details of how the Fourth Amendment protections apply to searches conducted in differed physical locals as well as various factual circumstances. This guide also points to a number of periodical and encyclopedia materials to help the reader anticipate what a court's reaction may be to a question that is as of yet unanswered.

Disclaimer

This legal bibliography does not constitute legal advice and is not comprehensive. It has not been updated since Fall 2011. This annotation should serve as a starting point for researching agent admissions in federal and Georgia law. The materials below do not address all issues that will arise, and researchers should read the full text of the resources cited. If you have questions as to how to proceed with your research, please consult a legal reference librarian.

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Primary Sources

Constitutional Amendments & Statutes

U.S. Constitution: Fourth Amendment

The Fourth Amendment protects individuals in their persons and effects from unreasonable searches and seizures. The text of the Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

Origination of the Terry Stop and Frisk

Terry v. Ohio, 88 S.Ct. 1868 (1968)

In this seminal case, the set out the frame work for determining when an officer may conduct a frisk. First the officer's action must be justified at its inception. This determination involves two considerations: whether the officer had a sufficient degree of suspicion that the party frisked was armed and dangerous to insist on an encounter and whether the officer was rightfully in the presence of the party frisked so as to be endangered if that person was armed.

Terry stops are thus permitted without a warrant and on the basis of reasonable suspicion less than probable cause.

Cases

Herein are included some of the most important court decisions regarding an officer's right to stop and frisk. Many of the following cases have links to websites where the full judicial opinion may be viewed without charge. Otherwise, LexisNexis or Westlaw may be used to access cases for a fee.

Reasonable Suspicion

Supreme Court Cases

U.S. v. Sokolow, 490 U.S. 1 (1989).

A search may not commence before the officer develops a reasonable suspicion--meaning there is a fair probability--that contraband or evidence of a crime will be found for a stop and frisk procedure to be implemented.

U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690 (1981).

The stop must be justified by some objective manifestation, based on the totality of the circumstances that the person stopped is, or is about to be engaged in criminal activity.

Court of Appeals and District Court Cases

U.S. v. Starks, 201 F. Supp. 2d 76 (D. Mass. 2004).

The Fourth Amendment does not permit a frisk where, although the circumstances might pass an objective test, the officers in the field are not actually concerned for their safety.

U.S. v. Vargas, 369 F.3d 98 (2nd Cir. 2004).

During an investigatory stop, the investigating officer may frisk an individual for weapons if the officer reasonably believes that person to be armed and dangerous.

U.S. v. Hernandez-Rivas, 348 F.3d 595 (7th Cir. 2003).

In order to conduct a Terry stop and frisk, the officer must be able to support his "reasonable suspicion" with articulable facts.

United States v. Burton, 228 F.3d 524 (4th Cir. 2000)

A police officer who does not have the quantum of suspicion necessary to make a forcible stop and frisk may instead conduct a non-seizure field interrogation. In this circumstance, the officer is not allowed to frisk the individual upon suspicion that he or she is armed. Although the individual refused to answer the officer's questions or remove his hand from his pocket as requested by the officer, the frisk was illegal because the officer did not have the initial suspicion that criminal activity was afoot. The officer must instead protect himself from danger by not engaging in the confrontation.

United States v. Ellis, 501 F.3d 958 (8th Cir. 2007)

This case distinguished Burton on the grounds that an officer who initiates a non-seizure field interrogation without the initial suspicion of criminal activity supporting a frisk, but then later develops such a suspicion during the interrogation (such as suspicion based on the individual's conduct) may then frisk for the officer's own protection.

United States v. Thomas, 863 F.2d 622 (9th Cir. 1988)

In this case the Court considered the opposite occurrence and concluded that in the event the evidence justifying the initial stop dissipates after the stop but before the frisk is conducted, through the officer's investigation or otherwise, the officer must not perform the frisk. Here, the frisk was unlawful because once the suspects had exited the car, it was apparent to the officer that their clothing did not match the description of those involved in a previously executed crime.

U.S. v. Hernandez-Mendez, 626 F.3d 203 (4th Cir. 2010).

Facts giving rise rise to a officer's reasonable detention of a defendant, including the objective facts justifying the initial detention and the facts that emerged after the defendant's detention, provided the officer with reasonable suspicion to frisk the defendant for weapons, regardless of the officer's subjective purpose in searching the defendant's purse.

The facts included: the officer observed the defendant in the company of suspected gang members outside the high school located near the site of a recent gang-related stabbing, the officer reasonably believed the group was organizing a retaliatory attach on rival gang members, the defendant was evasive and untruthful in her responses to the officer's questioning and the officer's impermissible search for her photo ID occurred at the same time he felt a solid and heavy object he recognized to the the barrel of a semiautomatic pistol through the exterior of the defendant's purse.

Perry v. Bordley, 379 F. Supp. 2d 109 (D. Mass. 2005).

Nervous and evasive behavior is a pertinent factor in determining reasonable suspicion warranting a stop and frisk.

State Court Cases

Nathan v. State, 370 Md. 648 (2002).

If a police officer is conducting a Terry stop and reasonably suspect a person of committing a crime, the officer may frisk the person if he or she reasonably believes the person posed a safety risk to the officer or others.

People v. Batino, 48 A.D.2d 619, 357 N.Y.S.2d 784 (1975).

Indeed, an officer if required to suspect both that there is criminal activity afoot *and* that the suspect is armed and dangerous. A mere suspicion that the suspect may be carrying a weapon does not, by itself support a frisk. The Court concluded that, even after giving credence to the officer's training and experience, the mere observance of a bulge in a person's pocket cannot provide the basis for a frisk.

People v. Prochilo, 41 N.Y.2d 759, 395 N.Y.S.2d 635 (1977).

This case distinguished Batino, holding that when the actual outline of the gun is visible through the pedestrian's clothing a frisk is proper.

Longshore v. State, 299 Md. 486 (2007).

The test for reasonable suspicion is not certainty but whether a reasonably prudent person under the circumstances would be warranted in the belief that his or her safety or that of others was in danger.

State v. Nash, 278 Conn. 620 (2006).

In determining whether an officer acted reasonably in conducting a pat down search for weapons during an investigatory stop, due weight must be given not to the officer's inchoate and particularized suspicion or "hunch," but rather to the specific reasonable inferences which the officer is entitled to draw from the facts in light of his or her experience.

Scope of Search

Supreme Court Cases

Minnesota v. Dickerson, 113 S.Ct. 2130, 508 U.S. 366 (1993).

A Terry protective search must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. If the search extends beyond that necessary to determine whether the suspect is armed, it is unconstitutionally invalid and any evidenced seized will be suppressed. In this case, an officer conducted an unconstitutional search during a frisk when he squeezed, slid and otherwise manipulated a lump in the defendant's pocket, which he knew was not a weapon. The officer was not able to determine the lump was contraband by simply placing his hands on the outer layer of the defendant's clothing.

Conversely, if the officer's legal search reveals non-threatening contraband, the officer may nonetheless seize the evidence, so long as the officer's search never exceeded the bounds marked by Terry.

Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 124 S.Ct. 2451, 542 U.S. 177, (2004), *rehearing denied.*

An officer's action must be justified at its inception, and reasonably related in scope to circumstances which justified the interference in the first place.

Nevada's "stop and identify" statute is constitutionally valid. The statute required a suspect to disclose his name in the course of a Terry stop because a request for identity can have an immediate relation to the justification for the stop. Thus the statute's identification requirements and the accompanying criminal sanctions for refusal to comply do not alter the nature of the stop or render it unconstitutional.

Court of Appeals and District Court Cases

U.S. v. Bullock, 632 F.2d 1004 (7th Cir. 2011).

When determining whether a seizure exceeds the bounds of Terry, the court should ask: (1) if the police were aware of specific and articulable facts giving rise to reasonable suspicion; and (2) whether the degree of intrusion was reasonable related to known facts.

U.S. v. Thomson, 354 F.3d 1197 (10th Cir. 2003).

A Terry frisk is not necessarily limited to a frisk of the person under investigation.

U.S. v. Price, 409 F.3d 436 (D.C. Cir. 2005).

The officer's frisk must be limited to the outer layers of the suspect's clothing.

U.S. v. Thomas, 363 F. Supp. 2d 84 (D. Conn. 2005).

An officer's search is unconstitutional if the frisk involves intrusion into pockets. A search must be concluded when a pat down of the outer layer of clothing reveals no weapon.

State Court Cases

Com. v. Whitmore, 92 S.W.3d 76 (Ky. 2002).

An officer does not exceed the bounds of Terry when, during the course of a lawful pat-down the officer feels an object whose contour and mass make its identity immediately apparent.

Woody v. State, 756 A.2d 1257 (Del. 2001).

When an officer feels an object which he reasonable believes to be contraband of a weapon, the officer may reach into the pocket where the suspicious item is located.

Sudduth v. State, 288 Ga. App. 541 (2007).

The Court held that when the officer reached into the defendant's pocket and pulled out a wrapper, the officer exceeded the bounds of Terry and violated the defendant's constitutional rights because there was no way for the officer to identify the wrapper as contraband by its contour and mass.

People v. Mascarenas, 972 P.2d 717 (Colo. App. 1998).

During a frisk for weapons, an officer may seize any contraband in full view.

Force Use During Search

Supreme Court Cases

Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 124 S.Ct. 2451, 542 U.S. 177 (2004), *rehearing denied.*

An officer's temporary detention of a suspect--i.e. the seizure--cannot resemble a traditional arrest.

U.S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980).

During an investigatory stop, there is no seizure if there is no police use of physical force and no show of authority, and a reasonable person would feel free to disregard the police and walk away.

Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382 (1991).

In this case, the Supreme Court emphasized mere questioning by a police officer does not constitute a seizure. The Court explained, “even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual,... ask to examine the individual's identification,... and request consent to search his or her baggage, ... —as long as the police do not convey a message that compliance with their requests is required.” The defendant argued he did not feel free to leave because the questioning occurred in the cramped confines of a full bus. The Court disagreed, stressing the importance of looking at the totality of circumstances and evaluating whether police behavior would communicated to a reasonable person that he was not free to leave.

Court of Appeals Cases

United States v. Sanders, 994 F.2d 200 (5th Cir. 1992).

This case, which predated the Supreme Court's decision in Hiibel, determined that a frisk can still be appropriate when a suspect has been first handcuffed. The aspect of danger is not eliminated when a suspect is handcuffed as part of the stop or to facilitate the frisk because it "is by no means impossible for a handcuffed person to obtain and use a weapon concealed on his person," and even if the officer does not develop probable cause during the detention, it is still possible for the individual to easily retrieve his pistol once the handcuffs are removed.

Duration of Search

Supreme Court Cases

Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 124 S.Ct. 2451, 542 U.S. 177, (2004), *rehearing denied.*

In order for a Terry stop to be constitutionally reasonable, the seizure cannot continue for an excessive period of time.

U.S. v. Sharpe, 105 S.Ct. 1568, 470 U.S. 675 (1985).

This decision helped define the boundaries of the acceptable Terry stop duration. In determining whether the stop was too long to be justified as a investigative stop, the court examined whether police diligently pursued a means of investigation that was likely to confirm of dispel their suspicions quickly. It also advised

courts to take care to consider whether police acted in a swiftly developing situation, in which case courts were admonished not to indulge in unrealistic second guessing.

In this case, a DEA agent who diligently pursued his investigation and did not delay unnecessarily in performing a twenty minute investigatory stop acted reasonably.

Court of Appeals Cases

Liberal v. Estrada, 632 F.3d 1064 (9th Cir. 2009).

In addition to considering whether the police were acting in a swiftly developing situation, this Court also considered whether the suspect's actions contributed to the added delay and whether, in attempting to confirm or dispel his suspicions of illegal activity, the officer used threats of force, unnecessary delay, exaggerated displays of authority or other coercive tactics.

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Secondary Sources

Books

- Terry Stops: Legal Perspectives/Tactical Procedures by Douglas R Mitchell, Gregory Connor & Douglas Mitchell
  ISBN: 087563964X
  Publication Date: 2000
  http://www.amazon.com/Terry-Stops-Perspectives-Tactical-Procedures/dp/087563964X/ref=sr_1_2?s=books&ie=UTF8&qid=1320087120&sr=1-2This book takes an in depth look at Terry v. Ohio, and provides and describes the application of the Terry rule to varying factual scenarios, analyzing "reasonableness" in each context.
- The Search and Seizure Handbook, 3rd Edition by David M. Waksman & Debbie J. Goodman
  ISBN: 0135038456
  Publication Date: 2009
  http://www.amazon.com/Search-Seizure-Handbook-David-Waksman/dp/0135038456/ref=sr_1_1?ie=UTF8&qid=1321297212&sr=8-1This book serves to help students and police officers understand key cases under the Fourth Amendment. The author aims to provide the reader with a basic understanding of the U.S. Constitution and its safeguards for individual privacy.
- Search and seizure : the Fourth Amendment for law enforcement officers by Robert Henley Woody
  ISBN: 0398076537
  Publication Date: 2006
  http://www.amazon.com/Search-Seizure-Amendment-Enforcement-Officers/dp/0398076537/ref=sr_1_1?ie=UTF8&qid=1321298544&sr=8-1This book, designed to inform law enforcement officers of the extent of their investigative abilities within the confines of the fourth amendment, gives an in depth review of the Constitution and key terms involving searches under the Fourth Amendment. Chapter three in particular defines key terms, including reasonable suspicion, how to initiate a frisk, obtaining consent and how to proceed to an arrest, if appropriate.
- Criminal procedure and the Supreme Court : a guide to the major decisions on search and seizure, privacy, and individual rights by Craig Hemmens, Rolando V. Del Carmen, David C. Brody
  ISBN: 1442201568
  Publication Date: 2010
  http://www.amazon.com/Criminal-Procedure-Supreme-Court-Individual/dp/1442201568/ref=sr_1_1?ie=UTF8&qid=1321387378&sr=8-1This book is a general overview of important legal decisions in the world of Criminal Procedure. Chapter 4 covers major decisions in the particularized field of stop and frisk law.

Treatises

- Search and seizure : a treatise on the Fourth Amendment by Wayne R. LaFave
  Publication Date: 2004
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=49402This is a comprehensive review of searches and seizures under the Fourth Amendment. The issue is current through the 2011 update. See § 9.2 for an overview of the extent and scope of permissible police "stops."
- A model code of pre-arraignment procedure : proposed official draft : complete text and commentary by American Law Institute.
  Publication Date: 1975
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=12711See § 110.2(4) for commentary on requisite suspicion and appropriate law enforcement conduct during investigatory stop and pat down.
- Federal practice and procedure by Charles Alan Wright et al.
  Publication Date: 1969
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID=25288Although this book was originally published many years ago, the updates are current through 2011. See § 682 for an analysis of appropriate police conduct, constitutional application and the issue of search and seizure during police/civilian encounters, and updates in case law since the 1968 Terry decision.
- Searches & seizures, arrests and confessions 2d by William E. Ringel
  Publication Date: 1979
  https://gil.gsu.edu/cgi-bin/Pwebrecon.cgi?BBID= 1582107See § 13:37 for information regarding the acceptable scope of a frisk, including relevant case law. Also see § 23:3 for requisite level of suspicion based on surrounding circumstances. These sections are informative, but relatively brief compared to other resources provided. Supplements run through 2011.

Glossary of Key Terms & Overview of the Law

- Detention Short of Arrest: Stop-and-Frisk, Justia.com
  http://supreme.justia.com/constitution/amendment-04/13-stop-and-frisk.html
- Stop and Frisk, LII
  http://www.law.cornell.edu/wex/stop_and_frisk
- Reasonable Suspicion, LII
  http://www.law.cornell.edu/wex/reasonable_suspicion

Podcasts & Commission Reports

- Terry Stop and Frisk, Department of Homeland Security
  http://www.fletc.gov/training/programs/legal-division/podcasts/4th-amendment-roadmap-podcasts/4th-amendment-transcripts/terry-stop-frisk.html
  A training interview with the Department of Homeland Security's Federal Law Enforcement Training Center. Also find podcasts outlining a number of other 4th Amendment issues on this site under FLETC Legal Division: 4th Amendment RoadMap Podcasts.
  A training interview with the Department of Homeland Security's Federal Law Enforcement Training Center. Also find podcasts outlining a number of other 4th Amendment issues on this site under FLETC Legal Division: 4th Amendment RoadMap Podcasts.
- Police Practices and Civil Rights in New York City, U.S. Commission on Civil RIghts
  http://www.usccr.gov/pubs/nypolice/ch5.htm
  Chapter 5, entitled "Stop, Question, and Frisk," from the August 2000 publication by the U.S. Commission on Civil Rights offers a legal analysis of stops and frisks under the 4th Amendment within the larger framework of New York Police Department Practices.

American Law Reports

American Law Reports (ALR) are volumes containing articles which follow the evolution of a specific area of law in what are known as annotations. Unlike encyclopedia articles, which span a topic in a general sense, ALR annotations delve deeply into a particular legal concept. These annotations contain a wide variety of citations to United States cases as well as secondary sources such as law review articles. Although these annotations have outdated original publication dates, all have been consistently updated with recent case law.

R.E.H., Annotation, ***Arrest, or search and seizure, without warrant on suspicion or information as to unlawful possession of weapons***, 92 A.L.R. 490 (1934).

This ALR was originally published in 1934, but has since been updated regularly and contains relevant, recent case law from every federal court and most state courts. Issues such as the requisite level of suspicion and corresponding circumstances are examined in detail, explaining the intricacies of the law. In particular, this report looks at the requirement of suspicion of threat in addition to a suspicion that the suspect is armed, and provides many citations to state cases dealing with the concept.

Kate Donovan Reynaga, Annotation, A***pplication of "plain-feel" exception to warrant requirements—state cases***, 50 A.L.R.5th 581 (1997).

This annotation deals specifically with state law concerning the plain-feel or plain-touch exception to the warrant requirement, which allows an officer to seize contraband clearly detected during a pat-down. The article includes an analysis of the validity of the plain feel doctrine under state constitutional powers, factors bearing on whether the object seized by the officer was within the scope of a constitutionally valid pat down, basis for a seizure, specific items the officer may detect during a pat down, and which articles of clothing in particular may be frisked. As with the previous ALR article, there are numerous links to state cases (and federal courts applying state law) to expand your search.

Corpus Juris Secundum

Corpus Juris Secumdum (C.J.S.) is an encyclopedia of United States law as developed by cases, including both federal and state cases. Legal topics are organized alphabetically in an index. This source provides clear information on various segments of American law, including footnotes citing to cases. The links below and their accompanying descriptions are a few useful and comprehensive outlines of constitutional restrictions and the legally permissible extent of Terry-stops and Frisks. The articles can be found on either Westlaw or LexisNexis.

6A C.J.S. ***Arrest*** § 38 (2011).

A review of the permissible dimensions, including extent and duration, of a legally authorized Terry-stop.

6A C.J.S. ***Arrest*** § 39 (2011).

A review of permissible dimensions and constitutional restrictions of a legal frisk and search.

6A C.J.S. ***Arrest*** § 45 (2011).

Explaining the justification, as judged by facts and circumstances for a pat-down or protective search.

American Jurisprudence, 2nd Edition

American Jurisprudence (Am. Jur. 2d) is an encyclopedia of American law published by West and has numerous volumes which are regularly updated with pocket part supplements with more recent law. The links below and their accompanying descriptions are a few useful and comprehensive outlines of constitutional restrictions and the legally permissible extent of Terry-stops and Frisks. The articles can be found online on either Westlaw or LexisNexis.

68 AM. JUR. 2d ***Searches and Seizures*** § 92 (2011).

Overview of Stop and Frisk procedure, accompanied by supplement of state cases.

68 AM. JUR. 2d ***Searches and Seizures*** § 93 (2011).

Overview of pat-down searches, accompanied by supplement of federal and state cases.

68 AM. JUR. 2d ***Searches and Seizures*** § 282 (2011).

Overview of "Stop and Frisk" with accompanying case supplement of federal and state cases.

Law Review and Periodical Materials

John Q. Barrett, ***Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference***, 72 St. John's L. Rev. 749 (1998).

This article focuses on the approach of stop and frisk issues to the Supreme Court including notable cases decided before Terry, as well as the societal climate at the time the case was heard. The author presents an in-depth analysis of the initial reaction of the different justices to the Terry case, and their subsequent conferences and separate drafting of the opinion. The article concludes with the final agreements and the publication of the opinion.

Sameer Bajaj, ***Policing the Fourth Amendment: The Constitutionality of Warrantless Investigatory Stops for Past Misdemeanors***, 109 Colum. L. Rev. 309 (2009).

A recap of the Fourth Amendment doctrine under Terry v. Ohio, as well as an evaluation of warrantless investigatory stops based on misdemeanors, in light of the Supreme Court decision allowing warrantless investigatory stops by police officers with knowledge of a completed felony.

Eugene L. Shapiro, ***Miranda Warnings and Terry Stops: Another Perspective***, 15 Barry L. Rev. 1 (2010).

Examining the increasing intrusiveness of Terry-stops, this article argues "Miranda warnings," which have historically not been required during investigatory stops, may be appropriate during a Terry-stop.

Rachel Karen Laser, ***Unreasonable Suspicion: Relying on Refusals to Support Terry Stops***, 62 U. Chi. L. Rev. 1161 (1995).

Case law dictates that an individual's refusal to consent to a police request during a non-confrontational encounter cannot alone provide an adequate basis for a Terry-stop. This Comment evaluates whether, however, refusal to cooperate with police during a non-confrontational encounter could support, in part, an officer's basis for a Terry stop.

Craig S. Lerner, ***Reasonable Suspicion and Mere Hunches***, 59 Vand. L. Rev. 407 (2006).

This article explores the application of the "reasonable suspicion" requirement for a "stop and frisk," and the difficulty in differentiating between actual suspicions and mere hunches. Although hunches are at times born out of prejudice, the author argues subjective evidence and hunches should be afforded greater deference in the future.

Omar Saleem, ***The Age of Unreason: The Impact of Reasonableness, Increased Police Force, and Colorblindness on Terry "Stop and Frisk",*** 50 Okla. L. Rev. 451 (1997).

This comprehensive article looks to the societal pressures exerted on the Supreme Court at the time of the Terry decision, the narrow scope of circumstances indicated in the Terry decision and the ensuing progeny of cases which sought to further define the contours of the Terry-stop. The author proposes that the reasonable person standard is unworkable due to a judicial inability to determine what the "reasonable person" would feel, and thus allows the police too much latitude in determining who to stop, which has consequently led to biased decisions based on race.

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Interest Groups and Associations

Interest Groups

- Flex Your Rights
  http://flexyourrights.com/

  Flex Your Rights is a educational, nonprofit organization that seeks to educate the public about "how basic Bill of Rights protections apply during encounters with law enforcement." The group was founded after a study indicated most people are uneducated or misinformed about their constitutional rights during a search and seizure. The group produces docudramas, including "BUSTED: The Citizen's Guide to Surviving Police Encounters."

- American Constitution Society
  http://www.ACSLaw.org/issues

The American Constitution Society seeks to positively change constitutional issues by bringing together networks of lawyers, law students, judges and policymakers dedicated to those ideas. Through its public programs (over 1,100 debates, conferences and press briefings across America each year), publications, and active on-line presence, ACS generates “intellectual capital” for ready use by progressive allies and shapes debates on key legal and public policy issues.

- Center for Constitutional Rights
  http://www.ccrjustice.org/

  This group is dedicated to protecting and advancing rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966, the group is a nonprofit legal and educational organization committed to using law and social movement for positive change.

- American Civil Liberties Union
  http://www.aclu.org/search/stop%20and%20frisk?show_aff=1

  The ACLU works to protect and defend individuals' constitutional rights through active participation in legislatures, courts, and communities. The ACLU website provides extensive education materials, including legislative updates, judicial updates and numerous articles available for free.

In The News...

Below are articles from several free news sources reporting on Terry-stops in the news. As is evidenced by the articles, many worry that minorities bear the brunt of "stop and frisk" intrusions.

- 'Terry stops' of 'suspicious' people are a focus under New Orleans police chief Serpas
  http://www.nola.com/crime/index.ssf/2010/10/terry_stops_of_suspicious_peop.html
- Supreme Court Considers Police Reaction to Unprovoked Flight
  http://www.nytimes.com/1999/11/03/us/supreme-court-considers-police-reaction-to-unprovoked-flight.html?scp=1&sq=%22terry+stop%22&st=nyt
- City Minorities More Likely to be Frisked
  http://ccrjustice.org/city-minorities-more-likely-to-be-frisked
- Coverage of Arrests During the Stop and Frisk Protest in New York City
  http://www.huffingtonpost.com/carl-dix/new-york-stop-and-frisk_b_1031872.html

Blogs, Webcasts and Websites

- FourthAmendment.com
  http://www.fourthamendment.com/blog/

  As the name suggests, this blog focuses on Fourth Amendment issues, providing commentary on excerpts of pertinent case law and current news (including the New York Times and NPR), as well as links to judicial opinions and numerous and varied relevant research links, some free and some for fee.

- The Diana Rehm Show
  http://thedianerehmshow.org/shows/2011-11-02/constitution-today-fourth-amendment

  On her radio program, Dian Rehm discussed "The Constitution Today: Fourth Amendment," the audio recording of which is available for free by following the link above. The discussion centers around whether technology is eroding Fourth Amendment rights to privacy.

- Legal Zoom
  http://www.legalzoom.com/us-law/privacy/when-can-police-stop

  In this article entitled "When Can the Police Stop and Frisk You on the Street?" the author provides background information on stops and frisks, an explanation of reasonable suspicion, what constitutes a stop and when both stops and frisks are justified, and a policy discussion on whether law enforcement officers are afforded too much power under the Terry rule.

- Occupy Wall Street
  http://occupywallst.org/article/stop-frisk-has-got-go-solidarity-occupyharlem/

  The Occupy Wall Street movement staged a non-violent protest against the New York Police Department's Stop & Frisk procedure. The movement complained that the police department's use of the Stop & Frisk was illegitimate and geared towards minorities. With the support of prominent people and the New York Civil Liberties Union, the group seeks to eradicate use of Stops & Frisks altogether.

- Crain's: New York Business
  http://media.crainsnewyork.com/title,c585a6c4,Goldsmith_on__stop_and_frisk__policy

  Video clip of New York Deputy Mayor Stephen Goldsmith discussing the controversy in New York over the use of Stop & Frisk, locally and nationally, addressing the benefits and potential abuses.

- CNN Report
  http://www.cnn.com/video/#/video/us/2011/10/24/candiotti-stop-and-frisk.cnn

  This video report discusses the issue of the stop and frisk policy as used in New York City. The report interviews people who have been stopped and frisked who feel the process is unjust and humiliating, as well as one burrow mayor who states New York as a profiling problem based on the statistics of race and number of weapons actually recovered by police during stops and frisks.

- Federal Law Enforcement Training Center

http://www.fletc.gov/training/programs/legal-division/the-informer/research-by-subject/4th-amendment/terryfriskupdate.pdf/view

The following paper, written by Senior Legal Instructor Steven L. Argiriou provides an update to Terry frisks. This comprehensive article is clearly laid out and provides definitions, analysis, hypotheticals and instruction.

- Department of Public Safety, Alaska
  http://www.dps.state.ak.us/apsc/docs/legalmanual/IINVESTIGATORYSEIZUREOFPERSONSANDTHINGSSTOPFRISK.pdf

  This article provides yet another source of comprehensive review of law enforcement officers' ability to perform and stop and frisk in accordance with the fourth amendment. This useful article provides bullet point information on when and how a search may be initiated. In addition, there are dozens of summaries of relevant judicial decisions.

When are the Police Allowed to Frisk Me?

The following short clip includes advice on police rights during a stop and frisk. The speaker explains about the law enforcement officer's need to establish reasonable suspicion before a frisk is initiated to search for weapons.

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