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STOP AND FRISK: THE POWER AND THE OBLIGATION OF THE POLICE*

FRED E. INBAU AND JAMES R. THOMPSON

On June 10, the Supreme Court of the United States, in the case of *Terry v. Ohio*, rendered a decision that will greatly aid the police in their efforts to prevent crime and apprehend criminals. That decision, however, must not be interpreted by the police as a green light for indiscriminate, arbitrary stopping and frisking, or for any other unworthy purpose.

Americans for Effective Law Enforcement, Inc., a non-partisan, non-political, not-for-profit educational corporation, which was founded last Summer for the purpose of advancing the cause of effective law enforcement, filed an "amicus curiae" (friend of the Court) brief in the *Terry* case last November. It urged the Court to rule as it did.

Upon the reasonable assumption that our brief had a persuasive effect upon the Supreme Court, we feel privileged to now admonish the police to assume the proper *responsibility* that must accompany this *privilege* so newly sanctioned by the Court.

The *Terry* decision only authorizes action upon *reasonable* suspicion of criminality and a frisking *reasonably* necessary for the officer's protection. And all this must be performed in a *reasonable* manner.

The Court's opinion sets up general guidelines for the police. The actual holding of the case, however, indicates that the Court intended to confine the power to "stop" to situations which clearly call for investigation of criminally suspicious circumstances and the power of "frisk" to situations where there is a probability that the person to be frisked or searched is armed and may be dangerous to the officer or other citizens. The Court said:

"...where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous; where in the course of investigating this

* Originally printed in 59 J. CRIM. L., CRIMINOLOGY & P.S. 333 (1968).

behavior he identifies himself as a policeman and makes reasonable inquiries; and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken."

Of course, the decision is not limited to the kind of facts set out in the Terry case. It encompasses a variety of suspicious conduct which the police meet every day during the course of field investigation and interrogation. For this reason, police training schools and police legal advisors must relay the message of the Court in meaningful terms to the police officer, with the use of appropriate examples of what is and what is not reasonable action in stop and frisk situations. Reference to the Court's holding, however, makes it unmistakably clear that the Court will not tolerate "dragnet" seizures and frisks which, though designed to achieve ostensibly worthy objectives, e.g., gun control or harassment of vice offenders and juvenile gangs, do not measure up to the Fourth Amendment requirement of reasonableness.

By its decision in the Terry case, the Supreme Court delivered into the hands of the police a very powerful weapon for the prevention and detection of crime. This power, however, is readily subject to abuse by an ignorant, brutal, or corrupt police officer. And any abuse of the power may easily lead to deterioration of police-citizen relationship, especially in the tense and emotionally charged slum areas of our large cities. All measures necessary to prevent this abuse must be taken by those in command positions within the police force itself.

AELE is proud of the effort it made in the Terry case to persuade the Supreme Court to uphold the right of the police to "stop and frisk." In our brief we pledged the Court that law enforcement agencies would not abuse the power we requested the Court to sanction. We now ask that the police of this country make good our word, and that they proceed to exercise their newly won legitimate power with tolerance, understanding, tact, and caution. What the Supreme Court has granted, the legislatures can take away upon evidence of police abuse of that power.

How well the police use the power may play an important part in future cases coming before the courts in which they are asked to rule in favor of the needs of law enforcement. This factor may also shape the course of events in the halls of Congress and before other legislative bodies whenever proposals are under consideration for additional grants of police powers.

We urge the police to use well and fairly the power they now clearly have, for the protection and preservation of the rights of all citizens.

