Title

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Journal

Behavioral sciences & the law, 37(2)

ISSN

0735-3936

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Publication Date

2019-03-01

DOI

10.1002/bsl.2401

Peer reviewed

Received: 22 August 2018 | Revised: 22 January 2019 | Accepted: 26 January 2019

DOI: 10.1002/bsl.2401

SPECIAL ISSUE ARTICLE

WILEY

The mismeasure of *Terry* stops: Assessing the psychological and emotional harms of stop and frisk to individuals and communities

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Abstract

In *Terry v. Ohio*, the US Supreme Court relied on a balancing test to uphold the reasonableness of the practice known as "stop and frisk," balancing the contribution of the practice to effective crime prevention and detection against the nature and quality of the intrusion to individual rights. In recent years, statistics have been powerfully deployed by legal scholars, jurists, and policymakers to challenge the assumption that stop and frisk leads to frequent discovery of contraband or other criminal behavior, and to address stark racial and ethnic disparities in the deployment of stop and frisk. However, the other side of the *Terry* equation—the nature and quality of the intrusion—has received far less attention from the legal community. With few exceptions, *Terry* jurisprudence portrays the *Terry* frisk simply as a brief pat-down of the outer clothing and treats each *Terry* stop as an isolated encounter for purposes of measuring the harm involved. Yet there is a robust social science literature on the effects of stop and frisk on individuals, including data on its effects on individuals from marginalized or vulnerable groups, on individuals over time, and on communities as a whole. Moreover, stop and frisk in the current era has evolved from a tool in the arsenal of individual officers to a systematic, widely deployed strategy. This article argues that the failure to grapple with the application of modern knowledge to modern policing practices leads to a mismeasurement on both sides of the *Terry* equation. Not only does stop and frisk cause a wide range of emotional and

psychological harms; these harms may also interfere with the ability of law enforcement to prevent and investigate crime. Even apart from any legal doctrinal implications for stop and frisk jurisprudence, recognizing the flawed assumptions described in this article should encourage all the relevant stakeholders to re-evaluate the consequences of the *Terry* regime.

1 | LEGAL BACKGROUND

In *Terry v. Ohio* (1968), the Supreme Court upheld the constitutionality of the practice known as "stop and frisk." The *Terry* court sought a middle ground between two unpalatable choices: insisting that every search or seizure, no matter how minimal, be accompanied by probable cause, or declaring that brief detentions and pat-down searches fall outside the ambit of the fourth amendment entirely. *Terry* resolved the dilemma by carving out an exception to both the warrant requirement and the probable cause standard for "an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat" (*Terry*, 1968, p. 20). For this category of conduct, the constitutionality of the police actions would be evaluated by determining whether the intrusion was reasonable in light of the governmental interest in safety and security. In the *Terry* case, Officer McFadden and his partner, suspecting that Terry and his compatriots were contemplating an armed robbery, "spun [Terry] around" and "patted down the outside of his clothing" (*Terry*, 1968, p. 7). The Court determined that the governmental interest in crime prevention and detention outweighed the harm inflicted by the intrusion. It emphasized that each subsequent situation should be decided based on its own facts. It assumed that conduct in violation of the *Terry* standard would be checked by the courts (*Terry*, 1968, p. 21).

It soon became clear that subsequent decisions would not take *Terry*'s admonition to heart.[1] Rather than treating each *Terry* frisk as fact specific, courts have tended to use the brief pat-down of the outer clothing of *Terry* and his compatriots as the default description of a pat-down search. Moreover, the *Terry* opinion authorized not just a search but a seizure—the *Terry* stop. One of the oddities of the *Terry* decision is that the majority, in its singular focus on the pat-down frisk, failed to mention the seizure at all. It fell to Justice Harlan in his concurrence to remind the majority that, by authorizing a bodily search, the court was also authorizing a forcible stop. Subsequent opinions have spent little if any time assessing the intrusiveness of the stop.

Though these problems have existed since *Terry*'s inception, they have been exacerbated in the last three decades, in which the stop and frisk regime has come to bear little resemblance to the individual police-citizen encounters *Terry* set out to regulate. It is inaccurate today to view *Terry* stops and frisks mainly as a tool in the arsenal of individual police officers faced with on-the-spot decisions. Stop and frisk has been transformed into "a programmatic… strategy systematic to policing" (Laurin, 2017).

The findings in the recent *Floyd v. New York* litigation[2] (2013) provide one window into the massive and disproportionate use of stop and frisk: at its peak the New York Police Department conducted nearly 700 000 frisks in a single year.[3] In some precincts, Black and Latino residents accounted for more than 90% of these encounters.

[1]See *Adams v. Williams* (1972), decided shortly after *Terry*, in which the court, with little attempt to distinguish the prior case, upheld a frisk that deviated in a number of respects from its carefully delineated holding in *Terry*.

[2]*Floyd* involved a set of cases arising from a class action civil rights suit against the City of New York and other governmental defendants, alleging that the defendants implemented a custom or policy of unconstitutional stops and frisks based on race and national origin.

[3]Judge Shira Scheindlin, who held the New York regime unconstitutional, recently noted that since the program was discontinued, "the use of stop and frisk in New York has declined by more than ninety percent and there has been no increase in crime. Indeed, most categories of criminal activity in New York

Another example of the expansive use of stop and frisk is provided by the Ferguson Report, with its accounts of Black residents of Ferguson, MO, subjected to routine "ped checks" and other burdensome intrusions as they sought to move through their town (US Department of Justice, 2015, p. 18).[4] As Rachel Harmon and Andrew Manns put it,

> *The* Terry *Court accommodated specific events by legitimizing stops and frisks under a new standard, requiring less suspicion than probable cause. Since then, that tool has been turned into a diffuse weapon, like a form of tear gas, in proactive policing. It imposes largely temporary harms in order to deter and control. Neither the* Terry *opinion itself nor subsequent case law gives courts a way to easily check this use of* Terry*, which is no surprise in light of the structure and limits of the law (Harmon & Manns, 2017, p. 65).*

The *Terry* framework was designed to balance the harms and benefits of individual police–citizen encounters. It is ill suited to evaluating harms to individuals or communities over time. As several scholars have noted (Fagan & Geller, 2015; Huq, 2017; Meares, 2014, 2015), it is dangerously inaccurate to regard stops and frisks as individual decisions in isolated cases. The *Terry* case-by-case approach cannot identify and address "shared harms, such as the effects of aggressive policing regimes on the quality of life of entire neighborhoods, or the injuries inflicted when the burden of police intrusion falls most heavily on certain racial or ethnic or economic groups" (Bandes, 2013, p. 46).

Terry is, primarily, a case about the limits of the exclusionary rule[5] (*Terry*, 1968, p. 12). It is a case about the responsibility of the courts to regulate individual police–civilian encounters that culminate in criminal charges, and in which there is physical evidence to suppress. Yet it is becoming increasingly clear that a court-centric approach to regulating stop and frisk is limited and, in some respects, counterproductive. *Terry* in the courts affords no remedy for those who are wrongfully stopped and frisked, no matter the intrusiveness of the police conduct or the frequency with which an individual is subjected to it, unless those subjected to the conduct are found with contraband and charged with a crime (Leong, 2012). It affords no remedy for neighborhood-wide conduct such as the "aggressive patrol" of blocks or areas, or the widespread "misuse of field interrogations" (*Terry*, 1968, pp. 14–15, n11). The approach that *Terry* adopts is atomistic. It "works one case at a time, trying to resolve individual disputes between law and enforcement and individual suspects" (Bandes, 2013, p. 46).

In other words, current *Terry* doctrine, though it still requires courts to balance the governmental interest in crime detection and prevention against the nature of the intrusion on the citizenry, does not accurately assess either side of the equation. Most obviously, current *Terry* doctrine has mischaracterized and mismeasured the second part of the balancing equation: the nature of the intrusion. The iconic image of the *Terry* stop-and-frisk is Officer McFadden's encounter with John Terry and his companions, in which McFadden and his partner "spun [Terry] around" and "patted down the outside of his clothing" (*Terry*, 1968, p. 7). The *Terry* opinion had little to say about how the subject of a stop and frisk would experience such an encounter, focusing mainly on whether the reasonable police officer would find the intrusion justified. In the decades since, the judicial portrayal of the intrusion occasioned by stop and frisk has remained resolutely inert.[6] Less evidently but just as seriously, the failure to comprehend the impact of stop and frisk on individuals and communities has also led to the mismeasure of the first part of the balancing equation: the governmental interest in preventing and investigating crime. There is growing evidence that stop and frisk, at least in its current incarnation, has a deleterious effect on crime deterrence, on compliance and cooperation with law enforcement, and on other critical elements of effective policing.

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have decreased despite dire predictions to the contrary from the mayor, the police commissioner, and the corporation counsel of the City of New York at the time the decision was issued" (Scheindlin, 2017, p. 35).

[4]"Ped check' is a term that was sometimes used to refer to reasonable-suspicion based stops, but often used "as though it has some unique constitutional legitimacy," when police stopped a person for no good reason.

[5]The exclusionary rule, with some exceptions, prohibits the use of illegally obtained evidence at a criminal trial. *Mapp v. Ohio*, 367 U.S. 643 (1961).

[6]See the discussion of *Safford v. Redding* (2009) at Part III for a rare example of a Supreme Court decision acknowledging the unreasonably intrusive nature of a Terry frisk.

In short, the *Terry* debate has not taken adequate notice of the mounting evidence that stops and frisks exact serious physical, psychological, and social costs that ought to be informing police practices, local, state and federal policy, and the national debate on policing practices. The *Terry* vourt itself recognized that its solution had limits, though perhaps it did not foresee how limited the constitutional solution would prove to be. Although the decision reaffirmed the judicial duty to condemn overbearing and harassing policing conduct, its opinion conveys a sense of its powerlessness to deter "the wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain"[7] (*Terry*, 1968, pp. 14–15). The *Terry* court recognized the varied forms that police–civilian encounters take, and also acknowledged that "hostile confrontations are not all of a piece" (p. 13). However, these acknowledgements function mainly as an explanation for the Court's inability to supervise the whole realm of police conduct, rather than a promise to remain alert to the "rich… diversity" of street encounters (p. 13).

Our goal is not to argue for a change in the current constitutional framework. Rather, we seek to call attention to the limitations, and some of the untapped possibilities, of constitutional criminal procedure for the task at hand. As Harmon and Manns (2017, p. 63) well summarized, constitutional law is framed in terms of limits on government action, "rather than an account of what police officers should do to ensure that law enforcement is worth the harms it imposes." A growing body of social science underscores that widespread stop and frisk inflicts harms that are all too often overlooked and undercounted. The existing social science also reveals troubling gaps in our knowledge and underscores the need for additional data. As we will argue below, a better calculus is both possible and essential.

2 | THE USE OF STATISTICS THUS FAR

Although statistics have played an increasingly important role in revealing the problems with stop and frisk, these statistical analyses have mainly focused on the crime control side of the balancing equation—the question of the nature of the law enforcement interest and the efficacy of *Terry* stops in accomplishing it. For example, there is substantial literature on how often (or how rarely) frisks lead to seizures and arrests, and on the connection between stop and frisk and crime rates (Gelman, Fagan, & Kiss, 2007). In the legal realm, little attention has been paid to empirical work that sheds light on the other side of the equation: the nature and impact of *Terry* stops on the citizenry. Yet there is a rich and growing body of social psychology and health research exploring the impact of *Terry* encounters[8] on individuals, on vulnerable populations, on those subjected to repeated non-consensual encounters, and on communities in which *Terry* stops and the ever-present fear of *Terry* stops are part of the fabric of life.

The landmark litigation in *Floyd v. New York* powerfully demonstrates the crucial role of statistics in enforcing the Fourth and Fourteenth Amendments. Although *Terry* and subsequent cases tend to portray each *Terry* stop as an isolated encounter, many important indicia of the efficacy of *Terry* stops are difficult or impossible to assess on a case-by-case basis. The work of empirical scholars has enabled—and been enabled by—litigation aimed at uncovering the patterns obscured by the case-by-case evaluation of *Terry* stops. These findings revealed stark racial and ethnic disparities in patterns of enforcement in New York City, and further revealed that the massive stop and frisk program uncovered few weapons and little criminality (Gelman et al., 2007, pp. 813–823; LaPlante & Dunn, 2012). Specifically, of New York City's over two-million Stop Question and Frisk (SQF) pedestrian stops between 2010 and 2016, only about 1 in 10 yielded contraband (NYCLU, 2018; Gelman et al., 2007).

In sum, the legal community has become increasingly aware of the importance of statistics in evaluating certain aspects of the stop and frisk regime. It has gained a fuller understanding of the demographics of those subjected to the encounters, and of the disconnect between goals and measurable outcomes ("hit" rates and arrest rates). Yet an entire half of the *Terry* equation—the nature of the intrusion on those subjected to *Terry* stops—remains poorly

[7]The court noted that the exclusionary rule, its traditional approach to police lawlessness, is ineffective in deterring police conduct whose purpose or effect is to harass, rather than to produce evidence for introduction at trial.

[8]Terry authorizes two types of conduct: a forcible seizure (the Terry stop) and a forcible search (the Terry frisk, or pat-down). For convenience, we will generally refer to these encounters as "Terry stops" except when distinguishing the stop from the frisk.

understood. And without this information, jurists, policy-makers, and legal scholars are likely to get both sides of the balance wrong. Not only will they underestimate the impact of *Terry* stops on the citizenry; they will overestimate the ability of *Terry* stops to advance public safety by investigating and preventing crime.

3 | THE UNDEREXPLORED PART OF THE *TERRY* EQUATION: THE PSYCHOLOGICAL, SOCIAL, AND EMOTIONAL IMPACT OF *TERRY* STOPS ON INDIVIDUALS AND COMMUNITIES

Recently, in *Safford Unified School District v. Redding* (2009), the Court took the unusual step of focusing on the psychological impact of an intrusive *Terry* frisk on its subject.[9] There it held that a strip search of a 13-year-old student,[10] conducted in the school principal's office based on suspicion that the student was carrying over-the-counter aspirin, was too intrusive to withstand Fourth Amendment scrutiny. The decision marked an important acknowledgment that *Terry* stops vary in their nature and intensity, and, more generally, that the suspect's point of view is part of the *Terry* equation.

However, this acknowledgement barely scratches the surface in portraying the variety and intrusiveness of *Terry* encounters. While settlement agreements have led to the collection of extensive data on the nature, scope, and outcome of *Terry* stops and frisks (Rudovsky & Harris, 2018), data collection and dissemination ought to remain a priority. It is essential to gain a better understanding of the full range of harms caused by, for example, frequent stops, stops concentrated in particular neighborhoods and falling most heavily on minority residents, derogatory and disrespectful language and other indignities, the use of unnecessary force, rapid or otherwise inappropriate escalation, and many other variables poorly captured in the current national conversation about stop and frisk.

Individual encounters are generally far more intrusive than the phrase "pat-down of the outer clothing" suggests. And, for certain populations, a frisk may be particularly traumatizing. As we will discuss, these populations may comprise a significant number of those who are routinely subjected to stop and frisk. More broadly, the traditional Fourth Amendment approach, which treats each encounter as an isolated incident, precludes understanding of the impact of *Terry* stops (and the pervasive fear of being subjected to *Terry* stops) on individuals over time. It precludes understanding of how each individual experience of being stopped and frisked affects and is affected by community-wide perceptions and experiences.[11] It also deflects investigation of the effects of programmatic stop and frisk on the health and well-being of communities, particularly marginalized or vulnerable communities.

These effects may appear less "quantifiable" than hit rates or arrest rates, but they can in fact be measured, and they are essential to understanding how stop and frisk affects important criminal justice values such as engendering trust in law enforcement, providing motivation to conform to legal norms, and signaling the governmental commitment to equal treatment and due process. Moreover, there is evidence that aggressively policed communities become less safe, both because of the erosion of the bonds of trust between police and citizenry, and because repeated exposure to *Terry* stops may cause crime (Del Toro et al., in press; Tyler & Huo, 2002). Thus, the mismeasure of the intrusion is also a mismeasure of the efficacy of the police conduct, casting doubt on the basic rationale for stop and frisk.

In this section, we describe the social science literature that sheds important light on Fourth Amendment jurisprudence involving stop and frisk. We focus on three major (and overlapping) categories. In Section 3.1, we discuss the

[9]The court relied on, among other evidence, amicus briefs from the Urban Justice Center, Asian American Legal Defense and Education Fund, Advocates for Children of New York, and the National Youth Rights Association, discussing the psychological effects of strip searches on children and adolescents. See *Safford* (2009) at 374–375 (describing amicus briefs).

[10]It is an open question what role the female student's gender played in the analysis. The court did note the exposure of the student's breasts as one factor leading it to conclude that the search was "embarrassing, frightening, and humiliating" (*Safford*, 2009, at 375). However, the opinion generally refers to harms to "young people" and adolescents," without specifying gender (*Safford*, 2009, at 375).

[11]In a footnote, the majority opinion in *Terry* made brief reference to community-wide perceptions, noting that "the degree of resentment aroused by particular practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices" (p. 17 n14).

psychological and emotional impact of *Terry* stops on individuals. In Section 3.2, we discuss the evidence that the psychological harm of *Terry* stops accrues and takes shape over time. Finally, in Section 3.3, we discuss the broader health and safety impact of programmatic stop and frisk on racial–ethnic minority communities over time. Although the *Terry* opinion itself barely mentioned race, the nature of the intrusion cannot be adequately grasped without attention to its racial dimensions, including the vast disparities in who is subjected to *Terry* stops, the racialized nature of many of the intrusions themselves, and the symbolic and practical impact of these disparities on criminal justice goals.

3.1 | Impact on individuals: The nature of the encounter

As the *Terry* court acknowledged, a frisk is an intrusive procedure, "performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised" (*Terry*, 1968, p. 17). The image of a quick pat-down of the outer clothing fails to capture the physical intensity of this intrusion. As former police officer Seth Stoughton observed about his years conducting frisks, in practice they were far more intrusive than a mere pat-down, involving "very little patting" (Stoughton, 2017, p. 28). In a footnote, the *Terry* majority quoted the following characterization as an "apt" description of a frisk: "[t]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet" (*Terry*, 1968, p. 17, n13). This description, in Stoughton's words, is "accurate as far as it goes, but does little to capture the full extent of a frisk" (Stoughton, 2017, p. 27). Moreover, the account fails to capture the risk that a *Terry* stop will escalate in physical intensity and intrusiveness as it unfolds.[12] *Terry* stops often escalate to handcuffing, being thrown or slammed down, or other forms of forcible conduct,[13] sometimes causing serious injury (Rios, 2011; Ruderman, 2012).

The physical harm inflicted by these encounters is only part of the equation. *Terry* stops also cause emotional and psychological harms.[14] Subjects view the stops as "unwarranted or as simple harassment" (Brunson & Weitzer, 2011, p. 431), and feel that police treat them as "guilty until proven innocent" (Kerrison, Cobbina, & Bender, 2018b, p. 14). These harms, like the physical harms, are measurable. An established social science literature has documented the psychological consequences (e.g. emotional and psychological harms, negative emotional freight, adverse mental health effects, trauma, overall anxiety) of involuntary police stops (see, e.g., DeVylder et al., 2017; Geller, Fagan, Tyler, & Link, 2014; Sewell, Jefferson, & Lee, 2016; Tyler, Fagan, & Geller, 2014).

In one qualitative study, public health researchers interviewed adults from the Bronx who detailed a range of physical and psychological violations by police officers during drug "crackdowns" that involved "random" stops and searches (Cooper, Moore, Gruskin, & Krieger, 2004). During these non-consensual encounters, respondents reported being stopped near their homes or in public spaces and searched, sometimes invasively (beneath their clothing and/or strip searched[15]). At times these stops escalated to physical or sexual violence. These traumatic experiences left the residents angry, afraid, and distrustful of the police. The psychological harms were exacerbated by the lack of any apology or acknowledgement of wrongful behavior, even when the invasive stops yielded no contraband (Cooper et al., 2004). Black millennial residents of Baltimore reported similarly distressing encounters with patrol officers,

[12]There is some evidence that the risk that a *Terry* encounter will escalate into physical violence falls most heavily on residents of primarily Black and Latinx neighborhoods. https://www.nytimes.com/2012/08/16/nyregion/in-police-stop-data-pockets-where-force-is-used-more-often.html

[13]See, e.g., *Cottingham v. Lojacono* (2018), a suit recently filed on behalf of Washington DC resident M. B. Cottingham by the ACLU, alleging that during a frisk predicated on the plaintiff's open container of alcohol Officer Lojacono "jammed his fingers between Mr. Cottingham's buttocks and grabbed his genitals…and then handcuffed Mr. Cottingham and returned to probe the most sensitive areas of his person—two more times."

[14]In a study by DeVylder et al., the World Health Organization's four domains of violence (physical violence, sexual violence, psychological violence, and neglect) were used as measures to assess the type of police victimization experienced by study participants. Of the four types of violence, psychological violence (e.g., threatening, intimidating, stopping without cause, or using discriminatory slurs) was the one most anecdotally prevalent in *Terry* stops, and was reported overwhelmingly by the young, minority, male, and transgender individuals who are disproportionately subjected to it (DeVylder et al., 2017).

[15]This study was not limited to the effects of *Terry* stops and frisks. It included full body searches and strip searches, which exceed the bounds of permissible conduct under *Terry* (though a consensual encounter or *Terry* stop may escalate into a full body search or a strip search: see, e.g., *Mendenhall v. United States* (, 1980), in which a consensual search rapidly escalated into an invasive strip search).

ranging from harassment and physical assault to aggravated illegal acts, such as planting of evidence (Kerrison et al., 2018b). Officer use of profanity and homophobic and racial slurs are also not uncommon during these encounters (Brunson & Weitzer, 2011; Rios, 2011; Son & Rome, 2004). These additional elements of the searches lead to increased feelings of humiliation, fear, and feeling like "less than a person" (Futterman, Hunt, & Kalven, 2016, p. 125), or "feeling like a target" (Jones, 2014, p. 34).

3.1.1 | Effects on individuals with mental disorders and disabilities

The effects of being subjected to this sort of invasive conduct can be especially harmful to individuals with existing and acute mental health symptoms, for whom these encounters can feel extraordinarily traumatic and intrusive (Geller et al., 2014). As Geller and colleagues warn,

> *The intensity of respondent experiences and their associated health risks raise serious concerns, suggesting a need to reevaluate officer interactions with the public. Less invasive tactics are needed for suspects who may display mental health symptoms and to reduce any psychological harms to individuals stopped (Geller et al., 2014, p. 2321).*

For those on the autism spectrum (1 in 42 boys),[16] for example, sensory-related challenges often associated with autism spectrum disorder (ASD) can make even a light touch feel physically painful (National Autistic Society, 2011). The feeling of being restrained, even momentarily, can be deeply psychologically and physically distressing to individuals with ASD (Hepworth, 2017).

3.1.2 | Effects on individuals with pre-existing sexual trauma

Terry frisks can cause acute psychological harm to survivors of sexual abuse, who may be retraumatized by the intrusive, non-consensual bodily touching involved in a physical search. The invasive contact of a *Terry* stop may reignite and worsen the stress, depression, and anxiety that survivors of sexual trauma are already battling (Dunleavy & Kubo Slowik, 2012; Rothschild, 2011). Given the prevalence of past sexual trauma among both men and women who are likely to be searched, unwanted touch may serve as a powerful psychological trigger for victims of sexual abuse.

Overall, in the USA, about 1 in 20 men and boys (5.1%) is a survivor of childhood sexual abuse (Finkelhor, Shattuck, Turner, & Hamby, 2014; Walsh, Koenen, Aiello, Uddin, & Galea, 2014). Lifetime prevalence of sexual abuse among males has been estimated at about 17%, or one in six men (Peterson, Voller, Polusny, & Murdoch, 2011; Smith et al., 2017). LGBQ people, (Balsam, Lehavot, & Beadnell, 2011), gender-non-conforming people (James et al., 2016), and Black cisgender women and girls (Balsam et al., 2011; Walsh et al., 2014) are especially likely to report a history of sexual abuse.[17] Given that cases of sexual trauma sustained by boys and men are more prevalent than is commonly perceived (Buchanan, 2012; Stemple & Meyer, 2014), and even higher among men with criminal justice histories (Chaplo, Kerig, Bennett, & Modrowski, 2015; Morash, Jeong, Bohmert, & Bush, 2012)[18] and for African-Americans from economically disadvantaged urban environments (Walsh et al., 2014), the likelihood that a suspect with a sexual traumatic history will be subjected to a *Terry* stop deserves more empirical and jurisprudential attention than it has received.

Finally, the intrusive physical touching involved in *Terry* frisks may exacerbate the risk of officer-perpetuated sexual exploitation or assault. Journalists and scholars have documented that police sexual misconduct with women and

[16]Retrieved from https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?s_cid=ss6302a1_e

[17]See, e.g., James et al. (2016): *The report of the 2015 U.S. Transgender Survey*.

[18]Data from jail and prison inmates suggests a rate of sexual victimization of 4.5% during a 12-month period while in prison (Beck, Berzofsky, Caspar, & Krebs, 2013), and these data do not account for any sexual assaults that may have occurred prior to prison, or sexual assaults that occur over longer lengths of prison stays. These numbers are even higher for non-heterosexual prison inmates, who are victimized by other inmates at a rate of 12.2%, and this number nearly doubles among non-heterosexual inmates who suffer from serious psychological distress, who are victimized by other inmates at a rate of 21% (Beck et al., 2013).

girls is not uncommon (Brunson & Miller, 2006a; Stinson, Brewer, Mathna, Liederbach, & Englebrecht, 2015; Stinson, Liederbach, Brewer, & Mathna, 2015). One study of women recruited from drug courts in St Louis, MO, found that of 318 women surveyed 25% reported a lifetime history of police sexual misconduct (Cottler, O'Leary, Nickel, Reingle, & Isom, 2014). Transgender people, women, and girls are especially vulnerable to police sexual exploitation when they are gender-non-conforming (Daum, 2015), Black and poor (Ritchie, 2017; Sankofa, 2016), sex workers or mistaken for sex workers (Sanders, 2004), or victims of sex trafficking (Jones, 2018). More work needs to be done to identify the extent to which permissive stop and frisk practices heighten the risk of sexual assault and exploitation.

3.2 | Impact on individuals over time

Terry and its progeny tend to treat each encounter as an isolated, stand-alone event. Yet, for many residents of highly policed areas, *Terry* stops are a frequent occurrence. Judge Shira Scheindlin, who presided over the *Floyd* trial, noted that in predominantly Black neighborhoods in Baltimore 410 people were stopped at least 10 times each in one five-year period, and "one black man was stopped thirty times in less than four years, although he was never charged" (Scheindlin, 2017, pp. 46–47).

Moreover, a growing body of social science suggests that these encounters, whether singular or multiple, may have cumulative, long-lasting psychological, physiological, and emotional effects. Indeed, even in the absence of an encounter, Black pedestrians and drivers live with the accumulated knowledge (acquired from both direct experience and observation) that investigative stops are an ever-present threat; and one that cannot be reliably avoided simply by following the law. This state of affairs has been linked to a number of deleterious psychological consequences.

3.2.1 | Psychological consequences

While much of the existing longitudinal research explores the relationship between incarceration experiences and collateral health outcomes (Kerrison, 2017; Lee, Wildeman, Wang, Matusko, & Jackson, 2014; Patterson, 2010; Patterson & Wildeman, 2015), a similarly deleterious relationship appears to exist between health and other forms of criminal justice contact. In an examination of the New York City SQF database, Sewell et al. (2016) found that living in an aggressively policed environment was a risk factor for men's mental health, as measured by Kessler's six-item scale of Psychological Distress (Kessler et al., 2003). Sewell (2017) found that those who experienced more frequent negative encounters with police had higher incidences of psychological distress and mental health issues. Less, however, is known about the precise mechanisms that link police contact and persistent health concerns.

3.2.2 | Physiological and psychological mechanisms

One likely underlying physiological mechanism leading to poor health and negative affect is heightened allostatic load. Allostatic load is a concept that has helped "health psychologists and other social scientists, as well as epidemiologists and researchers in the fields of medicine and psychiatry, to integrate the biology of stress with the psychosocial factors that promote stress-related disorders" (McEwen, 2013, p. 674). It sheds light on the mechanisms contributing to cumulative stress. Allostatic load is created by psychological distress and can cause a downward spiral by further exacerbating that stress (McEwen, 2013). Chronic stress tires the brain, which in turn dampens one's ability to metabolize chronic stress.

Moreover, psychological science posits that recurring exposure to collective reminders and affirmations of one's stigmatized status (constant racial profiling by state institutions, for instance), combined with allostasis, leaves individuals with an ever-diminishing pool of cognitive resources with which to combat these challenges and dig themselves out of low self-esteem and despair (Causadias, Casper, & Korous, 2017; Geronimus, Hicken, Keene, & Bound, 2006; Major & O'Brien, 2005; Williams, 1999). As Epp, Maynard-Moody, and Haider-Markel (2014) stated,

> *(the problem with) unjust stops (no matter how politely they are conducted) is that they are part of a broad, continuing pattern in which racial minorities are disproportionately subjected to suspicious inquiries without any particular basis or justification. Pervasive, ongoing suspicious inquiry sends the unmistakable message that the targets of this inquiry look like criminals: they are second-class citizens (Epp et al., 2014, p. 242).*

For those subject to pervasive criminal justice surveillance, in communities under the constant yet unpredictable threat of police intervention and threat of harm, the danger of stress-related disorders is likely to be profound. This is an issue that warrants more targeted study.

3.3 | Impact on communities

Unwelcome police presence and contact can also create community-wide environmental risks. There is an accumulating body of evidence that the need to live on high alert, in fear of arbitrary physical intrusions by police, can cause "deep and lasting harm" (Epp et al., 2014, p. 135). Continual exposure to such conditions has been found to produce poor health effects at the community level (Abdou et al., 2010; Shmool et al., 2015). In the context of police killings of unarmed Black Americans, mere awareness of police violence has produced negative mental health consequences for Black Americans (Bor, Venkataramani, Williams, & Tsai, 2018). While research measuring the community-level psychological fallout of *Terry* stops is limited, the magnitude of these harms and their underlying mechanisms are crucial areas for further study.

Similarly, while a recent National Academies of Sciences report notes the dearth of quantitative research on the consequences of police contact, there is a qualitative literature that examines how police contact and perceived prejudice—as well as the traumas often associated with these factors—can create stronger racial and other social identities (Brunson & Miller, 2006a, 2006b; Crocker & Major, 1989; Tyler & Lind, 1992). Stressors that negatively affect non-Whites are triggered by the presence of two common features of discrimination: "(1) the individual (or group) was treated unfairly and (2) the treatment was based on social identity (group membership)" (Major, Quinton, & McCoy, 2002, p. 316). These effects are exacerbated for individuals who are chronically more alert to being treated as a target of prejudice and those who are more sensitive to stigma and rejection based on their race (Major et al., 2002). Recently, Monica Bell has theorized that, in addition to in-group identity, these discrete experiences also form a kind of collective "memory," providing a form of shared quasi-direct experience based on narratives of racial oppression (2017). Still others suggest that it is through policing that social marginality and stigma are constructed (Chesney-Lind & Jones, 2010, Jones, 2009; Jones, 2014; Lerman & Weaver, 2014a; Soss & Weaver, 2017).

Taken together, these literatures suggest a myriad of negative downstream consequences that can calcify into harmful culture, identity, and social structures that live on independent of policing. Future research would do well to explore the magnitude of each of these literatures quantitatively. The current scholarship, outlined next, describes some of the contours of this harm, and some of the mechanisms that might explain it.

3.3.1 | Trust, cynicism, and estrangement

The influential work of Tom Tyler and others has explored how communities marked by chronic and frequently unjustified police intrusion become increasingly distrustful and cynical toward law enforcement. Mistrust and eroded confidence in law enforcement are particularly pronounced among ethnic and racial minority groups (Tyler, 2005). As marginalized communities grow to collectively doubt law enforcement's interest in their well-being, cynicism about police purpose and function may fester (Kerrison, Cobbina, & Bender, 2018a). One result is legal cynicism: a cultural orientation in which individuals regard legal structures as intrusive, irrelevant, or entirely absent (Bottoms & Tankebe, 2012; Sampson & Bartusch, 1998).

A significant concern is that cynicism towards legal structures may rationalize the weakening or dissolution of prosocial norms and encourage rejection of the obligations of legal compliance and cooperation with police personnel (Tyler, Jackson, & Mentovich, 2015). When this type of dissolution and rejection occur in structurally under-resourced contexts, crime and violence are more likely to proliferate, reducing police effectiveness and rendering communities even more unsafe.

Monica Bell (2017) argues, however, that the focus on cynicism inadequately captures the community-wide dynamics at play. One problem with the term "cynicism," Bell suggests, is that it connotes a loss of faith in legitimate structures, rather than a more complex inquiry into community-wide dynamics that may, in important respects, exclude community residents from the law's protection (Bell, 2017). Bell argues that a full examination should not only look at how individuals perceive the law, but also account for "the signaling function of the police and the law to groups about their place in society" (Bell, 2017, pp. 2087–2088). Bell argues that the question is not only

> *whether one can generalize from personal experiences. It is also how* other *people's negative experience with the police… feeds into a more general, cultural sense of alienation from the police. Legal estrangement is born of the cumulative, collective experience of procedural and substantive injustice" (Bell, 2017, pp. 2104–2105).*

Bell concludes that "more work needs to be done to examine the collective memory of police interaction, defined as the cultural conception of what it is like to interact with the police that emanates in part from membership in a group or identity category" (Bell, 2017, pp. 2106).

3.3.2 | Depressed civic and political engagement

Scholarship that focuses squarely on expressions of legal cynicism and diminished civic engagement among Black Americans (Braga, Winship, Tyler, Fagan, & Meares, 2014; Walker, 2014), and young Black Americans in particular (Brunson, 2007; Brunson & Gau, 2015; Fine et al., 2016), suggests that faith in legal institutions is significantly dampened by both direct and vicarious negative experiences with law enforcement personnel. Investigatory stops play a powerful role in this inequality-inducing dynamic. Interviews conducted by Epp et al. (2014) revealed that, for both Black and White drivers, the "targeting [of] African Americans for investigatory stops sends unmistakable messages about their lower social status," and contributes to a "diminished version of citizenship" (pp. 137–138).[19]

3.3.3 | Criminogenic consequences

As Nikki Jones' (2014) ethnographic study of adolescent and adult Black males in San Francisco's Fillmore neighborhood revealed, civilian–police interactions that are fraught with "abasements, degradations, humiliations and profanations of self" may radically shift one's "moral career" (p. 38). For example, through an analysis of longitudinal survey data from a sample of predominantly Black and Latino high school students, Del Toro et al. (in press) found that adolescent boys who are stopped by police reported higher levels of lawbreaking behavior 6, 12, and up to 18 months after a police stop, independent of prior delinquency. They also found that psychological distress partially explains this relationship.[20] Not only are police stops harmful to the psychological well-being of adolescents, but they are criminogenic and socialize children to harbor resentment towards an institutional authority that, in their experience, has only ever proven disruptive.

[19]Among other harms, these effects have been linked to a reduced likelihood of exercising the right to vote (Lerman & Weaver, 2014a; Weaver & Lerman, 2010).

[20]Also relevant here is the literature on strain theory, which posits that when desirable opportunities are withheld from groups their members may find alternative means to achieve these opportunities, including criminal activity. See, e.g., Agnew (2001), discussing the effects of high magnitude strains that are perceived as unjust and that create pressure or incentives to engage in criminal behavior.

3.3.4 | Reluctance to seek out police protection

Community residents may accurately perceive themselves not only as over-policed, in the sense that they are heavily surveilled and penalized for activities that would attract little or no notice in other communities, but also as under-policed, in the sense that they do not feel they can turn to law enforcement to protect them from violence. Bell terms this experience "structural exclusion," which refers to "the ways in which policies that may appear facially race-and-class neutral distribute policing resources so that African Americans and residents of disadvantaged neighborhoods tend to receive lower-quality policing than whites and residents of other neighborhoods" (Bell, 2017, p. 2114).[21] When police fail to respond to calls for help or fail to respond in a timely or constructive fashion, people may[22] cope by turning to "self-help" from family members or friends, or "by creating or enlisting the help of informal institutions" (Bell, 2017, p. 2116). These extra-legal responses may have the perverse and dangerous effect of increasing neighborhood violence.

3.3.5 | Public health consequences

Clean needles, condoms, and other harm reduction tools found during pat downs can be used as evidence of prostitution or treated as drug paraphernalia in some states, often leading to arrests. These tactics lead to public health consequences. When individuals are deterred from carrying and thus engaging in these methods of harm reduction, rates of infectious disease increase among already vulnerable poor and LGBTQ communities (McLemore, 2013). There are also other public health implications of residing in communities that experience high levels of intrusive police presence. For example, scientists have found that "living in minority communities with a high concentration of use of force by police against pedestrians is associated with an increased risk of diabetes and obesity" (Sewell, 2017, p. 1).

3.3.6 | Legal socialization

Legal socialization is the psychological process by which people develop their relationship with the law by acquiring law-related values and attitudes and making sense of legal practices (Trinkner & Tyler, 2016). Police officers engaging in the widespread, aggressive use of *Terry* stops may be effectively communicating a problematic collection of values and intentions to residents, who, in turn, communicate their understandings of the law to one another. Because negative police–civilian encounters are a regular occurrence in so many heavily policed neighborhoods, residents may feel compelled to prepare themselves and their children for a life characterized by second-class treatment and state-sanctioned danger (Evans & Feagin, 2015). As Justice Sotomayor observed in a recent scathing dissent from a Fourth Amendment decision expanding police power, "[f]or generations, black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them" (*Utah v. Strieff*, 2016, p. 2070).

From in-depth interviews conducted with a sample of 44 long-time Black residents of an almost entirely Black midwestern city, Brunson and Weitzer (2011) found that 40 out of 44 respondents felt the need to transmit norms to younger generations regarding the police and how to remain safe in the presence of police. Other corroborative

[21] See also Leovy (2015).

[22] There is conflicting evidence on how people who are faced with perpetually sluggish or unresponsive emergency services adapt to this deprivation. See, e.g., Lerman and Weaver (2014b) (in a study of the use of 311 [non-emergency] calls in NYC, even controlling for a host of influences that could shape civic participation, it is overwhelmingly the case that living in a neighborhood with a disproportionate concentration of "surplus" police contact that neither yields a finding of contraband nor leads to a summons, citation, or arrest is predictive of disproportionately low per capita calls for service to police and per capita calls to local city government institutions) and Desmond, Papachristos, and Kirk (2016) (in Milwaukee, 911 [emergency] calls decreased in Black neighborhoods after a particularly public incident of police abuse). But see Hagan, McCarthy, Herda, and Chandresekher (2018) (in a study of the use of 911 calls in Chicago, residents of underserved neighborhoods persisted in calling 911 despite their lack of expectation of a timely or adequate response).

studies suggest that intergenerational lesson plans include messaging about respect, compliance, proactive avoidance, and coping in the aftermath of a police encounter (Haldipur, 2017; Johnson, Rich, & Keene, 2016; Staggers-Hakim, 2016). Teachers, school administrators, and police officers also engage in formative contacts that socialize children to the norms of institutional power—sometimes at great cost. As Ta-Nehisi Coates said in his letter to his son, "This need to be always on guard was an unmeasured expenditure of energy… It contributed to the fast breakdown of our bodies. So, I feared not just the violence of this world but the rules designed to protect you from it, the rules that would have you contort your body to address the block…" (Coates, 2015, p. 90).

4 | PERSISTENT GAPS IN THE SOCIAL SCIENCE LITERATURE

As the above review shows, substantial evidence suggests that *Terry* stops are deleterious to the health of individuals and communities in ways that directly undermine *both* sides of the *Terry* balance. Not only are *Terry* stops far more intrusive than the *Terry* opinion itself anticipated, they also threaten the governmental interests that *Terry* itself set out to serve: the interest in "effective crime prevention and detection" (*Terry v. Ohio*, 1968, p. 22) and the interest in the safety of the police, crime victims, and the citizenry (*Terry v. Ohio*, 1968, pp. 23–24). Subjecting a community to a regime of aggressive *Terry* stops may contribute to the likelihood of criminal behavior in children and young adults, and it may discourage cooperation with law enforcement's efforts to investigate crime and keep the streets safe.

Legal scholarship will benefit from an acknowledgement of what social science discourses reveal about the harms associated with *Terry* stops. But at the same time, empirical research efforts must also address the persistent gaps in how harm is measured and for whom. For example, social scientists lack consensus on how to operationalize harms, or render harms "measurable," for large-scale quantitative data analysis. Debates about how indicators of the complex experience of distress can be captured and adapted for meaningfully robust statistical analysis remain unresolved (Wiley, Gruenewald, Karlamangla, & Seeman, 2016). Furthermore, findings derived from quantitative analyses of the association between *Terry* stops and psychological harm, no matter how robust or thoughtfully crafted the statistical model, are inadequate for painting the fullest picture of the emotional impact of stop and frisk. Qualitative social science that relies on interviews and observational data, for instance, may offer more complete accounts of distress that are otherwise undiscoverable in surveys of biometric data (Brunson, 2010).

Crucially, social science study designs must do better at including study subjects from populations that are historically excluded from large, clinical, and market research studies, and therefore from evidence-based claims about the legal impact of police encounters. This will require a concerted effort, particularly as it may require securing permission to ethically recruit homeless citizens, minors, and imprisoned individuals whose voices are often excluded or under-represented (Cislo & Trestman, 2013). At bottom, social science must better grapple with how *Terry* stop harms may be experienced differently in different contexts.[23]

While we have discussed a number of ways in which a lack of analyses blinds researchers and practitioners to the source, type, and magnitude of police bias, it is also worth noting that in some regards the very availability of police data can serve to obscure, rather than illuminate. Use-of-force forms provide an example of this phenomenon. Use-of-force forms may provide the comforting illusion that stop and frisk encounters are readily quantifiable. Yet even the most comprehensive use-of-force forms does not collect quantitative data on the time course of an interaction. This means that it is not possible (from quantitative police data) to determine the number of force incidents initiated in response to police escalation, resident escalation, or even simply a lack of opportunity for de-escalation. Gelman, Fagan, and others have noted the inability of police data to provide visibility of the degree to which an individual credibly posed a danger (Gelman et al., 2007; Rengifo & Fowler, 2016). Moreover, categories such as "furtive

[23]For example, critical race research captures the experience of contemporary Latinx community members for whom *any* interaction with police or state agents could lead to profoundly destabilizing outcomes (Asad & Clair, 2018; Vargas, Juárez, Sanchez, & Livaudais, 2018). For communities whose right to citizenship is precarious, the collective distress related to the very expectation of harm is likely that much more pronounced.

movements," the most common reason given for a frisk of African American and Hispanic persons stopped (Fagan, November 2012), flatten a wide variety of potential resident behaviors—behaviors that may reliably vary across subgroups within a population.

In other words, though we bemoan the lack of analytic sophistication surrounding conversations about stop, question, and frisk, it is always worth noting that administrative data both reveal and conceal truth about police interactions. The data reveal insights into the aspects of behavior that administrators have decided to track, or are best able to track, while offering the illusion of a fuller knowledge than we, in fact, possess.

5 | WHY THE MISMEASURE MATTERS: POSSIBILITIES FOR REFORM

Terry v. Ohio is the watershed Supreme Court case that created the constitutional basis for stop and frisk, and subsequently provided the constitutional scaffolding for innovations that included broken windows policing, zero tolerance policing, and other proactive law enforcement tactics that make use of frequent police encounters (Harmon & Manns, 2017, p. 58). *Terry*'s logic derived from two crucial assumptions. The first is that stop and frisk, though concededly intrusive, constitutes a relatively minor intrusion: an intrusion that may pale in comparison to the countervailing law enforcement interests at stake. As we have argued, there is substantial evidence to contradict this perception of the nature and scope of the intrusion, and a pressing need for further research. The second assumption is that constitutional criminal procedure has a limited reach: its main purpose is to limit police behavior that leads to individual court cases—and only cases in which contraband is found, at that. The *Terry* decision was squarely premised on the notion that the Court's role in guarding against "overbearing or harassing" conduct is to suppress evidence garnered from such conduct. However, most *Terry* stops and frisks lead to no arrests, produce no physical evidence, and never end up in court, and in all these cases the Court's suppression remedy is irrelevant and unavailable.

The Court did, however, note the possibility of "other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate" (*Terry*, 1968, p. 15). It has become increasingly clear that any meaningful reform of stop and frisk will occur primarily through these alternative remedial means. And these alternative remedies tend to rely on the *Terry* analysis, or, at the very least, are "crafted in the shadow of *Terry*" (Huq, 2017, p. 2401). To identify harms accurately and craft appropriate remedies will require a broader set of data of the types discussed above.

To be sure, federal civil rights suits[24] and federal pattern and practice litigation[25] have already led to the collection of essential data on the effects of stop and frisk. In federal civil rights suits, for example, legal scholars and others in the legal community have done an admirable job of obtaining and using data to challenge some of the *Terry* court's fundamental assumptions. First, a robust body of work shows the breadth of the use of stop and frisk, the malleability of the reasonable suspicion standard, and the shockingly unequal racial, ethnic, geographical, and economic distribution of the burden of those stops and frisks (Sundby, 2018, pp. 713–727). These data, and the scholarship and jurisprudence they have engendered, raise significant questions about the efficacy of stop and frisk. The data demonstrate, for example, that frisks rarely turn up weapons, despite the fact that disarming armed and dangerous suspects is the sole legitimate purpose of a *Terry* frisk. The data also demonstrate that *Terry* stops rarely lead to arrests and cast grave doubt on law enforcement claims that an aggressive *Terry* stop regime leads to a drop in more serious crimes.

The answer to the hotly contested question of whether an aggressive *Terry* stop regime leads to a safer environment will become clearer as more data becomes available. Thus far, however, this question has too often been approached as if it can be answered solely through crime statistics. The other side of the equation, the nature and impact of the intrusion on those subjected to it, has received vanishingly little attention in the legal literature. And as Yale Kamisar (1984) astutely observed in a related context (a discussion of the exclusionary rule), once the

[24]See, e.g., 42 U.S.C. Sec.1983, and discussion of *Floyd*, supra note 7.

[25]See 42 U.S.C. Sec. 14141and discussion of the Ferguson Report, supra note 8.

question is framed as a cost–benefit analysis pitting something that is considered measurable against something that is considered ephemeral or abstract, the measurable variable will always win (p. 613).

To take the full measure of the costs and benefits of *Terry* stops will require engagement with a broader set of data: data about the emotional, physiological and psychological effects of *Terry* stops on individuals, individuals over time, vulnerable or marginalized populations, and entire communities. Moreover, this imbalance—this failure to give due credence to the "intrusiveness" part of the equation—is only part of the mismeasure problem. As research increasingly demonstrates, aggressive use of stop and frisk may actually decrease law enforcement efficacy. In sum, the failure to better investigate the impact of stop and frisk and the longitudinal effects of widespread stop and frisk regimes on individuals and their communities creates gaping holes in our understanding of both sides of the *Terry* balancing equation.

Determining whether *Terry*'s balancing test rests on faulty assumptions is essential for two reasons. First, from a doctrinal viewpoint, to the extent that *Terry* overestimated the efficacy of stops and frisks and underestimated their damaging impact on individuals and communities, these errors cast serious doubt on the ever-expanding constitutional regime premised on the *Terry* balancing test. Second, even apart from any legal doctrinal implications for stop and frisk jurisprudence, recognizing the flawed assumptions described in this article should encourage all the relevant stake-holders to re-evaluate the consequences of the *Terry* regime. Police chiefs, commanders, and other law enforcement policy-makers are subject to (and in many cases, open to) formal and informal influences as they craft policies and priorities for their communities. Community groups and other constituencies may find common ground with law enforcement policy-makers based on fuller, more accurate information about the harms and benefits of various policing strategies. Civil rights lawyers and other activists can influence governmental policy even when their constitutional arguments fall short. As Rudovsky and Harris recount (2018, pp. 26–30), stop and frisk reform has often occurred even without a court order, precipitated by the complex interplay of local politics, community activism, media attention, settlement agreements, and other factors. A fuller, more accurate understanding of the harms and benefits of stop and frisk is essential to assessing the impact of consent decrees, state and local statutes, internal police regulations, and—probably most important—governmental and departmental decisions on deployment strategies and priorities. The current state of the research suggests that many of the goals of broken windows policing, zero tolerance policing, quality of life policing, aggressive preventative patrols, and other *Terry*-based approaches are actually thwarted rather than promoted by aggressive use of stop and frisk. To the extent that aggressive use of *Terry* stops is criminogenic, damages community–police relations, and has a long-term deleterious impact on the mental, emotional, and social health of individuals and communities, the result ought to be a serious and thorough reassessment of many federal, state, and local policing strategies and priorities.

Terry v. Ohio is notable in part because Chief Justice Warren presented the decision as a limited and pragmatic effort to properly balance the interests of the police, the community, and the individual. One strongly suspects that, given its good-faith effort to get the equation right, the *Terry* court would be the first to welcome reconsideration or refinement of the balance, as well as a reassessment of *Terry*'s limitations, in light of the experiences, changes in police work, and increased empirical data of the past 50 years.

ACKNOWLEDGEMENTS

The authors wish to thank Kim Shayo Buchanan, Scott E. Sundby, and Jill Swencionis for their comments on multiple versions of this paper. We also thank Camille Beckles, Marietta Carré, Juan Del Toro, Ayobami Laniyonu, Hilary Rau, Enrique Rodriguez Pouget, and the other members of the Center for Policing Equity research team for comments on an earlier draft, and Arlyn Katen for research assistance.

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How to cite this article: Bandes SA, Pryor M, Kerrison EM, Goff PA. The mismeasure of *Terry* stops: Assessing the psychological and emotional harms of stop and frisk to individuals and communities. *Behav Sci Law*. 2019;1–19. https://doi.org/10.1002/bsl.2401