

Posted 11/23/07

LOVE YOUR BROTHER -- AND FRISK HIM, TOO!

Aggressive patrol strategies have costs other than money

By *Julius (Jay) Wachtel*. Brushing aside concerns by the retiring police commissioner, Philadelphia's mayor-elect Michael Nutter announced that officers in the City of Brotherly Love would be implementing a "stop, question and frisk" campaign to combat a soaring murder rate, in 2006 nearly *four times* that of New York City (27.7/100,000 v. 7.3/100,000).

Nutter, who will take office on January 7, was elected on a platform that makes fighting crime the top priority. His police-centric emphasis contrasts sharply with an initiative by outgoing chief Sylvester Johnson and other community leaders to flood Philly's most dangerous neighborhoods with citizen patrollers. (Two-hundred members of the "10,000 Men: A Call to Action" movement are due to begin their duties this Thanksgiving weekend.)

Stop-and-frisk is nothing new. Cops have been detaining and questioning citizens since there *was* a police. But its roots as a legally-sanctioned strategy trace back to 1968, when the U.S. Supreme Court decided in *Terry v. Ohio* that the Fourth Amendment allows officers to detain and frisk persons if there is "reasonable suspicion" that they are armed and about to commit a crime, a much less stringent standard than the probable cause requirement for conducting a search or making an arrest.

Rulings after *Terry* allow officers to make investigative stops and temporarily detain anyone they reasonably suspect may have committed or is about to commit a crime, *whether or not they might be armed*. (See, for example, *U.S. v. Arvizu*). Reaching the "reasonable suspicion" threshold requires more than a guess -- it calls for the presence of objective, articulable facts that a reasonably well-trained officer would find compelling. Once they detain someone officers remain bound by the Constitution, so searching for anything beyond a weapon requires probable cause, and interrogation calls for *Miranda*.

On its surface, Mayor-elect Nutter's violence reduction approach seems like an ideal application for stop-and-frisk. But as the saying goes, the devil is in the details. Even if he follows through with plans to declare "crime emergencies" and impose curfews, his officers will still have to obey both the Constitution *and Terry*. Anti-crime campaigns place police, from the chief to patrol, under enormous pressure. Imagine what might happen when it is possible, as in the case of investigative stops,

to count the number of times that a particular technique is applied. Will officers be encouraged to do quality work or just rack up the numbers? Will they pull over cars and stop pedestrians willy-nilly or only when there is reasonable suspicion?

And it's not just a question of what's legal. Whether or not aggressive policing is done by the book, a heavy hand can erode the bonds of trust and confidence between citizens and police. When he was asked about a stop-and-frisk campaign, the present chief said, "While I'm the police commissioner, I'm not going to do it." Well, soon there will be a new sheriff in town, who *will* do it. Let's hope it's done right -- legally and with restraint -- so that the besieged city can finally live up to its ambitious slogan.