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## TOO MUCH OF A GOOD THING?

*NYPD's expansive use of stop-and-frisk may threaten the tactic's long-term viability*



“These are not unconstitutional. We are saving lives, and we are preventing crime.”

By *Julius (Jay) Wachtel*. That’s how department spokesperson [Paul J. Browne](#) justified the more than one-half million “[Terry](#)” stops done by NYPD officers in 2009.

But not everyone’s on board. A current [Federal lawsuit](#) by the Center for Constitutional Rights charges that the department’s own statistics (NYPD must keep stop-and-frisk data in settlement of an earlier case) prove that its officers routinely and impermissibly profile persons by race.

In [Terry v. Ohio](#) (1968) the Supreme Court held that officers can temporarily detain persons for investigation when there is “reasonable suspicion” that they committed a crime or were about to do so. Persons who appear to be armed may also be patted down (hence, “stop-and-frisk.”) Later decisions have given police great leeway in making investigative stops. For example, in [U.S. v. Arvizu](#) (2002) the Court ruled that officers can apply their experience and training to make inferences and deductions. Decisions can be based on the totality of the circumstances, not just on individual factors that might point to an innocent explanation.

Last year NYPD stop-and-frisks led to 34,000 arrests, the seizure of 762 guns and the confiscation of more than 3,000 other weapons. [Eighty-seven percent](#) of those detained were black or Hispanic. Since they only comprise fifty-one percent of the city’s population, to many it smacked of racial profiling. In its defense, NYPD pointed out that fully eighty-four percent of those arrested for misdemeanor assault in 2009 were also black or Hispanic. Its stops, the department insists, are proportionate to the distribution of crime by race.

There is data to support both views. A [2007 Rand study](#) found only a slight disparity in the intrusiveness and frequency of NYPD stops once differences in crime rates are taken into account. But a [1999 analysis](#) by the New York Attorney General concluded that the disparity in the frequency of stops could not be explained by racial differences in criminal propensity.

Dueling studies aside, NYPD concedes that blacks, Hispanics and whites who are stopped are equally likely to be arrested (for all races, that's about six percent.) Indeed, blacks are less likely than whites to have weapons (1.1 versus 1.6 percent.) So why are blacks and Hispanics far more likely to be stopped in the first place? According to NYPD, that's because anti-crime sweeps usually take place in high-crime (read: poor) precincts where many minorities happen to live.

It's a truism that policing resembles making sausage. Even when cops try to be respectful, no amount of explanation can take away the humiliation of being stopped and frisked. Although NYPD executives and City Hall argue that the tactic has been instrumental in bringing violent crime to near-record lows, a recent [New York Times editorial](#) and a [column](#) written by Bob Herbert, one of the city's most influential black voices, warn that its use has driven a wedge between cops and minorities.

NYPD's aggressive posture harkens back to the grim decade of the 1960's, when heavy-handed policing lit the fuse that sparked deadly riots across the U.S. Encouraged to devise a kinder and gentler model of policing, criminologists and law enforcement executives came up with a new paradigm that brought citizens into the process of deciding what police ought to be doing, and how. The brave new era of [community policing](#) was born.

It wasn't long, though, before observers complained that the newfangled approach was of little help in reducing crime and violence. Spurred for more tangible solutions, academics and practitioners devised [problem-oriented policing](#), a strategy that seeks to identify "problems," which may include but are not limited to crime, and fashion responses, which may include but are not limited to the police. But despite its attempts at practicality, POP's rhetorical load is substantial, while its strategic approach is not much different than what savvy police managers have been doing all along.

Then [CompStat](#) arrived. To be sure, police have always used pin maps and such to deploy officers. CompStat elevated the technology. More importantly, it prescribed a human (but, some argue, not necessarily *humane*) process for devising strategic responses to crime and holding commanders accountable for results. It was introduced, incidentally, by the NYPD.

Compstat [has been criticized](#) for placing unseemly pressures on the police. Its preoccupation with place, though, resonated with criminologists who had long believed that geography was critical. Soon there was a new kid on the block: [hot-spot policing](#). An updated, more sophisticated version of a strategy known as selective enforcement, it encourages police to fashion responses that take into account the factors that bind geography to crime. It's not just that a certain kind of crime happens at a certain time and place, but *why*.

After forty years of ideological struggle and experimentation vigorous policing has come back in style. For an example look no further than the [campaign pledge](#) by Philadelphia Mayor Michael Nutter to attack the city's violence epidemic with hot spot policing and "stop, question and frisk" His call to action has been echoed in cities across the U.S. From [Newark](#), to [Philadelphia](#), to [Detroit](#), [Omaha](#) and [San Francisco](#), police are using a variety of aggressive strategies including stop-and-frisk to restore the peace and get guns off the street.

That's the good news. The bad news is that from Newark, to Philadelphia, to Detroit, Omaha and San Francisco.... Benefits don't come without costs. Stop-and-frisk is no doubt effective, yet as recent events in New York City demonstrate it's not without potentially serious consequences. An inherently elastic notion whose limits officers frequently test, *Terry* is more than ripe for abuse. Of course, whether NYPD's enthusiastic embrace has stretched stop-and-frisk beyond what the Supremes intended will be the subject of litigation for a long time to come. Let's hope that events on the ground don't make the decision moot.