Flaws to a Law: Behind the Legislation of Stop and Frisk

Abstract

This review looks into the policy and legislation concerning ‘Stop and Frisk’ and controversies that have arisen from public and political discussion and court cases in recent years. It is important to explore the Stop and Frisk issue as active citizens in a democratic society. If we are to take the responsibility of active citizenship we may be confronted at different points in our life to take a stance on this procedure and its legislation. In order to examine this issue in an unbiased way, I referred back to the Constitution of the United States and carefully held into account the definitions of words such as “probable cause” and “reasonable suspicion”. Through this examination, all opinions are addressed: political, constitutional and public research methods include looking at Allan Johnson’s theories, which include the matrix of domination and oppression of the minority class. Stop and Frisk also has hegemonic and non-hegemonic players. In some cases, the role of the police officer is scrutinized and examined for ‘unjust’ stops and issues of racial profiling. In other cases, the research shows that Stop and Frisk is a completely fair policy and is in place to protect our country’s law enforcement officers. As active citizens, we should not judge this policy by its cover. We must examine the fundamental question of whether this policy does what it was set out to do in 1964 by the Supreme Court. While Stop and Frisk can be seen as a target for minorities, we must look for statistics in crime rates in areas where Stop and Frisk is practiced heavily--New York City, for example. Stop and Frisk is a necessary and constitutional procedure for crime prevention.
Further research is needed to discover ways to eliminate the injustices and controversies of Stop and Frisk.

Introduction

Stop and Frisk is a police procedure in which the officer is given the right to detain and “frisk” a suspect on the grounds of “reasonable suspicion”. A “frisk”, a patting down of outside clothing, is authorized when an officer reaches a reasonable conclusion during the “stop” that the person may be armed and dangerous. This procedure specifically allows the police to frisk a suspect without arresting them. Stop and Frisk was first addressed by the Supreme Court in 1964 in the case of Terry vs. Ohio. In this case Terry, the police officer, did not have any probable cause to arrest the suspicious men. The Supreme Court ruled that it is constitutional for law enforcement officials to “stop” a person with reasonable suspicion and obtain the person’s identity and more information. The Supreme Court has established guidelines for the validity of a Stop and Frisk procedure. When cases of Stop and Frisk are considered ‘unjust’ by the suspects, the court looks at evidence justifying the stop and the specific law enforcement officer’s years of experience. It is extremely important to remember the background and terminology of this procedure when examining different viewpoints regarding Stop and Frisk, its constitutionality, and the main players and factors this procedure addresses. If the Stop and Frisk procedure is believed to be unconstitutional by some citizens, whose responsibility is it to take action in this democratic society?

Constitutionality

Loren G. Stern states that, “The police power to detain and question is as old as the common law of England” (Stern, 532).This power is given to officers upon a standard of reasonable suspicion which is not as heightened as the term probable cause. Stern addresses that “The Fourth Amendment does not prohibit all searches and seizures just those which are unreasonable”
A law enforcement officer must present a reasonable belief under specific circumstances that the suspect is up to no good. Suspicion is one step down from belief on a ladder. The framers of the Stop and Frisk procedure are criticized for not defining the statutes of reasonable suspicion and probable cause, therefore leaving room for much misinterpretation of the procedure. According to a Northwestern Law Review journal, Stop and Frisk is constitutional when citizens understand the definitions of “probable cause” and “reasonable suspicion”. The review highlights that Stop and Frisk is seen as a “necessary element of crime prevention” (Stern, 541). The procedure allows police officers to confront and arrest citizens before they commit a crime. Law enforcement officials should not have to wait until a crime has been committed to question a suspect if an officer has a “reasonable suspicion” that a citizen may be armed and dangerous therefore likely to commit a crime within a short period of time. The Constitution gives law enforcement officers the right to question citizens they view as suspicious in simple terms. However, there is always another side. Protesters of the Stop and Frisk procedure argue that a “frisk” is more intrusive than an “arrest” and therefore unconstitutional. What these protesters may forget is that a police officer has to be authorized by the citizen or suspect in order to perform a frisk. If a citizen gives a law enforcement officer the right to pat the outside of their clothes, the Stop and Frisk statutes are 100 percent constitutional.

**Hegemony**

Hegemony is a form of power and dominance. This form of power and dominance produces people who exert this power and dominance which we view as hegemonic forces and those who lack power-non hegemonic forces. John C. Berg uses the term, hegemony in “Congress and Big Business” in *Voices of Dissent*. Stop and Frisk is composed of hegemonic factors and players as well as non-hegemonic factors and players. The procedure was established by one hegemonic factor, the government, in 1968 after the ruling of *Terry vs. Ohio*. The
government, specifically the legislative body, was the group that enacted the Stop and Frisk procedure and individual law enforcement officers carry out the procedure on a day-to-day basis. The Stop and Frisk procedure is seen as a form of power that law enforcement officers have over citizens. In addition to local law enforcement, citizens who report innocent individuals to the police are hegemonic factors. In this specific circumstance, police may be notified of a suspicious individual, report to the scene and with reasonable suspicion stop the individual, and with consent frisk their body. The officer does not arrest the individual because no weapons or illegal substances were found and through questioning the individual does not seem to be up to any trouble. From my research thus far, it seems that the majority of citizens believe this specific circumstance happens way too often. Protesters of the Stop and Frisk procedure believe that innocent individuals are stopped without reasonable suspicion and fully searched without probable cause or authorization. These innocent individuals whose voices are not fully heard by the political system are the non-hegemonic players of Stop and Frisk. Non-hegemonic players “find it harder to win unless they change the economic structure as well” (Berg, 188). Local court cases dealing with Stop and Frisk that do not get taken into higher court (Supreme Court) are great examples of individuals who lack this hegemonic power. Steven Zeidman, a professor of law, believes “the criminal court effectively shields police behavior” (Zeidman, 1189). Police behavior refers to the ideas and assumptions many officers make as a result of their experience in the police force. This allows unjust Stop and Frisks to occur regularly with no appropriate action. The criminal court is one hegemonic player that effectively undermines targeted victims and strong public opinions on the topic.

**Matrix of Domination**

Allan Johnson critically examines the dominant role “whites” play in our society today. He strongly believes racial profiling occurs in our society today. He explores the privilege whites
hold and how this privilege is handed down to them simply because of their skin color. Johnson states in *Privilege Power, and Difference* that, “Privilege takes different forms that are connected to one another in ways that aren’t obvious” (Johnson, 51). This is the “matrix of domination” and what could be referred to as the teeter-totter of privilege. Being a white male law enforcement officer puts you on the high side of the teeter-totter weighing the white female officer down. The white male would still be on the top if an Asian male law enforcement officer was added into the equation. This idea of “matrix of domination” applies directly to Stop and Frisk procedures. If a white male is walking in a high crime neighborhood at an hour in which robberies have been occurring in recent weeks, a police officer is not as likely to stop and frisk the man because he does not hold reasonable suspicion that a well-dressed white man would be the suspect of the recent crimes in the neighborhood. Bennett Capers proves Johnson’s point clearly by writing:

My husband and I are about the same age and build, wear the same clothes and share the same gender and build but I am far more likely to be stopped by the police. This isn’t because I have a criminal record or engage in furtive movements. Nor is my husband a choirboy. Statistically speaking, it’s because I’m black and he’s white. (Capers, 1)

Stop and Frisk is without a doubt viewed as a procedure that targets a race that is not white, in a specific neighborhood, at a specific time of day. However, a black male in a wealthy neighborhood does not produce as much reasonable suspicion as a black male in the city slums. Through the matrix of domination people are never seen solely in terms of race and gender.

**A Racial Dilemma**

Research shows that the majority of Stop and Frisks occur in high crime neighborhoods, which are heavily police patrolled and are inhabited by Latino, Hispanic, African American, and Asian adults. In New York City, the Attorney General’s “finding that Black and Latino men accounted for an overwhelming number of the reported stops-and-frisks led him to conclude that
this was the most serious civil rights issue…facing the city” (Zeidman, 1196). Critics argue that far too many law enforcement officers follow an equation in which gender plus race plus residence equals reasonable suspicion (gender + race + residence = reasonable suspicion). Johnson states that these police officers who most often stop individuals in these categories, “may not realize how routinely we form such impressions until we run into someone who does not fit neatly into one of our categories” (Johnson, 16). Law enforcement officers routinely categorize individuals based upon race and gender, which leads them to assume they have reasonable suspicion when all they really have is judgment. A New York Judge, Judge Scheindlin confirms the argument that the Stop and Frisk statutes were not laid out properly after the case *Terry vs. Ohio* and that many of the cases do not satisfy the requirement that was put in place after the ruling in this case (Capers, 1). Misinterpretation of the statutes is one of the biggest causes of the racial profiling associated with Stop and Frisk. The officer, Terry, in this specific case did not merely see the group of black men walking down the street and stop them immediately. Instead, he set up a post and monitored the men for a good amount of time therefore allowing him to gather reasonable suspicion to stop the men. Research and evidence show that citizens, especially black and Latino men in New York City, must keep an eye out for “the possibility of hostility and a second eye to decide whether whites get the benefit of the doubt” (Johnson, 58). In our country today, people who are not white must constantly be aware of what Allan Johnson describes as a “minority sense”.

**Recommendations**

With the understanding that the Stop and Frisk program is a very controversial topic that can be viewed through many different lenses, we must look more towards statistics and evidence presented in specific court cases. What are research authors proposing in order to eliminate the injustices? Police demeanor and behavior during Stop and Frisks is one solution that must be
further explored. Allan Johnson’s theory of geographic mobility should be further explored through research as well as other the uses of Stop and Frisk in multiple cities and states. In each case, we must refer back to the definitions the Constitution states for “reasonable suspicion” and “probable cause”. It is clear that people who disagree with Stop and Frisk procedures believe race is too commonly a standard for reasonable suspicion. However, further research is needed for why people who support Stop and Frisk, such as New York City’s mayor Michael Bloomberg, believe it is a necessary police procedure. In evaluating different research methods, we should keep in mind what facts and evidence these supporters are using as a basis for their opinion and whether the statistical evidence is unbiased and true.

**Conclusion**

Loren G. Sterns’ well-written law review *Stop and Frisk: An Historical Answer* provides detailed descriptions and answers to why the procedure is constitutional if the officer follows the statutes put in place by the Supreme Court in 1968 with the ruling of *Terry vs. Ohio*. Bennett Capers’ New York Times Article “Moving Beyond Stop and Frisk” supports Allan Johnsons’ theory of racial profiling and the privilege that comes along with white skin and the oppression that results from colored skin. Earl Ofari Hutchinson supports Johnson in stating that racial profiling does exist in our country today and especially in Stop and Frisk cases. Hutchinson points out that we must look to statistical evidence to see the effects of this profiling. Steven Zeidman makes a well-stated point for non-hegemonic citizens affected by the Stop and Frisk procedure. He believes that criminal court dismisses innocent citizens from making unjust cases against Stop and Frisk in order to protect law enforcement officers. It is important to take all perspectives into account when examining the issues and what can be done to eliminate the injustices produced because of the procedure.
Methodology

The idea of Stop and Frisk seems simple on the surface, but it is a procedure doomed to controversy. The reason, of course, is because Stop and Frisk uses personal perceptions as the basis for addressing public safety. The challenges of Stop and Frisk are best understood if we view the people who enforce the law and those who are affected by the law as members of different groups on a social ladder. The players of power within the Stop and Frisk procedure are represented on this ladder.

At the bottom of the ladder are citizens, specifically citizens in high crime areas, who lack geographic mobility, and who may have been convicted of a previous crime. People who oppose Stop and Frisk believe these are the citizens who are targeted solely because of their race or gender and, therefore, become the suspects of indirect racial profiling by the police force.

One step above these citizens, living in high crime areas are people who may come from a more affluent area within a city. A handful of these citizens support Stop and Frisk because they believe it is a necessary procedure for the prevention of crime, and they may have family members in the police force, or working in varying levels of government. The prejudices or privilege a citizen has influences how they view the Stop and Frisk procedure.

Near the top of the ladder we have the governmental figures such as Mayor Bloomberg of New York City, who is a strong supporter of Stop and Frisk as well as the police force. I had the opportunity to interview and speak with an officer from the San Jose Police Department, Trever Condon. Officer Condon expressed his strong support of Stop and Frisk because of the opportunity the procedure gives officers to stop criminals before a crime has been committed. Condon added that “the procedure is entirely constitutional” because it gives officers the permission to question a citizens suspicious behavior without accusing them of a crime or filing
for a warrant (Condon). The goal of Stop and Frisk is not to accuse a citizen of a crime but simply prevent that citizen from committing a crime in the near future.

Judges sit on the very top of the ladder, specifically Supreme Court and State judges who decide whether police actions are just on a case by case basis. The decisions these judges make influence public opinion and cause people to formulate their own opinions on the specific cases—often prompting them to take sides.

Viewing the different factions that bring Stop and Frisk to bear a groups position on different rungs of a ladder is a good analogy because it illustrates the divisions of power within the procedure. Clearly, Stop and Frisk results from and is supported by a social hierarchy. Each group within the hierarchy views the procedure through a different lense, creating tension and constant upheaval on varying court rulings on the basis of constitutionality.

The research I conducted on Stop and Frisk took me back to my childhood fascination of crime, and my constant inquiry of why people engage in bad behavior. Ever since I was a young girl, I have been fascinated by laws, crime, and the judicial system of the United States. As a child, I used to ask my mom to drive me by the jail so I could see the “inmates”, who I could see playing basketball. In the sixth grade, I did my first Power Point presentation on the Federal Bureau of Investigation (FBI). I also participated in a ride along with the Sacramento Police Department, where I experienced firsthand the patrolling police perform in all neighborhoods. In September of my senior year of college, it seemed only right to research Stop and Frisk for my senior thesis. The thought of being an investigator on this controversial legislation over the course of four months was exciting to me. My initial research methods began with the propaganda surrounding Stop and Frisk. It was clear after a few Google searches, that the Stop and Frisk procedure generated the most attention in New York City. New York City is densely
populated and people from all socioeconomic levels and ethnicities call it their home. After gaining a better understanding of the procedure, I centered my research methods on certain course theories that directly applied to the legislation because the Stop and Frisk procedure touches all layers of society. Throughout my research, I learned to love law reviews and their wealth of knowledge. Each research method required me to formulate my own opinions of the procedure and legislation. I examined Stop and Frisk as an unbiased individual, with no prior knowledge or opinions on the procedure. Ultimately, the main goal of my research was to examine the constitutionality of Stop and Frisk through different course theories and the lenses of varying social groups. Each law review, scholarly article, or news story left me questioning what many United States citizens question, is the Stop and Frisk procedure constitutional?

The research and evidence I uncovered made it clear to me that the Stop and Frisk procedure directly relates to the oppression and power in our country today. Multiple journals question the legislation and the statutes defined by the Supreme Court and the United States Constitution. Is each law enforcement officer abiding by the current statues in place or are they practicing a form of “indirect racial profiling”? Allan Johnson explains this form of racial profiling in his book *Power, Privilege and Difference* which portrays “white” people as those with power and most often the suspects in this act of racial profiling. Indirect racial profiling is only one lense through which some citizens view and critique the Stop and Frisk procedure. Most often this view comes from people who do not fit neatly into the “white and privileged” category. Citizens who have to confront the fear of getting stopped in their own neighborhood support leaders who argue that Stop and Frisk promotes racial profiling.

In order to understand the Stop and Frisk procedure, a person must be aware of the hegemonic players who hold power and dominance within the procedure. Stop and Frisk affects
more than just the citizen (suspect) and the police officer; it affects the way in which all security, law enforcement officers, and TSA agents interact with people they assume to be suspicious. By examining the constitutionality of Stop and Frisk through specific court cases the “reasonable suspicion” or evidence the law enforcement officer has for enacting the procedure contributes to the question of constitutional or unconstitutional. When the statutes of Stop and Frisk are defined and specific cases are provided, the purpose of the procedure becomes evident. As humans, we will always question the nature of a specific law or legislation especially once others begin to state their opinions. However, it is important to question a procedure under the right framework— one that is unbiased, factual, and confronts the controversy directly.

I had no prior knowledge of the Stop and Frisk procedure when I began my research at the start of the semester. Initially, I began researching what the procedure entailed and why those who oppose the procedure believe it is an act of racial profiling. I was broad at the beginning of my research, and this initial research is what narrowed my focused. Soon it became clear whether an article of law review would be useful from reading the title and abstract. As I continued my research, I started formulating specific questions such as: “Is Stop and Frisk constitutional?” “Is it an act of racial profiling?” and “What are the statutes in place?” By asking these questions and conducting further research including an interview and survey I began to formulate my own opinions and connect the varying opinions and objections to course theories from *Power, Privilege, and Difference* as well as *Voices of Dissent*. I became fully immersed in the different lenses and started identifying cracks—such as the lack of evidence officers need in order to Stop and Frisk a citizen, after having my initial research and investigation completed. I came to the conclusion that Stop and Frisk is constitutional if the appropriate statutes are followed by law enforcement officers. If a police officer has reasonable suspicion that a citizen is
engaging or about to become engaged in criminal activity they have the right to stop the citizen and with the citizen’s consent frisk their body.

**Data Analysis**

The Stop and Frisk procedure will always remain a question of “reasonableness” and pertain to a specific law enforcement officer’s behavior. What constitutes police behavior? There are many myths that remain attached to the role of public safety officers and how these men and women are supposed to forget personal bias when conducting a controversial procedure such as Stop and Frisk. When we refer to the behavior of the law enforcement officer in a Stop and Frisk, we are referring to the investigative techniques or field interrogation they use when conducting traffic stops or “stopping” a suspicious person. Police behavior refers to individual, situational, organizational, and community behavior. The Stop and Frisk procedure most commonly yields situational police behavior and factors referring “characteristics of the suspect (e.g., race, sex, age, demeanor, etc.), and characteristics of the situation e.g., location, number of bystanders present, etc.)” (Engel, 1092). The Stop and Frisk procedure can be performed on a juvenile or adult in any setting including traffic stops. Law enforcement officers must be careful of what specific judgments they are basing their suspicions on during these stops and questioning. However, a police officer can question a citizen on any public property without any legal restrictions and it is during this questioning that an officer can develop probable cause to “frisk” the suspect. All officers should play to their best benefit and conduct themselves in a sincere and direct way because the way in which an officer acts during this procedure directly affects the attitude the suspect or citizen holds about whether their reason for stopping them was legitimate.

The Constitution of the United States laid out by our founding fathers declares that there should be no unreasonable searches and seizures. Each person defines an unreasonable search or
seizure in a slightly different way. In other words we as human beings all have a slightly different idea of what makes a stop unreasonable. Law enforcement officers are individual human beings who come from many different backgrounds, therefore all conforming to the terms laid out by their specific city’s law enforcement office and their own personal bias and judgment. Officer Trevor Condon, a member of the San Jose Police Department defines an unreasonable search and seizure as “a search where you do not have any reasonable or probable cause, or consent to search a person or their belongings” (Condon). However, Officer Condon did state in an interview that there are many different ways to develop a “legal justification” to stop a citizen. The Stop and Frisk procedure does require reasonable suspicion so this is where legally many attorneys and judges believe the procedure is legally justified in cases. One of my research methods included a survey of both male and females asking what they defined as an “unreasonable search or seizure”. My findings produced the same general response; however, specific key terms such as the word “warrant” or “evidence” were mentioned in multiple responses. One respondent believed that a search is unreasonable if the officer does not have a warrant. One of the main reasons the Stop and Frisk procedure was created was to allow law enforcement officers to question and frisk suspects without a formal search warrant. The ruling of *Terry vs. Ohio* gave officers the right “to stop briefly a suspicious person in order to determine his identity or to maintain the status quo while obtaining more information” (Whitebread, 2552). Many citizens believe the Stop and Frisk procedure is unconstitutional primarily on the basis that it allows officers to question without specific evidence, which in turn most commonly yields a warrant.

If each person were of the same skin color the biggest controversy of the Stop and Frisk procedure would be eliminated completely. The Encyclopedia of Crime and Justice states that
“disparities and discrimination in field interrogations are a major cause of tension between police and minority communities” (Engel, 1093). Police officers are trained to act in a powerful and authoritative way when conducting Stop and Frisk. This authoritative and harsh nature often causes citizens with lower socioeconomic standings in higher crime areas to feel harassed. A New York Judge, Judge Scheindlin recently ruled through statistical data that “the New York City Police Departments stop-and-frisk procedure amounts to a policy of “indirect racial profiling” that violates the U.S. constitution” (Cassidy, 1). Judge Scheindlin is one hegemonic force that supports and allows voices of non-hegemonic people to be heard and have their opinions be publicized to the general public. Scheindlin’s opinion is proven by studies which “have considered officers’ decision-making during detection activities (e.g. Stop and Frisk) have generally found that suspects’ race does have an influence over officer behavior. The influence race has on a law enforcement officer’s decision to stop a suspect may not be intentional, but statistics show a higher percentage of ethnically diverse citizens stopped by the Stop and Frisk procedure. The United States of America has grown into an extremely diverse nation with people from many different backgrounds living in a single neighborhood. As active citizens in a democratic nation, we must remember not all murderers are of color.

Reasonable suspicion and probable cause remain pieces of the Stop and Frisk puzzle that do not require facts or evidence. However, we can look towards statistical data to analyze where, who, and why the Stop and Frisk procedure is used in specific situations. Jeffery Fagan, a criminologist at Columbia University conducted two studies,

one related to the claim that stop-and-frisk violates the Fourth Amendment’s protection against unreasonable searches and seizures, the other related to the claim that the policy,
by discriminating based on race, violates the Fourteenth Amendment’s guarantee of equal protection under the law for all American citizens (Cassidy, 1).

When the Supreme Court authorized the Stop and Frisk procedure under the ruling of *Terry vs. Ohio*, in which a Ohio police officer saw a group of men that looked as if they were planning an imminent robbery, the court declared that if law enforcement officers held reasonable suspicion a citizen might be in the process of committing a crime or armed and dangerous, the stop would not violate the act of an unreasonable search or seizure. However, when we enter a person’s race into the equation attorneys, judges and law enforcement officers are faced with blurred visions. The people who ruled in favor of the Terry Stop may never have guessed that racial profiling would be such a strong issue in our country today and that segregations of neighborhoods by socioeconomic status would be so high. These attorneys and judges might have believed our country would be in a better standing of equality and would be maintaining a higher democracy.

Jeffery Fagan was also able to prove in the second study, which compared the number of stops in certain areas to the predominant race in that neighborhood. The results showed “Blacks and Latinos are more likely to be stopped than Whites even in areas where there are low crime rates and where residential populations are racially heterogeneous or predominantly White” (Cassidy, 1). It is unbelievable to face these statistics and try to justify the fact that race is not part of the Stop and Frisk equation however, the studies show that people of color must constantly be aware of the “minority sense” they hold and even more so when walking in areas where their race may stick out more to the public eye. Statistically speaking the Stop and Frisk procedure is most often enacted in neighborhoods that are high crime areas of New York City, where a large number of African American and Hispanic citizens are questioned for their actions or presence.
New York City remains at the forefront of the Stop and Frisk procedure, with strong opinions and controversies of the procedure well publicized in weekly newspapers and magazines. New York City Mayor, Michael Bloomberg is a strong supporter of the procedure and takes pride in the fact that “New York is the safest big city in the nation” (Bloomberg, 1). Mayor Bloomberg defends law enforcement officers in New York City and acknowledges the fact that local newspapers and magazines do not cover police brutality in the line of duty like they do the Stop and Frisk procedure. It seems almost automatic to critique police behavior over citizen’s actions. Mayor Bloomberg powerfully states the reality that “Ninety percent of all people killed in our city—and 90 percent of all those who commit the murders and other violent crimes are black and Hispanic” (Bloomberg, 1). This statement elicits controversy, because it seems as though the Mayor is cancelling Whites out of the murder equation, therefore defending why they are not often seen as citizens affected by the Stop and Frisk procedure. New York City police officers commonly document many arrests as a result of a Stop and Frisk, making the procedure scrutinized by media and the public eye. Mayor, Michael Bloomberg is stepping out of office and Mayor-elect Bill de Blasio has appointed William J. Bratton as police commissioner. De Blasio states in an article featured in the New Yorker in December 2013 that “Stop-and-frisk is not a tool solely to look for guns” (Toobin, 1). Stop and Frisk is a procedure that allows law enforcement officers to stop a citizen for engaging in any sort of illegal or dangerous behavior. In my interview with Officer Condon, this was one of the biggest points Condon tried to get across. Police officers can stop someone for drinking alcohol on the side of the road, and if they feel that citizen may be armed that is when they begin a frisk. Many of the citizens who fight about the controversies of the procedure are not informed of the legal jurisdictions of Stop and Frisk. They simply feel targeted.
Stop and Frisk is a procedure practiced by law enforcement officers all over the nation, but the situational factors of the procedure change from location to location. For example, in New York City the procedure is most commonly practiced in a public place such as shopping malls, strip centers, or a city street. However, Arizona uses the Stop and Frisk procedure heavily when it comes to traffic stops. In 2009 in the ruling of *Arizona vs. Johnson*, “The court applied the Terry principles ruling that a motorist may be frisked for weapons if a reasonable officer could conclude that the driver is armed and presents a serious threat to the safety of the officer (Myers, 469). This ruling contributes to an officer’s safety and protection. Under the law, if an officer approaches a vehicle and believes the driver or passengers could be armed and dangerous he is allowed to ask them to get out of the car so he can pat the outside of their clothing. The officer can also directly ask the passengers if they have a firearm or illegal substance in the vehicle, and if they answer “yes” grants the officer permission to search. The reason vehicle stops are the sole encounter of Stop and Frisks in Arizona is because of the illegal substances often found in cars across many American Interstates. Police officers, in turn, ask key questions in order to develop reasonable suspicion that the vehicle may be transporting illegal substances. It is interesting and important to compare how the Terry Stop and Frisk procedure is used in different areas of our country. The culture of the different states effects police practices. Stop and Frisk has not created such high tension in other states because citizens and governmental officials have accepted its constitutional nature.

**Conclusion**

Essentially, Stop and Frisk is a basic police tactic intended to prevent crime and protect public safety. It is a procedure that has been part of police work forever. Stop and Frisk is practiced in all states, but is not always referred to and publicized as highly as it is in New York
City. The new police commissioner in New York City, William J. Bratton, states in an article by the New Yorker on December 5th, 2013;

If cops are not doing stop-and-frisk, they are not doing their jobs. It is a basic, fundamental tool of police work in the whole country. If you do away with stop-and-frisk, this city will go down the chute as fast as anything you can imagine. (Toobin,1)

What would our country look like without the police force? The role of law enforcement officers is to protect the public safety of all citizens at all times. If we want a peaceful society, we cannot eliminate the hegemonic forces that establish and enforce laws and rules that protect our safety as citizens. Therefore the Stop and Frisk procedure must remain part of policing.

Many American citizens did not know what was going to be brought on when police officers were allowed to perform a Terry Stop. Few people would have guessed in 1964 that the Stop and Frisk procedure would cause a national controversy spurred by a bias the United States of America has always faced as a nation—race. All research methods indicated many citizens feel racial injustice because of their skin color. The indirect and direct racial profiling stigma of the procedure is not positive, and the statistics surely do not help back up the opinion of those who state the procedure is not an act of racial profiling. The racial profiling aspect of the procedure could be abused, and citizens could plead this as a defense in court even in cases where they may be guilty. Citizens must take ownership of their actions when stopped by a police officer, and the officers must take ownership of the reason they hold for stopping the individual.

It is human nature to stand up for yourself, but many citizens now feel as though they cannot use their voice against the Stop and Frisk procedure. This lack of voice within the procedure is something that needs to be addressed. Research indicates that in court the judge will
most often rule in support of the public safety officer, which is why Judge Schindlins rulings are so monumental. I am not suggesting that we target law enforcement officers and entirely put the blame on them, but we must make compromises. As Frances Moore Lappe states, we live in a “thin democracy” where people’s voices are unheard and the justices and equalities constantly demanded by our society today are twisted and turned in favor of those in power and not the common good (Lappe, 14). We witness the self-determination of innocent individuals who stand up in court for their rights- and their freedom to walk in public places when they wish, free of racial prejudice. Law enforcement officers exhibit self-determination when they plead the case they believe is reasonable and just in court.

As active citizens in this “thin democracy”, we may never be able to change the system. The hegemonic forces associated with the Stop and Frisk procedure hold so much power that change is not realistic. Non-hegemonic forces will protest, fight, and struggle to have their opinions and voices heard. Police behavior and individual bias are elements that are difficult to change. It also is hard to change attitudes because it is human nature to become set in the ways in which you are comfortable.

So, we must return to the original question: If the Stop and Frisk procedure is believed to be unconstitutional by some citizens, whose responsibility is it to take action in this democratic society? First, in order for a major change within the procedure, cases must be taken higher than State courts. It might take multiple cases to reach the Supreme Court for the citizens of our country to experience a change in police officers’ behavior and what they are and aren’t allowed to do on the basis of reasonable suspicion. We can expect the Stop and Frisk procedure to continue as long as policing continues in our nation. We know that there will always be people who feel the need to commit crimes and carry weapons for their protection- free to use them
against other people when they feel it is necessary. We need to make sure the focus and publication of who is stopped by the Stop and Frisk procedure changes. Newspapers, articles, and criminal journals need to provide readers with cases where white men and women were stopped. What these journals and articles are currently showing is the privilege and power white men hold, and the oppression of minority citizens. We must recommit to the way the procedure was initially laid out under the statutes of the Supreme Court, and keep in mind that the Stop and Frisk element of policing is what reduces crime especially in high crime areas.

The Stop and Frisk procedure ultimately deals with the power of oppression versus public safety. I believe that law enforcement officers play a vital role in keeping our nation safe. These officers put themselves in dangerous situations- Stop and Frisk encounters included- in order to protect a community. The Stop and Frisk procedure is vital because you should not have to hold a warrant to question a citizen’s suspicious behavior. Imagine if we were all of the same skin color; Stop and Frisk would not present controversy. The bias would be taken out of the equation and citizens could not plead their race as evidence in court. Our society needs to become one people free of racial prejudice and oppression. However, we cannot say a procedure is unconstitutional simply because of racial prejudice. Racial prejudice should be viewed on an individual basis. The Stop and Frisk procedure is a constitutional procedure that law enforcement officers use on a day- to- day basis all over the nation in a variety of different situations. The controversy of racial profiling is bigger than Stop and Frisk.

Appendices

All research methods are cited on the following works cited page. Below are the notes from the survey and interview I conducted as part of my research.

Survey Question- What do you define as an unreasonable search or seizure?
Respondent: “Anytime there is not a cause”

Respondent: “Unreasonable unless they have a warrant”

Respondent: “Must have proof of why they want to search, for example may have gotten a lead”

Respondent: “Unreasonable with no warrant or if an officer can up to a you when you weren’t doing anything wrong”

Respondent: “Unreasonable without reasonable suspicion or probable cause”

Below are the questions I asked Officer Trevor Condon and his responses:

1) **What do you define as an "unreasonable search and seizure"?**

An unreasonable search and seizure, simply put is a search where you do not have any reasonable or probable cause, or consent to search a person or their belongings. However, with that said, there are many ways to develop legal justifications to search a person or their belongings when I encounter an individual. I would say, you can develop articulate-able facts in 95 percent of all encounters.

   Consent- As a police officer I can ask anyone questions without any legal restrictions (as long as I am in a lawful location. All places open to the public, or where the public could have access to. A rule of thumb is to ask where can a mail man go? So, that means into private property if it reasonable, like opening an unlocked gate to the front of the property but not through a locked gate or the back of the property.) While I am in a lawful place I can ask questions, like are you on parole, and do you have anything illegal? The individual can answer the question or tell me to get lost. If the person does not answer, I cannot force them to and I have to let them leave. However, during that small interaction I am observing the individual and trying to develop probable cause. If I can determine there is probable cause to believe they are involved in a crime I can turn the consensual encounter into a detention where the individual is
now no longer free to leave. One of the ways this is done is to recognize the symptoms of drug use.

    Now, if the person answers my question and says "yes" to having something illegal, that gives me a detention and allows me to "retrieve" the illegal items, thus allowing me a search.

    And, if the person says they do not have anything illegal I can ask them if I may check. Most innocent people grant permission to prove they are good people. And guilty people usually allow a search because they think if they allow you to search you will not actually search and they hope you move on.

    Reasonable suspicion or Probable cause- These exist when I have observed something that resembles illegal activity, or flat out I observe a crime. If I observe a crime and that crime is arrest-able I can search someone, without consent, incident to arrest.

    If an individual is on active searchable probation or there on parole they have no right to the 4th amendment and are subject to search of their person and belongings at any time upon the request of a police officer.

    So, the answer to the question of what is an unreasonable search and seizure is, if I search someone and cannot fulfill any of the above.

2) How do you authorize a Stop and Frisk? Meaning what causes you to pull the person over or stop somebody walking down the street and what do you generally say.

When I am getting ready to make contact with someone I first have to know what I have. Meaning, has this person broken a law, like j-walking. If they have broken a law I can detain the person, which means they are not free to leave. I can stop the person and direct them. For example, I would use my forward facing red light on my car and my siren to get their attention. They I say something along the lines of, "Hey Sir, San Jose Police. Keep your hands out of your
pocket and do not make any sudden movement." I like to down play things especially if I am talking to someone who I think is a good crook. I’ll say, "hey no big deal you just j-walked. I do not know if you know but several people have been hit by cars j-walking and I do not want you to get hit, so I am stopping you". While I am saying this, I am also directing the person to look away from me. (I am getting them positioned for a pat search. It is safer if they cannot see you.) I slip in the "play down" speech, "do you have any weapons, anything that could poke me or stick me. Like a pocket knife or a gun? Everyone has a pocket knife". Then I ask, "do you mind if I check?" However, regardless of their answer I start a pat search feeling the person for anything that feels like a weapon, or anything that could be used as a weapon. If I feel something I can remove to object and secure it. I do not have to have the persons consent to search for weapons as long as I can articulate the remote possibility the person could have a weapon. I use time of day, # of suspects versus # of officers, baggy clothing, distance away from back up police officers, prior contact with the person, high crime area, etc

And if the individual has not broken any laws but looks like they may be associated to some type of criminal activity, I have to use a consensual encounter, which means I cannot direct then or force them to listen to me. For example, if I make a consensual contact with someone but say, "Hey you stop and come here" I have just made the stop a detention. This is measured from the logic that once I say something like that, a reasonable person would not "feel" free to leave. This also means I cannot use my forward facing red light or my siren. So, I will say, "Hey sir, could you come here for a second?" or simply "what is your name?" Then I will say, "Hey I am sorry people try and fight the police all the time. For my piece of mind and safety, do you mind if I check you for weapons while I take to you? Then I do not have to keep my guard up with you, no offense, it’s part of the job." Most people will say "ok". However, those that do not say "ok"
immediately make me worry for my safety and there objection of a pat search is interpreted as non-compliance. Again, using time of day, # of suspects versus # of officers, baggy clothing, distance away from back up police officers, prior contact with the person, high crime area, etc I would initiate a pat search.
Works Cited


