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Stop and Frisk Guidelines for the D. C. Police.

This is in response to your request for our views on the proposed stop and frisk guidelines for the Metropolitan Police Department.

As you know, in the recent cases the Supreme Court did not delineate in detail the constitutional limitations of a policeman's power in the stop and frisk situation. The Court was primarily concerned with the frisk aspect of the problem and did not examine the extent to which a police officer can stop or detain a suspect in the absence of probable cause. Thus, while a guideline dealing with frisks can be drafted with some degree of certainty, the problems posed by a guideline dealing with stops are essentially unresolved questions whose ultimate answers can only be provided by subsequent Supreme Court adjudication. The following stop guideline is based on our predictions of what those answers might be.

Proposed stop guideline:

A police officer may stop, frisk for weapons (as explained in the succeeding frisk guideline), and briefly question any person in a public place whom he reasonably suspects is committing, has committed, or is about to commit a felony or misdemeanor, even though the officer does not have sufficient information to establish probable cause which would justify arresting the person. If the officer is not in uniform, he must first identify himself by promptly showing his badge or ID folder and by stating that he is a police officer.

Scope of questions: The officer may question the individual to obtain and verify his identification and address and may request an account of his presence and actions.

Refusal to stop: If the person refuses to stop, the officer may use reasonable force to detain the individual. Such reasonable force shall not include use of a weapon or nightstick in any fashion. If there is an assault on the officer, the officer may of course use necessary force to protect himself and arrest the person.

Miranda warnings: The warnings required by Miranda v. Arizona, as set forth in General Order No. 9-C, Series 1964, are not required if the questioning is limited to the individual's identity and a very simple explanation of his actions. However, if the questioning crosses the line from mere investigation of a suspicious situation to a sustained interrogation of an individual, focusing on the individual as a criminal, the Miranda warnings must be given. Furthermore, if the questioning is conducted in a police-dominated atmosphere, the warnings must be given. If in doubt, the warnings should be given.

Refusal to furnish identification: If the individual stops but refuses to identify himself, the officer cannot compel an answer. The refusal to furnish identification is not, in and of itself, sufficient to establish probable cause. However, the officer may have enough information, which, when combined with a refusal to furnish identification, will be sufficient to establish probable cause and justify arresting the individual.

Refusal to answer questions: If the individual identifies himself but refuses to answer any other questions, the officer cannot compel an answer. This refusal to answer questions shall not be considered by the officer in determining whether or not there is a basis for an arrest.

Length of stop: A person stopped under these circumstances shall be detained by the officer no longer than is necessary to frisk the person for weapons, if necessary, and to question briefly the individual about his identity and his actions. If the person refuses to answer these questions, he cannot be detained, unless the officer decides to arrest him.

Voluntary trip to a telephone or precinct: The officer cannot compel the individual to accompany him to a telephone or to the police station. However, if the officer makes it very clear to the individual that he is under no legal obligation to comply with the officer's request and if the individual voluntarily agrees to accompany the officer, the officer may take the individual to the police station or to a nearby telephone.

Unsatisfactory answers: If the individual does answer the officer's questions dealing with his identity and a simple explanation of his actions, but his answers appear false or unsatisfactory, the officer may question further after he has given the Miranda warnings. The officer may consider these unsatisfactory answers in determining whether to arrest the individual. However, if the officer relies in part on the unsatisfactory answers to sustain the arrest, he must be able to explain with particularity why he considered the answers unsatisfactory.

Proposed frisk guideline:

If a police officer is investigating a suspicious person and has reasonable grounds to believe that the person is armed and dangerous, the officer has the authority to search the person for weapons even though he does not have sufficient information to establish probable cause which would justify arresting the person. The officer is not authorized to search every person he stops and he is not authorized to conduct a general exploratory search for evidence of a crime. He is only authorized to search for weapons the persons he has stopped and reasonably believes to be armed.

Purpose: The sole purpose of this limited search for weapons is to protect the police officer and others nearby from harm. The purpose is not to discover evidence of a crime.

Supporting information: The officer's belief that the person is armed and dangerous must be based on specific facts which reasonably lead to the officer's conclusion. The officer does not need to be absolutely certain that the person is armed. However, he must know some particular facts from which he concluded that the person was armed. For example, if a police officer sees a man apparently "casing" a liquor store, he may stop the man for further investigation and, since most robberies of this nature are conducted with weapons, he may frisk the man to see if he has a weapon.

Miranda warnings: It is not necessary to give the Miranda warnings before conducting this limited search for weapons.

Scope: The scope of the search must be limited to that which is necessary for the discovery of knives, guns, clubs, or other hidden instruments which could be used to harm the officer or others nearby. The officer should pat down the outer garments of the suspect. If he feels an object which could be a weapon, he may of course remove the weapon. However, if he feels nothing which could be a weapon, the officer shall not place his hands in the suspect's pockets or beneath his outer garments.

Force: The officer may use reasonable force to detain the suspect while the frisk is being conducted. If the officer feels an object that could be a weapon, he may use reasonable force to remove the object. Such reasonable force shall not include use of a weapon or nightstick in any fashion. However, if there is an assault on the officer, the officer may of course use sufficient force to protect himself and arrest the suspect.

Result: If the officer discovers that the person illegally has a gun or other weapon in his possession, he should arrest the person for that violation of the law. If the police officer feels an object which may be a weapon but which turns out to be

evidence of a crime, such as burglary tools, he may use this information in deciding whether to arrest the person. However, if the officer does not feel anything which could be a weapon but nevertheless puts his hands in the suspect's pockets and discovers evidence of criminal activity such as narcotics, that evidence cannot be used in court since the officer did not have probable cause for the search and since he was not authorized to conduct a general search. However, he does not need to return the contraband to the individual.