
The Overload Of Discretion Used By Police To Stop Individuals

Over the recent years past, there have been many reports discussing the use of police power in searching those who appear to be going about their own daily lives. The case of Terry v. Ohio suggests the changes that have occurred with laws that look into the discretion that police officers have to stop those who “look suspicious.” What do these laws mean for the future of black people, the population that gets stopped more than any other race in the United States, or that often lands to the death of a young black boy. With this, I ask the question, “ Do police officers have too much discretion to approach people?” In this, I will be highlighting the laws that allow police officers to approach people and my recommendations to change these laws in order to protect the safety of all people in the United States, including African Americans.

Firstly, looking at the Terry v. Ohio case the court stated that the police officer had grounds for reasonable suspicion due to the officer’s explanation that Terry and Chilton were acting suspiciously. He stated that the interrogation was warranted, and that the officer had to pat down their clothing for his own safety due to reasonable cause to believe that they might be armed. This case resulted in the newly formed law, Terry stop. The Terry stop resulted from the reasonable suspicion. It is a standard that gives police power to see what changes the presumption to being a suspect and what happens and what limitations of the court. This court case created a new standard for reasonable search. The police department took it as support for stop and frisk policies which gave the right to investigate criminal behavior when there is no probable cause. These types of policies are what hurt the black community.

In Policing the Black Man, it looks into the race-neutral policies which are supposed to be facially neutral but have racially based outcomes. These types of policies include the war on drugs, “three-strikes-you’re-out” policies, and drug-free school zones that exist in every state. The drug-free school zones usually call for stricter penalties for drug offenses committed within a designated school zone. While the argument behind these policies is that this is incarcerating a number of people and would have a major effect on crime, that is not the case. These policies actually create more problems. First, there is a tendency to incarcerate an increasing number of less serious offenders, diminishing the “cost effectiveness” of any given prison term. Second, the broad use of life imprisonment means that there are many individuals in prison who are well past the point at which people “age out” of crime. Third, mass incarceration has a destabilizing effect in disadvantaged communities of color.

In Henning, Boys to Men: The Role of Policing in the Socialization of Black Boys, it explains the consequences that black boys face in today’s society that sometimes end up taking their lives. For example, the story of sixteen-year-old black male Emilio Mayfield was jaywalking and was pushed around by nine police officers. Jaywalking is not an arrestable offense. Black boys are policed more than black men. Youth in general are more likely to have contact with the police as they play in the streets, public places, hang out past curfew, drink alcohol, ride around, talk loudly etc. The assumptions made by the police about the supposed bad behavior of black boys are what hurts them because of the increased surveillance and stopping of them which in turn leads to searches, arrests and brutality. If black boys were not to be policed as much for simply enjoying their youth, there would be less African Americans getting hurt and sometimes even

resulting in deaths.

According to an article by Schwinn, under the Fourth Amendment, an officer may stop a vehicle based on reasonable suspicion that a crime has been committed. "Reasonable suspicion" includes a reasonable mistake of fact, so that an officer may even stop a vehicle based on a reasonable mistake of fact that a crime has been committed. In this case an officer stopped the petitioner's vehicle along an interstate highway because it had a broken right brake light. The officer had asked to search the vehicle and the petitioner agreed. Through this search, the officer found cocaine, and the petitioner was charged with trafficking. The petitioner moved to suppress the evidence, arguing that the officer's stop violated the Fourth Amendment. He argued that the state law required only one operable brake light and that the the officer based his stop on the mistaken belief that the petitioner violated state law and therefore, the officer did not have reasonable suspicion that the petitioner broke the law. Heien argues that an officer's reasonable suspicion must be held up to the correct interpretation (and not a misinterpretation) of the law. He says that the purpose of the reasonable suspicion standard is to not allow the officer to stop cars for no reason at all. He argues that a stop based upon any misinterpretation of the law undermines that core purpose. Heien states that while the Fourth Amendment allows stops based on reasonable mistakes of fact. But the reasoning does not carry over to reasonable mistakes of law.

He goes on to state that police departments would be discouraged to educate police officers on the law and would not ask legislatures to clarify the ambiguous laws. With this being said, motorists could be stopped for any reason as long as the officer made a reasonable mistake. Heien claims that allowing an officer to act with disregard to the Fourth Amendment by simply making a mistake of the law would put the law in the officer's hands. On the other hand the state claims "that an officer may make a mistake of fact for any number of perfectly reasonable reasons." This is the exact problem with the laws right now. Officers could stop any cars and claim it to be a reasonable mistake. Police officers have too much power when it comes to stopping those to ask questions. Supreme Court decisions that have occurred recently hold that an officer does not violate the Fourth Amendment when the officer acts on a reasonable mistake of law. Therefore, I challenge that the laws should be changed.

When the government decided that Darisse's stop was supported by reasonable suspicion, I disagree with this argument and propose to change the laws so that police officers have less discretion when stopping motorists or people walking. Essentially, this case decides the fact of who will get the benefit of the doubt, a police officer or a suspect regarding evidence obtained when the police officer made a reasonable mistake that led to a stop. If the benefit goes to the suspect, then the stop was invalid, and any evidence that was collected from the stop cannot be used. If the benefit goes to the officer, the stop was valid, and the evidence can be used against the suspect.

With the benefit of the doubt going to the officer, this could lead to several public policy changes. These could include less incentives for officer education and for clarifying the law; and an increase for reasoning for stops for lawful conduct; and officer credibility in the community. Traffic stops disproportionately affect racial minorities. A ruling for the state means that police officers would have the ability to know less about the law than the general public because "ignorance of the law is no excuse" for the general public only with this ruling.

Police officers have too much discretion when it comes to stopping people. Allowing police

officers to stop those just simply from reasonable suspicion and including reasonable mistake of the law is dangerous because it would promote discrimination. In the book, *Police Brutality* by Anne Cross, it discusses the implications of police brutality. Police brutality occurs when police officers knowingly attack, beat, ill or mistreat community members. There is a lack of intervention to stop police officers. There is a lack of training in nonviolent solutions, racially driven police stops, aggressive stop-and-frisk policies, and unequal enforcement of low-level offences. There are also the facially neutral policies including “War on Drugs” and “tough-on-crime” political platforms that disproportionately impact minority groups and individuals. There are conflicts of interest with public-private partnerships and government contracts. The Black Lives Matter movement asserts the fact that most police violence is unjustified and allows for “deadly oppression” of African Americans, causing them to be treated unjustly and without the freedoms that other groups have. The Black Lives Matter movement claims that “Black lives are systematically and intentionally targeted for demise” and that most police violence constitutes “deadly oppression” resulting in African Americans being denied justice and freedom that other groups have. In order to have changes made to not continue to hurt members of the African American community, there needs to be policy changes made.

Policies needed to be changed and added in order to prevent brutality by increasing the accountability of police officers and providing better guidance to officers regarding appropriate and inappropriate behavior. The issue at hand is that police agencies and unions, prosecutors, oversight boards, courts and federal and state laws grant broad discretion for police officers to use force. If these policies are not changed to hold police officers accountable for their actions, police officers will be able to understand that they can get away with using excessive force on individuals due to the Terry stop policies and the abilities they have to stop people even under a probable mistake of the law. They essentially have a lot of power because even if they stopped an individual based on a mistake that they realized later on, it is still legal. This allows police officers to stop any individual for any reason. The laws need to be changed in order to prevent this from happening. My recommendations include not allowing police officers to stop individuals based upon mistakes, and they should be held accountable for those mistakes. By allowing this change in the law, there will be more training and education for police officers in order to make better judgements about what individuals they are stopping for what specific reasons.