

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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TOPIC:

A LOOK BACK AT THE ORIGINAL TERRY STOP AND FRISK CASE, WHICH, INCIDENTALLY, IS THE FIRST IN MY SERIES OF "GREAT QUOTES" CASES

THE FIRST "GREAT QUOTES" CASE:

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)

By: Ralph B. Strickland, Jr.

FORWARD:

There are a number of cases, decided by the United States Supreme Court over the years, favoring officer survival. One of the best, most important to your safety, survival and good health is *Terry v. Ohio*, decided in 1968. This case established a great right for you to protect yourselves: **the right to frisk a person on reasonable suspicion that they are armed and dangerous.**

THE FACTS:

In *Terry*, a police officer observed Terry and two of his pals "case a store" for a "stickup." The officer watched the men, all standing on a street corner, take turns walking down the street to a store, peer in and return to the corner. This occurred a number of times over a 10-minute period. The officer was in plain clothes, had 39 years of experience, and based on his training and that experience, believed that they were about to rob the store. He thought that they might have a gun. He approached them, identified himself and asked their names. When they "mumbled something," the officer grabbed Terry, and spun him around so they both were facing the other two, with Terry between the officer and the others. The officer patted down the outside of Terry's clothes and felt a gun in his breast pocket. He took off Terry's coat and took the gun from the pocket. During a patdown of the other two he discovered a gun in another man's pocket as well. The officer took that gun and arrested the two men for carrying a concealed weapon.

The United States Supreme Court held that Terry had been seized within the meaning of the Fourth Amendment. Remember: that Amendment only prohibits *unreasonable* searches or seizures. The question was merely whether this officer's actions, on the street and under these circumstances, were unreasonable.

THE LAW:

The Court held that the Fourth Amendment authorized as reasonable a detention and frisk, or “patdown,” as conducted by this officer under these circumstances. The rule of law is stated as this: **a law enforcement officer may stop and detain a person based on reasonable suspicion, and frisk that person for a weapon if the officer has reasonable suspicion that the person is armed and dangerous.**

The Court recognized that you folks face situations, in simply doing your job and protecting people and property, that are **tense, uncertain and rapidly evolving**. You cannot always wait until you have probable cause to arrest; there must be a way to protect yourself based on reasonable suspicion that a person may be involved in a crime, and may be dangerous to you. You should be authorized to adjust your behavior to quick changes of circumstance. You need a practical, common sense method, based upon a clearly established right, to protect yourself and others in such a situation. And *Terry* meets that need.

In the *Terry* case, Chief Justice Earl Warren delivered the opinion of the Court, and made the following point. I personally find it to be as important a statement on the rights of officers to protect themselves as can be found in any case, federal or state. This is “Great Quote #1” from the *Terry* case.

Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded.

Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

“GREAT QUOTE #2”

So, what are those “necessary measures” that you may take? The Court also answered that for you as well. Once again, I quote the Court with “Great Quote #2” from the case (and the emphasis is mine):

WE MERELY HOLD TODAY THAT WHERE A POLICE OFFICER OBSERVES UNUSUAL CONDUCT WHICH LEADS HIM REASONABLY TO CONCLUDE IN LIGHT OF HIS EXPERIENCE THAT CRIMINAL ACTIVITY MAY BE AFOOT AND THAT THE PERSONS WITH WHOM HE IS DEALING MAY BE ARMED AND PRESENTLY DANGEROUS, WHERE IN THE COURSE OF INVESTIGATING THIS BEHAVIOR HE IDENTIFIES HIMSELF AS A POLICEMAN AND MAKES REASONABLE INQUIRES, AND WHERE NOTHING IN THE INITIAL STAGES OF THE ENCOUNTER SERVES TO DISPEL HIS REASONABLE FEAR FOR HIS OWN OR OTHERS’ SAFETY, HE IS ENTITLED FOR THE PROTECTION OF HIMSELF AND OTHERS IN THE AREA TO CONDUCT A CAREFULLY LIMITED SEARCH OF THE OUTER CLOTHING OF SUCH PERSONS IN AN ATTEMPT TO DISCOVER WEAPONS WHICH MIGHT BE USED TO ASSAULT HIM.

THE CATCH, AND WHAT FIRST LINE SUPERVISORS *MUST* KNOW:

Dang! There always is a catch, is there not? Ok, here goes: just because you detain someone does not automatically confer on you the right to frisk him every time. Yes, more often than not, the grounds for a frisk must be considered independently of the grounds for a stop. **Generally speaking, a frisk is not automatically justified solely by the right to seize and detain someone.**

Of course, there are even exceptions to this rule. Bob Farb notes in *Arrest, Search and Investigation in North Carolina*, Second Edition, 1992, Institute of Government, page 105: “However, courts permit officers automatically (that is, without reasonable suspicion or other justification) to frisk a person they reasonably suspect has committed a violent crime (for example, robbery, homicide, or assault) or a crime associated with violence and the possession of weapons (for example, the sale of drugs).” Thank you, Bob.

WHAT FIRST LINE SUPERVISORS SHOULD ALSO KNOW – THE TERRY STOP RULES:

Well, let’s see if I can put this in a series of steps that are easy to remember during a street encounter.

1. When you have reasonable suspicion that a person has committed, is committing or is about to commit a crime, you may seize and detain that person for a reasonable period of time. A detention may be made on reasonable suspicion alone; you need probable cause only if you are going to make an arrest.
2. If you detain a person for a violent crime (for example, robbery, homicide, or assault) or a crime associated with violence and the possession of weapons (for example, the sale of drugs) you may frisk (patdown the outer shell of his clothing) that person without a second, specific reasonable suspicion he is armed and dangerous.
3. Otherwise, during the detention, if you develop reasonable suspicion that the person with whom you are dealing is armed and dangerous, you may then frisk that person to determine if he has a weapon. Occasions will arise when you have the right to detain, but no right to frisk. If so, you should ask for consent to frisk.
4. A frisk may be made on reasonable suspicion alone; you need probable cause only if you are going to make an arrest, and then you may always perform a search-incident-to-arrest.
5. If you find a concealed weapon during a Terry Stop and Frisk, and it is in violation of the law, you may seize it. You may charge the person with carrying a concealed weapon if such charge is applicable (GS 14-269). Remember that with a carry concealed handgun (CCH) permit some people are authorized to carry a concealed handgun in certain locations within the state. If you approach or address a CCH permit holder, he or she must disclose that fact to you. Failure to do so is an infraction for the first offense (GS 14-415.11), and a Class 2 misdemeanor thereafter.

A FINAL THOUGHT:

Now is as good a time as any to begin a GREAT QUOTES notebook. Enter the two from this case, noting they came from *Terry*. You should keep that notebook available and even memorize a quote or two, now and then. My promise to you is that notebook will come in quite handy more often than you might think. Promise.

Post Script: Alert readers will notice that this first edition of “Great Quotes” was in fact preceded by the second edition of “Great Quotes” (Royer), which was posted back on June 1st. Do not adjust your set. Do not “Ctrl/Alt/Delete” your computer. It was simply a web sequencing error, probably caused by sun spot activity, or maybe Kevin Smith. Thank you.