INVESTIGATIVE ENCOUNTERS
FTO’s role in SQF Training

Remember the goals of the FTO program: mentor, guide, and prepare probationary officers for patrol.

Probationary officers must get practical experience in this area. FTOs must consistently look for appropriate opportunities for his/her PPO to gain actual experience handling street encounters and the documentation required for stops. FTOs must be able to evaluate a PPOs expertise in all 12 areas including SQF.

Stress the importance of tactics and de-escalation techniques.
More on FTO’s role in SQF Training

Consider engaging the Community Partner on the topic

Reinforce the importance of proper documentation

Reinforce the law of SQF in the context of the patrol experience. PPOs must know and remain fresh on the law. So must you....
Racial Profiling

Refers to a police officer’s decision to make a stop or take other law enforcement action motivated even in part on the actual or perceived race, color, ethnicity, or national origin of the person being stopped, and the officer’s decision is not based on a specific and reliable suspect description.
Racial Profiling

• Individuals may not be targeted for stops because they are members of a racial or ethnic group that appears more frequently in local crime suspect data.

• Race may only be considered where the stop is based on a specific and reliable description that includes not just race, age and gender, but other identifying characteristics or information.
Racial Profiling

Administrative Code

- An officer may not make a determination to initiate law enforcement action against an individual based “on actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status. . . rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.”
CONSTITUTIONAL CONSIDERATIONS

**4th Amendment:**
Protegs citizens against unreasonable governmental searches and seizures

**Exclusionary Rule:**
Unlawfully obtained evidence will be suppressed in court
“Fruits of the poisonous tree”
TERRY v. OHIO

A TERRY STOP IS AN ENCOUNTER WITH AN OFFICER WHERE A REASONABLE PERSON WOULD NOT FEEL FREE TO WALK AWAY.

IT IS A SEIZURE UNDER THE FOURTH AMENDMENT

REQUIRES REASONABLE SUSPICION

REASONABLE SUSPICION IS LESS THAN PROBABLE CAUSE, BUT MUST BE INDIVIDUALIZED SUSPICION BASED ON SPECIFIC FACTS

MAY FRISK FOR WEAPONS ONLY IF OFFICER REASONABLY SUSPECTS THAT THE PERSON STOPPED IS ARMED AND DANGEROUS
PEOPLE v. DeBOUR

NYS COURT OF APPEALS CREATED A FOUR TIER ANALYSIS THAT DICTATES LIMITS ON THE LEVELS OF PERMISSIBLE POLICE INTRUSION...

LEVEL 1: REQUEST FOR INFORMATION
LEVEL 2: COMMON LAW RIGHT OF INQUIRY
LEVEL 3: TERRY STOP
LEVEL 4: ARREST
LEVEL 1:
REQUEST FOR INFORMATION

• BASED ON AN OBJECTIVE CREDIBLE REASON
• AND NOT BASED ON CURIOSITY, BIAS, OR INTENDED TO HARASS
• MAY ONLY ASK NON-ACCUSATORY QUESTIONS
  • Public service or law enforcement function
• PERSON MUST FEEL FREE TO LEAVE
• MAY NOT ASK TO SEARCH
LEVEL 2: COMMON LAW RIGHT OF INQUIRY

• FOUNDED SUSPICION THAT CRIMINAL ACTIVITY IS AFOOT

• BASED ON OBSERVABLE CONDUCT OR RELIABLE HEARSAY INFORMATION

• MORE THAN A HUNCH
LEVEL 2: COMMON LAW RIGHT OF INQUIRY

- **CANNOT BE A STOP:** SUBJECT MUST FEEL FREE TO WALK AWAY

- **MAY** ASK POINTED, ACCUSATORY QUESTIONS

- **MAY** CONTINUE TO OBSERVE THE SUBJECT WITHOUT APPROACHING

- **MAY** REQUEST CONSENT TO SEARCH, BUT CONSENT MUST BE VOLUNTARY
LEVEL 1 vs. LEVEL 2

• LEVEL 1
  You have an objective reason to ask for information

• LEVEL 2
  You have information that indicates possible criminal activity
LEVEL 1 and LEVEL 2

• CANNOT use or threaten to use any level of force

• Individuals may refuse to answer, may choose to answer only some questions, and/or may freely walk away

• Individuals MUST feel free to leave

• Refusal to answer questions or walking away does not raise level of suspicion

• Events and observations at Level 1 or Level 2 can elevate the encounter to Level 3
If the stop does not yield probable cause for arrest, stress to your PPO the importance of explaining to the person why he/she was stopped
LEVEL 3: Also Known as TERRY STOP

WHENEVER A REASONABLE PERSON WOULD NOT FEEL FREE TO DISREGARD THE OFFICER AND WALK AWAY...

THAT IS A STOP

- Physical force or threat of force is not necessary to constitute a stop
- If commands or questions would lead a reasonable person to conclude she/he is NOT free to leave, it is a stop

Where can you stop the person?

- Within Geographic Area Of Employment (Five Boroughs) on or off duty
LEVEL 3 STOP

USE OF FORCE:

• Reasonable force may be used to stop or detain

• The type and amount of force used must be objectively reasonable

• Do not handcuff unless:
  • Reasonably suspect the person stopped is armed and dangerous **AND**
  • There is an extraordinary condition adding an element of danger (dark alley, officer alone with multiple suspects)
A stop is permissible only when individualized reasonable suspicion exists that the person stopped has committed, is committing or is about to commit:

- A felony or
- A Penal Law misdemeanor

Officer must be able to articulate specific facts justifying stop.
WHAT IS REASONABLE SUSPICION?

- When the information you have is of such weight and persuasiveness that, based on your judgment and experience, it is reasonable to suspect criminal activity is afoot
- Must be individualized, particularized, objective, and supported by specific facts
- Hunches or gut feelings are not sufficient
LEVEL 3 STOP

SOME FACTORS THAT MAY BE RELEVANT TO REASONABLE SUSPICION:

• Information from an identified informant
• Matching a specific description (not just race, age, gender) of a suspect wanted in a reported crime
• Carrying objects in plain view used in commission of crime (e.g., slim jim, pry bar)
• Actions indicative of “casing” victim or location
LEVEL 3 STOP

SOME ADDITIONAL FACTORS THAT MAY BE RELEVANT TO REASONABLE SUSPICION:

• Actions indicative of acting as a lookout
• Actions indicative of engaging in drug transaction
• Actions indicative of concealing or possessing a weapon
• Proximity to recent known crime scene location
THESE ARE ONLY FACTORS THAT MAY BE RELEVANT IN DETERMINING REASONABLE SUSPICION

ANY ONE FACTOR IN ISOLATION MAY NOT LEAD TO REASONABLE SUSPICION

A GENERIC CRIME SUSPECT DESCRIPTION, BY ITSELF, LIKE “YOUNG BLACK MALE” DOES NOT SUPPORT REASONABLE SUSPICION
INFORMATION FROM AN ANONYMOUS SOURCE:

- REASONABLE SUSPICION CANNOT BE BASED SOLELY ON ANONYMOUS INFORMATION
  - Except exigent circumstances, for example, bomb threats or DWI

- INFORMATION FROM ANONYMOUS SOURCE MUST BE CORROBORATED TO SUPPORT REASONABLE SUSPICION

- ANONYMOUS CALLER MAY SUPPORT LEVEL 2 “FOUNDDED SUSPICION”
LEVEL 3 STOP

INTRUSION

• **MAY** DETAIN SUSPECT FOR A REASONABLE AMOUNT OF TIME

• **MAY** ASK FOR NAME/ADDRESS & EXPLANATION OF CONDUCT, BUT...

• SUSPECT IS **NOT** REQUIRED TO ANSWER AND REFUSAL DOES **NOT** GIVE REASON TO ARREST
LEVEL 3 STOP

QUESTIONING

• MAY ASK POINTED, ACCUSATORY QUESTIONS RELATED TO REASON FOR THE STOP AND PEDIGREE INFO

• MIRANDA WARNINGS NOT REQUIRED

• PERSON MAY REFUSE TO ANSWER

• REFUSAL TO ANSWER IS NOT A REASON FOR ARREST
“STOP” AND “FRISK” ARE TWO DIFFERENT THINGS

CANNOT AUTOMATICALLY FRISK EVERYONE WHO IS LAWFULLY “STOPPED”
LEVEL 3 STOP

A FRISK

FRISK IS ONLY PERMITTED WHEN:

• There is independent reasonable suspicion that the person is armed and dangerous
• Limited pat down of the outside of suspect to check for dangerous weapons
• Cannot be used to search for evidence of a crime, such as drugs
• Cannot go inside of pockets or clothing during frisk
LEVEL 3 STOP

ARMED AND DANGEROUS

- Officer observes a weapon
- Knowledge that suspect may have a weapon
  - Suspect states he/she has a weapon
  - Witness or victim states suspect has a weapon
- Reasonable suspicion of a violent crime
LEVEL 3 STOP

FRISK OF A PORTABLE CONTAINER

• MAY ONLY FRISK PORTABLE CONTAINER THAT IS (A) WITHIN GRASP OF SUSPECT, (B) COULD CONTAIN A WEAPON, AND (C) UNLOCKED

• FRISK BY SQUEEZING THE CONTAINER OPEN ONLY IF YOU FEEL WEAPON

• IF CONTAINER IS SOLID, MAY OPEN TO DETERMINE WHETHER WEAPON IS PRESENT
SEARCH

A SEARCH IS THE PLACING OF HANDS INSIDE A POCKET OR OTHER INTERIOR PART OF CLOTHING OR POSSESSIONS

IT IS ONLY PERMITTED TO REMOVE OBJECT FELT DURING FRISK THAT YOU REASONABLY SUSPECT TO BE A WEAPON

PURPOSE IS FOR OFFICER SAFETY NOT TO DISCOVERY OTHER EVIDENCE OF CRIME
LEVEL 4: ARREST

ARREST REQUIRES PROBABLE CAUSE

PROBABLE CAUSE EXISTS WHEN FACTS AND CIRCUMSTANCES WOULD LEAD A REASONABLE PERSON TO BELIEVE:

• AN OFFENSE HAS BEEN COMMITTED AND

• THE PERSON TO BE ARRESTED COMMITTED IT
STOP REPORT

• PREPARE ONE STOP REPORT FOR EACH PERSON STOPPED
  • A Stop Report IS NOT REQUIRED FOR LEVEL 1 OR LEVEL 2 ENCOUNTERS

• IF PERSON STOPPED REFUSES TO ID HIM/HERSELF, REQUEST PATROL SUPERVISOR TO VERIFY
  • Person is not to be detained while waiting for patrol supervisor
REQUIRED ACTIVITY LOG ENTRIES

DETAILED ACTIVITY LOG ENTRY MUST BE MADE FOR EACH PERSON STOPPED

MUST INCLUDE:

• Pedigree
• Time, date, and location
• Suspected felony/penal law misdemeanor
• ICAD event number
• Detailed description of reasons for the stop/frisk/search
REQUIRED ACTIVITY LOG ENTRIES

• Describe all facts and information relied upon to determine that there was reasonable suspicion

AND

• In case of frisk, describe the facts and information relied upon to determine that there was reasonable suspicion that the person stopped was armed and dangerous

• In case of search, describe area searched and basis for suspecting that object felt during frisk resembled a weapon
Mere presence near, entry into, or exit out of a TAP or NYCHA building is **not** an objective credible reason to approach an individual.

If an officer has an **objective credible reason** to approach an individual, he/she may approach the individual to ask:
- If he or she lives in the building
- If he or she is visiting someone in the building
- If he or she has business in the building

These questions can only be asked if they are related to the reason for the approach and if they are asked in a non-threatening and non-accusatory matter.
POLICING HOUSING FACILITIES
TAP & NYCHA BUILDINGS

Based on answers to questions in an initial encounter, an officer may take measures to verify authority to be present in a building

- Inspect and return I.D.
- Request key to building or apartment
- Request apartment number where person resides or is visiting
- Communicate with building resident
- Ask person to call a resident

Individual may leave the building, unless officer has reasonable suspicion to detain; leaving the building, remaining silent or refusing to answer questions does not support reasonable suspicion
CRIMINAL TRESPASS

- If unable to verify authority to be the building, officer may instruct person that he or she must leave the building, and that refusal may result in arrest for Criminal Trespass

- If still unable to determine authority to be in the building and person refuses to leave the building, officer make arrest, per P.G. 208-1 Law of Arrest