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Following the Script: Narratives of Suspicion in *Terry* Stops in Street Policing

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Regulation of Terry *stops of pedestrians by police requires articulation of the reasonable and individualized bases of suspicion that motivate their actions. Nearly five decades after* Terry, *courts have found it difficult to articulate the boundaries or parameters of reasonable suspicion. The behavior and appearances of individuals combine with the social and spatial contexts in which police observe them to create an algebra of suspicion. Police can proceed to approach and temporarily detain a person at a threshold of suspicion that courts have been unable and perhaps unwilling to articulate. The result has been sharp tensions within Fourth Amendment doctrine as to what is reasonable, why, and in what circumstances. The jurisprudence of suspicion is no clearer today than it was in the aftermath of* Terry. *This issue has taken center stage in both litigation and policy debates on the constitutionality of the stop-and-frisk policing regime in New York City. Under this regime, police state the bases of suspicion using a menu of codified stop rationales with supplemental text narratives to record their descriptions of suspicious behaviors or circumstances that produced actionable suspicion.*

Evidence from 4.4 million stops provides an empirical basis to assess the revealed preferences of police officers as to the bases for these Terry *stops. Analyses of this evidence reveal narratives of suspicion beyond the idiosyncrasies of the individual case that police use to justify their actions. First, we identify patterns of articulated suspicion. Next, we show the individual factors and social conditions that shape how those patterns are applied. We also show how patterns evolve over time and become clearer and more refined across a wide range of police stops. That refinement seems to follow the capacious interpretative room created by four decades of post-*Terry *Fourth Amendment jurisprudence. Next, we assess the extent of constitutional compliance and examine the neighborhood and individual factors that predict noncompliance. The results suggest that the observed patterns of narratives have evolved into shared narratives or scripts of suspicion, and that these patterns are specific to suspect race and neighborhood factors. We conclude that scripts are expressions of the norms within the everyday organizational exercise of police discretion and that these scripts defeat the requirement of individualization inherent in case law governing Fourth Amendment stops.*

I. POLICING SUSPICION

A. Double Power

In 2009, the Italian philosopher Giorgio Agamben offered a useful dichotomy for thinking about how power operates in the hands of the state.[1] In one version, state power seeks to limit our freedom to engage in certain behaviors that may produce social harms. It is obvious that the police exercise state power to sanction such prohibited behaviors. But state power also limits the ways in which legal authorities can perform those tasks. The state does this through a complicated regulatory regime— enforced primarily by the courts but also through democratic and political regulation—that covers virtually all aspects of police power.

But there is another form of state power that works somewhat differently; it "affect[s]" what legal authorities "cannot do, or better, can *not* do."[2] That is, state power sometimes creates imperatives to act under certain conditions and regulates the instances in which that power can be declined. In the modern policing era, police are obligated to intercede with people and in situations when they perceive risks or realities of criminal activity. These obligations may trump traditional police discretion and lead to action when police might otherwise choose to use less intrusive or coercive forms of their authority. At stake in this second version of power is not so much what police can do but the limits on their capacity *not* to make use of their power. In the past decade, this double power has created tensions in modern policing that have spilled over into litigation regarding the authority of the police to interfere with citizens and temporarily seize them for questioning without either reasonable suspicion or probable cause.

The modern apparatus for regulating these tensions is the Fourth Amendment. Use of this apparatus first appeared in *Terry v Ohio*,[3] in which the Supreme Court lowered the standard for a police intervention from *probable cause* to a newer and proceduralized concept of *reasonable and articulable suspicion.*[4] On

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[1]   See Giorgio Agamben, *Nudities* 43–45 (Stanford 2011) (David Kishik and Stefan Pedatella, trans).

[2]   Id at 43 (emphasis added).

[3]   392 US 1 (1968).

[4]   Id at 33.

the surface, *Terry*'s goals were simple: determine a set of proce-
dural rules that would control discretion while avoiding the
temptations of extralegal police encounters. *Terry* created a very
difficult balancing act for police officers and their supervisors:
safeguard the interests of citizens from unwarranted invasions
of their privacy or liberty, yet impose restrictions on those free-
doms in the interest of maintaining security and controlling
crime.[5]

Terry's rules formed the reasonableness core of a new re-
gime governing what police *can* do and when. The doctrine was
part of a larger social and legal project to constrain police power
in a way that would made it politically and constitutionally ac-
countable, particularly when police power is used against those
who were policed most often and most intensively. Under *Terry*,
the police are required to articulate specific indicia of suspicion,
and those indicia must be sufficiently salient to justify police
action.[6]

Modern policing creates that second tension: animating
practices that tell police what they can *not* do. Policies such as
proactive policing,[7] order-maintenance policing,[8] and stop-and-
frisk[9] encourage, if not incentivize or even demand, police to

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[5]   See John Q. Barrett, *Deciding the Stop and Frisk Cases: A Look Inside the Su-
preme Court's Conference*, 72 St John's L Rev 749, 839 (1998) (concluding that "[m]any
thus think of *Terry* and the law of 'stop and frisk' as . . . a sensible balancing of public
interests in law enforcement against relatively lesser intrusions on personal freedom").

[6]   See *Terry*, 392 US at 21–23.

[7]   Proactive policing instantiates the notions of criminal archetypes by encouraging
police interdiction with persons whom the police decide *could* be committing a crime, al-
beit without explicit markers or indicia of suspicion. It anticipates the one-off interven-
tion into a crime in progress in the *Terry* case. For further descriptions of proactive polic-
ing, see, for example, Charis E. Kubrin, et al, *Proactive Policing and Robbery Rates
across US Cities*, 48 Crimin 57, 62 (2010); Jacqueline Cohen and Jens Ludwig, *Policing
Crime Guns*, in Jens Ludwig and Philip J. Cook, eds, *Evaluating Gun Policy: Effects on
Crime and Violence* 217, 217–18 (Brookings 2003) (discussing "targeted policing pro-
grams" designed to proactively deter gun violence); Robert J. Sampson and Jacqueline
Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*,
22 L & Society Rev 163, 164–66 (1988).

[8]   For descriptions of order-maintenance activities, see Debra Livingston, *Police
Discretion and the Quality of Life in Public Places: Courts, Communities, and the New
Policing*, 97 Colum L Rev 551, 558–60 (1997); Bernard E. Harcourt, *Reflecting on the
Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows
Theory, and Order-Maintenance Policing New York Style*, 97 Mich L Rev 291, 298–99
(1998) ("Order-maintenance policing . . . facilitates the very policy of aggressive arrests
for minor disorderly conduct.").

[9]   See generally Tracey L. Meares, *The Law and Social Science of Stop and Frisk*,
10 Ann Rev L & Soc Sci 335 (2014); David Keenan and Tina M. Thomas, *An*

interdict and temporarily seize citizens on thin or subjective bases of suspicion. For example, in a secretly recorded stop in New York City in 2010, a young man named Alvin Cruz asked an officer why he had been stopped. The officer responded: "Cause you keep looking back at us."[10] Cruz's stop is an example of the narrowing of discretion by police officers to take action based less on articulable signs of suspicion than on the very "hunches" or "inchoate and unparticularized suspicion" that *Terry* rejected.[11] The Cruz stop illustrates how, under an expansive definition of "suspicion," police have little choice about what they can *not* do: exercise discretion to avoid contact when suspicion is weak. Administratively, the demand for a steady flow of stops creates sanctions for police officers whose activity falls below the new benchmark.[12]

This Essay examines how officers form and apply suspicion under the conditions that expanded the *Terry* design,[13] as well as in policy regimes that narrow the discretion to act on promiscuously formed notions of suspicion. Through the expansion of the constitutional bases for permissible street interventions, coupled

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Offense-Severity Model for Stop-and-Frisks, 123 Yale L J 1448, 1460–62 (2014). For a broader discussion of the costs of aggressive policing of minor offenses, see generally K. Babe Howell, *From Page to Practice and Back Again: Broken Windows Policing and the Real Costs to Law-Abiding New Yorkers of Color*, 34 NYU Rev L & Soc Change 439 (2010).

[10] The Nation, *The Hunted and the Hated: An Inside Look at the NYPD's Stop-and-Frisk Policy* (Oct 9, 2012), online at http://www.youtube.com/watch?v=7rWtDMPaRD8 (visited Feb 16, 2015). Cruz also said that he had been stopped many times and was hypervigilant and fearful when he was walking in public and spotted officers. Later on during the encounter, Cruz was asked whether he wanted to go to jail. He responded by asking for the reason why the officers were arresting him. One replied: "For being a fucking mutt!" Id.

[11] *Terry*, 392 US at 22, 27.

[12] In New York City, institutional pressures urged officers to increase the number of *Terry* stops as a prophylactic measure against crime. The pressures included threats of sanctions for officers whose "productivity" was low, based on the evaluations of their supervising sergeants. See Graham A. Rayman, *The NYPD Tapes: A Shocking Story of Cops, Cover-Ups, and Courage* 43, 64, 182, 236 (Palgrave Macmillan 2013) (detailing how police supervisors threatened officers with workplace sanctions if they did not meet quotas for stops and arrests). See also John Del Signore, *Police Union Delegate Caught on Tape Demanding Cops Meet Quotas* (Gothamist, Mar 19, 2013), archived at http://perma.cc/66P6-FD4M (citing statements taped at a police precinct by Officer Adil Polanco, who was later the victim of retaliation from his superiors for publicly revealing the quota demands).

[13] See Brief for the United States as Amicus Curiae, *Terry v Ohio*, No 67, *11–12 (US filed Nov 29, 1967) (available on Westlaw at 1967 WL 93603) (enumerating particular factors that police should consider before conducting a street stop or field interrogation).

with the narrowing of discretion to *not* act, officers have developed recurring narratives or scripts of suspicion to satisfy administrative review of their actions and the rare instances of constitutional challenges to contemporary practices. We begin with a discussion of the intersection of Fourth Amendment reasonableness doctrine and the social psychology of scripted behaviors. We then examine the development of such scripts in the context of New York City's aggressive "Stop, Question, and Frisk" (SQF) policing regime, focusing on the past decade's policing, which led to constitutional litigation and a court order mandating regulatory reforms.[14]

B. Suspicion

A series of US Supreme Court cases over four decades expanded *Terry*'s reach and inflated its originally narrow concept of individualized and reasonable suspicion.[15] Today, neither courts nor social scientists know very much about how officers really form suspicion under the expanded *Terry* doctrine, how they crystallize specific behaviors to reach a threshold of actionable suspicion, or for which groups of persons that suspicion most often arises. Race complicates the mix; beyond the suspect's race, the particular social and neighborhood contexts in which police have everyday contact with non-Whites also influence the formation of suspicion.[16] In other words, what appears suspicious to the average police officer about the behavior of a Black person may seem less suspicious or even neutral for a similarly situated White person.[17]

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[14] For discussions of the history and practice of the SQF regime, see generally Jeffrey Bellin, *The Inverse Relationship between the Constitutionality and Effectiveness of New York City "Stop and Frisk"*, 94 BU L Rev 1495 (2014); Meares, 10 Ann Rev L & Soc Sci 335 (cited in note 9); David A. Harris, *Across the Hudson: Taking the Stop and Frisk Debate beyond New York City*, 16 NYU J Legis & Pub Pol 853 (2013).

[15] See William J. Stuntz, Terry's *Impossibility*, 72 St John's L Rev 1213, 1213–15, 1217 (1998) (arguing that any attempt to legally regulate street policing is prone to error since courts are incapable of systematically accounting for the realities of why police engage in certain types of behaviors).

[16] See, for example, David S. Kirk, *The Neighborhood Context of Racial and Ethnic Disparities in Arrest*, 45 Demography 55, 73–74 (2008) (showing empirically that social context explains racial and ethnic disparities in arrests and that the race-specific social and political features of neighborhood residential patterns explain variations in criminal outcomes).

[17] See *Floyd v City of New York*, 959 F Supp 2d 540, 580–81 (SDNY 2013).

The reality of how police form suspicion may be far simpler than the *Terry* Court envisioned. Professor Jerome Skolnick, riding with police in the 1960s, identified the archetype of the *symbolic assailant* that police called on to decide whom to put under their gaze: the person who used certain gestures or wore certain attire that police saw as predicates of criminal activity.[18] In ethnographic research in the 1970s, Professor John Van Maanen showed that police classify people into three categories: "suspicious persons," or those who police have a reason to believe may have committed a serious offense; "assholes," or those who do not accept the police definition of the situation and fail to give deference to the police; and "know nothings," or those who are not in either of the first two categories but are not police and therefore cannot understand what police do or why they do it.[19] Suspicious persons are particularly recognizable by their appearance and behavior in public areas, especially for their furtive and nonroutine movements.

In addition to examining behavioral indicia of suspicion, Professors Rod Brunson and Ronald Weitzer showed the importance of appearance and social expectations. In their street research on police-citizen encounters in and around St. Louis, being out of place and defying racial boundaries aroused police suspicion and, at times, verbal and physical aggression by police.[20] In an observational study of police, Professors Irving Piliavin and Scott Briar reported that appearances conforming to a delinquent stereotype often animated officers to initiate a street detention and interrogation, often in the absence of any

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[18] See Jerome H. Skolnick, *Justice without Trial: Law Enforcement in Democratic Society* 45–47 (John Wiley 1966). Skolnick cites an article by Thomas Adams, a "police expert," that summarizes the characteristics that make persons suspicious enough to merit a field interrogation, including automobiles that do not "look right," persons out of place, known troublemakers, persons who evade or avoid the officer, persons wearing a coat on a hot day, persons near a crime scene, and persons who are visibly rattled by a policeman. See Thomas F. Adams, *Field Interrogation*, 7 Police 26, 28 (Mar–Apr 1963).

[19] John Van Maanen, *The Asshole*, in Peter K. Manning and John Van Maanen, eds, *Policing: A View from the Street* 221, 223 (Goodyear 1978).

[20] See Rod K. Brunson and Ronald Weitzer, *Police Relations with Black and White Youths in Different Urban Neighborhoods*, 44 Urban Affairs Rev 858, 866–68 (2009) (reporting that White youths who were spotted in certain Black neighborhoods were viewed suspiciously by officers, and that the risk was greatest when the White youths were in mixed-race company or wearing what was deemed racially inappropriate clothing). See also generally Victor M. Rios, *Punished: Policing the Lives of Black and Latino Boys* (NYU 2011).

evidence that a crime had taken place.[21] One police officer told them that he had stopped and questioned a youth who looked "suspicious."[22] The officer said that this young man was suspicious because he was "a Negro wearing dark glasses at midnight."[23] These officers simply assumed from departmental statistics that youths who "look tough" committed crimes more often and that this justified their heightened suspicion.[24] For these officers, actuarial suspicion was sufficient to justify a street detention.

In fact, officers in the decades prior to *Terry* were rarely trained on the specific indicia of suspicion and were granted broad discretion when deciding whether to use their full authority. Professor Joseph Goldstein cited a New Mexico statute, stating that police were granted broad discretion with the duty to enforce only "if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken."[25] Goldstein also cited the Introduction to the Atlanta (Georgia) Police Department Rules and Regulations, which includes an affirmation by officers declaring that their "eyes must be open to . . . slinking vice in back streets and dives . . . [and] the suspicious appearance of evil wherever it is encountered."[26] Despite *Terry* and four decades of expansion of the concept of reasonable suspicion, there has been little progress toward articulation of behavioral indicia that can, ex ante, inform police discretion. One of our students, a former NYPD officer, complains that "we are trained how to make stops, not when to make them."

More recently, Professor Geoffrey Alpert and his colleagues showed that police on patrol are more likely to view a minority citizen as suspicious based on nonbehavioral cues—location, associations, and appearances—while relying more often on

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    21   Irving Piliavin and Scott Briar, *Police Encounters with Juveniles*, 70 Am J Sociology 206, 212–13 (1964) (discussing how police officers decide to initiate encounters with juveniles, and describing the factors that motivate those encounters and explain their outcomes).

    22   Id at 212 n 22.

    23   Id.

    24   Id at 212 (describing "look[ing] tough" as including wearing "chinos, leather jackets, boots, etc").

    25   Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 Yale L J 543, 557 n 26 (1960), citing NM Stat Ann § 39-1-1 (1954) (emphasis omitted).

    26   Goldstein, 69 Yale L J at 559 (cited in note 25).

behavioral cues to develop suspicion for White citizens.[27] Professors Jon Gould and Stephen Mastrofski observed police stops and searches and concluded that officers based nearly half of them on constitutionally insufficient criteria.[28] Professor Bernard Harcourt went deeper into the Gould-Mastrofski data to show how an institutional account of policing at the intersection of drug profiling and community policing helped create narratives that served as pretexts to justify decisions about whom to search and how the search should unfold.[29]

In recent years, case law has expanded the logic and substance of reasonable suspicion. For example, *Illinois v Wardlow*[30] broadened the boundaries of suspicion to allow consideration of a person's presence in a "high crime area."[31] But *Wardlow* and other cases left unsettled exactly what constitutes a high crime area[32] and how police are to factor location into individualized behavioral indicia of suspicion such as "casing." In fact, there is no constitutional consensus as to *how much* suspicion is needed to give rise to reasonable suspicion.[33] Nor are there substantive

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27   See Geoffrey P. Alpert, John M. MacDonald, and Roger G. Dunham, *Police Suspicion and Discretionary Decision Making during Citizen Stops*, 43 Crimin 407, 422–23 (2005) (showing that whether a suspect is Black influences an officer's decision to form suspicion based on nonbehavioral versus behavioral cues).

28   Jon B. Gould and Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior under the US Constitution*, 3 Crimin & Pub Pol 315, 325, 330, 333, 345–46 (2004) (showing that officers violated Fourth Amendment standards for searches in 46 percent of a sample of 44 searches and 571 encounters, based on ratings of researcher-generated narratives, a sample of which were checked by a panel of defense lawyers, prosecutors, and retired judges, who agreed with 90 percent of the researcher's assessments).

29   See Bernard E. Harcourt, *Unconstitutional Police Searches and Collective Responsibility*, 3 Crimin & Pub Pol 363, 366–67 (2004) (describing how community policing officers invoked a drug-enforcement rationale to stop a suspect without any indicia of drug use or possession and proceeded to conduct a fruitless cavity search).

30   528 US 119 (2000).

31   Id at 124–25 (determining that flight from the police in a "high crime area" could constitute reasonable suspicion for a stop). See also Bernard E. Harcourt and Tracey L. Meares, *Randomization and the Fourth Amendment*, 78 U Chi L Rev 809, 862–64 (2011) (using data from studies of street stops to explore the empirical implications of *Wardlow*).

32   For example, the Ninth Circuit has held that "more than mere war stories [from police testimony] are required to establish the existence of a high-crime area" and that courts must "examine with care the specific data underlying any such assertion." *United States v Montero-Camargo*, 208 F3d 1122, 1139 n 32 (9th Cir 2000). See also *United States v Bonner*, 363 F3d 213, 218–19 (3d Cir 2004) (Smith concurring) (discussing possible burdens of proof for establishing that an area is "high crime").

33   See *Camara v Municipal Court*, 387 US 523, 536–37 (1967) ("Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.").

indicia to prioritize or weigh which behaviors or factors matter; the courts have said only that these indicia must be *reasonable*. Some courts have argued for an outcomes test, but there too, there is no agreement on what constitutes an acceptable "hit rate" that satisfies the reasonableness standard across cases.[34]

Telling police what they can *not* do with respect to stops has pushed the boundaries of both reasonableness and suspicion beyond what the *Terry* Court may have envisioned as a set of workable rules implemented by experienced police. The configuration of *Terry* and its progeny tends to assume that there is a threshold of suspicion that renders police action constitutionally permissible. Suspicion in this formulation thus becomes a hurdle model, or a binary category, in which the stop is either constitutional or not.[35] Courts worry more than the police about whether there is enough suspicion to get over that hurdle and satisfy the "individualized" suspicion test. And the elasticity of the *Terry* standards complicates the job of courts to regulate those decisions.

So the determination of suspicion, and whether the quantity of suspicion is enough to motivate action, is now about subjective and probabilistic assessments of capricious signs that, in *Terry*'s language, "criminal activity may be afoot."[36] Suspicion has become the application of ex ante factors of what suspicion *ought* to look like in a particular circumstance. Still, contemporary standards do not really tell a police officer doing modern police work how much suspicion is enough to satisfy constitutional standards.[37] Officers are left to the extremes of roll call training on the one hand and litigation challenges on the other to define

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[34] In *Navarette v California*, 134 S Ct 1683 (2014), Justice Antonin Scalia suggested that at least 5, if not 10 percent, of the entire universe of incidents would need to be an accurate "hit" to be indicative of reasonable suspicion. Id at 1695 (Scalia dissenting). According to Scalia, absent such a showing, the basis of suspicion is not *reasonable* without further information. A similar outcomes test was considered in *Floyd* to claim that the police were so often wrong in the bases of suspicion for their stops that those bases were faulty. See *Floyd*, 959 F Supp 2d at 559, 575 (pointing to the fact that "[t]he rate of arrests arising from stops is low . . . and the yield of seizures of guns or other contraband is even lower," and noting "that the City's attempt to account for the low rate of arrests and summonses following stops was not persuasive").

[35] See Harcourt and Meares, 78 U Chi L Rev at 811 (cited in note 31).

[36] *Terry*, 392 US at 30.

[37] See notes 7–9. See also Tracey L. Meares, *Programming Errors: Understanding the Constitutionality of Stop and Frisk as a Program, Not an Incident*, 82 U Chi L Rev 161, 172–76 (2015).

a space in which their actions comport with the shifting territory of the Fourth Amendment.[38]

Those who would regulate the use of these standards have to apply good faith assumptions that the officer is accurately reconstructing the triggers and clues that move her action beyond merely a hunch. When officers do articulate their bases of suspicion, they often do so after the fact—after the contact is resolved one way or another and sometimes after a further delay.[39] This allows the emotional baggage of both the officer's individual perceptions and the aftermath of the interaction to carry over. Recording therefore happens after there has been some level of emotional arousal—which often happens in the company of peers and supervisors who may weigh in on the interaction[40]— and well after the original bases of suspicion have been validated or not. Telescoping and other cognitive distortions come into play as officers try not only to reconstruct their own thinking but also to accurately portray the actions and settings of an individual in a moment of salience, if not arousal.[41]

So, how much can we trust the accuracy and neutrality of these "accounts" of perception, cognition, and decisionmaking? It is hard to come up with a clear answer to this question since there is little opportunity for observing police behaviors other than real-time recording. While there have been experimental studies on police reactions to provocative situations,[42] there is less data about the everyday encounters that make up much of modern police work in an era of proactive engagement and

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[38] See Corey Fleming Hirokawa, *Making the "Law of the Land" the Law on the Street: How Police Academies Teach Evolving Fourth Amendment Law*, 49 Emory L J 295, 319–31 (2000).

[39] See *Floyd*, 959 F Supp 2d at 578 (noting that the UF-250 forms used to record *Terry* stops are "prepared by officers shortly after the stops," and discussing the form's flaws, including that it is "one-sided" and "not always prepare[d]").

[40] See The Nation, *The Hunted and the Hated* (cited in note 10). In the video, the sergeant can be heard in the background at several points over the course of the stop escalating the tension by interpreting Alvin's responses as challenging the officer's authority.

[41] See George D. Gaskell, Daniel B. Wright, and Colm A. O'Muircheartaigh, *Telescoping of Landmark Events: Implications for Survey Research*, 64 Pub Op Q 77, 77–87 (2000); David C. Rubin and Alan D. Baddeley, *Telescoping Is Not Time Compression: A Model of the Dating of Autobiographical Events*, 17 Memory & Cognition 653, 653–55 (1989).

[42] See, for example, Modupe Akinola and Wendy Berry Mendes, *Stress-Induced Cortisol Facilitates Threat-Related Decision Making among Police Officers*, 126 Behavioral Neuroscience 167, 172–73 (2012) (showing that officers' thresholds for shooting at suspects vary according to their biologically measured stress in the immediate situation).

stop-and-frisk. The inherent limitations in accurate accounting of what constitutes reasonable suspicion suggest some caution in offering generalizations about what we might call the "cognitions of suspicion."

C. Stop-and-Frisk as Police Actuarialism

The dilution and recasting of suspicion after *Terry* took place in the same era as developments in the practice of policing that curtailed officer discretion and mandated police action regardless of the circumstances.[43] Stop-and-frisk tactics are the natural successor to the new policing regimes, from broken windows theory[44] to order-maintenance policing (OMP),[45] hot spots policing,[46] and proactive policing.[47]

Stop-and-frisk as envisioned by the *Terry* Court was largely a set of distinct "retail" transactions, characterized by individualization, material or visual indicia, and specificity. But the current "wholesale" practice is quite different from the vision of the *Terry* Court.[48] It incorporates elements of OMP by substituting social disorder for suspicion of imminent or current criminal activity. It incorporates elements of hot spots by privileging high crime neighborhoods with saturated enforcement in the search

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[43]   See Philip B. Heymann, *The New Policing*, 28 Fordham Urban L J 407, 441 (2000). See also note 12.

[44]   See generally James Q. Wilson and George L. Kelling, *Broken Windows*, Atlantic Monthly 29 (Mar 1982) (suggesting that social and physical disorder in neighborhoods is strongly linked to crime rates in those places). See also Wesley G. Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* 65–124 (Free Press 1990). But see Harcourt, 97 Mich L Rev at 302–05 (cited in note 8).

[45]   See Livingston, 97 Colum L Rev at 562–91 (cited in note 8) (arguing that social disorder such as loud music, boisterous street behavior, and petty criminal activity are signals of more serious crime and should be met by police with street detentions if not arrests). Arrests based on probable cause for minor crimes simplify the task of more-intrusive interactions during these encounters, including searches for weapons or contraband, or warrant checks for scofflaws or fugitives. See generally Brief of Dr. Ian Ayres, Dr. Jeffrey Fagan, Dr. Richard Rosenfeld, Anthony Thompson, Dr. Geoffrey Alpert, David Rudovsky, Dr. Andrew Gelman, Dr. Bernard Harcourt, Dr. Robert Crutchfield, Dr. Christopher Winship, Dr. Peter Siegelman, Dr. David Greenberg, Dr. Justin Wolfers, and Tracey Meares as Amici Curiae in Support of Petitioner, *Faulkner v United States*, No 11-235 (US filed Sept 23, 2011) (available on Westlaw at 2011 WL 4479100).

[46]   See Wesley Skogan and Kathleen Frydl, eds, *Fairness and Effectiveness in Policing: The Evidence* 237–40 (National Academies 2004) (describing the nuances that distinguish policing strategies and tactics that focus on specific places).

[47]   See note 7.

[48]   See generally Meares, 82 U Chi L Rev 161 (cited in note 37).

for suspicious activity that may signal crime.[49] Individualized suspicion is thin and diluted, predicated not just on signs of social disorder but also on metrics that assign suspicion to people collectively in places based on crime rates. In effect, individualized suspicion defaulted to appearance-based regulation and actuarial logic.[50] The "specific and articulable facts" that Chief Justice Earl Warren required in *Terry* are lost in an actuarial matrix of collective suspicion. Suspicion, then, has broadened into an exercise in Bayesianism, actuarial profiling, and prospect theory in action.[51]

Imagine, then, how *individualized* suspicion is constructed when police are mandated through institutional pressures to maximize stops. The answer is that it is not. Just as stops have become an administrative regime, so too has suspicion become a de-individuated feature of the encounter. In New York City, approximately 19,000 patrol officers made nearly 5 million street stops from 2004 to 2013, rising from fewer than 100,000 in 2003 to over 685,000 in 2011, before tapering off in late 2012 through 2013.[52] Most stops were concentrated in a relatively small number of neighborhoods with high crime rates, concentrations of non-White residents, and severe socioeconomic disadvantage.[53] The mandate for ever-increasing stops thus created a demand for narratives of suspicion to justify those stops. But throughout this period, serious crime was declining sharply in New York

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[49] The hot spots regime anticipated very small spaces where there would be recurring crime. But these are assessed by its proponents as street segments or intersections. See, for example, David Weisburd, et al, *Trajectories of Crime at Places: A Longitudinal Study of Street Segments in the City of Seattle*, 42 Crimin 283, 291, 294 (2004) (showing the recurring, disproportionate concentrations of crime in very small areas in Seattle). Instead, stop-and-frisk regimes target large residential and occasionally commercial areas, eschewing the microscopic perspective on specific locations. See Report of Jeffrey Fagan, PhD, *Floyd v City of New York*, 08 Civ 01034 (SAS), *11, 32 (SDNY filed Oct 15, 2010) ("Fagan Report").

[50] See Robert J. Sampson, *When Things Aren't What They Seem: Context and Cognition in Appearance-Based Regulation*, 125 Harv L Rev F 97, 99–102 (2012). See also Adam M. Samaha, *Regulation for the Sake of Appearance*, 125 Harv L Rev 1563, 1620–34 (2012).

[51] See generally Nicholas C. Barberis, *Thirty Years of Prospect Theory in Economics: A Review and Assessment*, 27 J Econ Persp 173 (2013); Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux 2011); Daniel Kahneman and Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, 47 Econometrica 263 (1979).

[52] *The Stop, Question and Frisk Data* (New York City Police Department, 2015), archived at http://perma.cc/AKK3-24DN. Original analyses are available from the authors.

[53] See Fagan Report at *11, 32, 36–38 (cited in note 49).

City.[54] The prerequisite of individualized suspicion, then, conflicted with the dwindling supply of available criminal activity. In the face of actuarial suspicion, how was individualized suspicion managed? From the experience with stop-and-frisk in New York City, our Essay suggests an answer to this question.

D.   Scripting Suspicion

In three out of four street stops in New York City, police observe a suspect for less than two minutes before proceeding to what state law[55] defines as an "intrusion."[56] The stop requires officers to perform a quick perceptual and cognitive sorting of complicated and highly contextualized information that shapes the initial evaluations of suspicion. As the interaction unfolds, this sorting is modified and narrowed through interactions and exchanges between the suspect and the officer(s). The setting in which the interaction takes place—location, time of day, presence of bystanders, local social and crime conditions, and personal baggage that each party brings to the event—interacts with the details of the event to shape the verbal and perhaps physical exchanges that take place, the decisions within the event and its outcome, and how the event is perceived and reconstructed once it concludes.

The question for this Essay is whether individualized suspicion gives way to the convenience of cognitive or perceptual scripts—stylized narratives of suspicion—when police discretion narrows to limit what police can *not* do, or, in other words, to mandate what they are obligated within their command structure *to* do. Scripts are handy conveniences to manage complex cognitive tasks, especially when those tasks become burdensome in the face of both administrative demands and the need to articulate a basis for action.

What, then, is a script? Script theory offers a way of generalizing, organizing, and systematizing knowledge about the processual aspects and requirements of recurring events. The

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[54] See Joseph Goldstein, *Safer Era Tests Wisdom of "Broken Windows" Focus on Minor Crime*, NY Times A1 (July 25, 2014). See also Franklin E. Zimring, *The City That Became Safe: New York's Lessons for Urban Crime and Its Control* 6–7 (Oxford 2012).

[55] See *People v De Bour*, 352 NE2d 562, 571–72 (NY 1976). In contrast to the two-stage inquiry developed in *Terry*, *De Bour* articulates four levels of suspicion correlated with four levels of justified intrusion. See also *People v Hollman*, 590 NE2d 204, 205 (NY 1992).

[56] See note 52.

theory borrows heavily from cognitive psychology and was best
articulated by Professor Robert Abelson in 1976.[57] For Abelson, a
"script" is a cognitive structure or framework that organizes a
person's understanding of typical situations, allowing the person
to have expectations and to make conclusions about the poten-
tial result of a set of events.[58] Script theory has been widely used
in social psychology to identify patterns of decisionmaking and
social interaction that persist among persons within social net-
works.[59] Professor Derek Cornish regards scripts not only as or-
ganizing tools for connecting events but also as procedural tools
for decisions about how to proceed within events.[60]

Over time, these ideas and scripts become socially conta-
gious within and then across social networks, spreading from
person to person and across nodes of people.[61] In this case, we
might hypothesize that there are memes of suspicion among

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[57] See generally Robert P. Abelson, *Script Processing in Attitude Formation and
Decision Making*, in John S. Carroll and John W. Payne, eds, *Cognition and Social Be-
havior* 33 (Lawrence Erlbaum 1976).

[58] See id at 33–34. See also generally Robert P. Abelson, *Psychological Status of the
Script Concept*, 36 Am Psychologist 715 (1981).

[59] See generally, for example, Abelson, 36 Am Psychologist 715 (cited in note 58).
Script theory can explain contagion in several ways. See Jeffrey Fagan, Deanna L. Wil-
kinson, and Garth Davies, *Social Contagion of Violence*, in Daniel Flannery, Alexander
T. Vazsonyi, and Irwin D. Waldman, eds, *The Cambridge Handbook of Violent Behavior
and Aggression* 688, 691 (Cambridge 2007):

> (1) Scripts are ways of organizing knowledge and behavioral choices; (2) indi-
> viduals learn behavioral repertoires for different situations; (3) these reper-
> toires are stored in memory as scripts and are elicited when cues are sensed in
> the environment; (4) the choice of scripts varies among individuals, and some
> individuals will have limited choices; (5) individuals are more likely to repeat
> scripted behaviors when the previous experience was considered successful; (6)
> scripted behavior may become "automatic" without much thought or weighing
> of consequences; and (7) scripts are acquired through social interactions among
> social network members.

Within structurally equivalent networks, such as professions or unions, similarly situat-
ed people are likely to influence or adopt behaviors from one another that can make
those people and their ideas more attractive as a source of further relations. See id
at 692.

[60] See Derek Cornish, *The Procedural Analysis of Offending and Its Relevance for
Situational Prevention*, in Ronald V. Clarke, ed, 3 *Crime Prevention Studies* 151, 157–59
(Criminal Justice 1994). Cornish's "script" focuses in detail on the step-by-step proce-
dures of committing crime that are learned, stored in memory, and enacted when situa-
tional cues are present. See id at 155–59.

[61] See Deanna L. Wilkinson and Jeffrey Fagan, *The Role of Firearms in Violence
"Scripts": The Dynamics of Gun Events among Adolescent Males*, 59 L & Contemp Probs
55, 65 (1996). See also Fagan, Wilkinson, and Davies, *Social Contagion of Violence* at 691
(cited in note 59).

police that are articulated through repetition and practice, valued for their utility within social networks, and then adopted and applied in a probabilistic way to a set of recognizable circumstances and situations.

Police ethnographers in the decade bookending the *Terry* opinion—such as Jerome Skolnick, John Van Maanen, Egon Bittner[62]—constructed categories that collapsed suspicious persons, appearances, and behavior. The effects of such group categorization are well understood, with research originating with psychologist Gordon Allport in 1954 and continuing for the ensuing six decades.[63] The moving parts of the process involve human information processing and heuristics to classify individuals based on that information (with updates). Categories are essential to navigate through a world of uncertainty in social interactions. In the case of police stops, the embedding of social interactions in locations and institutional frameworks adds layers to the categorization process. Prior experience and knowledge are important in creating a set of categories that seem to work, in that they efficiently sort persons or events.

As the early police ethnographers suggest, the number of categories is limited (due perhaps to capacity), so that police (in our case) are forced to group heterogeneous experiences into the same categories. When the prior groupings can no longer resolve the indicia that a person or event presents, new groupings may be created in a process (one hopes) of Bayesian updating.[64]

The early ethnographies suggested simple schemes, perhaps even binaries. The Van Maanen typology of three groups seemed optimal for police to accomplish their work.[65] Skolnick suggested

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[62] See Egon Bittner, *The Police on Skid-Row: A Study of Peace Keeping*, 32 Am Sociological Rev 699, 703 (1967) (describing the police responsibility to respond to people that they view as "less than fully accountable for their actions"). See also generally Arthur Niederhoffer, *Behind the Shield: The Police in Urban Society* (Doubleday 1967).

[63] See, for example, Roland Fryer and Matthew O. Jackson, *A Categorical Model of Cognition and Biased Decision Making*, 8 BE J Theoretical Econ *1 (2008). See also generally Gordon W. Allport, *The Nature of Prejudice* (Addison-Wesley 1954); Gordon W. Allport, *The Historical Background of Modern Social Psychology*, in Gardner Lindzey, ed, 1 *Handbook of Social Psychology* 3 (Addison-Wesley 1954).

[64] For an example on criminal behavior, see generally Shamena Anwar and Thomas A. Loughran, *Testing a Bayesian Learning Theory of Deterrence among Serious Juvenile Offenders*, 49 Crimin 667 (2011).

[65] Van Maanen also suggests what the appropriate responses are to each group. For instance, the "assholes" were worthy of street justice—meaning physical assault—simply to reinforce the power hierarchy of the police in the areas of their routine activity, regardless of whether the "assholes" had broken any laws. See Van Maanen, *The Asshole*

a binary scheme, building on both his own conclusions about suspicious archetypes and the work of other police professionals who used their own criteria for sorting.[66] Perhaps such binaries are optimal in modern police work since the action that follows the categorization is a seizure or street stop. The sorting and categorization task is of interest, then, in understanding how suspicion is constructed and how much suspicion must be present to animate police action.

Experience matters in the weighting of the indicia of suspicion. But so too does the institutional dimension that impels action. In an institutional design that urges—or mandates—action, the threshold is likely to be forced downward. Cognitive processing of the appearances of suspicion may produce a large pool of potential suspects for stops; however, which members of that pool are ultimately stopped may have more to do with an external threshold than with the natural or deregulated decision of the individual officer.

E.   What Police Can *Not* Do

To explain what police do, it is important to understand what police can do and can *not* do: how they are constrained by dual power. The constitutional rules of engagement ensure that police behavior unfolds in a regime of constrained situations. Police actions lie somewhere between "ritual and strategy,"[67] constrained and shaped by three factors: the situational dynamics of everyday stop activity, institutional preferences and demand for contact, and their ex ante assumptions about suspects' behaviors. The first of these factors creates a wide space for the influence of the other two. That is, the boundaries of what police can *not* do are widened in a regime that values volume. This in turn requires that police invoke scripts to simplify complex and charged cognitive landscapes to shape what is said and what happens in the course of each of multiple contacts.[68] And, because these events unfold through time, the meanings of suspicion at the outset of a contact are likely to shift as new

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at 224 (cited in note 19). See also John Van Maanen, *Observations on the Making of Policemen*, 32 Hum Org 407, 407–18 (1973).

   [66]   See text accompanying note 18.

   [67]   See generally Jeffrey C. Alexander, *Cultural Pragmatics: Social Performance between Ritual and Strategy*, 22 Sociological Theory 527 (2004).

   [68]   See id at 550.

information is revealed. In other words, it is not just *physical* shoehorning of complex information on a small administrative form that leads to scripting,[69] but also *conceptual* shoehorning of complex social interactions into narrow categories whose fit with the reality of the encounters may be poor.

It is this gap—which we claim shows the distance between normative and revealed preferences—that we examine in this Essay. *Normative preferences* represent an agent's actual interests, whereas *revealed preferences* represent the tastes that rationalize the agent's observed actions.[70] In the context of street stops, normative preferences ought to be revealed by an observable pattern of stops, informed primarily by local crime and social conditions. Revealed preferences are observable as well: the factors that animate stops for specific crimes should be influenced by the local prevalence of that particular crime. In other words, in a constitutional regime that demands individuation of suspicion, suspicion for specific crimes would reflect factors unique to that crime, specific with the boundaries set by case law.[71]

Revealed preferences reflect tastes or interests that the agent is pursuing through the use of her power. Those tastes could map well onto the demands of a constitutional policing regime if agents were able to "consume" only those stops that fit the law. In that case, *revealed preferences* would be identical to *normative preferences*. This would signal that the margin for discretion had been properly narrowed by an institutional design that demanded compliance with law. In the case of dual power, what police can do is shaped and constrained by law.

Of course, if those constraints are not imposed, or if they are compromised by institutional preferences, dual power might lead to a gap between normative and revealed preferences. This gap suggests the influence of "true" preferences.[72] If tastes differ

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[69]   See Appendix.

[70]   See John Beshears, et al, *How Are Preferences Revealed?*, 92 J Pub Econ 1787, 1787–90 (2008) (showing how actual preferences may differ from what the stated or even best interests of an agent might be). See also generally Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (Yale 2008).

[71]   For example, stops in which a violent crime is suspected should be informed by factors that express behaviors consistent with a violent crime.

[72]   See Beshears, et al, 92 J Pub Econ at 1787–89 (cited in note 70). Revealed preferences could be as simple as taste but could also reflect limited experience, decisionmaking errors, proximity, complexity, and "third-party marketing" of available

from what the boundaries of the law permit, the gap between normative and revealed preferences will widen. In the case of modern dual power, when police are told what they can *not* do— that is, told to limit their search for suspects to instances of individualized and articulable suspicion—we would expect their revealed tastes and preferences to be skewed to fit particular circumstances that they might not otherwise choose for action. Under a proactive-policing regime, in which police are incentivized to make stops that may exceed in number what the contexts provide, dual power creates incentives, if not mandates, for stops in which the rationales are stretched beyond the boundaries and requirements of law.[73] It is in these instances that we believe that officers invoke scripts to explain and justify their actions— scripts that exceed the margins of what the circumstances might otherwise offer.

The next Part empirically details these preferences and the extent of the gap between them. We observe this in the articulation of reasonable and individualized suspicion under New York City's stop-and-frisk regime of the past two decades.

II. EMPIRICS OF SCRIPTED SUSPICION

The New York City stop-and-frisk data[74] provide an opportunity to assess recurring patterns and narratives of suspicion and to discern whether these patterns show sufficient consistency to take on the characteristics of a script. Data from 4.7 million stops from 2004 to 2012 reveal what officers see in the run-up to street stops. First, we can exploit these data on police officers' accounts of the reasons and bases for effecting a *Terry* stop. Second, using the same data, we can assess the extent to which, within the limits of reporting, police officers adhere to

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logics. See generally Kahneman and Tversky, 47 Econometrica 263 (cited in note 51) (discussing cognitive errors in decisionmaking that result from external pressures).

   [73] Continuing the above example of the stop for violent crime, in a regime in which suspicion is diluted by the pressures of dual power, officers might explain a stop by invoking factors not only consistent with a violent crime but also with other more diffuse and nonspecific rationales such as furtive movements, evasive actions, or area characteristics.

   [74] The NYPD has published downloadable case records annually for all stops from 2003 to 2013. See NYPD, *The Stop, Question and Frisk Data* (cited in note 52). For the following analysis, we use data from 2004 to 2012 and follow a similar methodology to the analyses in *Floyd v City of New York*, 959 F Supp 2d 540 (SDNY 2013).

Terry's individualization requirement or instead develop recurring and stylized narratives of suspicion.

A. The Empirical Project

Following the stipulated settlement in *Daniels v City of New York*[75] in 2003, police and plaintiffs agreed to a set of law-related checkboxes to replace the previous narrative format for recording Fourth Amendment stop justifications.[76] The *Daniels* plaintiffs had claimed Fourth and Fourteenth Amendment violations in the SQF program, and the settlement mandated procedures for NYPD officers to record the rationale for stops.[77]

The boxes included nine affirmative stop rationales plus an option to check "other" and record the specifics by hand.[78] The nine rationales were identified jointly by the *Daniels* plaintiffs and the City, incorporating a set of categories based on both state and federal case law that would survive a Fourth Amendment test for the individualized stop rationales. On the reverse of the form, officers were trained to record a series of "additional circumstances" to justify the stop.[79] Officers could check as many boxes as needed to express the basis for the stop.

Table 1 lists the twenty stop factors and additional circumstances available to officers; the form itself is shown in the Appendix. About 95 percent of the stops from 2004 to 2012 checked

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[75] Stipulation of Settlement, *Daniels v City of New York*, 99 Civ 1695 (SAS), *8–9 (SDNY filed Dec 31, 2003) ("Daniels Settlement").

[76] See id at *22. The checkboxes were incorporated into the standard reporting form for stops, the UF-250. They were a set of indicia of suspicion derived from the aggregate experiences of officers who had been conducting stops over many years, in consultation with plaintiffs' counsel in the *Daniels* litigation. See Fagan Report at *48–49 (cited in note 49) (concluding that the indicia of suspicion in the checkboxes were group-based identifiers rather than markers of individual behavior).

> For the most part, suspicion attaches to group-based traits, conditions, and behaviors: the police identify sets of individuals with motives, such as individuals who match a drug courier profile, individuals whose behavior fits a pattern of someone casing a store for a possible burglary, individuals who fit an eyewitness description, individuals who occupy a specific location where crimes may be prevalent, or individuals whose movements signal that they are concealing contraband. These are not individual markers of suspicion, but in fact are constructed categories that the officer who has determined that a suspect is "suspicious" must use as an organizing scheme to express the bases of suspicion.

Id at *49.

[77] Daniels Settlement at *8–9.

[78] See id at *22.

[79] See id at *23.

from one to six factors, creating 60,459 possible combinations that express the bases of suspicion for this subset. Because of redundancy in the meanings and descriptions of these factors, we reduced the twenty to a set of nine distinct factors. The first column in Table 2 shows the reduced factors, and the second column shows the components based on the original set of twenty.

TABLE 1. SPECIFIC STOP CIRCUMSTANCES AND THE PERCENTAGE OF STOPS BASED ON EACH FACTOR

Factor	Percentage of Stops
Area Has High Crime Incidence	56.0%
Time of Day	36.9%
Casing	28.8%
Changed Direction	24.0%
Other Stop Circumstance	20.2%
Proximity to Scene	20.1%
Evasive Response	17.1%
Fits Description	17.0%
Acting as Lookout	16.9%
Ongoing Investigation	12.8%
Report of Witness or Victim	12.4%
Drug Transaction	9.3%
Suspicious Bulge	8.9%
Actions Indicate Violent Crime	8.0%
Clothing Used in Crime	4.3%
Other Additional Circumstances	4.3%
Associating with Known Criminals	3.7%
Suspicious Object	2.7%
Sights and Sounds of Criminal Activity	2.3%

N=4,559,624
Notes: The total exceeds 100 percent because the majority of stops have multiple factors indicated. Stops are excluded if the suspect's age is below ten or above eighty-five years.
Source: NYPD, The Stop, Question and Frisk Data (cited in note 52).

TABLE 2. USE OF SUSPICION FACTORS WITH COMPONENTS, NYPD
STREET STOPS, 2004–2012

Factor	Percentage of Stops	Components
Crime Location	73.1%	"Area Has High Incidence Of Reported Offense Of Type Under Investigation" "Time Of Day, Day Of Week, Season Corresponding To Reports Of Criminal Activity" "Ongoing Investigations, e.g., Robbery Pattern" "Proximity To Crime Location"
Evasive/ Furtive	54.9%	"Furtive Movements" "Evasive, False Or Inconsistent Response To Officer's Questions" "Changing Direction At Sight Of Officer/Flight"
Casing	35.7%	"Actions Indicative Of 'Casing' Victim Or Location" "Actions Indicative of Acting As A Lookout"
Other	22.0%	"Other Reasonable Suspicion Of Criminal Activity" "Other"
Fits Description	21.5%	"Fits Description" "Report From Victim/Witness"
Suspicious Object	12.7%	"Suspicious Bulge/Object" "Wearing Clothes/Disguises Commonly Used In Commission Of Crime" "Carrying Objects In Plain View Used In Commission Of Crime"
Drug Transaction	9.3%	"Actions Indicative Of Engaging In Drug Transaction"
Criminal Appearances	8.2%	"Suspect Is Associating With Persons Known For Their Criminal Activity" "Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms"
Violent Crime	8.0%	"Actions Indicative Of Engaging In Violent Crimes"

N=4,559,624
Notes: A factor is said to appear in a stop if at least one included component is indicated by the NYPD. The total exceeds 100 percent due to multiple factors indicated per stop. Stops are excluded if the suspect's age is below ten or above eighty-five years.

We used two empirical strategies to illustrate the narrowing and patterning of suspicion as articulated by officers through this system. The first charts the use of each of the nine composite factors over time. We show this through a set of graphs that chart the use of each factor for each calendar quarter from 2004 to 2012. Table 3 shows the characteristics of the persons stopped in this period.

The second examines a set of regression models that attempt to explain stop patterns over time within New York City's

seventy-six police precincts.[80] We first estimate the regressions without including the stop factors. We estimate models for all stops and then disaggregate stops by the suspected crime that animated the stop. We then add the suspicion factors to determine the extent to which individualized suspicion improves the model fit and its explanatory power. Individualized and reasonable suspicion should clarify the patterns of stops, revealing the actual preferences of officers in forming suspicion to make stops. We estimate these models for the total number of stops recorded and then disaggregate by the suspected crime in the stop. Across a range of suspected crimes, we assess the extent to which stated suspicion factors explain the variation in stop activity.

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[80]   Precinct 22, the Central Park precinct, is omitted due to low population, crime, and stop activity.

TABLE 3. CHARACTERISTICS OF SUSPECTS IN NYPD STREET STOPS, JANUARY 2004 TO JUNE 2013

Race	
White	9.8%
Black	51.9%
Hispanic	30.6%
Other or Unknown	7.6%

Age	
Mean	28.1
Standard Deviation	(11.5)

Sex	
Male	90.2%
Female	7.0%
Unknown	2.8%

Suspected Offense	
Murder	0.1%
Drug	8.3%
Violence	15.6%
Weapons	18.4%
Property	19.1%
Trespass	9.2%
Quality of Life	1.3%
Other	28.1%

N=4,783,793
Notes: The total for suspected offenses exceeds 100 percent due to rounding. Stops are excluded if the suspect's age is below ten or above eighty-five years. Source: NYPD.

B. Dilution, Expansion, and Dependence

Over time, officers identified progressively more circumstances to justify their stops. Figure 1 shows that the average number of factors identified by officers has grown by about 30 percent over 9 years, from 3.0 factors per stop to 3.8 factors per stop. The number of stops in which officers checked off 5 or more factors rose 79 percent from 2004 to 2012, from 16.5 to 29.5 percent. This could reflect better training and sensitivity to the specific circumstances surrounding each stop, but as the graphs in Figure 2 suggest, it more likely reflects a decreasing sensitivity or greater shoehorning of the realities of stops into the available reporting categories.
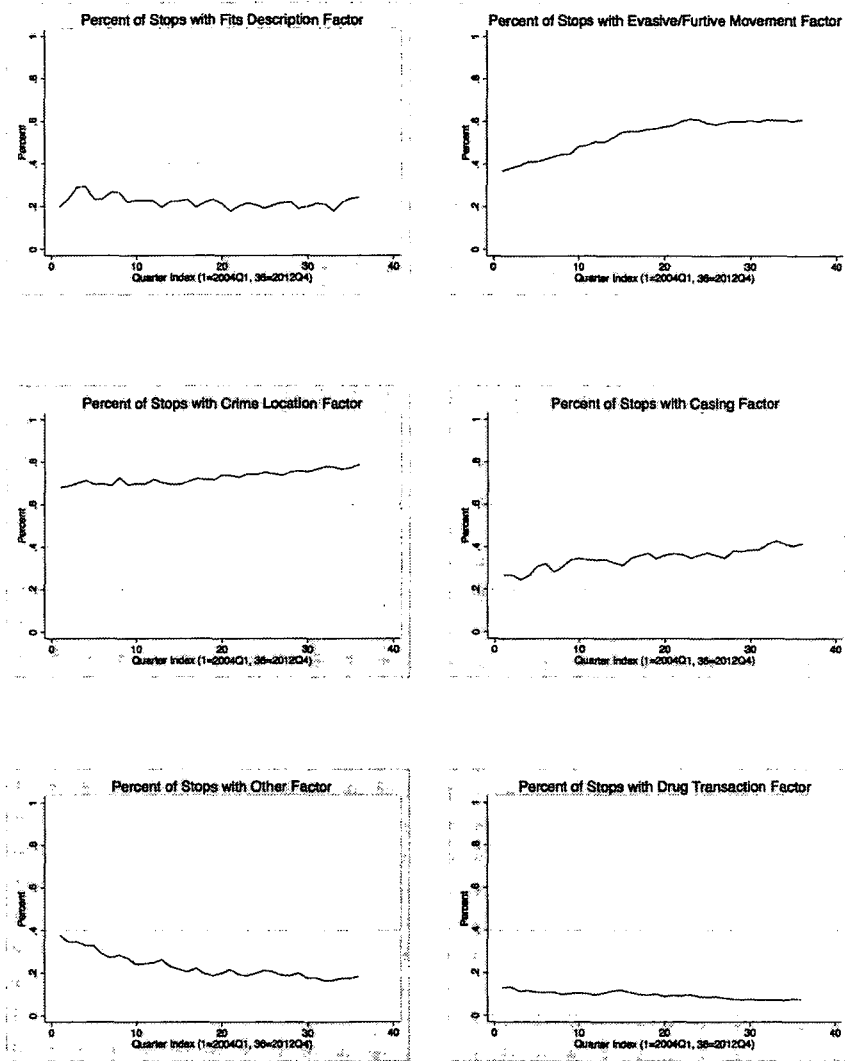
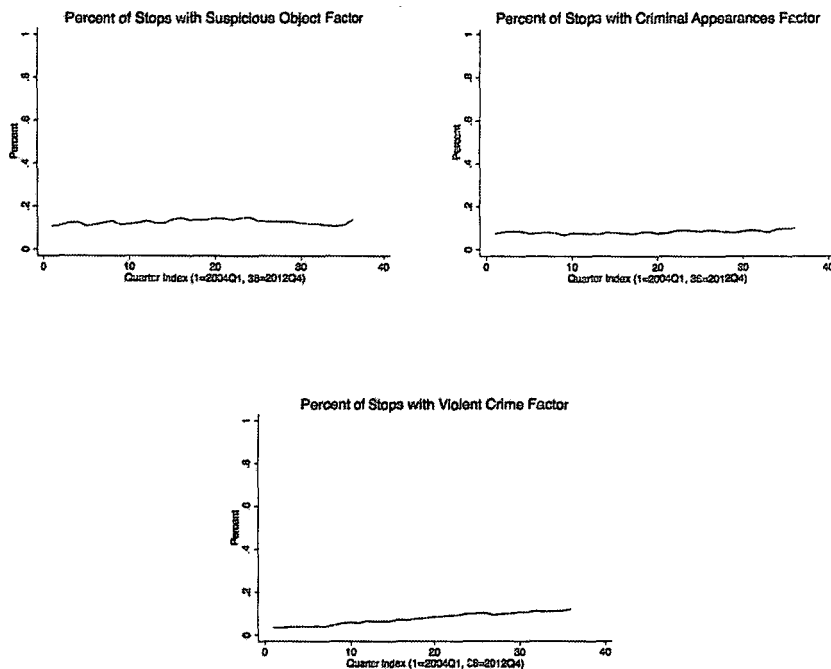FIGURE 1. FACTORS PER STOP, 2004–2012
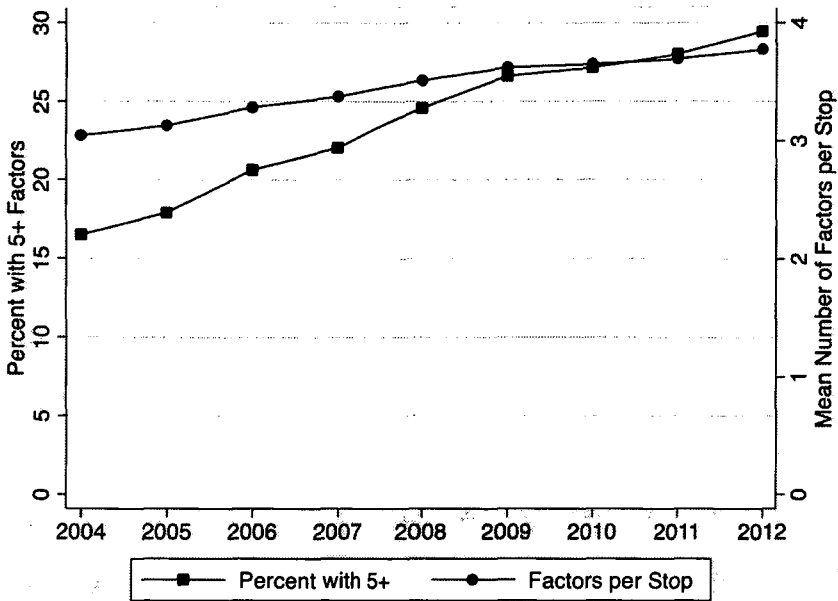
Over time, officers increasingly relied on a narrow set of specific factors to articulate individualized suspicion. Figure 2 shows a set of simple graphs charting changes in the use of each of the stop factors over time. In these graphs, we look for patterning and narrowing in order to examine whether the specificity of the reasons for stops has been diluted over time, in contrast to the individualization requirements of both state and federal case law.[81]

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81   See *Terry*, 392 US at 22, 27; *People v De Bour*, 352 NE2d 562, 568–70 (NY 1976) (articulating the standard for search and seizure under New York common law). See also Meares, 82 U Chi L Rev at 172–74 (cited in note 37) (showing the mismatch between the factors identified by the *Terry* Court and the factors on the UF-250).

FIGURE 2. PERCENT OF STOPS USING EACH SUSPICION FACTOR
BY CALENDAR QUARTER, 2004–2012

Percent of Stops with Suspicious Object Factor

Percent of Stops with Criminal Appearances Factor

Percent of Stops with Violent Crime Factor

Several distinct patterns are evident. First, three factors are used infrequently though consistently over time. "Drug Transaction" is marked in about 10 percent of all stops, as are "Criminal Appearances" and "Suspicious Object."[82] The number of cases in which officers check "Suspicious Object" rose over time from 10 percent to 15 percent of stops, but the increase is slight in degree. "Criminal Appearances" was consistently marked in just

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[82]   An officer cannot stop or frisk an individual simply because the person possesses a "suspicious object" that could either be contraband (including a weapon) or be innocently possessed. See *People v Francis*, 847 NYS2d 398, 401–02 (NY Sup 2007) (holding that an officer who observed an object that looked like a knife, which was clipped inside a suspect's pocket, did not have reasonable suspicion to believe that the knife was not a permissible knife). Without additional indicia of suspicion, the fact that an individual is in possession of objects commonly used in the commission of crimes does not provide an officer with the reasonable suspicion necessary to stop or frisk that individual. See *People v Saad*, 2008 WL 747895, *5 (NY Crim) (holding that officers lacked reasonable suspicion to stop a man seen walking down the street, pushing a shopping cart with a tire iron protruding, and looking into parked cars). A stop might be justified if there is evidence that the object has just been or is about to be used in a crime. See *People v Brown*, 297 NE2d 94, 95–96 (NY 1973) (holding that an officer did not have probable cause to arrest a person for possession of a burglar's tool and stolen property, but that the officer could have made an investigatory stop of a man seen exiting a building holding a crowbar and a car battery that had torn cables on it).

under 10 percent of stops. The use of the "Violent Crime" marker rose over time from about 5 percent of all stops to 10 percent, but stayed low. Officers seem to take some care in using these three factors, suggesting a measure of individualization under particular circumstances.

Other factors are used consistently over time or with little variation, but at a higher rate. At least one of the "Fits Description" indicators is marked in 21.6 percent of stops but varies within a narrow range and declines slightly over time.[83] "Casing" exhibits a similar pattern: it is checked in 35.6 percent of stops.[84] Use of this factor rises from about twenty percent in 2004 to nearly 30 percent by the end of 2011. While falling within the broad conceptual space of "reasonableness," these two factors are not as much about individualization of suspicion as they are about serving as handy bins of suspicion that judges can easily understand to satisfy constitutional review.

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[83] Reasonable suspicion based on this factor requires a specific description that points to a specific suspect. See *People v Thomas*, 752 NYS2d 70, 71 (NY App 2002) (holding that a "vague and general description of a Black male wearing black clothing was insufficient to provide reasonable suspicion that he was the perpetrator"). This factor is also vulnerable to broad interpretation and misuse. In *Brown v City of Oneonta*, 221 F3d 329 (2d Cir 1999), police responded to the victim's description of a "young" "black man" who had cut himself during a struggle over a knife used in a 1992 assault that took place near the local college campus. Id at 334. The police obtained a list of every Black male student at the college and began a sweep that resulted in stops of approximately two hundred students and nonstudents, including at least one woman. Id at 334, 338.

[84] "Casing" is a term that can describe a wide range of behaviors, but ascertaining the intent of these behaviors requires a knowledge of the context and persistence of the suspicious behavior. A person looking into car windows might either be casing cars or considering purchasing a similar car. In these instances, the burden falls on the police officer to conduct a lengthy and detailed period of observation to confirm that these are in fact preludes to a potential crime and not incidental or casual activities. See *Terry*, 392 US at 28 (1968) (upholding a stop-and-frisk when an officer suspected three men of casing a store in preparation for a daytime robbery because the officer observed the suspects for nearly twenty minutes before conducting the stop); *United States v Padilla*, 548 F3d 179, 187–88 (2d Cir 2008) (holding that a detective's observation of two men quietly following another individual into a secluded area while attempting to remain in the dark and out of the individual's peripheral vision "supported the detective's suspicion that the two men might have been targeting the disheveled man for a robbery" and justified a stop-and-frisk); *People v Richard*, 668 NYS2d 386, 387 (NY App 1998):

> Reasonable suspicion supporting the forcible detention of defendant was supplied by lengthy police observations of defendant's complex, unusual, and suspicious pattern of "casing" -type behavior, strongly suggestive of a known series of armed robberies in the neighborhood that targeted movie theaters in particular, coupled with the fact that defendant met a general description of one of the robbers.

The use of either of the two "Other" factors declined between 2004 and 2011, from nearly 30 percent of all stops to just below 20 percent. The decline in use of the opportunity to tailor and articulate the suspicion rationale suggests increasing comfort with the broad bins offered by the other categories and perhaps a shift among officers toward de-individuation when offered a suspicion recipe or menu. It could also be simply an efficiency choice: checking "Other" imposes an additional recording burden to state the specific circumstances that fell outside the easier choices. And if officers invoke additional factors that boost the amount of suspicion—such as "High Crime Area" combined with suspicious movement[85]—the need to record exact details of suspicion is mooted. Absent an institutional demand for strong articulation of the bases of suspicion, officers can avoid details when satisficing on the recording burden to show just enough suspicion.[86] None of these interpretations suggests stronger compliance with *Terry*'s (and *De Bour*'s) individuation demands, and they instead suggest an increase in officers' comfort with other shortcuts to establishing reasonable suspicion.

Two factors in particular suggest the presence of a script and its development over time. First, officers increasingly relied on the "Evasive/Furtive" movement factor over time. One or more of its components was checked off in about 40 percent of all stops in 2004, rising to over 60 percent in 2011. The term "furtive movements" can be used to refer to an almost-infinite number of actions that an officer might find suspicious. This factor is vague in its meaning and subjective in its interpretation. In some instances, a furtive movement might be a strong signal that a suspect is carrying a weapon.[87] But in others, as in Alvin

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[85] See *Wardlow*, 528 US at 124. But the *Wardlow* Court offered no test for what constituted a "high-crime area." See *United States v Montero-Camargo*, 208 F3d 1122, 1138, 1139 n 32 (9th Cir 2000) (concluding that a suspect's presence in a high-crime area is not enough to support reasonable and particularized suspicion and that the factor must "not [be] used with respect to entire neighborhoods . . . in which members of minority groups regularly go about their daily business"). See also Andrew Guthrie Ferguson and Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 Am U L Rev 1587, 1588 (2008) (demonstrating that current Supreme Court jurisprudence provides those in "high-crime area[s]" with less-robust Fourth Amendment protections).

[86] Chief of Patrol, Police Department, City of New York, *Required Activity Log Entries Regarding UF250's* (Mar 5, 2013) (requiring officers to provide narrative detail of the specific indicia of suspicion in each stop) (on file with authors).

[87] See, for example, *United States v Graham*, 483 F3d 431, 439 (6th Cir 2007) (upholding a search in part because the suspect's movements were "consistent with an

Cruz's stop, a "furtive movement" may be nothing more than a glance at an officer or, fearing an encounter with an officer, hurrying down the street to avoid police contact.[88] There is considerable space between those poles for an officer to use this particular factor to motivate and justify a stop. The general failure of officers to find guns in the millions of stops during this time is another sign of the expansive interpretation of this factor.[89] Its increasing use suggests its core role in a script of suspicion.

Second, nearly three in four stops used one or more indicators of crime location consistently over the nine years. "High Crime Area" is vulnerable to subjective and highly contextualized interpretation. Under *Wardlow*, the "High Crime Area" rationale can be used to multiply the constitutionality of other factors which, standing alone, are insufficient to justify a seizure.[90] Table 2 shows that the "Area Has High Incidence Of Reported Offense" factor was used in more than 55 percent of all stops during this period. As shown in Figure 2, together with other indicia of crime location, 75 percent of all stops were based in part on the "Crime Location" metafactor, which incorporates the "High Crime Area" notation.

The scripted nature of this suspicion is demonstrated in Figure 3. To construct this figure, we analyzed the specific locations of each stop and the reported crime rates in the stop's location. We divided the city into quintiles, or 20 percent brackets, in which the lowest quintile includes the safest 20 percent of precincts, and the highest quintile includes the 20 percent with the highest crime-complaint rates. As shown in Figure 3, a stop made in the lowest-crime quintile has a nearly identical probability as a stop in the highest-crime quintile to be identified as occurring in an area with "high incidence" of crime. Similar

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attempt to conceal a firearm"). Absent movements indicating that a suspect might be armed, furtive movements cannot give rise to reasonable suspicion. See, for example, *People v Powell*, 667 NYS2d 725, 727–28 (NY App 1998) (holding that officers did not have reasonable suspicion to frisk a suspect who responded evasively to questioning and was walking with his arm stiffly against his body in a high-crime area); *United States v McCrae*, 2008 WL 115383, *1–10 (EDNY) (holding that an officer did not have reasonable suspicion to stop a suspect who moved his hand "from the center of his stomach to the left side of his waistband" in a manner that the officer claimed was similar to how an officer handles firearms while in plain clothes).

[88]   See note 10 and accompanying text.

[89]   Only 0.15 percent of all stops in the UF-250 database analyzed for *Floyd* led to the seizure of a gun. See Fagan Report at *63 (cited in note 49).

[90]   See *Wardlow*, 528 US at 124–25. See also Ferguson and Bernache, 57 Am U L Rev at 1588 (cited in note 85).

results were found in tract-level analyses, suggesting that the propensity to identify an area as "high crime" is not driven by small hot spots in large precincts.[91]

FIGURE 3. PERCENTAGE OF STOPS FOR "HIGH CRIME AREA" AND "FURTIVE MOVEMENT" BY PRECINCT CRIME QUINTILE
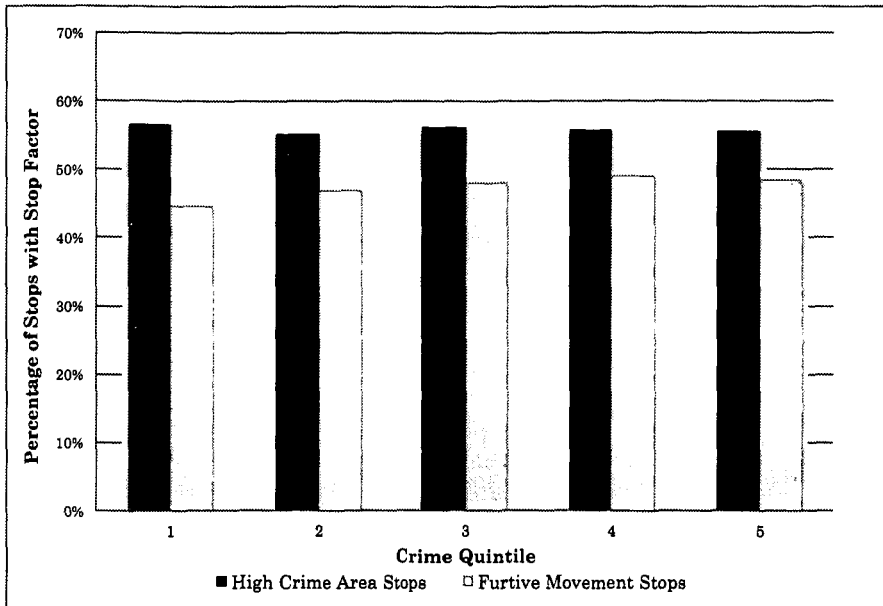
Again, as in the other indicia of individualized suspicion, there is a gradual and persistent process of desensitization in the interpretation of these factors, allowing officers to use these factors to conform their perceived suspicion to the prevailing narratives in which NYPD officers conduct their patrols. The trend toward increasing use of the "Evasive/Furtive" factor may simply reflect the adoption and spread of a cognitive framework to filter perceptions of the criminogenic and disorderly charac-teristics of police patrol sectors.[92] In turn, officers may reflexive-ly attribute the conditions of local crime and social disorder to

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    [91] See Supplemental Report of Jeffrey Fagan, PhD, *Floyd v City of New York*, 08 Civ 01034 (SAS), *43 (SDNY filed Dec 15, 2010).
    [92] See Robert J. Sampson and Stephen W. Raudenbush, *Seeing Disorder: Neighbor-hood Stigma and the Social Construction of "Broken Windows"*, 67 Soc Psychology Q 319, 330–34 (2004) (showing empirically that perception of disorder in neighborhoods is corre-lated not only with observation of disorder but also with the racial composition of the neighborhood).

all persons in that area. Again, one can see a widely shared script emerging and taking hold in the perceptual frames of patrolling officers.

C. Normative and Revealed Preferences

Next, we estimated the extent to which explanations of stop patterns are improved when the suspicion factors are added to regressions based solely on offense or offender characteristics. By identifying whether the additional knowledge of the suspicion factors improves our understanding of stop patterns, we can distinguish between normative and revealed preferences. Patterns of suspicion that explain a large portion of variation in stop patterns across several types of suspected crimes may suggest normative preferences. Conversely, suspicion patterns that are substantively uncorrelated with the suspected crime may suggest that suspect behaviors of the offenses are poorly linked to their suspected crimes.

We first estimated regressions to explain the stop patterns within police precincts based solely on local crime and social conditions. We assume that these reflect officers' normative preferences for suspicion. Then, we expanded the regressions to include the percentage of stops in each precinct-quarter claiming each of the suspicion factors in Table 2.[93] If individualized suspicion is functioning well as a set of standards guiding officer discretion when making stops,[94] the inclusion of these standards in a regression analysis explaining stop patterns should improve the strength of the model, or the model fit.[95]

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[93] Regression models were estimated in two stages. First, a series of negative-binomial regressions were estimated, predicting stop counts overall as well as by suspected crime. Each model includes: (1) precinct racial composition, (2) total precinct residential population, (3) precinct socioeconomic status, (4) local crime conditions (the percentage of crime complaints that corresponds to the suspected crime for the model), (5) patrol strength, and (6) a dummy variable indicating whether the precinct was one of the four business precincts. Then, for each model in Table 4, the same model was estimated again, this time including a variable for the percentage of all stops in the precinct justified by each suspicion factor.

[94] NYPD officers are trained to conduct SQF interventions under guidelines articulated in the NYPD Patrol Guide. See New York City Police Department, *Patrol Guide Manual (2006 ed.)* §§ 211-11, 696-7 (on file with authors).

[95] Model fit is the capacity of a statistical model to capture the variance of a phenomenon across sampling units. The goodness of fit of a statistical model is typically measured by the discrepancy between observed values and the values expected under the model in question. Such measures can be used in statistical hypothesis testing. Here, we report the Pseudo R^2, a measure that shows model fit for regressions of events such

Table 4 summarizes four features of these analyses for each crime-specific model. First, it shows the explained variance, or goodness of fit, for each model without consideration of the stop or suspicion factors. Goodness of fit is measured with a marginal-R^2 statistic, which is used to measure model fit for Generalized Estimating Equations.[96] The next five columns show results when the NYPD suspicion factors are incorporated into the model. The third column shows which of the stop factors or additional circumstances were statistically significant positive predictors of the number of stops. The fourth column shows the statistically significant negative predictors: those factors that were significantly less likely to appear in a pattern of crime-specific stops.

The fifth column shows the marginal R^2 for each crime-specific model when the stop factors are included. The sixth column shows the change in the marginal R^2 that estimates the improvement over the model without stop factors. If reasonable suspicion is in fact animating these stops, the regressions should show a convergence between the normative and revealed preferences in police stop decisions. Overall model fit should improve at the margins when more-accurate explanatory information is included. In other words, more information should lead to less chance as well as a more systematic understanding of how often, where, and under what circumstances stops take place. That is, revealed preferences should tell us more about stop patterns than when that information is masked.

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as police stops. For information on calculating fit in such models, see generally David W. Hosmer and Stanley Lemesbow, *Goodness of Fit Tests for the Multiple Logistic Regression Model*, 9 Communications in Stats—Theory & Methods 1043 (1980).

   96 See generally Gary A. Ballinger, *Using Generalized Estimating Equations for Longitudinal Data Analysis*, 7 Org Rsrch Methods 127 (2004).

TABLE 4. FACTORS PREDICTING STOP RATES BY SUSPECTED CRIME AND CHANGE IN MODEL FIT, ALL STOPS, 2004–2012

Suspected Crime	Model Fit (No RS Factors)	Positive Predictors	Negative Predictors	Model Fit (with RS Factors)	Overall Model Improvement	Percent Model Improvement
Total Stops	.64	Crime Location	Fits Description Evasive/Furtive Other Criminal Appearances	.74	.10	15.6%
Violence Stops	.51	Crime Location Casing Criminal Appearances	Fits Description Evasive/Furtive Other Drug Transaction Suspicious Object	.57	.06	11.8%
Property Stops	.35	Crime Location Casing	Fits Description Evasive/Furtive Drug Transaction Suspicious Object	.40	.05	14.3%
Drug Stops	.29	Crime Location Drug Transaction	Fits Description Evasive/Furtive Casing Other Criminal Appearances Violent Crime	.52	.23	79.3%
Weapons Stops	.51	Suspicious Object	Fits Description Casing Other Drug Transaction Criminal Appearances	.57	.06	11.8%
Trespass Stops	.30	Crime Location Other Drug Transaction	Fits Description Evasive/Furtive Criminal Appearances	.57	.27	90.0%
Quality of Life Stops	.16	Criminal Appearances	Fits Description Suspicious Object	.21	.05	31.3%

Note: Negative binomial regressions, population-averaged models with fixed effects for precinct and time, and AR(1) covariance.

Two trends stand out in Table 4. First, overall model fit improves little with the addition of the suspicion factors. The improvement was 10 percentage points or fewer for five of the seven models. For these stops, the positive predictors of stop activity suggest few crime-specific references. Stops for most crime types are predicted by "crime location," suggesting that officers may be invoking a convenient script that is difficult to challenge. The "crime location" script—like the "suspicious object" rationale in weapons stops—does away with the more demanding task of articulating individuated actions and is not easily challenged under current case law.[97] In other words, most of these models are tautological with the promiscuously invoked "high crime area" script.[98]

Second, model fit improves by more than 10 percentage points for only drug stops and trespass stops. Drug stops are significantly more prevalent in precinct-quarters where "Drug Transaction" narratives are cited in a greater proportion of stops. Estimated model fit for drug stops nearly doubled: the marginal R^2 for drug stops increased from .29 to .52. While this is substantively consistent, no other behavioral cues are predictive of drug stops (only the environmental cue of "Crime Location"), raising concerns that the "drug transaction" justification may be tautological and may fail to capture the individual behaviors indicating *how* a suspect's actions indicated a drug transaction. Trespass stops were significantly more prevalent in precinct-quarters in which stops are more often justified with "Crime Location," "Other," and "Drug Transaction" narratives, and the marginal R^2 for these stops increased from .30 to .57 when suspicion factors are included. Trespass stops were concentrated in public housing sites,[99] and the prevalence of

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[97] See note 85.

[98] See notes 85 and 90 and accompanying text.

[99] See Jeffrey Fagan, Garth Davies, and Adam Carlis, *Race and Selective Enforcement in Public Housing*, 9 J Empirical Legal Stud 697, 716–17 (2012) (showing the heavy spatial concentration of trespass stops in New York City public housing sites from 2004 to 2011). Public housing was a primary target of drug-law enforcement beginning in the 1970s and was declared by definition a high-crime area by the NYPD. See generally *Escalera v New York City Housing Authority*, 425 F2d 853 (1970) (describing a program of drug arrests and summary evictions of residents in public housing who were accused by NYPD Housing Bureau patrols of drug possession or trafficking); Gregory Fritz Umbach, *The Last Neighborhood Cops: The Rise and Fall of Community Policing in New York Public Housing* (Rutgers 2011) (describing the shift during the 1970s from a community policing regime to a proactive-policing regime in public housing).

The increase in the marginal R^2 in these two models results primarily from the fit of the location (public housing) and circumstance (drug transactions) to the RS factors,

"Crime Location" rationales is likely based on the categorization of public housing as a problematically crime-ridden venue.[100] While some public housing sites indeed face crime rates significantly higher than surrounding areas, not all do. However, agreements between the New York City Housing Authority (NYCHA) and the NYPD, most notably the Trespass Affidavit Program, expand police enforcement authority to make stops and arrests at lower levels of suspicion in both NYCHA and privately owned housing, not only those with elevated crime rates.[101]

Conceptually, without a stop and an inquiry of a suspect about his presence in a public housing site, it is difficult to imagine ex ante factors that would lead to suspicion of trespass.[102] NYPD officers routinely claimed "High Crime Area" as the stop rationale in trespass stops, based on the categorization in policy of public housing as a problematically crime-ridden venue.[103] Again, little information is provided about the specific behaviors that motivated a stop.

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without saying precisely which behaviors other than the offense itself characterize "suspicion." For example, "Actions Indicative Of Engaging In Drug Transaction" predict drug stops, and "High Crime Area" and "Drug Transaction" predict trespass stops (which are concentrated in public housing). Accordingly, the meanings of these suspicion factors with respect to the suspected crime are dictated more by policy than by individualized behavioral descriptions. In the current procedure for recording RS bases of stops, the behavioral meaning of the act is removed from the design of the specific factor that the officer indicates.

[100] See Adam Carlis, Note, *The Illegality of Vertical Patrols*, 102 Colum L Rev 2002, 2004–11 (2009).

[101] See id at 2019 n 116, 2020–23 (showing the incentives for effecting stops in public housing sites that equate presence in the locale with behavioral indicia of suspicion).

[102] See id at 2002 (showing the failure of trespass enforcement practices under the NYPD stop-and-frisk regime to comport with Fourth Amendment standards of reasonable-and-articulable suspicion).

[103] See Report of Jeffrey Fagan, PhD, *Davis v City of New York*, 10 Civ 0699 (SAS), *3 n 3, 5 (SDNY filed June 2012). See also *Davis v City of New York*, 902 F Supp 2d 405, 416 n 67; Carlis, 102 Colum L Rev at 2009–11 (cited in note 100); *Ligon v City of New York*, 925 F Supp 2d 478, 484–85 (SDNY 2013) (noting that police trespass stops in and around high-rise residential buildings lacked individualized and reasonable suspicion).

CONCLUSION

As stops increased in New York City from fewer than 100,000 in 1998 to more than 685,000 in 2011,[104] individuated suspicion was diluted as officers defaulted to convenient and stylized narratives to justify stops. In turn, we suspect that police constructed scripts of suspicion that could be tailored and invoked to fit the cosmetic or epidemiological circumstances of a stop. The weak evidence of specificity in stop patterns, coupled with the reliance on a small number of factors to justify individualized suspicion, hints at the drift toward memes and scripts to satisfy a weakly enforced and regulated Fourth Amendment regime. When repeated across tens of thousands of interactions, and when knowledge of these interactions is shared within dense social and informational networks of officers, narratives are shaped and reinforced in a process that combines self-presentation with job performance[105] and allows officers to give plausible accounts of their actions[106] that minimally conform to the requirements of training and law.[107]

When there is a burden on officers to develop sustainable narratives across innumerable events, social networks become important places to practice and refine plausible narratives of suspicion. The narratives, in turn, become scripts that are widely shared. They are handy cultural tools to simplify complexity.[108] The scripts are "rules" that shape, both cognitively and perceptually, how situations are perceived, how to choose among contingent actions to proceed (or not) with a stop, what language and tone is used, and how to respond to any of several reactions from the suspect. To some extent, such formalities or patterned

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[104] Eliot Spitzer, *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General* 132–34 (Civil Rights Bureau 1999). See also *Stop-and-Frisk Data* (New York Civil Liberties Union, 2014), archived at http://perma.cc/Z5XK-FXFR.

[105] See Erving Goffman, *The Presentation of Self in Everyday Life* 17–25 (Anchor 1959) (providing professional examples of "the individual's own belief in the impression of reality that he attempts to engender in those among whom he finds himself"). See also generally Paul Marsden, *Memetics and Social Contagion: Two Sides of the Same Coin?*, 2 J Memetics–Evolutionary Models of Information Transmission 68 (1998).

[106] See generally Marvin B. Scott and Stanford M. Lyman, *Accounts*, 33 Am Sociological Rev 46 (1968).

[107] See Hirokawa, 49 Emory L J at 307 (cited in note 38).

[108] See generally Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 Am Sociological Rev 273 (1986) (explaining that tool kits include habits, skills, and styles from which individuals select lines of actions). See also Paul DiMaggio, *Culture and Cognition*, 23 Ann Rev Sociology 263, 269 (1997).

responses to a heavy workload and set of administrative de-
mands are unavoidable. But when built into everyday practice,
the use of scripts, memes, or stylized narratives poses critical
challenges for Fourth Amendment regulation.

Regulation fails in this regard since the scripts seem to sus-
tain a regime that is remarkably inefficient at detecting criminal
wrongdoing while simultaneously failing to satisfy even today's
weak Fourth Amendment standards.[109] It is more than reasona-
ble to ask how useful it is to memorialize these categories and
scripts when the rates of arrest, prosecution, and conviction are
so low. The centrality of these scripts to what the federal court
found to be a constitutionally deficient regime suggests that
Terry's balancing act has gone awry.

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[109] See *Floyd v City of New York*, 959 F Supp 2d 540, 573 (SDNY 2013) (noting that
police took no further law-enforcement action in about nine out of every ten stops).
Among those stops subject to court review, nearly half fail to reach a conviction, suggest-
ing an error rate of nearly 95 percent. See *A Report on Arrests Arising from the New York
City Police Department's Stop-and-Frisk Practices* *3 (New York State Office of the At-
torney General, Civil Rights Bureau, Nov 2013), archived at http://perma.cc/5Z9B-9EVC.

APPENDIX: UF-250 FORM

(COMPLETE ALL CAPTIONS)

STOP, QUESTION AND FRISK REPORT WORKSHEET
PD344-151A (Rev. 11-02)

Pct.Serial No.

Date | Pct. Of Occ.

Time Of Stop | Period Of Observation Prior To Stop | Radio Run/Sprint #

Address/Intersection Or Cross Streets Of Stop

☐ Inside ☐ Transit | Type Of Location
☐ Outside ☐ Housing | Describe:

Specify Which Felony/P.L. Misdemeanor Suspected | Duration Of Stop

What Were Circumstances Which Led To Stop?
(MUST CHECK AT LEAST ONE BOX)
☐ Carrying Objects In Plain View Used In Commission Of Crime e.g., Slim Jim/Pry Bar, etc.
☐ Fits Description.
☐ Actions Indicative Of "Casing" Victim Or Location.
☐ Actions Indicative of Acting As A Lookout
☐ Suspicious Bulge/Object (Describe)
☐ Other Reasonable Suspicion Of Criminal Activity (Specify)
☐ Actions Indicative Of Engaging In Drug Transaction.
☐ Furtive Movements.
☐ Actions Indicative Of Engaging In Violent Crimes.
☐ Wearing Clothes/Disguises Commonly Used In Commission Of Crime.

Name Of Person Stopped | Nickname/ Street Name | Date Of Birth

Address | Apt. No. | Tel. No.

Identification: ☐ Verbal ☐ Photo I.D. ☐ Refused ☐ Other (Specify)

Sex:☐ Male Race:☐ White ☐ Black ☐ White Hispanic ☐ Black Hispanic
☐ Female ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native

Age | Height | Weight | Hair | Eyes | Build

Other (Scars, Tattoos, Etc.)

Did Officer Explain If No, Explain: Reason For Stop
☐ Yes ☐ No

Were Other Persons Stopped/ ☐ Yes If Yes, List Pct. Serial Nos.
Questioned/Frisked? ☐ No

If Physical Force Was Used, Indicate Type:
☐ Hands On Suspect
☐ Suspect On Ground
☐ Pointing Firearm At Suspect
☐ Handcuffing Suspect
☐ Suspect Against Wall/Car
☐ Drawing Firearm
☐ Baton
☐ Pepper Spray
☐ Other (Describe)

Was Suspect Arrested? | Offense | Arrest No.
☐ Yes ☐ No

Was Summons Issued? | Offense | Summons No.
☐ Yes ☐ No

Officer In Uniform? | If No, How Identified? ☐ Shield ☐ I.D. Card
☐ Yes ☐ No | ☐ Verbal