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STOP AND FRISK AND SUBSTANTIVE CRIMINAL LAW PANEL: INTRODUCTION

MARY I. COOMBS*

Welcome back to the final panel of the conference, on the relation of stop and frisk doctrine to substantive criminal law.

Since I am a *visiting* professor at St. John's, I can take two positions. First, as a quasi-outsider, I want to thank John Barrett and Charles Bobis and the rest of the people from St. John's who organized the conference. Second, as a quasi-insider, I want to express my thanks and admiration to all the panelists for their contributions to an absolutely spectacular conference. Thank you all.

This is a roundtable, not a panel, on the relationship of stop and frisk to substantive criminal law, a topic which has floated through the conference in a number of places, most clearly in the comments earlier today of Professor Tracey Meares.¹ The four of us on the dais will each speak very briefly, and then we're going to open it up, I hope, to a lot of questions.

I remember that when I first taught *Terry*,² it occurred to me that Officer McFadden could probably have arrested Terry for loitering and avoided the whole stop and frisk issue. I recently had one of our trusty law librarians obtain for me the relevant Cleveland ordinance that was apparently in effect at the time of *Terry*.³ Let me read to you the section that seems applicable:

Whoever is found loitering about any barroom, gambling device, or about pools on baseball, prizefights, or horse racing; or is

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¹ See Tracey L. Meares, *Terry and the Relevance of Politics*, 72 ST. JOHN'S L. REV. 1343 (1998).

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ This "suspicious persons" ordinance was later declared unconstitutional. See *City of Cleveland v. Forrest*, 223 N.E.2d 661 (Cleveland Mun. Ct. 1967).

found wandering about the streets, either by day or by night, without being able to give a reasonable and satisfactory account of themselves . . . [or who] obtains his living by criminal means and practices . . . [or] is the companion and associate of criminals or other dissolute persons shall be guilty of a misdemeanor. . . .⁴

(I can't resist, amongst an audience of lawyers, adding one of the other forbidden activities: "loiter[ing] around Courts of Justice, or other public places, for the purpose of soliciting the employment of professional services. . . .")⁵

The participants in this roundtable discuss how and why Officer McFadden, or contemporary police departments, might operate under stop and frisk and/or under substantive criminal laws, such as this or more modern variations. Our first speaker is Debra Livingston of Columbia Law School. Our second speaker is William Stuntz of the University of Virginia Law School. I will then speak briefly and our final speaker will be the Honorable Judge John Keenan of the Southern District of New York.

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⁴ CLEVELAND, OHIO, CODE §13.0935 (Supp. 1951).

⁵ *Id.*