

Statement of Significance With Footnotes

This subject merits recognition of an Ohio Historical Marker because this criminal case from Cleveland, Ohio, resulted in a landmark opinion issued in 1968 by Chief Justice Earl Warren of the Supreme Court of the United States¹. In 1964, Cuyahoga County Judge Bernard Friedman clearly stated a new standard of law that provided that police may stop and frisk a suspect for weapons for their safety if they have reasonable suspicion the person has or is about to commit a crime². It is not often that the ruling of a local judge is adopted and affirmed by the Supreme Court of the United States. However, in *Terry vs. Ohio*, the nation's highest court affirmed the ruling of Judge Bernard Friedman, which defined the limits of police action for when they "stop and frisk" suspects based on their suspicion of criminal activity³. Since 1968, the standard of law articulated in the *Terry* case has become a bedrock of Fourth Amendment analysis⁴. A search of the *Terry vs. Ohio* case in the legal database LexisNexis indicates that it has been cited in 31,881 court opinions⁵.

This case still remains relevant⁶ and is regarded as one of the most important criminal cases in the modern history of the Supreme Court of the United States⁷. *Terry* is regularly studied across law schools and police academies⁸ across America. To this day, police officers, lawyers, and courts, continue to refer to the decision of *Terry vs. Ohio* to determine whether police action of "stopping and frisking" criminal suspects is constitutional⁹.

¹ Charles S. Bobbs, *Foreword*, 72 St. John's L. Rev. 721, 721-725 (1998).

² John Q. Barret, *Appendix B: State of Ohio v. Richard D. Chilton and State of Ohio v. John W. Terry: The Suppression Hearings and Trial Transcripts*, 72 St. John's L. Rev. 1387, 1443-1446 (1998).

³ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).

⁴ Charles S. Bobbs, *Foreword*, 72 St. John's L. Rev. 721, 721-725 (1998).

⁵ See printout labelled "Court Cases Citing Terry v. Ohio."

⁶ See printout labelled "Court Cases Citing Terry v. Ohio."

⁷ Charles S. Bobbs, *Foreword*, 72 St. John's L. Rev. 721, 721-725 (1998).

⁸ James J. Fyfe, *Terry: A[n Ex-] Cop's View*, 72 St. John's L. Rev. 1231, 1231.

⁹ See <http://www.nytimes.com/2016/06/23/opinion/policing-the-police-on-stop-and->

The Supreme Court of the United States has never overturned *Terry* nor has it revisited the specific legal issue from *Terry*¹⁰. Courts continue to determine the legality of police searches in cases with legal issues closely related to *Terry*¹¹. In fact, just within this past week, the majority of the Supreme Court of United States ruled in *Utah v. Strieff* that it was legal for police to search someone, even after that person has been stopped without lawful cause, as long that individual has an outstanding warrant¹².

Terry vs. Ohio is closely connected to the history of Cuyahoga County, Ohio. Cleveland defense attorney Louis Stokes and Assistant Cuyahoga County Prosecuting Attorney Reuben Payne first argued the issues of this case in the Cuyahoga County Courthouse in 1964¹³. Cuyahoga County Court of Common Pleas Judge Bernard Friedman heard the case and found that Officer McFadden had not violated the defendants' Fourth Amendment rights¹⁴. Eighth District Court of Appeals Judges Joseph Silbert, Joseph Artl, and J.J.P. Corrigan later affirmed the decision of Judge Bernard Friedman¹⁵. The argument before the Eighth District Court of Appeals was held in the Main Courtroom of the Old Courthouse, located at 1 lakeside Avenue, Cleveland, Ohio¹⁶. Interestingly enough, the Ohio Supreme Court held that

[frisk.html?rref=collection%2Ftimestopic%2FStop%20and%20Frisk&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection&r=0](http://www.scotusblog.com/case-files/cases/utah-v-strieff/), accessed June 29, 2016.

¹⁰ See printout labelled "Court Cases Citing *Terry v. Ohio*."

¹¹ *Id.*

¹² <http://www.scotusblog.com/case-files/cases/utah-v-strieff/>, accessed June 29, 2016.

¹³ John Q. Barret, *Appendix B: State of Ohio v. Richard D. Chilton and State of Ohio v. John W. Terry: The Suppression Hearings and Trial Transcripts*, 72 St. John's L. Rev. 1387, 1387 - 1396 (1998).

¹⁴ *Id.* at 1443-1446.

¹⁵ *State v. Terry*, 5 Ohio App.2d 122, 214 N.E.2d 114 (1966).

¹⁶ The applicant has learned this information by directly contacting the Eighth District Court of Appeals in Cleveland, Ohio. The Eighth District was able to confirm this through its records. Judge Sean Gallagher from the Eighth District Court of Appeals has verified that in 1966 the Eighth District Court of Appeals case was argued in the Main Courtroom of that Court House. Judge Gallagher can be contacted at (216) - 443 - 6350.

there was no substantial constitutional question in this case¹⁷. The Supreme Court of the United States later accepted review directly from the Eighth District Court of Appeals and affirmed the decisions of Cuyahoga County Common Pleas Judge Bernard Friedman and the judges from the Eighth District Court of Appeals of Ohio¹⁸.

Many of the key participants in this case served important roles in Ohio history. Reuben Payne was a black male born in Scio, Ohio, in 1922¹⁹. Mr. Payne graduated from Western University and Cleveland-Marshall College of Law²⁰. He worked as an assistant law librarian and for the United States General Accounting Office²¹. Mr. Payne was working the Cuyahoga County Prosecutor's Office at the time of the *Terry* case and would later become one of Cleveland's leading criminal defense attorneys²². Defense attorney Louis Stokes, was also a black male from Ohio who received his law degree from Cleveland-Marshall College of Law²³. Stokes eventually became one of Cleveland's foremost criminal defense lawyers²⁴. Stokes helped his brother Carl B. Stokes win election as Mayor of Cleveland²⁵. Stokes himself was later elected as an Ohio Congressman where he served for 30-years²⁶. Judge Bernard Friedman was a white male born in Poland in 1909 and immigrated with his family to the United States and graduated from Western Reserve School of Law²⁷. Judge Friedman served in a variety of public

¹⁷ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).

¹⁸ *Id.*

¹⁹ John Q. Barret, *Appendix B: State of Ohio v. Richard D. Chilton and State of Ohio v. John W. Terry: The Suppression Hearings and Trial Transcripts*, 72 St. John's L. Rev. 1387, 1389 - 1395 (1998).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

positions, including Special Counsel to the Attorney General of the State of Ohio, an attorney with the Public Works administration, and as Cuyahoga County's deputy registrar of motor vehicles²⁸.

The Ohio Historical Society previously determined that the officer from the *Terry* case, Detective Martin J. McFadden deserved to be recognized for his work when it awarded a historical marker in his honor²⁹. The historical marker built in honor of Detective Martin J. McFadden now stands near the intersection of Euclid Avenue and Huron Road in Cleveland, Ohio³⁰.

Even though this case started as a routine matter for all participants, the decision's effects upon American jurisprudence were profound³¹. From a simple and routine case that started in Cleveland, Ohio, the Supreme Court of the United States created a "reasonable suspicion" standard for "stop and frisk" cases instead of the higher standard of "probable cause" that the Court was seriously considering³². An Ohio Historical Marker should be made to recognize the significance of this case and its close connection with Ohio history.

²⁷ *Id.*

²⁸ *Id.*

²⁹ <https://thisismycleveland.wordpress.com/2013/01/03/ohio-historical-markers-detective-martin-j-mcfadden/>, accessed June 29, 2016.

³⁰ *Id.*

³¹ John Q. Barret, *Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference*, 72 St. John's L. Rev. 748, 748 - 752 (1998).

³² *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).