Attachment 3

REDACTED
INVESTIGATIVE ENCOUNTERS
Learning Objectives:

• Understand the different levels of Investigative Encounters and the tools you have at each level

• Understand the documentation responsibilities, including how to prepare a good Stop Report

• Understand what is expected during the supervisory debriefs that follow stops

• Understand the proper procedures for interior patrols in TAP and NYCHA buildings

• Understand the appropriate and inappropriate use of race in conducting Investigative Encounters
Precision Policing: Stop Outcomes

- **Arrests**
  - 2011: 5
  - 2016: 25

- **Contraband Found**
  - 2011: 2
  - 2016: 7

- **Weapons Found**
  - 2011: 1
  - 2016: 7
Protect and Serve

Decline to Prosecute
Patrol Guide Procedure 212-11

The law is not new
The law in the PG 212-11 isn’t new, but **THIS** is:

**Minor or inadvertent mistakes in documentation or isolated cases of erroneous but good-faith stops or frisks by members of the service should ordinarily be addressed through instruction and training.** In most instances, instruction and training should be accomplished at the command level. The application of the law in this area can be complicated, and investigative encounters are fluid situations in which one event or observation can alter the level of suspicion or danger. A single erroneous judgment will not generally warrant referral to the Legal Bureau for retraining. However, members of the service who evince a lack of comprehension of the core concepts of the law governing this procedure should be referred to the Legal Bureau.
Level 1

Request for Information

Objective Credible Reason
Level 1 Tools

Non-accusatory Questions

Protective Measures?
Protective Measures at Level 1?

Example: a male passes by two other men and continues to stare at them with a menacing, angry expression. You approach and ask him if there is a problem with those men. The male glares at you and begins to reach for his back pants pocket.

The use of the tool depends on a reasonable concern that your safety may be in jeopardy.
At Level 1, you **CAN’T:**

- Ask pointed or accusatory questions
- Seek consent to search
- Detain the person, block his path or use or threaten to use force
- Direct the person to stop
At Level 1 . . .

Does the person have to stay and answer questions?
I’m in pursuit on suspicion of....?
False or Inconsistent Answers can the Encounter
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**NYPD**
New York City Police Department

**FREE TO LEAVE**
1
Non-accusatory Questions
Protective Measures?

**OBJECTIVE CREDIBLE REASON**
2
Request for Information

3
If you have an objective credible reason to approach someone and request information, then you are permitted to ask the person pointed questions.
Back to our Quiz:

If you have an objective credible reason to approach someone and request information, then you are permitted to ask the person pointed questions.

TRUE      FALSE      IT DEPENDS      I HAVE NO IDEA
Level 2

Common Law Right Of Inquiry

Founded Suspicion
Level Two

FREE TO LEAVE
1
Non-accusatory Questions
Consent to Search
Protective Measures?

FREE TO LEAVE
RUNNING AWAY ELEVATES
2
Pointed Questions
Founded Suspicion
Common Law Right of Inquiry
Level 1 Questions v. Level 2 Questions

- Can I talk to you for a second?
- Name, address, destination, reason for being in the area?
- Did you see anything?
- Did you hear shots?
- What's going on?

- Do you have any weapons?
- Do you have anything you shouldn't have?
- What's in the bag?
CONSENT to SEARCH
"Can I search your bag?"

"I can only search your bag if you consent, do you understand?"
Protective measures: Even if an officer does not have reasonable suspicion that a person is armed and dangerous, there are tactics for officer safety that an officer may use short of a frisk when the officer perceives her/his safety is at risk. These include ordering the individual to take her/his hands out of her/his pockets, put down or step away from an otherwise lawful object that could be used as a weapon, grabbing the person’s hands if the circumstances suggest the person may be grabbing a weapon, or forcibly removing the person’s hands from her/his pockets if the individual refuses to remove them from her/his pockets. Any lawfully possessed article that is removed/safeguarded by a member of the service during an investigative encounter should be returned to the individual at the conclusion of the encounter (unless probable cause is developed and the individual is arrested).
Protective Measures

What you can say:

• “Show me your hands”
• “Put that down”
• “Take your hands out of your pockets”
• “Raise your hands”

What you can do:

• You can forcibly remove the person’s hands from their pockets, if they refuse to show them
• You can grab the person’s hands, if they reach for their pocket or waistband
Level Two

FREE TO LEAVE 1
Non-accusatory Questions
Protective Measures?

Anonymous Source

FREE TO LEAVE RUNNING AWAY ELEVATES 2
Pointed Questions
Consent to Search
Protective Measures

OBJECTIVE CREDIBLE REASON
Request for Information

FOUNDED SUSPICION
Common Law Right of Inquiry
Corroborating an ANONYMOUS CALLER BEFORE YOU GET TO THE SCENE

Call ANI ALI
Get a NAME
If you can’t get a name:

Did caller JUST EYEWITNESS CRIMINALITY?
Get caller’s basis for knowing about the crime

Does the ORIGINAL JOB convey sufficient details of observed criminality and a basis of knowledge?
Corroborating an ANONYMOUS CALLER WHEN YOU GET TO THE SCENE

Observations that corroborate alleged criminality
At Level 2

△ Ask pointed or accusatory questions
△ Seek consent to search

☒ Detain the person or use or threaten to use force
☒ Direct the person to stop
At Level 2, does the person have to:

- Answer your questions?
- Produce ID?
- Consent to a search?
- Can he walk away?
- Does his refusal to consent or answer questions elevate the encounter?
Back to our Quiz:

Founded suspicion is not enough to seek consent to search. In order to seek consent to search, you need at least reasonable suspicion.
Back to our Quiz:

Founded suspicion is not enough to seek consent to search. In order to seek consent to search, you need at least reasonable suspicion.

TRUE  FALSE  IT DEPENDS  I HAVE NO IDEA
Level 3

The Terry Stop

Reasonable Suspicion
Coming together?
Behavior
Intelligence about the area “high crime area”
Description
   Race, Age, Gender +
Location
Time
Pattern
Furtive movements
Flight
And more?
HE MATCHED THE DESCRIPTION

Race should not play any part in a decision to approach or take action unless race is part of a sufficient suspect description.
How you talk to people

One of your most powerful tools
Level Three

1. Non-accusatory Questions
   Protective Measures?

2. Pointed Questions
   Consent to Search
   Protective Measures

3. Detain
   Force?
   Frisk?
   Pointed Questions
   Consent to Search
   Protective Measures

 OBJECTIVE CREDIBLE REASON
 Request for Information

 FOUNDED SUSPICION
 Common Law Right of Inquiry

 REASONABLE SUSPICION
 Terry Stop
STOP and possibly FRISK
Operator: “What’s your emergency?”

Store Manager Lisa Jenkins: “We need the police - this couple was just in our store – they were here last week and ran up about $2500 on stolen credit cards – my security guard spotted them just now and was about to approach them – they ran out of the store, we’re on 14th street – they ran down University. It’s a young man and woman in their 20’s. He is white, has brown hair, ponytail....
“I frisked for my safety...”

“...because I believed the suspect was armed and dangerous”
Handcuffs during a Level 3 Stop?

If questioning continues: Mirandize
What's a FRISK?
What's a SEARCH?
Remember

There is no requirement that you be absolutely certain the suspect is armed. Reasonable suspicion deals with probabilities and not hard certainties – just be able to explain your reason based on clear facts.
If you have reasonable suspicion that a person just committed a Grand Larceny, you can frisk the person.

TRUE  FALSE  IT DEPENDS  I HAVE NO IDEA
If you have reasonable suspicion that a person just committed a Grand Larceny, you can frisk the person.
TAP and NYCHA Interior Patrols
There’s no 4th Amendment Exception
The law applies to NYCHA and TAP

Mere presence ≠ an Objective Credible Reason
FOR TAP VERTICALS, CONFIRM CURRENT OWNERS AFFIDAVIT (SIGNED WITHIN PAST 6 MONTHS)

ARE NO TRESPASSING SIGNS PROMINENTLY DISPLAYED?
Even if there is probable cause to arrest a person for trespassing, officers may exercise their discretion to refrain from arresting that person, and instead instruct that person to leave under appropriate circumstances.
TRESPASS CRIMES – FACT SHEET
AND SUPPORTING DEPOSITION
PD 351-144 (Rev. 04-17)

NOTE: This Form Must be Completed by the Officer Who Made the Observations that Led to the Defendant’s Arrest.

Defendant’s Name: _________________________________________  Arrest No.: ______________________

I, ________________________________________, Shield No. __________, a New York City Police Officer/Detective

assigned to the ___________ (command), deposes and swears as follows:

On _______________ (date), at ______ (time), at __________________________________________________ (location),

while on patrol inside this dwelling, an apartment building where people reside, I observed the defendant inside this

location as described below.
What about Level 4?

Probable Cause to Arrest
A **Summons** is a **Level 4** encounter.

Can you frisk someone you are going to summons?
A gun is fired; the sound of an explosion radiates.

Multiple ShotSpotter sensors throughout coverage area trigger.

Location of gunfire is pinpointed within seconds and ShotSpotter gunfire and acoustic experts review and qualify the data.

Qualified Alert quickly sent to dispatch center, PSAP and mobile units for immediate dispatch.

Within minutes officers arrive to precise gunshot location with greater situational awareness and preparedness.
Real Cases...
Contact Us

- Risk Management Bureau
  - 1 Police Plaza, Room 1408
  - 646-610-7900

- Compliance Division
  - 253 Broadway, 6th Floor
  - 212-618-3100

- Legal Bureau, Criminal Section
  - 1 Police Plaza, Room 1406
  - 646-610-5400