Prof. Sirota
Spring 2022

TERRY STOP IN CONTEXT // BREAKING THE RULES

For our penultimate class on March 29, everyone—Sections 20 and 21—will meet from 11:10-1:10 in H1000. Section 20 students should sit to my left (where U.S. counsel sat all semester); Section 21 students should sit to my right (where Bell counsel sat all semester).

During this session, we will discuss how lawyers sometimes seek not merely to apply a legal rule to their client's circumstances but to change the rule altogether.

Preparation for this discussion involves two parts, as follows.

PART I

Read Illinois v. Wardlow, 528 U.S. 119 (2000), both the majority opinion and Stevens's partial concurrence. Then read this news article in The Guardian about the death of Elijah McClain following a Terry stop in Aurora, Colorado.

- OPTIONAL: You are not required to watch the video embedded in the news article, which depicts the events of that night. The video is very disturbing.
- ALSO OPTIONAL: If you are interested in reading the full independent report about Mr. McClain's death, it is available here.

Come to class prepared to discuss your answers to the following questions:

- Based on Wardlow, what is the rule for the extent to which an officer may rely on "high-crime area" as a justification for a Terry stop? What facts established reasonable suspicion in Wardlow?
- The officers who stopped Mr. McClain said that they had reasonable suspicion for the stop. Based just on the article in The Guardian, what facts did the officers rely on for this claim and what was the independent report's conclusion about those justifications?
- Do you feel that the Wardlow rule regarding officer reliance on a "high-crime area" justification strikes the right balance between the competing interests wrestled with in Terry (legitimate law enforcement vs. riding roughshod over individual rights)? Why or why not?

PART II

Lawyers have a long tradition of advocating for change. For example, consider the fight over abortion. Jane Roe, the plaintiff in Roe v. Wade, could not obtain a legal abortion because of the Texas statute prohibiting abortions except to save the life of the mother. For Roe to prevail, her lawyers had to attack the existing rule—the Texas prohibition—and propose a new rule. Fifty years later, Thomas Dobbs, the Mississippi State Health Officer who is the lead plaintiff in the pending matter of Dobbs v. Jackson Women's Health Organization, is seeking to uphold a

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Mississippi statute that prohibits abortion after fifteen weeks' gestation, with limited exceptions. Dobbs cannot prevail under the Roe rule tying abortion rights to fetal viability; accordingly, Dobbs's lawyers have argued that the rule crafted by Roe and its progeny is wrong and propose a new rule to take its place.

Skim the Supreme Court brief for Roe, available on Westlaw at 1971 WL 128054, and the Supreme Court brief for Dobbs, focusing on the breadth of authority—legal and otherwise—relied upon by the parties. Come to class prepared to discuss your observations in this regard. Specifically:

- What types of authority did Roe's lawyers rely on to argue that abortions for reasons other than saving the mother's life are permissible?
- What types of authority did Dobbs's lawyers rely on to argue that pre-viability restrictions are permissible where a rational basis supports the prohibition?

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