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ARTICLES

THE PSEUDOSCIENCE OF GUN HUNTING

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Police departments nationwide train their officers to assume that a member of the community is armed using the "characteristics of an armed person" (CAP) framework. This framework, composed of multiple characteristics that ostensibly allow police to determine whether a person is carrying a handgun, has become a pseudoscientific justification for stop-and-frisk.

The CAP framework is a form of proactive policing: patrolling to find potential crime and preempt or stop it rather than responding to crime after it is reported. Such tactics lead to a myriad of legal and social problems, including racialized harassment, widespread distrust of police, and pervasive Fourth Amendment violations.

This Article examines the CAP framework, using the Baltimore Police Department's (BPD) implementation of this framework as a case study. The BPD's CAP training is so superficial and broad that nearly everyone exhibits the targeted characteristics. Everything from turning one's body or touching one's waistband to wearing an untucked shirt can give an officer cause to conclude a person might be armed. In effect, the CAP framework gives officers unbridled discretion to frisk whomever they choose and functions as a tool for racialized harassment.

*This Article argues that the CAP framework cannot provide legal justification for stops and frisks, especially post-*New York State Rifle & Pistol Ass'n v. Bruen. *This Article likewise argues that use of the CAP framework as a proactive policing tactic violates the Fourth Amendment.*

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INTRODUCTION

On May 11, 2023, a Baltimore Police Department (BPD) detective shot seventeen-year-old Mekhi Franklin in the back.[1] The encounter began when the detective approached Franklin and his friend.[2] Franklin and his

1. CBS Balt. Staff, Baltimore Police Release Body-Camera Video of Officer Shooting 17-Year-Old in Shipley Hill Neighborhood, CBS News, https://www.cbsnews.com/baltimore/news/baltimore-police-body-camera-shipley-hill-17-year-old-boy-shooting-officer/ [https://perma.cc/QSK8-RPLC] (last updated May 16, 2023); Lea Skene, Teen Shot by Baltimore Police Officer During Foot Chase, Hospitalized in Critical Condition, AP News (May 11, 2023), https://apnews.com/article/baltimore-police-shooting-teen-critical-condition-39e57753d6efc0e62aef1d69d0b81213 [https://perma.cc/2TRW-DDYA] [hereinafter Skene, Teen Shot by Baltimore Police Officer].

2. Cadence Quaranta, Assault Charges Filed Against 17-Year-Old Shot by Police Officer in Shipley Hill, Balt. Banner (May 30, 2023), https://www.thebaltimorebanner.com/community/criminal-justice/charges-17-year-old-police-officer-shipley-hill-PW5ODHB2KVHH3MHOJIIE2QS3HQ/ (on file with the *Columbia Law Review*).

friend tried walking away.[3] When the detective said, "Come here," Franklin ran.[4] The detective chased Franklin, later claiming to have seen Franklin pull something out of his waistband as Franklin ran, and then fired four shots at Franklin.[5] A bullet struck Franklin in the back as he continued to run away.[6]

The detective who shot Franklin was a member of one of the BPD's District Action Team (DAT) squads,[7] units dedicated to proactively policing neighborhoods that the BPD considers "high crime," looking to identify and preempt criminal activity.[8] The detective was not there investigating any offense, nor did he have any specific reason to suspect Franklin or his friend of doing anything unlawful.[9] After the shooting, the detective said that he engaged with and tried to stop Franklin because he believed Franklin exhibited "characteristics of an armed person."[10]

Patrolling the community and looking for civilians exhibiting characteristics of someone who is armed is a form of proactive policing—a practice that this Article defines as police-initiated action aimed at reducing or preventing crime before it occurs.[11] While proactive policing is marketed as anticrime and pro-public safety, it in fact damages communities, hurts public safety,[12] and encourages discriminatory

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3. Id.

4. Id. (internal quotation marks omitted) (quoting Cedric Elleby, Detective, Balt. Police Dep't).

5. CBS Balt. Staff, supra note 1.

6. Id.

7. Id.

8. Brandon Soderberg, After the Gun Trace Task Force Scandal, BPD Established New Plainclothes Units. Are They More of the Same?, Balt. Mag. (May 2, 2023), https://www.baltimoremagazine.com/section/community/baltimore-police-department-plainclothes-district-action-team-units-gun-trace-task-force/ [https://perma.cc/7L6H-CXSS] [hereinafter Soderberg, After the Gun Trace Task Force Scandal] (internal quotation marks omitted).

9. Alex Mann, Cassidy Jensen & Darcy Costello, After Baltimore Police Shooting, Some Question: What Does 'Displaying Characteristics of an Armed Person' Really Mean?, Balt. Sun (May 12, 2023), https://www.baltimoresun.com/2023/05/12/after-baltimore-police-shooting-some-question-what-does-displaying-characteristics-of-an-armed-person-really-mean/ (on file with the *Columbia Law Review*) [hereinafter Mann et al., After Baltimore Police Shooting].

10. Id. (internal quotation marks omitted) (quoting Rich Worley, then-Deputy Commissioner, Balt. Police Dep't).

11. Definitions of proactive policing differ. See, e.g., Nat'l Acads. of Scis., Eng'g, & Med., Proactive Policing: Effects on Crime and Communities 30 (David Weisburd & Malay K. Majmundar eds., 2018) (defining proactive policing as "all policing strategies that have as one of their goals the prevention or reduction of crime and disorder and that are not reactive in terms of focusing primarily on uncovering ongoing crime or on investigating or responding to crimes once they have occurred").

12. See Lupe Victoria Aguirre & Simon McCormack, The Rise of Stop-and-Frisk Is a Dangerous Gift to the Trump Agenda, NYCLU (June 27, 2024), https://www.nyclu.org/commentary/the-rise-of-stop-and-frisk-is-a-dangerous-gift-to-the-trump-agenda [https://perma.cc/54HK-LMYT] ("The heavy reliance on stop-and-frisk has never been an effective

policing and stop-and-frisks without sufficient cause.[13] People in proactively policed neighborhoods experience poorer health outcomes, including chronic stress and worse mental health.[14] And, as it did after the BPD detective engaged Franklin, proactive policing can lead to police violence.[15]

The BPD's use of the "characteristics of an armed person" (CAP) framework is a form of proactive policing. Using standardized, written materials, the BPD trains its officers and detectives on the CAP framework. The BPD's training materials include a slideshow and a pocket-sized thirty-nine-page booklet, the cover of which is shown below[16]:

public safety tool. Though it's been pitched as a way to prevent violent offenses, few guns are ever recovered and the vast majority of people who are stopped are completely innocent.").

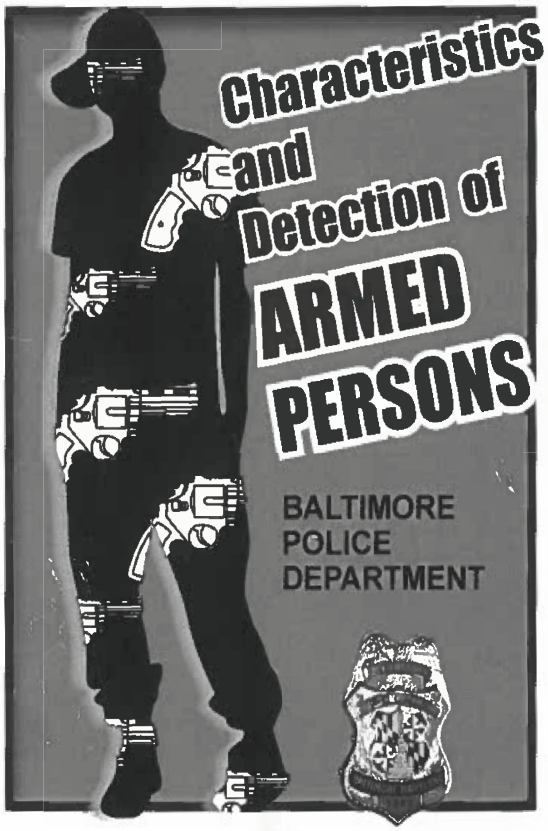
13. See Rachel A. Harmon & Andrew Manns, Proactive Policing and the Legacy of *Terry*, 15 Ohio St. J. Crim. L. 49, 49 (2017) ("Proactive policing may make constitutional violations more likely because—when poorly implemented—it can encourage officers to engage in stops and frisks even when adequate suspicion is lacking or in a manner that discriminates.").

14. See Juan Del Toro et al., The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys, 116 Proc. Nat'l Acad. Scis. 8261, 8266–67 (2019) (finding that young people stopped by police more frequently engaged in more delinquent behaviors six, twelve, and eighteen months later, even when controlling for factors like past delinquency); Amanda Geller, Jeffrey Fagan, Tom Tyler & Bruce G. Link, Aggressive Policing and the Mental Health of Young Urban Men, 104 Am. J. Pub. Health 2321, 2324–25 (2014) (finding that police contact was a statistically significant predictor of PTSD in young men); Alyasah Ali Sewell, Kevin A. Jefferson & Hedwig Lee, Living Under Surveillance: Gender, Psychological Distress, and Stop-Question-and-Frisk Policing in New York City, 159 Soc. Sci. & Med. 1, 9–10 (2016) (identifying an association between escalated police encounters and psychological distress).

15. While Franklin survived being shot in the back by a BPD detective, others whom police have pursued based on the "characteristics of an armed person" (CAP) framework have lost their lives. The link between the CAP framework and police violence is discussed in depth in section II.D.

16. Both the twenty-eight-slide slideshow, entitled *Characteristics of Armed Persons*, and the booklet, entitled *Characteristics and Detection of Armed Persons*, were already in this author's possession. During this project, this author requested these training materials directly from the BPD pursuant to the Maryland Public Information Act but received only the *Characteristics of Armed Persons* slideshow (provided November 25, 2024) and not the booklet. See Balt. Police Dep't, Characteristics of an Armed Person (Mar. 18, 2019) (unpublished slideshow) (on file with the *Columbia Law Review*) [hereinafter BPD Slideshow]; Balt. Police Dep't, Characteristics of an Armed Person (n.d.) (unpublished booklet) (on file with the *Columbia Law Review*) [hereinafter BPD Booklet]. This training is discussed in more detail in section II.B.

FIGURE 1. BPD BOOKLET COVER



As the booklet cover attempts to illustrate, the CAP framework is all about finding concealed guns. The framework consists of a list of traits that purportedly indicate that a person may be armed. This includes someone who wears seasonally inappropriate clothing, a tailored shirt untucked, an outfit with something that does not match (like suit pants with a windbreaker), only one glove, or a fanny pack or an unzipped shoulder bag. It also includes someone who turns their body, touches their waistband, or wears or uses a shoulder bag but keeps their wallet in their pocket.[17] The list goes on, and, by its end, the CAP framework provides reason for police to stop practically *anyone*.[18]

This police-created framework gives police justification for conflict *they initiate* by engaging with civilians who are not visibly doing anything unlawful. On the ground, use of the CAP framework entails police walking

17. See infra notes 162–166 and accompanying text.

18. The unreliability of the CAP training will be discussed in section II.B. See infra notes 162–166 and accompanying text.

through communities they have deemed priorities for proactive policing (usually communities of color[19]) and engaging with civilians who exhibit these characteristics—stopping them, speaking with them, patting them down for weapons.[20] Indeed, according to witnesses, the detective who shot Franklin would often come through the neighborhood, "antagonize residents," and "make derogatory jokes."[21] One witness said officers routinely came through the area, said "[y]ou look like you might have a gun on you," and then grabbed and searched him.[22] This anecdote is a concrete example of the way that the CAP framework encourages thinly disguised racial profiling and police harassment.

The CAP framework originated with a New York Police Department (NYPD) detective in the early 1990s who some described as a "gun-hunter."[23] The detective is said to have had an "uncanny ability to spot people carrying guns on the street" and "ma[de] a science out of his sixth sense" by listing out factors and training other officers.[24] The framework developed and spread from there. Today, across the nation, police

19. A 2023 study using police officers' GPS location data as a measure of where they were policing found that officers "spend more time in places with larger Black, Hispanic, or Asian populations both between and within cities" and that the disparity remained between time spent in Black and Hispanic neighborhoods versus white neighborhoods when controlling for socioeconomic status, social disorganization, and violent crime. M. Keith Chen, Katherine L. Christensen, Elicia John, Emily Owens & Yilin Zhuo, Smartphone Data Reveal Neighborhood-Level Racial Disparities in Police Presence, 107 Rev. Econ. & Stats., 1734, 1734–35 (2025).

20. E.g., David Collins, I-Team: Family of 17-Year-Old Shot Say Police Were Harassing Him for Some Time, WBALTV (May 12, 2023), https://www.wbaltv.com/article/mekhi-franklin-17-year-old-shot-police-family-accused-harassment/43878691 [https://perma.cc/T64N-SXLD].

21. Lea Skene, Witness: Teen Wounded by Baltimore Police Was Shot in the Back While Running Away, AP News (May 12, 2023), https://apnews.com/article/baltimore-police-shooting-fleeing-teen-7728192f419d8e353171b0811bdaafc1 [https://perma.cc/2RDN-UBYH] [hereinafter Skene, Witness].

22. Mann et al., After Baltimore Police Shooting, supra note 9 (internal quotation marks omitted) (quoting Daquan Young, Witness); see also Alex Mann, Cassidy Jensen & Darcy Costello, Body Camera Footage Shows Baltimore Police Officer Shoot 17-Year-Old From Behind, Balt. Sun (May 16, 2023), https://www.baltimoresun.com/2023/05/16/body-camera-footage-shows-baltimore-police-officer-shoot-17-year-old-from-behind/ (on file with the *Columbia Law Review*) [hereinafter Mann et al., Body Camera Footage Shows].

23. Erik Eckholm, Who's Got a Gun? Clues Are in the Body Language, N.Y. Times (May 26, 1992), https://www.nytimes.com/1992/05/26/nyregion/who-s-got-a-gun-clues-are-in-the-body-language.html (on file with the *Columbia Law Review*). The history of the CAP framework is discussed further in section I.B.

24. Id.

departments and police academies have in-house training on similar CAP frameworks[25] or rely on equivalent trainings by federal policing agencies.[26]

Terry v. Ohio is the seminal case used to justify proactive policing tactics.[27] The Supreme Court held in *Terry* that even in the absence of probable cause, an officer may stop a civilian if the officer reasonably believes the civilian may be in the process of committing a crime.[28] Moreover, the officer may pat down the civilian's outer clothing for weapons if the officer believes the civilian is armed and presently dangerous.[29] Officers employing the CAP framework routinely use *Terry* to justify warrantless stops and pat-downs for weapons, usually at the suppression stage of a criminal case: The prosecution argues that the CAP framework provided the officer with reasonable suspicion that the defendant possessed a gun, therefore justifying a stop and, in turn, a pat-down for weapons.[30]

This use of *Terry* to defend the CAP framework ignores the rapidly changing legal landscape in the United States around gun possession. In 2022, in *New York State Rifle and Pistol Ass'n v. Bruen*, the Supreme Court expanded the right of citizens to carry handguns outside their homes for self-protection.[31] In a post-*Bruen* world, questions about what if anything police are allowed to do when, absent other suspicions, they believe someone is armed require more nuanced consideration. Carrying a gun is not necessarily illegal, and someone who carries a gun is not necessarily dangerous.[32] Even someone carrying a gun illegally may not be dangerous.

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25. For example, the Wilmington Police Academy in Wilmington, Delaware, offers its own characteristics of armed gunmen training. See State v. Murray, 213 A.3d 571, 575 (Del. 2019) (noting that an officer who testified in a gun case had received training on the CAP framework at the Wilmington Police Academy).

26. For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) offers a four-hour "Characteristics of Armed Gunmen" course "[s]pecifically designed for uniform patrol officers." Project Safe Neighborhoods Enforcement Training, ATF, https://www.atf.gov/firearms/project-safe-neighborhoods-enforcement-training-psn-3-day-program [https://perma.cc/66XV-8RAH] (last updated Feb. 28, 2019). The United States Secret Service also offers a CAP training. Kevin Porter, U.S. Secret Serv., Characteristics of the Armed Individual (2010), https://info.publicintelligence.net/USSS-ArmedIndividuals.pdf [https://perma.cc/B4UL-4GUZ] (last visited Oct. 14, 2025).

27. Terry v. Ohio, 392 U.S. 1 (1968).

28. Id. at 22–24.

29. Id. at 30.

30. The author of this Article was an Assistant Public Defender in the Baltimore Felony Division of the Maryland Office of the Public Defender from January 2022 through July 2024. In her practice there, this author saw the State argue this in nearly every case involving an arrest based on the CAP framework.

31. See N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2122 (2022) (holding that the Second Amendment protects an individual's "right to carry a handgun for self-defense outside the home").

32. See Brandon del Pozo & Barry Friedman, Policing in the Age of the Gun, 98 N.Y.U. L. Rev. 1831, 1851 (2023) ("In short: If possession of guns is lawful in a state, then stops are

Suspecting that someone has possession of a handgun, then, should not automatically give rise to reasonable articulable suspicion of criminal activity, nor should it automatically give rise to a reasonable belief that the person is presently dangerous. But evident throughout judicial handling of the CAP framework is a conflation of *stops* with *weapons pat-downs*. When an officer offers suspicion that a person was armed as the reason for the officer's stop-and-frisk, questions of legality of the suspected gun possession (did the person have a permit?) and questions about dangerousness (does suspicion of being armed necessarily mean the person is presently dangerous?) are often ignored.[33] Instead, suspicion that a person was armed is accepted as justification for both the stop and the pat-down for weapons without differentiation between the two. The result is a perversion of the stop-and-frisk framework, in which the initial justification for the frisk *also* becomes a post hoc justification for the stop.

In legal scholarship, discussion of proactive policing has largely focused on stop-and-frisk, mostly in the context of the NYPD. Professor Tracey Meares called out the mismatch between what *Terry* allows and the way the NYPD misused it in its stop-and-frisk framework.[34] In *Terry*, the police officer "saw a crime in progress and tried to stop it."[35] But in modern policing, superficial characteristics rather than any legitimate individualized suspicion all but predetermine who will be stopped.[36] Further exposing the inequality of the NYPD's stop-and-frisk program, Professor Jeffrey Fagan analyzed the NYPD's stop-and-frisk citizen stop data and revealed racial disparities throughout.[37] Despite these important contributions to the more narrow issue of the NYPD's stop-and-frisk policy, no legal scholar has yet examined the broader CAP framework.

This Article provides the first analysis of the CAP framework while contextualizing it within proactive policing more generally. In discussing how state courts handle the CAP framework, this Article shows a split between states (and inconsistencies within courts in a single state over time) as to whether and how to accept and defer to the framework during suppression hearings. While some trial and appellate courts have rejected

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not."). This Article discusses the justification of firearm possession for a police stop further in section III.B.

33. See infra section III.B.

34. Tracey L. Meares, Programming Errors: Understanding the Constitutionality of Stop-and-Frisk as a Program, Not an Incident, 82 U. Chi. L. Rev. 159, 174–78 (2015).

35. Id. at 178.

36. See id. at 174–76 ("[I]n a significant percentage of cases, police do not comply with the Constitution, and when they do not, the burden falls disproportionately on racial minorities.").

37. See Jeffrey Fagan, No Runs, Few Hits, and Many Errors: Street Stops, Bias, and Proactive Policing, 68 UCLA L. Rev. 1584, 1587–91 (2022) ("We find consistent evidence of bias toward Blacks, Latinx, and Black Latinx persons and significant differences by race and ethnicity in the use of the reasonable suspicion rationales that motivate stops.").

the CAP framework because of questions about its reliability,[38] more have permitted police actions based on the framework, deferring to officers' training and experience without further inquiry.[39] No court has parsed out the interplay between the CAP framework and the post-*Bruen* right to possess a firearm outside of the home for self-protection.

The BPD—whose officer shot Franklin in the narrative that began this Article—is a useful case study for this Article's analysis of the CAP framework for two reasons. First, the BPD frequently engages in stops based on the CAP framework.[40] Second, and perhaps more importantly, Baltimore's history with the CAP framework represents a profound paradox: Despite the BPD's extensive record of corruption and misconduct,[41] Baltimore judges routinely accept and defer to the BPD's use of the framework.[42] The Civil Rights Division of the DOJ concluded in 2016 that the BPD "us[es] enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches and arrests of African Americans."[43] Specifically referencing the CAP framework, the DOJ found that "BPD officers . . . appear to be relying too heavily on only a single characteristic of an armed person, rather than a set of characteristics that,

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38. See, e.g., State v. Murray, No. 1710007866, 2018 WL 1611268, at *2–3 (Del. Super. Ct. Apr. 2, 2018) (rejecting the use of the framework for reliability concerns in Delaware), rev'd and remanded by, 213 A.3d 571, 578–80 (2019); State v. Pugh, 826 N.W.2d 418, 423–24 (Wis. Ct. App. 2012) (rejecting the use of the framework in Wisconsin). For a discussion on these cases, along with other state courts' reactions to the CAP framework, see infra section III.C.

39. See, e.g., Flowers v. State, 195 A.3d 18, 27–28 (Del. 2018) (finding reasonable articulable suspicion for a stop in part because of the corporal's training "in the police academy and from courses on street crime as to how to recognize the characteristics of an armed person").

40. While there has been no measure of the frequency with which the CAP framework is cited to justify stops and frisks in Baltimore, media accounts highlight its prevalence. See, e.g., Balt. Courtwatch, Displaying Characteristics of a Carceral State, Balt. Beat (Nov. 28, 2023) https://baltimorebeat.com/displaying-characteristics-of-a-carceral-state/ [https://perma.cc/95Y8-UPB6] (recounting how Baltimore Courtwatch observers frequently hear CAP explanations for stops in pretrial hearings); Mann et al., After Baltimore Police Shooting, supra note 9 (describing how the CAP explanation was used to justify the BPD's shooting of a seventeen-year-old).

41. See, e.g., Jessica Lussenhop, Who Were the Corrupt Baltimore Police Officers?, BBC (Feb. 13, 2018), https://www.bbc.com/news/world-us-canada-43035628 [https://perma.cc/M4Q5-53JY] (discussing the federal prosecution and conviction of members of the Gun Trace Task Force); Skene, Teen Shot by Baltimore Police Officer, supra note 1 (describing reforms that the Baltimore Police Department instituted after the DOJ discovered longstanding misconduct).

42. See infra section III.C.1.

43. C.R. Div., DOJ, Investigation of the Baltimore City Police Department 163 (2016), https://www.justice.gov/d9/bpd_findings_8-10-16.pdf [https://perma.cc/C6DZ-8RA7] [hereinafter DOJ C.R. Div. Investigation]. This investigation was followed by a 2017 consent decree. Consent Decree, United States v. Police Dep't. of Balt. City, No. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017) https://www.justice.gov/opa/file/925056/dl?inline [https://perma.cc/67XY-87SE] [hereinafter Consent Decree].

when combined, together indicate that a person is armed."[44] The BPD's Gun Trace Task Force (GTTF)—a street-level enforcement unit engaged in proactive policing[45]—was disbanded, and thirteen of its members were federally prosecuted, because of criminal activity within it, including planting guns and fabricating claims that people exhibited characteristics of an armed person.[46] Pop culture has focused on problems plaguing policing in Baltimore: *The Wire* brought police corruption and violence in Baltimore to people's living rooms in the early 2000s, and *We Own This City* depicted the corruption within (and the ultimate demise of) the GTTF in 2022.[47] Baltimore, however, has not received as much attention as New York City in the legal literature, and its police department continues to receive judicial deference on its use of proactive policing despite its documented history of reckless and unconstitutional behavior.

This Article proceeds as follows. Part I provides background. It describes the CAP framework and discusses the legal scholarship on other methods of proactive policing.

Part II is a case study of the BPD's use of the CAP framework. Part II includes a history of proactive policing in Baltimore within the context of its rise nationwide. Part II also engages in an in-depth discussion of the training BPD officers receive on the framework, its ineffectiveness at identifying people who have handguns, and the ways in which the framework damages the community and facilitates police violence. Part II concludes by comparing the BPD's use of the CAP framework to other

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44. DOJ C.R. Div. Investigation, supra note 43, at 95 n.105.

45. See generally Michael R. Bromwich, Jason M. Weinstein, Rachel B. Peck, Katherine M. Dubyak, William G. Fletcher, James M. Purce & Troy D. Shephard, Steptoe, Anatomy of the Gun Trace Task Force Scandal: Its Origins, Causes, and Consequences (2022) [hereinafter GTTF Report] (providing a comprehensive explanation of the formation of the GTTF and the scandals in which it was involved).

46. See, e.g., id. at ii (explaining how thirteen former BPD officers were charged for crimes they committed both before and after they joined the GTTF); id. at 177–78 (documenting different instances of GTTF members fabricating claims that individuals were armed); Tim Swift, Police Sergeant Sentenced to 21 Months for Planting Evidence in Gun Trace Task Force Case, Fox 45 (July 13, 2022), https://foxbaltimore.com/news/local/police-sergeant-sentenced-to-21-months-for-planting-evidence-in-gun-trace-task-force-case [https://perma.cc/UY24-WYE4] (reporting that one GTTF member was convicted of planting evidence). Since 2020, Baltimore has paid $22,935,073.27 in settlements related to the Gun Trace Task Force's illegal conduct. Gun Trace Task Force (GTTF) Settlement Tracker, Balt. City Comptroller, https://comptroller.baltimorecity.gov/boegttf [https://perma.cc/XQ24-VUHK] (last visited Oct. 19, 2025); see also GTTF Report, supra note 45, at 115 (noting how the city paid out $8 million to compensate for the wrongful convictions of two individuals).

47. The Wire (HBO television broadcast, aired June 2, 2002); We Own This City (HBO television broadcast, aired Apr. 25, 2022); see also Eric Deggans, HBO's 'We Own This City' is the Closest Fans Will Get to a Sequel of 'The Wire', NPR (May 3, 2022), https://www.npr.org/2022/04/25/1094590786/hbo-we-own-this-city-the-wire-baltimore-police [https://perma.cc/VH5R-RAXS] (describing how these TV shows depicted real-life policing issues in Baltimore).

police departments nationwide, illustrating that they use the framework in similarly problematic and harmful ways.

Part III analyzes the constitutionality of the CAP framework, focusing on the Fourth Amendment and the conflation between the legal cause for the stop and the legal cause for the weapons pat-down. Part III also considers post-*Bruen* changes in the legal significance of being armed and the interplay between being armed and being presently dangerous. Part III compares state courts' treatment of the CAP framework and notes a split in whether the framework's reliability is considered.

Part IV argues that the CAP framework's reliability should be considered before trial courts accept testimony and conclusions based on it. Using existing discovery and evidentiary rules to obtain information about the framework and officers' relevant training, defense attorneys can expose the framework's failures: The framework cannot reliably identify people who are armed, let alone people who are *unlawfully* armed, and provides no information relevant to an assessment of dangerousness. Part IV argues that trial courts should play a gatekeeping function, as they do for expert testimony, to screen out unreliable policing practices like the CAP framework as justification for stops and weapons pat-downs. Finally, the Article concludes that requiring criminal courts to assess the proactive policing policies themselves is an effective way to expose the constitutional violations in individual criminal cases that otherwise go unchecked.

I. THE CAP PROACTIVE POLICING FRAMEWORK

The CAP framework, as its full name suggests, allows police to assume that a person is carrying a weapon if that person exhibits certain characteristics.[48] The framework is fundamentally a list of factors that *might* mean someone has a gun.[49]

Police present the CAP framework in reports and to judges as though it is scientific or evidence-based.[50] But assessments of the CAP framework's reliability in identifying people who are armed suggest that it fails.[51] Each of the listed characteristics is more consistent with innocence than illegality, and the list of factors is so long and broad that the framework describes almost everyone.[52] Accordingly, the CAP framework provides

48. See Balt. Courtwatch, supra note 40 (listing the characteristics often cited as evidence that someone is armed and noting that they often include "a wide variety of clearly harmless and innocent behaviors"); Mann et al., After Baltimore Police Shooting, supra note 9 (reporting that the framework was used to justify the shooting of a teenager by a BPD officer).

49. See Balt. Courtwatch, supra note 40 (explaining that the characteristics are meant to act as evidence that an officer possessed the reasonable suspicion necessary to make a stop); see also infra section II.B.

50. See infra notes 174–179 and accompanying text.

51. See infra section II.C.

52. See Balt. Courtwatch, supra note 40 ("These characteristics' broad and vague nature allows police to justify any stop."); see also infra section II.B.

unchecked discretion to police to stop-and-frisk members of the community.[53] Yet, it has flown under the radar of scholars and critics of the criminal legal system.[54]

This Part provides a description and overview of the CAP framework and traces its historical development.[55] It then discusses legal scholars' analyses of other proactive policing tactics, including the NYPD's stop-and-frisk and use of individual characteristics to justify police stops and pat-downs for weapons, highlighting the absence of any discussion of the CAP framework.[56]

A. *History*

The origins of the CAP framework trace back to NYPD detective Robert Gallagher. In 1992, the *New York Times* published an article, *Who's Got a Gun? Clues Are in the Body Language*, describing Detective Gallagher and his "gun-hunting."[57] Gallagher was touted for "disarm[ing] more than 1,200 gun-toting thugs" in his eighteen years with the NYPD.[58] In what the *New York Times* called "a science," Gallagher outlined the characteristics he observed—a bulge, "discordant clothes," an uneven stride and shorter arm swing, a "security feel" (touching the area where a weapon might be)—and claimed that "[r]ainy weather is great gun-hunting weather" because people hold a hand over their gun as they run for cover.[59] After making those observations, Gallagher would stop the person, "box the [person] in," then "reach over and clamp his hand over the gun" if the person turned away from him.[60] Gallagher had visual diagrams of the characteristics:[61]

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53. See Mann et al., After Baltimore Police Shooting, supra note 9 (discussing a defense attorney's perspective that the CAP framework allows police to "justify stopping people on a 'hunch'").

54. See infra section I.C.

55. See infra section I.A–.B.

56. See infra section I.C.

57. See Eckholm, supra note 23 (reporting on Gallagher's "uncanny ability to spot people carrying guns on the street").

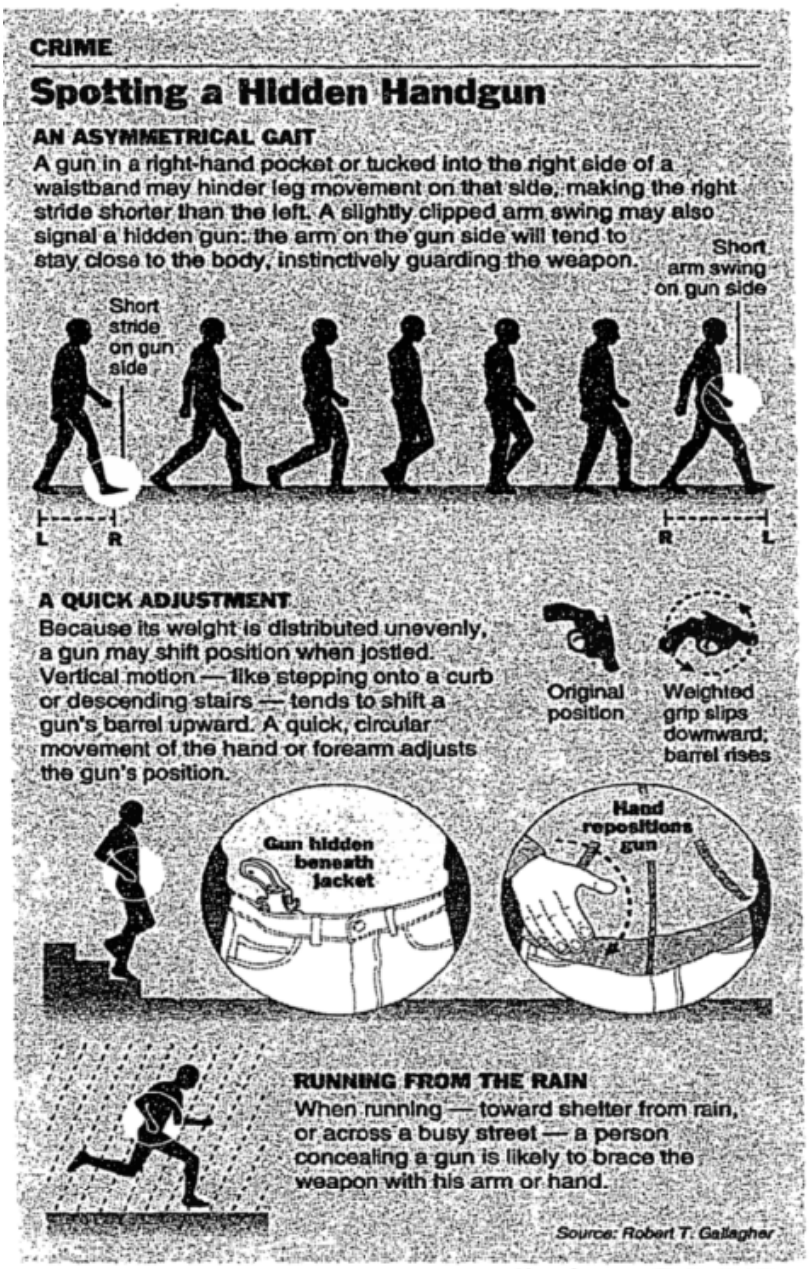
58. Id.

59. Id. (internal quotation marks omitted) (quoting Robert T. Gallagher, Detective, NYPD).

60. Id.

61. Id.

FIGURE 2. CAP FRAMEWORK VISUAL DIAGRAM



Gallagher's attempt to make his observations scientific came in the early 1990s, during the nationwide rise in proactive policing in response

to the perceived failures of police to reduce crime.[62] While not called the characteristics of an armed person framework, Gallagher's descriptors to determine whether someone was in possession of a gun became the foundations of the modern CAP framework.

B. *The CAP Framework*

Presently, the CAP framework is composed of a list of characteristics said to indicate that a person is armed.[63] Some of its characteristics are appearance based: wearing seasonally inappropriate clothing, wearing clothing that appears weighed down on one side, wearing an item of clothing that does not match the rest, and so on.[64] And some of the characteristics are movement based: "blading" (turning) one's body, walking or running with a stiff arm, touching one's waistband or pocket, and more.[65]

Officers across the country are trained in the CAP framework.[66] In effect, CAP training encourages police engagement with civilians not otherwise being investigated for anything, to determine whether those civilians possess guns. The training is distinct from merely teaching officers to recognize when someone has a weapon during an arrest or a conflict.[67] The CAP framework's primary focus is not officer safety—it is supposed to give officers the ability to recognize when a civilian they may not otherwise be interacting with (like someone just standing on the corner as the officer

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62. See Nat'l Acads. of Scis., Eng'g, & Med., supra note 11, at 35–40 (discussing the history and evolution of proactive policing). The Committee on Proactive Policing noted that proactive policing emerged from "a period of intellectual ferment as police chiefs, outside experts, and academics searched for new principles for police operations." Id. at 30. The article outlining Gallagher's successes was juxtaposed in the *New York Times* next to one entitled "Gunshot Kills Boy, Age 9, in Brooklyn," clearly illustrating the focus on crime and crime control. Ian Fisher, Gunshot Kills Boy, Age 9, in Brooklyn, N.Y. Times, May 26, 1992, at B3 (on file with the *Columbia Law Review*).

63. Examples of specific police departments' or agencies' training materials are discussed in sections II.B and II.E. What follows here is a general description. See BPD Booklet, supra note 16, at 2 ("This booklet was created to assist members of law enforcement in . . . identification of armed persons.").

64. See Porter, supra note 26; BPD Booklet, supra note 16, at 17–19; BPD Slideshow, supra note 16.

65. See Porter, supra note 26; BPD Booklet, supra note 16, at 14–17, 33–37; BPD Slideshow, supra note 16.

66. For example, the CAP framework is used by police in Pennsylvania, see Commonwealth v. Brown, 64 A.3d 1101, 1108–09 (Pa. Super. Ct. 2013); in Massachusetts, see Commonwealth v. Harrison, No. 15-P-1609, 2017 WL 838230, at *1–2 (Mass. App. Ct. Mar. 3, 2017); Commonwealth v. Jean, No. 14-P-1088, 2015 WL 9306684, at *1–2 (Mass. App. Ct. Dec. 21, 2015); and in Delaware, see Bryant v. State, No. 236, 2016, 2017 WL 568345, at *1–2 (Del. 2017).

67. Porter, supra note 26 (framing training as what to look for "[w]hen placing a subject under observation for the purpose of trying to determine whether or not that person is possibly armed").

is walking by) is armed, empowering officers to stop and investigate that civilian for weapon possession.[68]

Some police departments have their own training on the CAP framework,[69] while others rely on training offered by other agencies like the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).[70] Either way, the CAP framework training tends to be dual focused. First, the training presents identifying signs that someone is armed.[71] The training then shifts to helping officers write reports about these stops and searches that will survive Fourth Amendment challenges.[72] This is often explicit in the training. For example, the description of the ATF training notes: "The course includes detailed instruction on identifying characteristics of persons who carry concealed firearms; legal issues concerning stop and frisk; and articulating probable cause for searches."[73] Likewise, the BPD training has a section called "Writing the Incident Report,"[74] and the corresponding booklet identifies its purpose as assisting police in writing probable cause statements.[75]

Fundamental to the CAP framework are two assumptions. First, that reasonable belief that a person is armed justifies a stop. And second, that reasonable belief that a person is armed justifies a pat-down for weapons. As is discussed more fully in section III.B, both of these assumptions are flawed. The right to bear arms is constitutionally protected, and police cannot tell, merely by looking at someone, whether a weapon they may possess is or is not permitted.[76] Moreover, possession of a handgun does not automatically mean that someone is dangerous in a legal sense, especially given the Supreme Court's expanding interpretation of the

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68. Id.

69. For example, the BPD has its own "Characteristics of an Armed Person" training and "Characteristics and Detection of Armed Persons" booklet which, according to the booklet itself, was "the collectives' [sic] efforts of several members of the Baltimore Police Department, Baltimore Assistant States [sic] Attorney's Office and Detective Robert Gallagher of the New York City Police Department." BPD Booklet, supra note 16, at 2; see also BPD Slideshow, supra note 16.

70. See Project Safe Neighborhoods Enforcement Training, supra note 26. For example, the police officer whose conduct was being reviewed in *Commonwealth v. Brown* attended the ATF's version of the CAP training. See 64 A.3d at 1108–09 (affirming a lower court finding of reasonable suspicion in part based on the corporal attending "an ATF seminar on 'Characteristics of an Armed Gunman'" (quoting Suppression Court Opinion, Sep. 20, 2011, at 7–8)).

71. See BPD Booklet, supra note 16, at 14–21; BPD Slideshow, supra note 16; Project Safe Neighborhoods Enforcement Training, supra note 26.

72. See BPD Booklet, supra note 16, at 5–10, 25–32; BPD Slideshow, supra note 16; Project Safe Neighborhoods Enforcement Training, supra note 26.

73. Project Safe Neighborhoods Enforcement Training, supra note 26 (emphasis omitted).

74. BPD Slideshow, supra note 16.

75. Id.; see also BPD Booklet, supra note 16, at 2.

76. See infra section III.B.

Second Amendment.[77] But the CAP framework is premised on the idea that suspicion of a gun is suspicion of a crime, and possession of a gun is synonymous with being dangerous.

Like stop-and-frisk, infamously used by the NYPD, the CAP framework emphasizes quantity, not quality, in terms of stops.[78] The idea is that the more police stop people who present certain characteristics, the more weapons police will get off the street. What distinguishes the CAP framework from general stop-and-frisk, though, is that the CAP framework holds itself out to be a more scientific, evidence-based form of policing. While stop-and-frisk notoriously allowed unchecked discretion, the CAP framework centers around a list of characteristics to guide officers' decisionmaking. Officers using the CAP framework are often admitted in court as *experts* in it.[79]

But there is nothing evidence-based or scientific about the CAP framework. The characteristics that the framework comprises, discussed more fully in section II.B, do nothing to reliably distinguish armed people from those who are unarmed. A person turning his body away from the police, wearing seasonally inappropriate clothing such as a coat when the police do not think the weather warrants it, or carrying a bag that looks weighed down unevenly *could* be carrying a gun—or could be unarmed.[80] The CAP framework does not differentiate between the two and therefore does nothing to meaningfully guide officer decision-making. The framework merely empowers police to stop a civilian and check.

The checklist style of the CAP framework is not unique. Other checklist-based proactive policing frameworks have led to the same overbreadth that defeats their purpose. Street Cop, a popular police training organization,[81] trains officers from across the nation on the "Reasonable Suspicion Factors (RAS) Checklist" for identifying criminal

77. See infra section III.B.

78. See Meares, supra note 34, at 164 (discussing the purposeful frequency of stop-and-frisks when implemented by the NYPD pre-*Floyd*).

79. Officers are routinely admitted as experts in the CAP framework in Baltimore. See, e.g., Ford v. State, No. 1447, 2022 WL 4546674, at *1 (Md. Ct. Spec. App. Sep. 29, 2022) (discussing the admission of a police officer as an expert in the characteristics of an armed person framework); Davis v. State, No. 2585, 2021 WL 3630036, at *1–2 (Md. Ct. Spec. App. Aug. 17, 2021) (same); Mallette v. State, No. 1624, 2018 WL 4521013, at *1–2 (Md. Ct. Spec. App. Sep. 20, 2018) (same); Bailey v. State, No. 522, 2017 WL 2482339, at *2–3 (Md. Ct. Spec. App. June 8, 2017) (same).

80. See BPD Booklet, supra note 16 at 14–19; BPD Slideshow, supra note 16.

81. Government entities from every state except Hawaii have provided public funds to Street Cop. N.J. Off. of the State Comptroller, Supplemental Report on the High Price of Unregulated Private Police Training 5 (2025), https://www.nj.gov/comptroller/library/reports/StreetCopFollowUp/2025-01-09_Street_Cop_Supplemental_Report.pdf [https://perma.cc/Z7TP-7MGQ] ("The only state not represented in the records . . . was Hawaii.").

behavior in motorists.[82] The RAS checklist, like the CAP framework, is a long and broad list of characteristics that supposedly indicate that a motorist might be engaged in unlawful behavior.[83] There is overlap between the two lists of characteristics, including a person's blading of their body.[84] The RAS Checklist was analyzed and then condemned by the New Jersey Comptroller's Office, which concluded that "none of [the RAS Checklist's] factors are more consistent with guilt than innocence," so "a stop based on a combination of those factors alone—without some additional factor that suggests criminality—would be unconstitutional."[85] Of particular concern to the New Jersey Comptroller was the utter lack of justification or assurance of the reliability of the factors on the checklist.[86] The Comptroller suggested *retraining* the officers who went to RAS Checklist trainings.[87]

The common thread throughout different proactive policing frameworks, even outside those that employ lists or checklists, is that they give the freedom to police to choose *whom to police*. And when police have full discretion over whom to police, history and experience show that inequality, rather than increased public safety, follows.[88]

C. *Legal Scholarship*

The relevant legal scholarship on proactive policing has mostly focused on the NYPD's stop-and-frisk policy and has never included a discussion of the CAP framework.[89] Legal scholarship understandably focused on stop-and-frisk in New York City after the takedown of the

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82. N.J. Off. of the State Comptroller, The High Price of Unregulated Private Police Training to New Jersey 11 (2023), https://www.nj.gov/comptroller/library/reports/PoliceTraining/police_training_report.pdf [https://perma.cc/NN5Q-S268] [hereinafter Comptroller Report] (internal quotation marks omitted).

83. Id. The factors include "look[ing] away from the police car . . . or at the police car . . . for 'an extended period of time,'" "tilt[ing] their head," "remov[ing] their hat," "wear[ing] their hat so low that it covers their face," "mak[ing] some other 'slight head movement,'" "turning up their music and singing along," putting a turn signal on too early or at the last minute, "yawning," "smoking during a motor vehicle stop," "stretching," "vehicle occupants starting to whisper to one another when they pass the police car," "drivers and passengers 'clearly conversing' but looking forward instead of at each other," a passenger texting after their vehicle has been pulled over, a car containing more than one cell phone or a backpack in it, and more. Id. at 11–12 (quoting the RAS Checklist).

84. Id.

85. Id. at 13. The New Jersey Comptroller's Office investigated the legitimacy of Street Cop trainings after information surfaced about program presenters using demeaning racist and sexist language and examples. Eric Kiefer, Racist, Sexist Police Training Cost NJ Taxpayers $1M, New Report Says, Patch (Jan. 10, 2025), https://patch.com/new-jersey/newarknj/racist-sexist-police-training-cost-nj-taxpayers-1m-new-report-says [https://perma.cc/EG9K-F6M6].

86. Comptroller Report, supra note 82, at 13.

87. Id. at 37.

88. See supra note 37 and accompanying text.

89. See, e.g., Fagan, supra note 37; Meares, supra note 34.

NYPD's stop-and-frisk policy in 2013 by the Southern District of New York in *Floyd v. City of New York*.[90] The *Floyd* Court concluded that the NYPD violated the Fourth and Fourteenth Amendments and the Equal Protection Clause by having its officers "engage[] in 'indirect profiling' coded in terms of stop rationale."[91]

Professor Meares criticized the NYPD's use of stop-and-frisk as a policing "program" because of its nature as an "organizationally determined practice of stopping certain 'sorts' of people for the stated purpose of preventing or deterring crime."[92] Meanwhile, Professor Rachel Harmon and Andrew Manns touted the role of civil rights lawyers in generating data about proactive policing,[93] noting the impact that the data generated in the *Floyd* litigation has had while expressing doubt that changes to the relevant Fourth or Fourteenth Amendment doctrines are imminent.[94]

When the proactive policing conversation in legal academia has shifted from stop-and-frisk, it has looked at individual justifications offered to establish reasonable suspicion like presence in a "high-crime area," "furtive movements," or more recently, "blading."[95]

In the context of blading, which is one of the characteristics listed in the CAP framework, Professor Aliza Hochman Bloom discussed the "false veil of expertise that effectively minimizes *Terry*'s requirement for individualized suspicion" when it is offered to the court as a justification for a stop.[96] Hochman Bloom pointed out the "problematic adaptability of police testimony to judicial scrutiny through the use of new terms and tropes to support reasonable suspicion justifying a stop, search, or frisk."[97] Hochman Bloom argues there is a predictability to this process under the Fourth Amendment. First, police increasingly cite a particular term (there, "blading") as justification for their actions after noticing courts' acceptance of it as cause for reasonable suspicion.[98] Then, as scholars and judges "recognize the factor's problematic features," police cite the term less frequently, replacing it with a different reason for stops.[99] Rinse and

90. Floyd v. City of New York, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013).

91. Fagan, supra note 37, at 1606 (citing *Floyd*, 959 F. Supp. 2d at 562).

92. Meares, supra note 34, at 162.

93. Harmon & Manns, supra note 13, at 68–70.

94. Id. at 63. Professor Harmon and Manns argue that "the Court has been increasingly permissive about what constitutes reasonable suspicion in recent years, and it is almost unimaginable that it will become substantially more scrutinizing about Equal Protection violations anytime soon." Id. Ultimately, they argue for change through local statutes and ordinances. Id.

95. Aliza Hochman Bloom, Whack-A-Mole Reasonable Suspicion, 112 Calif. L. Rev. 1129, 1140–41, 1148, 1153 (2024) (internal quotation marks omitted).

96. Id. at 1134.

97. Id. at 1136.

98. Id. at 1134–35.

99. Id.

repeat. "Furtive movements" is an example—once judicially accepted as a basis for reasonable suspicion, frequently cited by police to justify their actions, then attacked by scholars and judges, ultimately falling out of favor.[100]

The CAP framework is the amalgamation of stop-and-frisk and the sort of individual characteristics offered to courts as justification for stops. As a result, the CAP framework can potentially disrupt the cycle that Hochman Bloom describes.

The framework complements stop-and-frisk by purporting to provide a more refined way to determine who is armed, replacing stop-and-frisk's disfavored blanket approach to stops. The CAP framework eliminates the need for singular terms of art like "furtive movements" or "blading," avoiding the eventual judicial disapproval once the term's vagueness is realized. The CAP framework masquerades as evidence based. But while having a list of characteristics seems objective, when those characteristics are so broad that they become meaningless, police are again able to profile, harass, and discriminate.

Accordingly, the CAP framework allows a similar "hunt for suspects using racialized proxies of suspicion"[101] as stop-and-frisk and results in a similar "fear of being stopped whenever [a person] leaves [their] home to go about the activities of daily life" condemned by the *Floyd* Court.[102] The CAP framework also provides the same (or perhaps even more of a) "false veil of expertise that . . . minimizes *Terry*'s requirement for individualized suspicion."[103] If ignored, use of the framework will likely expand, become normalized, and continue to go unchecked.

II. CASE STUDY: THE BALTIMORE POLICE DEPARTMENT

Baltimore, Maryland, is consistently portrayed as one of the most dangerous cities in the United States because of its persistent high crime rates.[104] Despite the strength and resilience of Baltimore's majority Black

100. Id. at 1143–44.

101. Fagan, supra note 37, at 1670.

102. Floyd v. City of New York, 959 F. Supp. 2d 540, 557 (S.D.N.Y. 2013).

103. Bloom, supra note 95, at 1134 (citing Commonwealth v. Nestor N., 852 N.E.2d 1132, 1137 (Mass. App. Ct. 2006) (Brown, J., concurring)).

104. See, e.g., James Cutmore, Top 11 Most Dangerous Cities in the US, BBC Sci. Focus (Nov. 4, 2024), https://www.sciencefocus.com/planet-earth/most-dangerous-cities-in-the-us [https://perma.cc/D7EP-KXEX] (identifying Baltimore as the city with the third highest rate of violent crime in the United States); Most Violent Cities in America, World Population Rev., https://worldpopulationreview.com/us-city-rankings/most-violent-cities-in-america [https://perma.cc/R67Q-WNCT] (last visited Dec. 13, 2024) (same). However, over the last three years, homicide and shooting rates in Baltimore have been decreasing, and in 2025 the number of homicides in Baltimore was at its lowest in almost fifty years. See Press Release, City of Balt., Baltimore Sees Lowest Number of Homicides Ever Recorded; Homicides and Shootings Down by Nearly 60% Since 2021 (Jan. 5, 2026), https://www.

population in the face of a long history of racialized discrimination[105] and harassment,[106] public corruption,[107] and environmental neglect,[108] pop culture knows Baltimore for its history of police corruption and stubbornly high crime rates.

In 2016, the United States DOJ condemned the BPD for its "us[e of] enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches and arrests of African Americans,"[109] leading to

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baltimorecity.gov/mayor/news-media/press-releases/2026-01-05-mayor-brandon-m-scott-highlights-historic-reductions-in-violent-crime-in-2025 [https://perma.cc/D7J7-VTY9].

105. Baltimore is the birthplace of redlining, a housing policy which purposely creates racial divisions and racial segregation. See Mayor Scott's Approach to Addressing Baltimore's Vacant Properties at Scale, City of Balt., https://www.baltimorecity.gov/vacants [https://perma.cc/FN99-PLUA] (last visited Oct. 19, 2025) ("Redlining is at the root of Baltimore's hyper-segregated neighborhoods, and has impacted the health, education and life expectancy outcomes of Baltimoreans for generations.").

106. See ACLU Md., Chasing Justice: Addressing Police Violence and Corruption in Maryland 27 (2021), https://www.aclu-md.org/sites/default/files/field_documents/aclu-md_chasingjusticereport_aug2021.pdf [https://perma.cc/BAU7-2D39] [hereinafter ACLU Report] ("Whether it is due to a lack of reliable data, taking too many risks on dangerous officers, the white supremacist culture of policing, or simply indifference, law enforcement leaders have proven themselves unable or unwilling to make necessary changes.").

107. For example, the former State's Attorney of Baltimore City, Marilyn Mosby, was federally prosecuted and convicted of perjury and separately of making a false mortgage application, crimes committed while she was in office. Press Release, U.S. Att'y's Off. Dist. of Md., Former Baltimore City State's Attorney Marilyn J. Mosby Sentenced to Twelve Months of Home Confinement, With Electronic Monitoring and Ordered to Forfeit 90% of Property Value (May 23, 2024), https://www.justice.gov/usao-md/pr/former-baltimore-city-states-attorney-marilyn-j-mosby-sentenced-twelve-months-home [https://perma.cc/5Y42-WZ93]. About a decade before that, the former mayor, Sheila Dixon, resigned as part of a plea agreement after being found guilty of corruption. Convicted of Embezzlement, Former Baltimore Mayor Sheila Dixon Is Running Again, AP News (Sep. 7, 2023), https://apnews.com/article/baltimore-mayor-sheila-dixon-running-again-f946fe3f473b3e9ca8ef16c43e18eb1f [https://perma.cc/CV6Y-AY3L]. The history of law enforcement corruption in Baltimore is also vast. As State's Attorney, Mosby kept a list of officers with "integrity issues," which was more than three hundred entries long. ACLU Report, supra note 106, at 23. In 1965, the future police commissioner Donald Pomerleau "issued a report that 'declared the Baltimore force to be among the nation's most antiquated and corrupt, and characterized its use of force as excessive and its relations with the city's black community as nonexistent.'" Id. at 8 (quoting David Simon, Homicide: A Year on the Killing Streets 15 (1991)).

108. For example, lead poisoning has been and remains pervasive in many of Baltimore's majority Black neighborhoods. Lawrence Brown, Baltimore's Ongoing Lead Poisoning Crisis & the Link to Violent Crime, Medium (Sep. 11, 2018), https://bmoredoc.medium.com/baltimores-ongoing-lead-poisoning-crisis-b53870c4a142 (on file with the *Columbia Law Review*).

109. DOJ C.R. Div. Investigation, supra note 43, at 163.

a consent decree.[110] The DOJ investigation came after the BPD killed Freddie Gray in 2015.[111]

The BPD's actions over the years have been the subject of multiple award-winning dramas. *The Wire*, an early 2000s television series, brought police corruption and violence in Baltimore into the public eye.[112] In the 2021 series *We Own This City*, viewers returned to BPD corruption to learn about the rise and fall of the BPD's GTTF.[113]

Despite the unprecedented public attention the BPD has received and the corruption infecting its ranks, policing in Baltimore has been largely ignored by legal scholarship. This Part uses the BPD as a case study for the problems associated with the CAP framework, beginning with the historical context of proactive policing in Baltimore. It proceeds to examine the BPD's training on the framework, then discuss the problems with the BPD's use of the CAP framework—including the framework's unreliability, the flawed assumptions the framework relies on about the legality of gun possession and dangerousness, and the way the framework's overbreadth leads to unbridled discretion. This Part discusses the close connection between the BPD's use of the CAP framework and recent instances of extreme police violence. It concludes by contextualizing the BPD's use of the framework within the broader practices of other police departments across the country.

A. *Baltimore's History of Proactive Policing*

Proactive policing has been used in Baltimore for more than two decades.[114] Around the turn of the twenty-first century, Baltimore's mayor—future Maryland governor and presidential candidate Martin O'Malley—hired Ed Norris, a former executive in the NYPD, to help the

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110. Consent Decree, supra note 43.

111. Alan Blinder & Richard Pérez-Peña, 6 Baltimore Police Officers Charged in Freddie Gray Death, N.Y. Times (May 1, 2015), https://www.nytimes.com/2015/05/02/us/freddie-gray-autopsy-report-given-to-baltimore-prosecutors.html (on file with the *Columbia Law Review*). Freddie Gray's murder was the result of a "rough ride," a routine practice of the BPD in which people are locked in the back of police vans without seatbelts and transported in an intentionally rough manner. See Baynard Woods, 'Rough Ride': Practice Linked to Freddie Gray's Death at the Center of Latest Trial, The Guardian (June 9, 2016), https://www.theguardian.com/us-news/2016/jun/09/freddie-gray-death-trial-rough-ride-baltimore-police [https://perma.cc/3KP2-JVE3]. The BPD has a documented history of "rough rides," serving as another example of violent corruption within the police department. Id.

112. See Deggans, supra note 47 (describing *The Wire* as a "critically-acclaimed, groundbreaking police drama" in its exploration of institutional failure and police corruption in Baltimore).

113. Id.

114. See DOJ C.R. Div. Investigation, supra note 43, at 5 ("Starting in at least the late 1990s, . . . City and BPD leadership responded to the City's challenges by encouraging 'zero tolerance' street enforcement that prioritized officers making large numbers of stops, searches, and arrests . . . .").

BPD implement the NYPD's zero tolerance policing strategies.[115] Norris became the BPD's police commissioner.[116] Under Norris, the BPD encouraged its patrol officers to engage in the same "zero tolerance" enforcement that the NYPD pioneered: increasing stops, searches, and arrests for all offenses, including the most minor.[117] Corruption was "already an embedded part of BPD's culture."[118] At the time, Baltimore was dealing with a number of challenges, including corruption within the police department and high crime rates, and there was vast pressure to make arrests and get guns off the street.[119] The DOJ later concluded that Baltimore's Black residents and "predominantly African-American neighborhoods" suffered the most from this new proactive policing regime.[120]

The rise of proactive policing in Baltimore coincided with its rise in popularity across the United States. Proactive policing emerged nationwide in the 1980s and 1990s in response to concerns about the inability of police to meaningfully reduce crime.[121] As the proactive policing methods emerged, they could be categorized into four groups: (1) place based (policing geographic areas with higher concentrations of crime, such as "hot spots policing"); (2) person focused (targeting groups of individuals believed to engage in crime more frequently); (3) problem oriented (reducing crime by addressing the underlying issues that lead to it); and (4) community based (using community partnerships and relationships to address problems that lead to crime).[122] Broken windows policing, units dedicated to watching closed-circuit television (CCTV)

115. DOJ C.R. Div. Investigation, supra note 43, at 40; GTTF Report, supra note 45, at vii.

116. GTTF Report, supra note 45, at vii.

117. DOJ C.R. Div. Investigation, supra note 43, at 5; GTTF Report at vii.

118. GTTF Report, supra note 45, at vii. The Report notes that "[a] common form of corruption, which was not universally perceived by officers as inherently wrong, was making misrepresentations of fact to support law enforcement actions such as stops, arrests, and searches," then "perpetuat[ing] [the falsehood] through false testimony, if necessary." Id.

119. GTTF Report, supra note 45, at viii–ix.

120. DOJ C.R. Div. Investigation, supra note 43, at 47. The DOJ found that between January 2010 and June 2015, Black residents made up 84% of the BPD's stops, while making up 63% of the city's population. Id. at 48.

121. Nat'l Acads. of Scis., Eng'g, & Med., supra note 11, at 29–30; see also Rory Kramer & Brianna Remster, Stop, Frisk, and Assault?: Racial Disparities in Police Use of Force During Investigatory Stops, 52 Law & Soc'y Rev. 960, 969 (2018) (explaining that the NYPD began employing proactive strategies in the late 1990s as a response to an unprecedented crime rate). There is some suggestion that there was an even earlier era of proactive policing, which was then replaced by a "professionalized model of policing" in the 1960s and 1970s, which was replaced again by proactive policing in the 1980s. Bernard E. Harcourt & Tracey L. Meares, Randomization and the Fourth Amendment, 78 U. Chi. L. Rev. 809, 821 (2011).

122. Paul A. Haskins, Research Will Shape the Future of Proactive Policing, Nat'l Inst. Just. J., Oct. 24, 2019, at 1, 4; see also Harmon & Manns, supra note 13, at 56–57 (using different labels but describing similar categories of proactive policing).

cameras or monitoring social media accounts, road-side sobriety checkpoints, patrolling high crime areas, stop-and-frisk, and the CAP framework are all examples of proactive policing.[123]

Though proactive policing methods differ in their details, "very often proactive policing has in practice meant aggressively stopping and frisking individuals on the street in order to deter (rather than uncover or directly stymie) criminal activity."[124] In that sense, its intent is crime prevention. But proactive policing has also been aptly described as a "hunt for suspects using racialized proxies of suspicion"[125] because, in practice, proactive policing has strayed from its stated goal of crime prevention and instead has been used to target and harass certain members of the community.

The years that followed the implementation of proactive policing tactics in Baltimore were fraught with controversy about these methods.[126] BPD officers were encouraged to stop anyone they could and arrest them for anything they could.[127] Through zero tolerance policies, the BPD "prioritized attempts to suppress crime by regularly stopping and searching pedestrians and arresting them on any available charges, including discretionary misdemeanor offenses."[128] The BPD even joked about the philosophy of stopping violent crimes by policing minor ones: A BPD sergeant posted on Facebook that the "solution to the murder rate is easy. Flex cuffs and a line at [Central Booking]," citing the code for loitering arrests.[129] A flyer was circulated by the BPD's Violent Crime Impact Division (VCID) saying: "VCID: Striking fear into loiters . . . City-wide."[130] The BPD Officers were pressured to make arrests and get guns

123. Harmon & Manns, supra note 13, at 56–58; Matt Lethin, Proactive Policing at a Crossroads: Why Technology, Not Discretion, Should Drive Enforcement, Police1 (Feb. 4, 2025), https://www.police1.com/vision/proactive-policing-at-a-crossroads-why-technology-not-discretion-should-drive-enforcement (on file with the *Columbia Law Review*).

124. Harmon & Manns, supra note 13, at 57.

125. Fagan, supra note 37, at 1670.

126. See, e.g., Brandon Soderberg, Baltimore Police Unit Under Fire for Deadly Shootings, Questionable Stops, Garrison Project (Nov. 15, 2023), https://thegarrisonproject.org/baltimore-police-unit-dat/ [https://perma.cc/JFR3-7USJ] [hereinafter Soderberg, Baltimore Police Under Fire] ("Anytime that you have a unit described as 'proactive policing'—they're not responding to calls or issues that are arising in the area but deciding to take it upon themselves—it lends itself to the potential abuse of power[.]" (internal quotation marks omitted) (quoting Natalie Finegar, Md. Off. of the Pub. Def.)).

127. See DOJ C.R. Div. Investigation, supra note 43, at 42 ("Many officers believe that the path to promotions and favorable treatment, as well as the best way to avoid discipline, is to increase their number of stops and make arrests for [gun and drug] offenses.").

128. Id. at 24.

129. DOJ C.R. Div. Investigation, supra note 43, at 24 (alteration in original) (internal quotation marks omitted). Central Booking is the nickname for the local jail. See Baltimore Central Booking & Intake Center, Md. Dep't of Pub. Safety & Corr. Servs., https://www.dpscs.state.md.us/locations/bcbic.shtml [https://perma.cc/6BUN-VD6Z] (last visited Oct. 18, 2025).

130. Id. (internal quotation marks omitted). Anthony Barksdale, the former deputy police commissioner, told the media that the posters were meant to *insult* the VCID. Edward

off of the streets, leading to "[c]orrosive incentive structures."[131] The combination of this "pressure to achieve high arrest and gun seizure numbers" and the "inadequate training on the law of arrest and search and seizure" led to "unjustified stops and frisks, unlawful arrests, and gun seizures that did not result in successful prosecutions."[132] While the BPD had no official quotas for arrests or gun seizures, "the demand to produce numbers led some officers to cross the line and engage in enforcement actions that were unjustified—and, in many instances, illegal—and created incentives to shade or misrepresent facts in probable cause statements and search warrant affidavits."[133]

According to the DOJ, this "prioritiz[ation of] short-term [crime] suppression, including aggressive use of stops, frisks, and misdemeanor arrests" persists among "many BPD supervisors who were trained under the prior enforcement paradigm."[134]

Predictably, these pressures and incentives led to unlawful stops, frisks, searches, and seizures, increasing distrust between the community and the BPD.[135] While the BPD's failure to comply with its own policy of recording all stops makes it impossible to know how many stops they make per year, the DOJ estimated that "BPD officers likely make several hundred thousand pedestrian stops per year" at a time when the population was 620,000.[136] To put this number of police stops in perspective, the GTTF Report noted 130,000 stops and frisks during the first nine months of 2005.[137] Thus, in the first nine months of 2005, BPD made one stop for every five Baltimoreans, which is likely an undercount.[138]

The BPD was in the national spotlight for its proactive policing in 2015 when Freddie Gray was killed after being put in the back of a BPD

Ericson Jr., BPD Violates the Constitution and Federal Law, DOJ Finds, Balt. Sun (Aug. 17, 2016), https://www.baltimoresun.com/2016/08/17/bpd-violates-the-constitution-and-federal-law-doj-finds/ (on file with the *Columbia Law Review*) (last updated June 28, 2019).

131. GTTF Report, supra note 45, at ix–x.

132. Id.

133. Id. at x.

134. DOJ C.R. Div. Investigation, supra note 43, at 24.

135. See GTTF Report, supra note 45, at ix–x, 92 ("This incentive structure that emphasized arrest and gun seizure numbers, and the misconduct by some officers in response, profoundly damaged relationships between BPD and the community, especially Baltimore's Black community.").

136. DOJ C.R. Div. Investigation, supra note 43, at 25.

137. GTTF Report, supra note 45, at 92. This figure is likely an undercount because it is based on recorded information and did not account for the likely vast number of unrecorded stops and frisks. Id.

138. When the racial makeup of those stopped is considered, the situation becomes even worse. According to the DOJ, the BPD's data "show that these stops are concentrated on a small segment of the City's population." DOJ C.R. Div. Investigation, supra note 43, at 26 (reporting that "roughly 44 percent of the total stops" were recorded by officers in two districts, including the "central business district and several poor, urban neighborhoods with mostly African-American residents").

police wagon, handcuffed and shackled, but not strapped into his seat.[139] The officers who arrested Freddie Gray had been on proactive patrol and pursued him simply because he fled when the officers stopped their car.[140] The officers arrested Freddie Gray because he possessed a small knife, an arrest that the then-State's Attorney for Baltimore City called illegal because the knife was not unlawful to possess.[141]

Following Freddie Gray's killing by the BPD, the DOJ Civil Rights Division investigated the BPD, ultimately concluding in 2016 that "there is reasonable cause to believe that BPD engages in a pattern or practice of conduct that violates the Constitution or federal law," including (among other things) "making unconstitutional stops, searches, and arrests" and "using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches and arrests of African Americans."[142] The DOJ specifically noted that "BPD officers regularly stop and search individuals who are lawfully present on Baltimore's streets, despite lacking the constitutionally-required indicia that criminal activity is afoot."[143]

In a sample of the data the DOJ analyzed, the DOJ found that only 3.7% of pedestrian stops led to criminal citation or arrest,[144] meaning, 96.3% of the time, the stop uncovered nothing unlawful. The DOJ condemned the BPD's proactive policing tactics[145] citing "deficient policies, training, oversight, and accountability" and discriminatory "policing strategies" as causes for its pattern of unconstitutional action.[146] The DOJ's criticism extended to the CAP framework, too, with the DOJ

139. Freddie Gray's Death in Police Custody—What We Know, BBC (May 23, 2016), https://www.bbc.com/news/world-us-canada-32400497 [https://perma.cc/BD3V-RX24].

140. Id.

141. Blinder & Pérez-Peña, supra note 111. The then-State's Attorney, Marilyn Mosby, filed criminal charges against the involved officers, leading to a strained relationship between law enforcement and the State's Attorney's Office. See id. (reporting that "[t]he Baltimore chapter of the Fraternal Order of Police called the speed of the prosecutor politically motivated"). Ultimately, none of the involved officers were criminally convicted. See Jonathan Franklin, Officer Involved in Freddie Gray's Death Will Oversee Baltimore Police Integrity Unit, NPR (Feb. 14, 2024), https://www.npr.org/2024/02/14/1231225553/alicia-white-baltimore-police-promotion-freddie-gray-death [https://perma.cc/NJF7-9KTR] ("A year after Gray's death, prosecutors in Baltimore dropped the remaining charges against all six officers after three of them were acquitted at trial by a judge.").

142. DOJ C.R. Div. Investigation, supra note 43, at 163. This investigation was followed by a 2017 consent decree. Consent Decree, supra note 43.

143. DOJ C.R. Div. Investigation, supra note 43, at 27.

144. Id. at 28.

145. The DOJ noted, "Proactive policing does not have to lead to these consequences. On the contrary, constitutional, community-oriented policing is proactive policing, but it is fundamentally different from the tactics employed in Baltimore for many years." Id. at 5.

146. Id. at 163.

noting a problematic overreliance among officers on single characteristics.[147]

After the DOJ's report and the disbandment of the GTTF, the BPD introduced District Action Teams (DATs) across the city.[148] DATs, like the GTTF, disproportionately and aggressively police Black and brown neighborhoods, and members of the DATs, like the GTTF, have a documented history of misconduct.[149]

Despite this history—internal corruption scandalous enough to inspire multiple HBO series, a police killing that triggered an uprising across the city and sustained nationwide attention, a DOJ investigation followed by damning findings, and continued corruption within the new and theoretically improved units—proactive policing remains the status quo in Baltimore. As in other locales, the CAP framework is the now popular method used by the proactive policing units to justify their stops and frisks of people otherwise not under suspicion for anything unlawful.[150]

B. *CAP Training*

Members of the BPD, including members of the DATs and other proactive policing units, undergo in-service training on the CAP framework.[151] Part of this training occurs at the police academy, and a second part occurs thereafter.[152] The training purports to give BPD officers the tools necessary to identify people presently carrying weapons.[153] The CAP framework training is used by officers not just to assess their own safety when confronting suspects or investigating reported crimes but also to identify civilians—while on proactive patrol—whom police believe *may* be armed but who are otherwise doing nothing outwardly unlawful.[154]

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147. Id. at 95 n.105. The DOJ's criticism of the BPD's use of the CAP framework is discussed more fully in section II.C. See infra notes 191–196 and accompanying text.

148. GTTF Report, supra note 45, at 267–68; see also Robinson v. State, No. 0269, 2025 WL 1982852, at *1 n.2 (Md. App. Ct. July 17, 2025) (noting that the BPD created the DAT after the GTTF's disbandment).

149. Soderberg, After the Gun Trace Task Force Scandal, supra note 8. Members or former members of the DAT have been caught stashing drugs in a police locker, taking part in a warrantless search decried by a federal judge, engaging in police violence leading to four- and five-figure settlements and jury verdicts, and engaging in police violence resulting in civilian deaths. Id.

150. See Balt. Courtwatch, supra note 40.

151. DOJ C.R. Div. Investigation, supra note 43, at 79.

152. See Bailey v. State, No. 522, 2017 WL 2482339 at *4 (Md. App. Ct. June 8, 2017) (discussing a BPD officer's testimony in court that he received eight hours of training on the characteristics of an armed person while in the police academy, and eight more hours of training on it the following year).

153. BPD Booklet, supra note 16, at 7; BPD Slideshow, supra note 16.

154. See DOJ C.R. Div. Investigation, supra note 43, at 96 (describing examples of situations where police may utilize the CAP framework while on proactive patrol).

The BPD's CAP framework training consists of a twenty-eight-slide presentation, entitled "Characteristics of Armed Persons."[155] The slides give definitions and instructions for stops, weapons pat-downs, searches of a person, and reasonable suspicion.[156] The slides provide the "Legal Test for Stopping": "A well founded suspicion based on specific, objective, articulable facts, taken together with the member's training and experience, that a subject has committed, is committing, or is about to commit a crime."[157] They also list the "Legal Tests for Conducting a Weapons Pat-Down (Frisk)": "Reasonable articulable suspicion (RAS) for the stop . . . RAS that the person is armed[,] . . . [and] RAS that the person is dangerous."[158] The slides also describe and illustrate "[p]laces a person may try to hide a weapon," and list out characteristics that are "[i]ndicators that a person may be armed."[159]

In addition, the BPD has a pocket-sized booklet entitled *Characteristics and Detection of Armed Persons*, which outlines a longer list of characteristics; case law; an example probable cause statement; definitions of stop, frisk, search, and reasonable suspicion; guidelines for implementing the CAP framework; and some free pages at the end for notes.[160] This booklet was written collectively by members of the BPD, the Baltimore Assistant State's Attorney's Office, and former NYPD gun-hunter Detective Gallagher.[161]

The slides portion of the BPD CAP training teaches officers that people may hide weapons in or on their waistbands, holsters, ankles, pockets, sleeves of a jacket or shirt, jackets, bags or purses, or vehicles.[162] The training then teaches officers that each of the following characteristics are indicative that a person may be carrying a gun:

- security checks (when a person touches their waistband or pocket as if to make sure a weapon is still there);
- bladed stances (standing at an angle rather than directly facing the officer, as if to keep the weapon out of sight);
- the length of a person's stride;
- clothing that is weighted to one side;
- seasonally inappropriate clothing; and
- someone who is clutching at clothing or at something in their clothing while moving.[163]

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155. BPD Slideshow, supra note 16.

156. Id.

157. Id.

158. Id.

159. Id.

160. BPD Booklet, supra note 16.

161. Id. at 2. Detective Robert Gallagher was discussed in section I.A. See supra notes 57–62 and accompanying text.

162. BPD Slideshow, supra note 16.

163. Id. These factors are in addition to those discussed in section I.B, also noted in the BPD training materials.

The booklet reiterates many of the same and provides an additional, far longer, discussion of characteristics which suggest that someone may be armed:

- someone who wears a heavy coat when it is seasonably appropriate but keeps it partially unbuttoned or unzipped;
- someone whose belt is not properly threaded through belt loops;
- someone with the ties on their hood tightened;
- someone carrying a shoulder bag when it is warm out;
- someone who uses a shoulder bag but keeps their wallet in their pocket;
- someone whose shoulder bag is unzipped;
- someone who wears a fanny pack;
- someone whose bag looks like it is "hang[ing] heavily downward";
- someone wearing an athletic cup; and
- a woman carrying a purse.[164]

BPD officers are trained that these factors may support reasonable articulable suspicion of criminal activity.[165] The example given on one of the CAP framework training slides is that someone blading his body and keeping a stiff arm presumably to conceal a bulge displays "BOTH characteristics of an armed person AND characteristics of someone engaged in criminal activity (trying to hide the weapon from police)," thereby establishing reasonable articulable suspicion of criminal activity.[166]

Once trained on the CAP framework, officers use it to identify people to stop in the community whom the officer believes could be armed. The BPD's website captures a typical use of the framework:

> Northern District DAT officers were conducting proactive patrol . . . . During their patrol, they observed an unidentified male displaying characteristics of an armed person. When the officers attempted to stop the male, he fled on foot and was observed throwing a bag that was across his shoulder. The officers apprehended a 22-year-old male, placed him under arrest and recovered the bag along with a loaded Polymer handgun.[167]

Armed with training in the CAP framework, an officer can utter the seven magic words—"suspect exhibited characteristics of an armed

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164. BPD Booklet, supra note 16, at 14–24. These are just some of the factors listed in the BPD Booklet.

165. BPD Slideshow, supra note 16.

166. Id.

167. BPD Arrests and Enforcement—April 9, Balt. Police Dep't (Apr. 10, 2024), https://www.baltimorepolice.org/news/bpd-arrests-and-enforcement-april-9 [https://perma.cc/9CTE-56DH].

person"—and establish the cause needed to stop someone and then pat them down for weapons.[168]

C. *Analysis of the CAP Training*

Apart from listing the factors and providing some perfunctory legal definitions, the BPD's CAP training does not provide officers with the guidance they need to use the framework in a constitutional manner. The problems associated with the CAP framework discussed in this section cast doubt on the suggestion that an officer could *reasonably believe* someone was armed based on the CAP framework's use.

A foundational problem with the BPD's CAP training is that the training does not provide guidance to officers on how to distinguish between someone who may be armed *lawfully* versus someone who may be armed *unlawfully*.[169] The training materials likewise do not provide guidance on how to assess dangerousness.[170] In Maryland, "wear and carry" handgun permits existed, even before the Supreme Court expanded the right to bear arms outside of the home in *Bruen*,[171] so possessing a weapon is not necessarily a crime in Baltimore. And if possessing a weapon is not necessarily a crime, then the CAP framework cannot be relied on to form the basis of the reasonable articulable suspicion of criminal activity needed to stop someone.[172]

Even setting aside questions about the legality of gun possession, examination of the CAP training materials leads to questions about their legitimacy. The materials offer no explanation of how they were determined and lack any data about how frequently the characteristics coincide with someone being armed versus how often an unarmed person exhibits them. Likewise, there is no indication of how officers' competency with the framework is assessed—does being shown a presentation with a list of characteristics qualify an officer to use the framework? Is there an assessment of whether the officer can use it effectively? What does effective use of the framework even mean when its reliability is unknown?

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168. See infra section III.C (discussing courts' analyses of the CAP framework and general deference to the training and experience of police).

169. See BPD Booklet, supra note 16, at 2, 12–24, 33–37; BPD Slideshow, supra note 16.

170. See BPD Booklet, supra note 16, at 12; BPD Slideshow, supra note 16.

171. See N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2122 (2022) ("We too agree, and now hold . . . that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."). In Maryland, a person may "carr[y], wear[], or transport[]" a handgun if they have obtained a handgun qualification license, Md. Code Ann. Pub. Safety § 5-303 (West 2023), submitted and had approved a firearm application and waited one week, see id. at §§ 5-118(a)(1); 5-122(b)(1); 5-123, and applied for and received a permit to wear, carry, or transport the handgun, see id. at § 5-301(c); see also In re McCloy, 321 A.3d 748, 753 (Md. 2024) (describing the permitting process in Maryland).

172. The interplay between the CAP framework and the right to bear arms is discussed in section III.B.

Perhaps most troubling is the wide applicability of the CAP framework's listed factors. The characteristics outlined in these training materials describe virtually *everyone*. According to the training, BPD could conclude that any of the following could be armed:[173] A person who touches their pocket to make sure their wallet or phone or keys are there (especially if they are getting in or out of a vehicle); a person whose clothing looks weighted to one side because they have a wallet or keys or something else in their pocket; a person who, out of habit, walks with their hand on their phone in their pocket; a person who partially unzips their winter coat because they are too warm; a person who only wears one glove because they want to keep a hand free to operate their touchscreen phone; a person who wears a backpack in the summer or keeps heavy items like books or groceries in their bag; a person who tosses a windbreaker on over their suit or walks around with an untucked dress shirt. The innocent explanations far outnumber the "suspicious" ones, even when multiple factors are combined.

On the streets of Baltimore, the CAP framework is used by BPD officers as a justification for proactively approaching members of the community—usually Black, usually male, usually young—and stopping and then searching them for weapons.[174] The fact that the characteristics are so broad means that an officer policing with the CAP framework has nearly limitless discretion to stop anyone on the streets of Baltimore behind a guise of expertise, essentially transforming racially biased stops into an area of police expertise.

Whether the CAP framework is intended to be viewed as a science or an art is unclear. In Baltimore courtrooms, the BPD has indeed turned Detective Gallagher's "sixth sense" into a "science," as BPD officers are often qualified as experts in the CAP framework.[175] When challenges to the officer's expertise in the CAP framework are mounted, the state and the police defend it by emphasizing the amount of training officers undergo.[176] But when pressed during voir dire or cross examination on what the characteristics actually mean, the explanation becomes: "I know it when I see it."[177]

In a podcast discussion between two former police officers, one from the BPD and the other from a different county in Maryland, one of the former officers said, "There was a whole block of instruction on characteristics of an armed person."[178] He went on to list some of the same

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173. See supra notes 162–164 and accompanying text.

174. See DOJ C.R. Div. Investigation, supra note 43, at 47 (finding "reasonable cause to believe that BPD engages in a pattern or practice of discriminatory policing against African Americans.").

175. See supra note 59 and accompanying text.

176. See infra section III.C.

177. See infra notes 279–280 and accompanying text.

178. Black and White and Thin Blue Lines: Characteristics of an Armed Person, at 08:08 (Spotify, May 20, 2023).

characteristics—security checks, unnatural gait, and so on[179]—but also noted that "unfortunately, they could also be carrying a bundle of keys"[180] and that "the tail end of a phone can also mimic the print of a gun,"[181] concluding that "[i]t's a skill, it's almost like an artform, and it's something that has to be honed."[182] Disclaiming that this is an "*artform*," a skill "*to be honed*"[183] suggests that at least at first, officers will not be able to properly use these characteristics to make accurate decisions on who to stop and search.[184]

The risk of hindsight and outcome biases[185] is unavoidably present in judicial evaluation of the CAP framework and other methods of proactive policing.[186] The stops and searches being evaluated by judges are typically the cases in which police were right in their belief that the person was armed.[187] Judges usually do not hear about the experiences of people stopped by police simply because they walked off with a stiff arm or because they chose to wear a heavier coat than the officer thought seasonally necessary. These unarmed people who are stopped, searched, and released are not considered in the calculus of whether this framework works or whether it is merely a pretext for an overly broad gun dragnet. The Supreme Court has been clear that judicial review of police reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"[188]—that is, the fact that the police were right that a particular defendant

179. Id. at 11:28–11:40.

180. Id. at 11:48–11:51.

181. Id. at 12:44–12:52

182. Id. at 09:37–09:46.

183. Id. (emphasis added).

184. In its 2016 report, the DOJ noted that "BPD policies and training materials either misstate the law or are too vague to provide meaningful guidance to officers about operative constitutional standards." DOJ C.R. Div. Investigation, supra note 43, at 43.

185. "Hindsight bias" is "the tendency to view an event as more likely or predictable after it happened than it actually was before it occurred." Maggie Wittlin, Hindsight Evidence, 116 Colum. L. Rev. 1323, 1327 (2016) (citing Dustin P. Calvillo & Abraham M. Rutchick, Domain Knowledge and Hindsight Bias Among Poker Players, 27 J. Behav. Decision Making 259, 259 (2014)). "[O]utcome bias" is "the tendency to judge decisionmaking in light of outcome, independent of how likely or predictable the outcome was." Id. (citing Jonathan Baron & John C. Hershey, Outcome Bias in Decision Evaluation, 54 J. Personality & Soc. Psych. 569, 570 (1988)).

186. See Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, Probable Cause, Probability, and Hindsight, 8 J. Empirical Legal Stud. 72, 73 (2011) ("Decades of research on judgment in hindsight suggest that such judgments will be biased, as people cannot suppress the influence of known outcomes on their judgments . . . .").

187. Certainly, there are cases in which police stopped and searched someone based on the CAP framework and recovered contraband other than a weapon (e.g., drugs). The author saw such cases as an assistant public defender in Baltimore. But most of the time, the cases that judges see involving use of the CAP framework were the ones in which the person indeed turned out to be armed.

188. Graham v. Connor, 490 U.S. 386, 396 (1989).

indeed did possess a gun should not be part of the judge's consideration of whether the officer had legal justification for the stop-and-frisk.

But the risk remains. Judges may feel pressure to rule in favor of the police, believing that suppressing evidence is akin to allowing a defendant to get away with their crime.[189] Even in the absence of such pressures, "[p]eople who know how events unfolded come to believe that the course of events was unavoidable, and even predictable."[190]

In its 2016 investigation of the BPD, the DOJ criticized the over-applicability of the CAP framework.[191] The DOJ noted that "BPD training instructors warn students that there may be false positives, and informed us that they instruct students that *eighty percent* of individuals who show characteristics of an armed person—such as wearing loose or baggy clothing, or grabbing their waistbands while running—will *not* be armed."[192] But the DOJ noted that the true number is likely *much higher*: "It is highly unlikely that only eighty percent of individuals who are wearing loose or baggy clothing are unarmed."[193] The DOJ expressed further concern that "this issue of false positives does not appear to be taught in an effective manner" because "[n]o scenarios involving false positives are employed in the training that would allow officers to internalize and retain this lesson."[194]

The DOJ also criticized the BPD's implementation of the framework. The DOJ found that "BPD officers . . . appear to be relying too heavily on only a single characteristic of an armed person, rather than a set of characteristics that, when combined, together indicate that a person is armed."[195] When officers are given a list of factors, it is probably inevitable that they will zero in and over-rely on single factors. But even focusing on multiple CAP factors likely does not reliably predict when someone is armed and certainly does not reliably predict whether they are *unlawfully* armed.[196]

The inability of police to correctly identify whether someone has a weapon has been illustrated by social science research. Psychological researchers found no significant difference between police officers' and

189. Rachlinski et al., supra note 186, at 73.

190. Id. at 74. In three studies on the effect of hindsight bias on judges' decisionmaking, the authors observed mixed results: Hindsight bias had insignificant effects on judges' rulings but did affect their assessments of probability. Id. at 93–98.

191. See DOJ C.R. Div. Investigation, supra note 43, at 95 (describing the overbreadth of the CAP criteria).

192. Id.

193. Id. at 95 n.105.

194. Id. at 101.

195. Id. at 95 n.105. The DOJ also discussed BPD stops generally, noting that "BPD officers regularly stop and search individuals who are lawfully present on Baltimore's streets, despite lacking the constitutionally-required indicia that criminal activity is afoot." Id. at 27.

196. See id. at 95 n.105 ("[E]ven a person who is displaying some of the characteristics of an armed person is most likely to be unarmed.").

civilians' ability to determine whether someone is armed and found that more experienced members of policing agencies were *worse* at it than less experienced ones.[197]

Together, concerns about the framework's disregard of legal gun possession, its overbreadth, and its resulting unreliability bring into question whether an officer's opinion that someone was armed, based on use of the framework, is reasonable. Without any assurance that the framework accurately distinguishes between people who are armed versus people who are not armed, people who are armed *legally* versus people who are armed *illegally*, and people who are presently dangerous versus people who are not, a belief that a suspect is armed based on the listed characteristics cannot be a reasonable one. And if the belief is not reasonable, it cannot be the basis for a stop or a frisk.

D. *CAP and Police Violence*

The CAP framework does not just lead to violations of civilians' constitutional rights but to pervasive harassment, violence, and even death. The CAP framework empowers police to initiate interactions with community members that can turn violent or deadly.

On May 11, 2023, a detective from the BPD's DAT shot seventeen-year-old Mekhi Franklin in the back, leaving him in critical condition.[198] As was discussed in the Introduction, before police shot him, Franklin was approached by a member of the DAT, a unit tasked with proactive policing of areas the department considers to be high violence.[199] While police claimed to have seen Franklin remove a handgun from his waist while Franklin was running away from them, there is no allegation that Franklin

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197. See Dawn M. Sweet, Christian A. Meissner & Dominick J. Atkinson, Assessing Law Enforcement Performance in Behavior-Based Threat Detection Tasks Involving a Concealed Weapon or Device, 41 Law & Hum. Behav. 411, 418 (2017) (concluding that the results of three studies demonstrated a lack of difference between civilians' and police officers' abilities to detect a concealed item). Researchers for private police training company Second Sight Training Systems LLC interviewed "veteran law enforcement" agents to put together a list of factors used in police practice to visually identify handguns. Nathan Meehan, Christopher Strange & Alexander Garinther, It's the Walk, Not the Talk: Behavioral Indicators of Concealed and Upholstered Firearms Carrying, 94 Police J. 462, 462–63, 469–74 (2021). The list the researchers put together largely overlaps with CAP trainings. See id. at 469–74 (discussing common physical and behavioral indicators of gun possession, including "crease[s]" or bulging in clothing, changes in stride, and "[s]canning" for police or law enforcement). But the researchers admit the lack of validation of the factors and the possibility of and dearth of information about false positives and negatives. See id. at 475–76 ("[F]ield-based validation would be necessary to determine . . . how frequently these specific cues occur in comparison to when a firearm is not carried, and the . . . extent to which it is possible for trained law enforcement to identify them."). Additionally, they emphasize the complexity of using behavioral indicators to predict behaviors. Id.

198. Mann et al., After Baltimore Police Shooting, supra note 9; Mann et al., Body Camera Footage Shows, supra note 22.

199. Skene, Teen Shot by Baltimore Police Officer, supra note 1.

pointed or fired the gun, and eyewitnesses reported to the media that they had not seen him holding a gun while running at all.[200] The pursuit lasted less than a minute.[201]

The BPD officers *created the conflict* with Franklin. The detective was not responding to a tip about Franklin or investigating a particular crime. The detective was engaged in proactive policing. The detective confirmed that the CAP framework led him to engage with Franklin[202]—the detective believed Franklin exhibited characteristics of an armed person.

Six months after Franklin was shot, on November 7, 2023, members of the BPD DAT shot and killed twenty-seven-year-old Hunter Jessup.[203] Once again, the BPD officers were "proactively patrolling" and claim to have believed Jessup was armed with a gun because Jessup exhibited a characteristic of an armed person: Police saw a "non-anatomical bulge" in Jessup's waistband area.[204] Based on the bulge, BPD officers approached Jessup in a police vehicle, and later claimed to have seen a gun when Jessup raised his shirt.[205] Soon after, Jessup ran, and BPD officers chased him. After a BPD officer attempted to tackle Jessup, Jessup pulled out a gun and shot it, so officers fired at Jessup, shooting and killing him.[206] Jessup had twenty gunshot wounds, resulting from three dozen shots fired at him.[207] The BPD commissioner called this fatal interaction, initiated by police for no reason other than suspicion that Jessup had a gun because of a bulge, "another example of our officers doing a great job of apprehending an individual who was armed."[208]

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200. See Mann et al., After Baltimore Police Shooting, supra note 9 (explaining that the BPD did not allege that Franklin pointed a gun at the officers); Mann et al., Body Camera Footage Shows, supra note 22 (describing that the bodycam footage shows that Franklin was shot in the back).

201. Quaranta, supra note 2.

202. Skene, Witness, supra note 21.

203. Balt. Courtwatch, supra note 40; Lea Skene, Baltimore Police Shooting Prompts Criticism of Specialized Gun Squads, AP News (Nov. 9, 2023), https://apnews.com/article/baltimore-police-shooting-district-action-teams-eb9dc3b35d96c47384e9ef060ba75b12 [https://perma.cc/5VFN-ZVV7] [hereinafter Skene, Baltimore Police Shooting].

204. Indep. Investigations Div., Md. Off. of the Att'y Gen., Report Concerning the Police-Involved Fatal Incident in Baltimore City on November 7, 2023, at 3 (2024) https://oag.maryland.gov/resources-info/Documents/pdfs/IID/011924_IID_Report.pdf [https://perma.cc/9YNN-PM37] [hereinafter Md. Att'y Gen. Report] (internal quotation marks omitted) (quoting Antonio Johnson, Detective, Balt. Police Dep't).

205. Id. at 4–7.

206. Id. at 4–5.

207. Darcy Costello, No Criminal Charges for Baltimore Police Officers Who Fatally Shot Hunter Jessup, AG's Office Says, Balt. Sun (Jan. 19, 2024), https://www.baltimoresun.com/2024/01/19/hunter-jessup-shooting-baltimore-police/ (on file with the *Columbia Law Review*).

208. Skene, Baltimore Police Shooting, supra note 203 (internal quotation marks omitted) (quoting Richard Worley, Comm'r, Balt. Police Dep't).

Nine months after Jessup was shot and killed, on August 5, 2024, members of the BPD Group Violence Reduction Unit[209] shot and killed William Gardner, a seventeen-year-old.[210] According to the BPD officers, they were on patrol in the area because of gunshots an hour earlier but were not looking for Gardner in particular.[211] Gardner was standing with a group of people, and police claim to have seen him exhibit a characteristic of an armed person: Gardner grabbed at his waistband.[212] Gardner walked off when police approached him, so police pursued him, one on foot and three others by car.[213] Body camera footage begins during the chase, and officers can be heard yelling "get on the ground," "you're gonna get shot," and "I will shoot you."[214] What appears to be a gun becomes visible in Gardner's hand, then officers shoot Gardner a dozen times, killing him.[215]

In each of these cases, examples from just over a single year in Baltimore, the confrontation began because the BPD officer reportedly believed that the child or young man they were looking at displayed characteristics of an armed person.[216] The BPD officers were not investigating any of them for particular crimes. They had no tips that any of the three were dangerous or likely to commit any offenses. In each tragic situation, the BPD officers proactively approached someone who was doing nothing visibly wrong, pursued him, and shot him because of a belief that he was armed.[217]

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209. The BPD's Group Violence Reduction Strategy is a proactive policing partnership between the BPD and the Office of the State's Attorney for Baltimore City that focuses on individuals most likely to become victims of gun violence. Group Violence Reduction Strategy (GVRS), Balt. Mayor's Off. of Neighborhood Safety & Engagement, https://monse.baltimorecity.gov/gvrs-new [https://perma.cc/2PWW-F2JU] (last visited Oct. 19, 2025).

210. Lea Skene, Bodycam Video Shows Baltimore Officers Opening Fire on Fleeing Teen Moments After Seeing His Gun, AP News (Aug. 9, 2024), https://apnews.com/article/baltimore-police-shooting-william-gardner-bodycam-22dd3efccbc372d635aaaee21c79b77d [https://perma.cc/GQN7-VPRG] [hereinafter Skene, Bodycam Video Shows].

211. Id.

212. Clara Longo de Freitas, No Charges for Baltimore Police Officers Who Fatally Shot Teen, AG Says, Balt. Banner (June 12, 2025), https://www.thebanner.com/community/criminal-justice/baltimore-police-teen-shot-no-charges-JGY77L5OIRF2RLR4VNKPPUCMTI/ (on file with the *Columbia Law Review*); Skene, Bodycam Video Shows, supra note 210.

213. Skene, Bodycam Video Shows, supra note 210.

214. Id. (internal quotation marks omitted) (quoting two officers arresting Gardner).

215. Id.

216. This does not represent the full scope of the police violence that the DAT has engaged in during this time period. Members of the DAT have been involved with numerous other incidents of police violence, including fatal shootings in 2018 and 2020 and a fatal car crash in 2022. Soderberg, After the Gun Trace Task Force Scandal, supra note 8. Likewise, this does not represent the full scope of the police violence connected to the CAP framework. See DOJ C.R. Div. Investigation, supra note 43, at 94–96 (discussing patterns of police violence in which BPD officers justified their actions by reference to CAP factors).

217. The link between the CAP framework and extreme police violence is not unique to Baltimore. For example, members of the Chicago Police Department shot thirty-seven-

In these instances of police violence, it does not matter whether the person shot by police was actually armed. In each case, police engaged in profiling to pursue someone who was not engaged in violent or threatening behavior, then shot and injured or killed them because of a belief that they may be carrying a gun. Especially considering the expanding right to bear arms outside the home, to pursue and then shoot someone for possibly possessing a weapon is illegal, illogical, and immoral.[218]

Of course, the fact of a person being armed or suspected to be armed does not in itself give police legal justification to shoot them. The Supreme Court made clear in *Tennessee v. Garner* that the mere fact of being armed does not mean police can use deadly force: "Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so."[219] That certainly remains the case as the right to possess a gun has been expanded by the Supreme Court.[220]

In each of these examples, BPD officers were trained using the CAP framework to engage with the shooting victim, and each time, the engagement led to the officer shooting him.[221] So, did the police get guns off the street? Yes. But at what cost? Police killed two people and seriously injured another, two of them children, all because of an officer's belief that each was armed.[222]

Even in examples in which the police do not shoot people, proactive policing has a damaging and persistent impact on communities and disproportionately impacts people of color. The American Civil Liberties

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year-old Harith Augustus, who attempted to flee after police tried to stop him for exhibiting characteristics of an armed person. Hannah Leone, Jeremy Gorner, Nuccio Dinuzzo & Rosemary Sobol, Violent Clash Between Officers and Crowd After Fatal Police Shooting in South Shore, Chi. Trib. (Aug. 22, 2019), https://www.chicagotribune.com/2018/07/15/violent-clash-between-officers-and-crowd-after-fatal-police-shooting-in-south-shore/ [https://perma.cc/68EQ-YGUR].

218. See infra section III.B.

219. Tennessee v. Garner, 471 U.S. 1, 11 (1985).

220. See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2156 (2022) (holding gun licensing regimes that require applicants to show a "special need" unconstitutional).

221. Caitlyn Freeman & Cassidy Jensen, Baltimore Police Fatally Shoot Man Who They Say Pointed Gun at Officers Tuesday Afternoon in Millhill, Balt. Sun (Nov. 8, 2023), https://www.baltimoresun.com/2023/11/07/baltimore-city-police-officer-involved-in-fatal-shooting-of-22-year-old-department-says/ (on file with the *Columbia Law Review*); Longo de Freitas, supra note 212; Mann et al., After Baltimore Police Shooting, supra note 9; Mann et al., Body Camera Footage Shows, supra note 22.

222. It is certainly also possible that in any of these examples law enforcement initiated the contact and escalated the situation for other reasons and merely used the CAP framework as a justification for their actions after the fact. There are no doubt examples of police violence involving the CAP framework where the civilian ultimately did not have a weapon. But it is far less likely that in those scenarios the officer would cite the CAP framework as the reason for their pursuit.

Union of New York has noted that "the stress and humiliation of these types of police interactions can cause people serious psychological harm, which can extend more broadly to their families, neighborhoods, and communities."[223] The distrust that results between community members and police creates barriers to cooperation when it is needed.[224] Public health researchers have supported these conclusions, consistently finding that people in proactively policed communities experience poorer health outcomes, including "compromised mental health" and "higher levels of anxiety and trauma."[225] Over time, frequent stops by police are correlated with an *increase* in future delinquency.[226]

These trends align with eyewitness reports. According to witnesses from Franklin's neighborhood, the same detective would often come through the neighborhood, grabbing and searching people and making antagonistic comments—for example, telling one witness he "needed to lose weight."[227] As for police targeting Franklin in particular, Franklin's aunt said in a media interview that "this had been going on for about four or five days. They kind of just, like, come through jumping out on the kids, sitting with them and different stuff like that."[228] With the stated purpose of looking for guns and the CAP framework to back them up, proactive policing units in Baltimore are thereby stopping whomever they choose—young Black men in public doing nothing visibly unlawful.

E. *CAP Framework Across the Nation*

The BPD's training on the CAP framework and the breadth of its list of characteristics are not unique. Other CAP trainings have even broader lists of characteristics. The United States Secret Service "Characteristics of the Armed Individual" training highlights similar characteristics and adds additional, perhaps even more vague ones: "[m]acho feeling," "running," wearing a belt with pants that do not have belt loops, wearing ponchos or

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223. Aguirre & McCormack, supra note 12; see also Sewell et al., supra note 14, at 9–10 ("Living in a neighborhood with a higher density of frisking is associated with experiencing more severe psychological distress for all residents, while living in a neighborhood with a higher density of use of force is associated with experiencing fewer feelings of sadness and effort.").

224. See Tom R. Tyler, Jonathan Jackson & Avital Mentovich, The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact, 12 J. Empirical Legal Stud. 602, 605 (2015) (linking the experience of being made to "feel[] like a suspect" by police to decreased police legitimacy and willingness to cooperate with police).

225. Geller et al., supra note 14, at 2324–25. Public health researchers have called overpolicing "a health risk factor," finding that aggressive policing "is of detriment to the health of male residents in the neighborhood," resulting in psychological distress at the individual level. Sewell et al., supra note 14, at 10.

226. See Del Toro et al., supra note 14, at 8266–67.

227. Mann et al., Body Camera Footage Shows, supra note 22; see also Skene, Teen Shot by Baltimore Police Officer, supra note 1.

228. Soderberg, Baltimore Police Under Fire, supra note 126 (internal quotation marks omitted) (quoting Mary Scott).

other clothing with "wide arms," "[c]hains, straps, hats, etc.," "[s]ocks (use elastic as ankle holster)," and pockets.[229]

An article in the FBI Law Enforcement Bulletin highlights clothing-based characteristics, including things like a jacket that is not fastened when it is cold, a "man wearing a shirt and tie, suit trousers, and dress shoes" with "his shirttail hanging out," bags that "appear out of place," and someone who has a handwarmer on their coat whose hands are not in it despite cold weather.[230]

The Federal Law Enforcement Training Center also has a training that highlights many of the same characteristics,[231] as does the ATF.[232] Additionally, some individual police departments have their own versions of the training.[233]

Common among all the iterations of CAP framework trainings is the centralization of what is essentially a list of characteristics. The trainings do not focus on the nuanced considerations an officer should make regarding the legality of suspected weapons possession or how to determine when an armed person is dangerous given the possibility of carrying a weapon for self-protection. Instead, they list characteristics—an ever-growing list of characteristics—with blanket assertions that the people who exhibit them could be armed.

In January 2025, the City of Minneapolis, Minnesota, entered a consent decree in which it agreed that the Minneapolis Police Department would be prohibited from using only "conclusory statements, boilerplate, or canned language" including "characteristics of an armed person," in documenting uses of force.[234] The Louisville and Jefferson County Metro Government in Kentucky likewise entered a consent decree which included the same prohibition for the Louisville Metro Police Department

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229. Porter, supra note 26.

230. Anthony J. Pinizzotto, Edward F. Davis & Charles E. Miller III, "Dead Right": Recognizing Traits of Armed Individuals, 75 FBI L. Enf't Bull., Mar. 2006, at 1, 2–5. The article also cites behavioral traits, like adjusting or touching an area of clothing. Id. at 5.

231. See Fed. L. Enf't Training Ctrs., *Terry* Frisks, at 02:34–03:00, (Jan. 15, 2009), https://www.fletc.gov/video/terry-frisks (on file with the *Columbia Law Review*) (last visited Jan. 14, 2026) (discussing the different characteristics that lead police to conduct a stop).

232. See Project Safe Neighborhoods Enforcement Training, supra note 26 (detailing a course for ATF officials that includes a four-hour "Characteristics of Armed Gunman" seminar).

233. See, e.g., State v. Murray, 213 A.3d 571, 575 (Del. 2019) (referencing the Wilmington Police Academy's training).

234. Consent Decree at 25, United States v. City of Minneapolis, No. 0:25-cv-00048-ADM-DLM (D. Minn. Jan. 6, 2025), https://www.justice.gov/crt/media/1383116/dl [https://perma.cc/9ZEB-V8HB] (internal quotation marks omitted). The Trump Administration later withdrew its support for the consent decree, and the decree was dismissed in May 2025. Press Release, Off. of Pub. Affs., DOJ, The U.S. Department of Justice's Civil Rights Division Dismisses Biden-Era Police Investigations and Proposed Police Consent Decrees in Louisville and Minneapolis, (May 21, 2025), https://www.justice.gov/opa/pr/us-department-justices-civil-rights-division-dismisses-biden-era-police-investigations-and [https://perma.cc/X328-8C8G].

in December 2024.[235] The characterization of the CAP framework as an example of "conclusory statements, boilerplate, or canned language" shows recognition, at least in these instances, of the overbreadth and illegitimacy of the framework and its troubling connections to police violence.

Allowing the simple phrase "they exhibited characteristics of an armed person" to justify police violence is akin to excusing an officer from giving any explanation at all. Given the expansiveness of the CAP factors and their tendency to apply to nearly anyone, citation to the CAP framework does nothing to explain why an officer was suspicious of a particular individual. This failure of the CAP framework to expound an officer's reasons for engaging with someone spans beyond the context of police violence—as is discussed in Part III, the framework likewise fails to provide justification for stops and frisks for weapons.

III. ADDRESSING THE CAP FRAMEWORK THROUGH PROPER APPLICATION OF THE FOURTH AMENDMENT

Terry v. Ohio paved the way for the whittling away of the Fourth Amendment's protections for civilians.[236] *Terry* was never meant to provide blanket permission for stops of the masses or to be an investigatory tool in an officer's toolbelt.[237] Intentionally or not, in *Terry* the Supreme Court got rid of the probable cause requirement for vast numbers of police encounters, allowing officers to instead stop and search people not under investigation for any particular crime so long as the officer can give an excuse for why the individual was suspicious.[238]

Terry is cited in more than fifty thousand court opinions,[239] analyzed in many law review articles,[240] and invoked in nearly every trial level-brief

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235. See Consent Decree at 31, United States v. Louisville Metro/Jefferson Cnty. Gov't, No. 3:24-cv-00722-BJB (W.D. Ky. Dec. 12, 2024), https://www.justice.gov/crt/media/1379951/dl [https://perma.cc/YW9J-BACZ] ("LMPD policy will prohibit officers from using conclusory statements, boilerplate, or canned language . . . ."). The DOJ under the Trump Administration has also withdrawn support for this consent decree, and the court appears poised to dismiss it as well. See DOJ, Off. of Pub. Affs., supra note 234.

236. See Brando Simeo Starkey, A Failure of the Fourth Amendment & Equal Protection's Promise: How the Equal Protection Clause Can Change Discriminatory Stop and Frisk Policies, 18 Mich. J. Race & L. 131, 134 (2012) ("[I]n 1968, the Warren Court, despite its liberal reputation, lowered the standard police officers had to meet to conduct a certain type of search: the so-called '"stop" and "frisk."'" (quoting Terry v. Ohio, 392 U.S. 1, 16 (1968))).

237. See infra section III.A.

238. *Terry*, 392 U.S. at 30–31 (1968).

239. According to Westlaw, there are 51,003 decisions that cite *Terry* as of March 15, 2026. Westlaw, "*Terry v. Ohio*", 51,003 results (Mar. 15, 2026) (on file with the *Columbia Law Review*) (filtered by "Citing References," "Cases").

240. See generally, Lewis R. Katz, *Terry v. Ohio* at Thirty-Five: A Revisionist View, 74 Miss. L.J. 423 (2004) (explaining the impacts of *Terry* on individual freedoms); Stephen A. Saltzburg, *Terry v. Ohio*: A Practically Perfect Doctrine, 72 St. John's L. Rev. 911 (1998)

arguing for or against suppression of physical evidence stemming from a stop-and-frisk.[241] Yet the factual scenario in *Terry* often receives short shrift, and it warrants reminder here.

This Part examines the divorce between *Terry*'s original intent and the way *Terry* is applied to justify the CAP and similar frameworks. Delving into the conflation between cause for stops and cause for frisks, and the flawed assumptions inherent within the framework about dangerousness and the legality of gun possession, this Part discusses the ways that the Supreme Court's broad reading of the Second Amendment further illegitimizes the CAP framework. This Part then discusses state courts' reactions to the CAP framework, in Maryland and elsewhere, noting a split depending on the depth of the court's examination of the framework's legitimacy.

A. Terry *and the CAP Framework*

While the Fourth Amendment[242] protects against searches and seizures in the absence of probable cause, it is well recognized that police are allowed, in certain circumstances, to stop and search the outer clothing of civilians even in the absence of probable cause. In 1968, in *Terry v. Ohio*, the Supreme Court held:

> [W]here a police officer observes unusual conduct which leads him *reasonably* to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and *presently dangerous*, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.[243]

In so holding, the Court empowered police to conduct what are colloquially known as *Terry* stops and *Terry* frisks.

The facts of *Terry* demonstrate that the holding was intended to be far narrower than it has become. The officer in *Terry* was on patrol and

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(assessing the *Terry* decision as a controlling doctrine); Gregory Howard Williams, The Supreme Court and Broken Promises: The Gradual but Continual Erosion of *Terry v. Ohio*, 34 How. L.J. 567 (1991) (providing an in-depth analysis of the findings and conclusions of *Terry*).

241. Public defender offices often disseminate manuals to help guide attorneys in their arguments for the suppression of physical evidence, and such manuals encourage challenging *Terry* stops and frisks as unreasonable. See, e.g., Ky. Dep't of Pub. Advoc., The Suppression Manual: Search, Seizure, & Miranda in Kentucky 7 (1st ed. May 2024), https://dpa.ky.gov/wp-content/uploads/2024/06/Suppression-Manual-May-2024.pdf [https://perma.cc/95LH-9MCF].

242. U.S. Const. amend. IV.

243. 392 U.S. 1, 30 (1968) (emphasis added).

observed two men standing at a corner.[244] The officer "took up a post of observation" because they "didn't look right to [the officer] at the time."[245] The officer watched one of them walk to a store, look in the window, then walk back and forth several times.[246] The two "conferred briefly."[247] The second man then repeated the first man's path.[248] The two did this "between five and six times apiece—in all, roughly a dozen trips."[249] Amid this, a third man approached, they all briefly spoke, the third man walked off, and the first two continued walking up to and peering in the store window.[250] After ten-to-twelve minutes, the two men walked in the direction the third man had gone.[251] The officer followed the two men and saw them stop and talk to the third man. Based on what he had seen, the officer "suspected the two men of 'casing a job, a stick-up,'" and was afraid "they may have a gun."[252] The officer approached them, asked for their names, grabbed Terry, and patted each of them down for weapons.[253]

It was in this context that the Supreme Court held that an officer who has reasonable suspicion but not probable cause to believe criminal activity is afoot may stop a suspect to investigate further.[254] After that initial encounter, and if that officer has a reasonable belief that the suspect is armed and presently dangerous, the officer may pat the suspect down for weapons.[255]

When the *Terry* Court imposed the reasonable articulable suspicion standard, they specifically contrasted this with an "inchoate and unparticularized suspicion or 'hunch,'" which the Court said does *not*

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244. Id. at 5.

245. Id. (internal quotation marks omitted) (quoting Martin McFadden, Officer, Cleveland Police Dep't).

246. Id. at 5–6.

247. Id. at 6.

248. Id.

249. Id.

250. Id.

251. Id.

252. Id. (internal quotation marks omitted) (quoting Martin McFadden, Officer, Cleveland Police Dep't).

253. Id. at 6–7.

254. See id. at 6–7, 30–31 ("[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.").

255. See id. at 32 (holding that "[t]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime").

provide legal justification for a stop and pat-down for weapons.[256] The *Terry* Court further emphasized the indignity suffered by a person who is publicly frisked by police.[257] In what Professor Sam Kamin and Zachary Shiffler called "an unusually self-conscious move," the *Terry* Court explicitly acknowledged "that it was handing law enforcement a powerful tool" that "would be easy for them to misuse" and made efforts to limit it.[258] In *Terry* and the cases that followed, Professor Kamin and Shiffler argue, the Court held that *Terry* stops must be "carefully circumscribed" and imposed limitations on things like the scope and duration of stops and frisks.[259] *Terry* nonetheless opened the floodgates for the very indignities it decried. After *Terry*, police across the country started stopping and frisking civilians, most of them not doing or in possession of anything illegal, while claiming to have reasonable articulable suspicion.[260] *Terry* is routinely cited by the government to defend proactive policing when challenged under the Fourth Amendment.

Defining reasonable articulable suspicion and making broad rules for when stops and frisks are permissible and when they are not has proven nearly impossible. Legal scholars have pointed out that "reasonable suspicion has never received a solid definition."[261] Decades after *Terry*, courts are still unable to articulate reasonable articulable suspicion in any clear fashion.[262] Indeed, legal scholars argue that courts are ill-equipped to truly analyze police claims about their levels of suspicion.[263]

It is well-established, at least, that random searches that lack individualized suspicion for the purpose of crime control violate the Fourth Amendment.[264] While the Supreme Court has held that sobriety

256. Id. at 27. "And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Id. at 21.

257. See id. at 16–17 ("[I]t is simply fantastic to urge that [frisking] . . . performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.'").

258. Sam Kamin & Zachary Shiffler, Obvious but Not Clear: The Right to Refuse to Cooperate With the Police During a *Terry* Stop, 69 Am. U. L. Rev. 915, 922 (2020) (citing *Terry*, 392 U.S. at 15).

259. Id. (citing *Terry*, 392 U.S. at 19–20).

260. Id. at 16–17.

261. William J. Stuntz, *Terry's* Impossibility, 72 St. John's L. Rev. 1213, 1215 (1998) (arguing that "reasonable suspicion has never received a solid definition").

262. Id.; see also Jeffery Fagan & Amanda Geller, Following the Script: Narratives of Suspicion in *Terry* Stops in Street Policing, 82 U. Chi. L. Rev. 51, 58 (2015) (arguing that "there is no constitutional consensus as to *how much* suspicion is needed to give rise to reasonable suspicion") (citing Camara v. Mun. Ct. of S.F., 387 U.S. 523, 536–37 (1967)).

263. Fagan & Geller, supra note 262, at 55 ("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.").

264. See City of Indianapolis v. Edmond, 531 U.S. 32, 45–48 (2000) (invalidating a checkpoint program with the primary purpose of crime control and noting that "[w]hen

checkpoints do not violate the Fourth or Fourteenth Amendment,[265] nor do "reasonably located checkpoints" for immigration enforcement,[266] they have been clear that there is a line at which individualized suspicion is required and searches for general crime control crosses it. Despite public safety benefits, the Supreme Court rejected narcotics-interdiction checkpoints for that reason: "We are particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends."[267]

Use of the CAP framework falls somewhere in between. The circumstances of *Terry* are notably different from the typical application of the CAP framework. The officer in *Terry* noticed what he believed to be a crime in progress. Had the officer not intervened, the crime presumably would have occurred. Officer safety became an unavoidable issue, because in intervening to stop the suspected break-in, the officer had to interact with the suspects and reasonably believed they were armed. Use of the CAP framework is entirely different. Going into a neighborhood and watching people until they exhibit characteristics that an officer believes justify a stop is nothing like the factual scenario in *Terry*, even setting aside whether the officer could reasonably conclude that the suspected gun possession was unlawful.[268]

Professor Meares argues the inability of proactive policing to fit into the framework created by the *Terry* Court.[269] Stop-and-frisk, for example, is a "program to police [groups]" wherein police investigate "people that they suspect *could* be offenders" rather than those they suspect committed

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law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here . . . stops can only be justified by some quantum of individualized suspicion").

265. Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 455 (1990).

266. United States v. Martinez-Fuerte, 428 U.S. 543, 562 (1976).

267. *Edmond*, 531 U.S. at 42–43.

268. See Fagan & Geller, supra note 262, at 53 n.7 ("Proactive policing instantiates the notions of criminal archetypes by encouraging police interdiction with persons whom the police decide *could* be committing a crime, albeit without explicit markers or indicia of suspicion. It anticipates the one-off intervention into a crime in progress in the *Terry* case.").

269. Meares, supra note 34, at 163.

specific crimes.[270] The stop-and-frisk policing program and the CAP framework alike are far afield of the sort of policing going on in *Terry*.[271]

The urgency that existed in *Terry* to justify acting before probable cause was established is not present in most uses of the CAP framework—unless the officer has reason to think the person the officer suspects of having a gun is about to use it, then there is no compelling need to act before probable cause has been established. And unless the officer has a reason to believe that there is present danger, then a frisk for weapons is unjustified under *Terry*.

B. *Legality and Dangerousness*

When police assume a person has a gun based on the CAP framework and then pat the person down for a weapon, they ignore *Terry*'s pre-stop requirement of reasonable articulable suspicion of *criminal activity* and *Terry*'s pre-frisk requirement of a reasonable belief the person is *presently dangerous*.[272]

The *Terry* Court clearly separated the cause needed for a stop (reasonable articulable suspicion that criminal activity is afoot) and the cause needed for a frisk (reasonable suspicion that the suspect is armed and presently dangerous).[273] But the use of the CAP framework on someone not otherwise suspected of committing any offense conflates *Terry*'s requirements: The cause for the stop is suspicion of gun possession, and the cause for the pat-down is suspicion of gun possession. The question of whether a belief someone is armed can justify a stop *and* a frisk does not have a clear answer in case law. As Professor Royce de R. Barondes explained, "[E]xtant Supreme Court authority does not unequivocally indicate whether reasonable suspicion a *Terry* subject is armed authorizes

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270. Id. at 164–65 (citing Jeffrey Fagan, Greg Conyers & Ian Ayres, No Runs, Few Hits and Many Errors: Street Stops, Bias and Proactive Policing (2014) (unpublished manuscript) (now published as Jeffrey Fagan, No Runs, Few Hits and Many Errors: Street Stops, Bias and Proactive Policing, 68 UCLA L. Rev. 1584 (2022))). When the Maryland Court of Appeals rejected a bulge as the basis for a stop in *Ransome v. State*, they included a discussion of this very issue: "Unlike the defendant[] . . . in *Terry*, petitioner had done nothing to attract police attention other than being on the street with a bulge in his pocket at the same time [the officer] drove by." 816 A.2d 901, 907 (Md. 2003).

In 2022, Maryland renamed its highest court from the Court of Appeals of Maryland to the Supreme Court of Maryland, and its intermediate appellate court from Maryland Court of Special Appeals to the Appellate Court of Maryland. See Press Release, Md. Cts., Voter-Approved Constitutional Change Renames High Courts to Supreme and Appellate Court of Maryland (Dec. 14, 2022), https://www.courts.state.md.us/media/news/2022/pr20221214 [https://perma.cc/7CNF-JYJD]. When discussing a decision, this Article refers to the relevant court by its name at the time of decision.

271. Meares, supra note 34, at 163.

272. Terry v. Ohio, 392 U.S. 1, 30–31 (1968).

273. Id.

a frisk."[274] While there is some lower court case law to suggest that a singular suspicion can be cause for both,[275] there is a split among courts that leaves this question open.[276]

Suspicion that a person is armed cannot justify a stop unless there is a reasonable belief that the suspected gun possession is *unlawful*. A lawfully possessed gun looks the same in someone's coat pocket as an unlawfully possessed gun. Suspicion that someone is armed, then, is not the same as suspicion that the person is committing a crime. And this is especially true post-*Bruen*.[277]

In *Bruen*, the Supreme Court held that individuals have the *right*, pursuant to the Second and Fourteenth Amendments, to "carry a gun outside the home for self-defense."[278] While states are still allowed to impose permitting and licensure requirements, states' ability to forbid civilians from carrying guns outside their homes has vanished, thereby vastly expanding the right to bear arms in public. *Bruen* is a part of the current Supreme Court's continued expansion of the right to bear arms.[279] In a post-*Bruen* world in which it is lawful in all states to possess a handgun (at least for some people), it cannot be legal for a stop to be based purely on suspicion that a civilian is armed with one.[280] As Professors Brandon del Pozo and Barry Friedman point out (in the context of traffic stops), "[T]here is no longer a reason to believe that a person carrying a gun . . . is anything but a law-abiding citizen."[281] Yet, an assumption that possession of a gun is illegal is the foundation on which the CAP framework was built, insofar as it is used as the basis for *Terry* stops.

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274. Royce de R. Barondes, Automatic Authorization of Frisks in *Terry* Stops for Suspicion of Firearms Possession, 43 S. Ill. U. L.J. 1, 20 (2018).

275. See del Pozo & Friedman, supra note 32, at 1848 ("[I]n countless subsequent [to *Terry*] cases, the only crime of which the target was suspected was carrying a gun."); see also United States v. Horne, 386 F. App'x 313, 315 n.1 (3d Cir. 2010) ("[W]hen police . . . reasonably suspect that a person is carrying a firearm, they also have reasonable suspicion that he is committing a crime unless the circumstances affirmatively suggest he has a permit.").

276. Barondes, supra note 274, at 20–21.

277. N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022).

278. Id. at 2159. This came after the Supreme Court's decisions in District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 561 U.S. 742 (2010), in which the Supreme Court "recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun *in the home* for self-defense." *Bruen*, 142 S. Ct. at 2122 (emphasis added).

279. See, e.g., *McDonald*, 561 U.S. at 791; *Heller*, 554 U.S. at 635–36.

280. See del Pozo & Friedman, supra note 32, at 1851 ("In short: If possession of guns is lawful in a state, then stops are not. A growing body of cases recognizes this new reality. This alone will necessitate a sea change in policing."); cf. Jeffrey Bellin, The Right to Remain Armed, 93 Wash. U. L. Rev. 1, 5 (2015) ("[B]allooning numbers [of concealed carry licenses] will eventually force judges (and police officers) to acknowledge that gun possession alone is a constitutionally dubious justification for a search or seizure.").

281. Del Pozo & Friedman, supra note 32, at 1858.

Accordingly, a stop based on the CAP framework cannot satisfy *Terry*'s requirements without incorporating consideration of the legality of the suspected gun possession.[282] The reasonable suspicion inquiry hinges on "the *ex ante* probability that the suspect is breaking the law."[283] In their discussion of policing tactics after *Bruen*, del Pozo and Friedman call this question "[t]he [l]icensure [c]onundrum" and point out a split in courts' treatment of this inquiry.[284] In jurisdictions that explicitly bar police from stopping civilians to inquire about the licensure status of a weapon, a *Terry* stop based solely on suspicion of possession of a weapon is unlawful.[285] The Fifth Circuit Court of Appeals, for example, held that suspicion of gun possession alone is insufficient to justify a *Terry* stop.[286] But elsewhere, the question is more complex—some states, like New Jersey, have a presumption that a weapon is unlicensed, so police may stop the possessor to inquire,[287] while others, like Pennsylvania, do not.[288] The result is a split among jurisdictions, and widespread uncertainty among police about "what the structure of any particular state's law means for *Terry* stops."[289]

Though enlarged by *Bruen*, the enigma of how police must differentiate between lawful handguns and unlawful ones is not new. Even pre-*Bruen*, in states that did not forbid or severely limit civilians from carrying handguns in public, a person possessing a gun was not necessarily committing a crime. As the Supreme Court of Pennsylvania put it in 2019 in *Commonwealth v. Hicks*, "there can be no doubt that a properly licensed

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282. See Bellin, supra note 280, at 30 ("With respect to the Fourth Amendment, police officers' authority to stop an armed person depends on the constitutional standard — whether there is 'reasonable suspicion' to suspect that the person is committing an offense (e.g., unlicensed firearm possession)." (footnote omitted)).

283. Bellin, supra note 280, at 30.

284. Del Pozo & Friedman, supra note 32, at 1851.

285. See id. ("'A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license,' says § 16-11-137 of the Georgia Code. And so, presumably, they will not be." (footnote omitted) (quoting Ga. Code Ann. § 16-11-137 (2015))).

286. United States v. Wilson, 143 F.4th 647, 655–59 (5th Cir. 2025). The Fifth Circuit Court of Appeals rejected a presumption of illegality of gun possession in Louisiana and found "[t]here is no 'firearm exception'" to *Terry*. Id. at 657 (citing Florida v. J.L., 529 U.S. 266, 272 (2000)). The court nonetheless found reasonable suspicion to justify the *Terry* stop based on other circumstances. Id. at 659.

287. See del Pozo & Friedman, supra note 32, at 1852 ("New Jersey law provides that . . . 'it shall be presumed that [the gun possessor] does not possess such a license or permit . . . until he establishes the contrary.'" (quoting N.J. Stat. Ann. § 2C:39-2(b) (West 2014))).

288. See id. (explaining that the Pennsylvania Supreme Court reversed its rule allowing officers to "stop an individual to ensure a person concealing a weapon was licensed to do so" for being inconsistent with *Terry*).

289. Id. at 1853. As one journalist put it, "You mix guns with racism, and stir in some law and order, and it gets very confusing." Robert C. Koehler, Mixing Guns and Racism, Common Dreams (July 19, 2018), https://www.commondreams.org/views/2018/07/19/mixing-guns-and-racism [https://perma.cc/W45L-7ULB].

individual who carries a concealed firearm in public engages in lawful conduct."[290]

A similar conundrum exists regarding questions about dangerousness. With the Supreme Court expanding the right to bear arms for self-protection on the one hand and concerns about gun violence and officer safety on the other, clear guidance on how to assess dangerousness is needed. Even without clear guidance, it is evident that just because someone has a gun, that does not mean that he or she is dangerous.[291] In a dissent in *Adams v. Williams*, fifty years before *Bruen*, Justice William O. Douglas pointed out the hypocrisy in allowing a weapons frisk in a state that permits its citizens to carry guns.[292] In the same decision, Justice Thurgood Marshall also dissented, stating bluntly, "[T]here was no reason for the officer to infer from [the fact the respondent was armed] that the respondent was dangerous," because carrying a permitted weapon is legal.[293] While street-level gun violence is more likely to be committed by someone carrying a gun illegally than someone carrying one legally,[294] as Professor Jeffrey Bellin put it, "The challenge is crafting a lawful mechanism for police officers to distinguish licensed from unlicensed gun carriers."[295]

Even carrying a gun illegally does not necessarily mean a person is dangerous. There is a split among lower courts in handling the question of dangerousness.[296] Professors del Pozo and Friedman point out that "[g]iven the dangerousness that some see in the gun, courts have been

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290. Commonwealth v. Hicks, 208 A.3d 916, 926 (Pa. 2019). The *Hicks* Court held that suspicion that someone possesses a firearm does not justify a stop without "articulable facts supporting reasonable suspicion that a firearm is being used or intended to be used in a criminal manner." Id. at 937.

291. There is evidence to suggest that legally possessed guns are not often used in violent crimes on the streets. Bellin, supra note 280, at 32 n.157.

292. See Adams v. Williams, 407 U.S. 143, 149–50 (1972) (Douglas, J., dissenting) (noting the hypocrisy that in Connecticut citizens are allowed to carry guns, yet they can be arrested for carrying one).

293. Id. at 160 (Marshall, J., dissenting). While an entire article (like Professors del Pozo's and Friedman's article, "Policing in the Age of the Gun," supra note 32), or perhaps even an entire book, could be dedicated to a discussion of *Bruen* and *Terry* and what suspicion of weapons possession means for policing going forward, that goes beyond this Article's confines.

294. See Bellin, supra note 280, at 32–34 ("Empirical evidence supports the intuition that those disqualified from possessing a firearm are among the most likely to use guns unlawfully.").

295. Id. at 34.

296. See del Pozo & Friedman, supra note 32, at 1855. When courts equate possession of a firearm with dangerousness, they do so based on the "inherently dangerous nature of firearms." Id. Professors del Pozo and Friedman note judicial support from the Supreme Court in cases such as *Pennsylvania v. Mimms*, which uses language suggesting the inherent dangerousness of guns. Id.

remarkably blasé about where this leaves police,"[297] noting, "[I]t is now impossible to love guns and cops equally, and so courts are choosing."[298]

The CAP framework does not provide any guidance to officers on how to assess present dangerousness. Instead, the framework seems to rely on the incorrect assumption that being armed and being dangerous are synonymous. These questions about conflation between cause for stops and frisks, disregard of the possibility of legal gun ownership, and lack of true evaluation of dangerousness, call into question the foundation of the CAP framework.

C. *The CAP Framework in the Courts*

Fourth Amendment-based challenges to stops and frisks based on the CAP framework have been met with mixed results. As Professor Katie Kronick noted in her analysis of judges' decisionmaking in the context of expert testimony, judges have a tendency to "admit the evidence . . . without critical analysis, even though they should have reason to believe the evidence is unreliable or, at best, has not been shown to be reliable."[299] While testimony from police regarding the CAP framework is sometimes considered expert testimony and sometimes considered lay testimony,[300] it nonetheless falls victim to this same problem of judicial conformity. Thus, the more times officers are allowed to testify to knowing someone is armed based on their training and experience in the CAP framework, the less pushback judges will provide the next time similar testimony is offered.[301] This section compares the treatment of the CAP framework by Maryland state courts with other courts across the country.

1. *Maryland.* — In the context of the BPD's use of the CAP framework to justify stops and searches, Maryland courts have been inconsistent in their analysis of the tactic as establishing reasonable suspicion. In 2003, the Maryland Court of Appeals in *Ransome v. State* examined a case in which the basis for a stop-and-frisk was a bulge in the defendant's pocket and the defendant's apparent nervousness and held that those characteristics did *not* suffice to establish reasonable articulable suspicion.[302] According to the *Ransome* Court:

> [C]onduct that would seem innocent to an average layperson may properly be regarded as suspicious by a trained or experienced officer, but if the officer seeks to justify a Fourth Amendment intrusion based on that conduct, the officer ordinarily must offer some explanation of why he or she regarded

297. Id. at 1858.

298. Id. at 1859.

299. Katie Kronick, Forensic Science and the Judicial Conformity Problem, 51 Seton Hall L. Rev. 589, 617 (2021).

300. See infra note 326 and accompanying text.

301. See infra note 326 and accompanying text.

302. Ransome v. State, 816 A.2d 901, 908 (Md. 2003).

> the conduct as suspicious; otherwise, there is no ability to review the officer's action.[303]

The *Ransome* Court acknowledged that to allow a stop based only on a bulge "would allow the police to stop-and-frisk virtually every man they encounter."[304]

Likewise, in 2011, the Maryland Court of Special Appeals in *In re Jeremy P.* rejected adjustment of the defendant's waistband as a characteristic of an armed person justifying a stop-and-frisk.[305] The court there indicated:

> Mere conclusory statements by the officer that what he saw made him believe the defendant had a weapon are not enough to satisfy the State's burden of articulating reasonable suspicion that the suspect was involved in criminal activity. For that reason, the officer's account of the stop must include specific *facts* from which the court can make a meaningful evaluation of whether the officer's suspicion was objectively reasonable under the totality of the circumstances.[306]

While siding with the defendants, the courts in these cases provided a roadmap for officers to follow in future cases to avoid suppression: explain *why* you thought the characteristic was suspicious, not merely that you did.

Then, in *Womack v. State*, the Appellate Court of Maryland discussed police training in a very different way while finding that a detective *did* have reasonable articulable suspicion to stop the defendant:

> The determination as to the existence of reasonable articulable suspicion must be made "through the prism of an experienced law enforcement officer," and deference must be given "to the training and experience of the . . . officer who engaged the stop at issue." . . . Though an average layperson may interpret such movements as neutral and unremarkable, those nuanced movements may be, and were in the instant case, significant to a trained officer.[307]

Notably, *Womack* was the first in this series of cases in which the detective explicitly spoke about the training he underwent in the CAP framework. The detective was a member of the BPD's DAT and had been

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303. Id.

304. Id. at 906.

305. In re Jeremy P., 11 A.3d 830, 838–39 (Md. Ct. Spec. App. 2011).

306. Id. at 839 (citation omitted) (citing *Ransome*, 816 A.2d at 907–08).

307. Womack v. State, No. 320, 2023 WL 1857241, at *7 (Md. App. Ct. Feb. 9, 2023) (quoting Holt v. State, 78 A.3d 415, 425 (Md. 2013)); see also Thornton v. State, 214 A.3d 34, 48 (Md. 2019) (discussing the officers' training in recognizing characteristics of an armed person but nonetheless finding their explanation of their suspicion insufficient because it was not sufficiently particularized); *In re Jeremy P.*, 11 A.3d at 842 (finding no reasonable articulable suspicion but commenting that the detective "did not testify about his own experience in recovering a gun based on observations of similar waistband adjustments").

monitoring a CCTV feed focused on a "high crime area."[308] The *Womack* detective went on to testify that the defendant's "[left jacket pocket] looked weighted down" and that the defendant had conducted "several security checks."[309] These observations were made via CCTV and were, in the court's eyes, sufficient to establish reasonable, articulable suspicion that Womack had a gun, because of the deference that must be given to the detective's "training and experience."[310]

In *Williams v. State*, decided less than a year after *Womack*, the appellate court again noted its "deference to the training and experience of the law enforcement officer."[311] There, the BPD officer only noted that the defendant was in a "high crime area" and conducted what the officer believed to be a security check.[312] Despite deference to the officer's training and experience, the court found that the security check alone did not justify a stop.[313] Likewise in *Robinson v. State*, the appellate court found a single CAP factor—a large and heavy object in a backpack that caused a bulge with a straight line—insufficient to justify a stop or a frisk, emphasizing the "reasonable possibility" that the heavy object was "any number of ordinary, innocuous items."[314]

While *Williams* and *Robinson* provide a glimmer of hope for judicial scrutiny of the CAP framework, the CAP training is generally credited so faithfully by judges that in Baltimore officers and detectives are routinely admitted as experts in this field.[315] As is discussed in Part IV, however,

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308. *Womack*, 2023 WL 1857241, at *1.

309. Id. (quoting testimony of Victor Villafane, Detective, Balt. Police Dep't).

310. Id. at *6–7.

311. Williams v. State, No. 2198, 2024 WL 3579314, at *4 (Md. App. Ct. July 30, 2024) (quoting Sellman v. State, 144 A.3d 771, 781 (Md. 2016)).

312. Id. at *1 n.1 (internal quotation marks omitted) (quoting testimony of Aaron Jackson, Officer, Balt. Police Dep't).

313. Id. at *7. Notably, *Williams* also discussed *Bruen* at great length, but only in the context of the defendant's motion to dismiss the firearms charges as unconstitutional. There was no discussion of the interplay between the reasonable articulable suspicion standard and *Bruen*. See id. at *8.

314. Robinson v. State, No. 0269, 2025 WL 1982852, at *6 (Md. App. Ct. July 17, 2025).

315. Indeed, the detective in *Robinson* was admitted as an expert in the framework. Id. at *4–6. While the higher courts in Maryland have not addressed the issue of expertise in the CAP framework in a published case, a series of unpublished decisions on the topic, each stemming from cases in Baltimore, show that courts are recognizing this as an area of expertise. In 2017, the Appellate Court of Maryland found that an officer who had only been out of the police academy for one month at the time of the defendant's arrest was properly qualified as an expert in the CAP framework because of his eight hours of training in the academy and eight hours of training after the academy on the framework. See Bailey v. State, No. 522, 2017 WL 2482339, at *4–5 (Md. Ct. Spec. App. June 8, 2017). In 2018, the Maryland Court of Special Appeals again found in an unreported decision that an officer was appropriately qualified as an expert in the characteristics of an armed person, citing that he "had received formal training while at the Police Academy in the characteristics of an armed person." Mallette v. State, No. 1624, 2018 WL 4521013, at *4 (Md. Ct. Spec. App. Sep. 20, 2018); see also Ford v. State, No. 1447, 2022 WL 4546674, at *1 (Md. Ct. Spec. App. Sep. 29, 2022) (noting that a detective had been admitted as an expert in identifying

recognition of CAP as a field that police can be experts in should open the framework up to reliability challenges.

The discussion in Maryland courts about the adequacy of officers' claims about citizens exhibiting characteristics of armed persons has been completely devoid of discussion about the *substance* of the training itself. Maryland courts have not considered whether the CAP framework training is adequate or reliable or whether it merely allows police to stop-and-frisk anyone they choose. Rather, these courts focus on whether the officer testifying in each case followed the roadmap and checked the right boxes—did the officer have experience? Did the officer say that they could tell this otherwise innocent characteristic was not innocent in this circumstance? The CAP framework is a policing program and should be analyzed as such.[316]

Further, while Maryland courts consistently recognize the distinction between the cause needed for a *stop* and the cause needed for a *frisk*, these cases lack any discussion of what to do with this distinction when the cause for the stop and the cause for the frisk is *one and the same*. The Maryland Court of Special Appeals (now titled the Appellate Court of Maryland) emphasized the distinction in the cause needed for a stop and the cause needed for a frisk in *Ames v. State*, saying "the two do not conflate" and explaining:

> The *Terry* stop and the *Terry* frisk, of course, serve quite distinct purposes. The stop is crime-related, its purpose being to prevent or detect crime. The reasonable articulable suspicion for a stop must be framed in terms of that purpose. *The frisk, by diametric contrast, is not intended to be an investigative tool at all.* Its express purpose and animating concern is the safeguarding of the life and limb of the stopping officer.[317]

Similarly, that court explained in *Graham v. State*:

> The respective interests served by stops and by frisks are distinct. The stop is crime-related. What is, therefore, required is reasonable suspicion that a crime has occurred, is then occurring, or is about to occur. The frisk, by contrast, is concerned only with officer safety. What is, therefore, required is reasonable suspicion that the person stopped is armed and dangerous.[318]

The *Williams* court came close to discussing the meaning of this distinction in the context of the CAP framework, noting that the purpose

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characteristics of an armed person); Davis v. State, No. 2585, 2021 WL 3630036, at *4 (Md. Ct. Spec. App. Aug. 17, 2021) (same). In *Williams*, the Appellate Court noted that neither involved member of law enforcement was qualified as an expert because of a discovery violation, suggesting that otherwise, they would have been. See 2024 WL 3579314, at *2 n.2.

316. See Meares, supra note 34, at 162–63 ("When policing agencies engage in an organizationally determined practice of stopping certain 'sorts' of people . . . [t]he stops that flow from these programs are not individual incidents . . . .").

317. Ames v. State, 153 A.3d 899, 904 (Md. Ct. Spec. App. 2017) (third emphasis added).

318. Graham v. State, 807 A.2d 75, 92–93 (Md. Ct. Spec. App. 2002).

of the frisk of the defendant there (who was standing on a corner, spotted by police via CCTV, and stopped then searched because police observed him do a security check) was to look for evidence: "In this case, the purpose of the frisk appears to have been to uncover evidence of a crime, not to protect an officer from danger."[319] The *Williams* court noted, "Until the officers arrived at the scene, there was *no plausible threat to officer safety*."[320] Yet the court did not discuss the broader question of whether a pat-down for weapons can ever be lawful when the entire interaction was triggered solely by the CAP framework.[321]

2. *Nationwide*. — Higher courts across the country have approved police actions based on CAP frameworks. Courts generally give broad deference to officers trained in the CAP framework, without critical (or any) discussion of what the training entails, whether it is reliable, or the cited factors themselves. Indeed, in one instance, a state high court gave deference to the reliability of officers' use of the framework even when faced directly with the trial court's skepticism of the same.[322]

Perhaps the starkest example of a state supreme court refusing to engage with the reliability or substance of the framework is Delaware. In *State v. Murray*, a Delaware trial court granted the defendant's motion to suppress based on its refusal to defer to the officer's training and experience in the CAP framework (referred to there as "'armed gunman' profiling").[323] The trial court seemed disturbed by the lack of information it was provided about the training during the officer's testimony at a suppression hearing, noting that it "assume[s] [the training and experience] is real" but was not provided with any record about it; rather, the court was "essentially told to 'trust me.'"[324] The trial court made its concerns about deferring to the training without more information explicit:

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319. *Williams*, 2024 WL 3579314, at *8.

320. Id. (emphasis added).

321. See id. The Appellate Court of Maryland likewise stated in *Robinson* that the frisk was used as an investigatory tool, not for officer safety, noting "a *Terry* stop and a *Terry* frisk are two distinct investigative tools, each requiring a different justification." Robinson v. State, No. 0269, 2025 WL 1982852, at *5 (Md. App. Ct. July 17, 2025). The court in *Robinson* nonetheless avoided addressing whether suspicion of gun possession can trigger both a stop and a frisk. Id. But less than a month earlier in *Taylor v. State*, the Appellate Court of Maryland affirmed the denial of a motion to suppress in a bulge case in which the justification for the stop and the frisk was one and the same. No. 838, 2025 WL 1856497, at *3–5 (Md. App. Ct. July 3, 2025).

322. See State v. Murray, 213 A.3d 571, 579 (Del. 2019) (holding that an officer's testimony that the defendant was moving unusually was enough to justify the stop).

323. State v. Murray, 2018 WL 1611268, at *3 (Del. Super. Ct. Apr. 2, 2018). In *State v. Murray*, the officer cited "swinging of one arm" and "blading" as the factors he relied on, in conjunction with the defendant being in a "high crime neighborhood," taking a "stutter step," and "looking around" as the officer got out of his police vehicle. Id. at *1–2. The officer was trained in "'armed gunman' profiling" and trains other members of law enforcement in the same. Id. at *2.

324. Id. at *2.

> What we are not told, however, is the basis for this belief. The record is bereft of any scientific support for the proposition. What percentage of armed gunmen walk swinging one arm but not the other? What percentage of citizens who walk swinging one arm but not the other are armed gunmen? How, if at all, do these percentages change based upon the time of day or the fact that it is a high crime neighborhood? . . . [W]hat percentage of the citizens turn their bodies away from the policeman? And of those that do, what percentage are hiding something? And of those that are hiding something, what percentage of them are hiding firearms?[325]

The trial court noted that the officer's testimony about his training and experience and the conclusions he drew from it "is certainly not a 'lay opinion'" because "it is professed to be based on 'scientific, technical, or other specialized knowledge.'"[326] Yet the foundation needed for such an expert opinion was lacking—the trial court refused to recognize the state's CAP equivalent as a "science" (using scare quotes),[327] and noted that it could not even characterize it as a legitimate or "junk" science with the dearth of information about the training and its reliability.[328]

The Delaware Supreme Court reversed the trial court's decision, discarding the trial judge's concern about the substance of the training altogether: "A fair reading of the officer's testimony creates an inference that the occurrence of unusual canting and blading movements has risen to such a level that these movements are discussed in officer training as being indicators that a person is carrying a concealed weapon."[329] The Delaware Supreme Court admonished the trial court for not "giv[ing] due deference to the training and experience of the police officer"[330] and said that "[w]hen an officer testifies about something he has learned through his police training or through his police experience, . . . a court cannot expect the testimony to be supported by a statistical analysis or a scientific study where there is no evidence that such an analysis or study exists."[331]

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325. Id. at *3.

326. Id. (quoting Del. R. Evid. 701(c)).

327. Id. at *2–3 (internal quotation marks omitted).

328. Id. at *3.

329. State v. Murray, 213 A.3d 571, 579 (Del. 2019).

330. Id.

331. Id. at 580. The Delaware Supreme Court likewise deferred to training in the CAP framework in *Flowers v. State*, 195 A.3d 18, 27–28 (Del. 2018) (finding reasonable articulable suspicion in part because of the corporal's training "in the police academy and from courses on street crime as to how to recognize the characteristics of an armed person"), and *Bryant v. State*, 156 A.3d 696 (Del. 2017) (unpublished table decision) (finding that the police officer had "reasonable and articulable suspicion" to approach the defendant because the defendant was in a group near a vacant property, grabbed his waistband, and then fled). The Delaware Supreme Court did not engage in a discussion of the substance of the training in either opinion but merely noted it in passing as a reason for crediting the officer's opinion.

In a scathing dissent, Justice Gary Traynor argued that the trial judge did not have to "defer absolutely to [the officer's] testimony merely because he purported to ground it upon his 'training and experience'" and characterized the officer's testimony as "vague and fail[ing] to inspire confidence."[332] Justice Traynor's dissent recited the information the officer provided when asked about what he learned during his training:

> There's several characteristics involving people's behavior and the geographical locations that they are in. I mean, a lot of it is observations, and there are elements that–certain things that people display when they are attempting to conceal firearms from the police and from the public. They're just things that we're aware of and that we can use as a tool.[333]

The dissent engaged with the characteristics cited and pointed out that there was nothing to indicate that they were linked with anything unlawful.[334]

The Appeals Court of Massachusetts also gave its stamp of approval to the "characteristics of an armed gunman" framework by justifying a finding of reasonable suspicion for a stop-and-frisk because the officer testified to attending the ATF's training on it.[335] The appeals court, in a footnote, recited some specifics from the ATF training[336] but assumed the reliability of the training without discussion.[337]

The Superior Court of Pennsylvania affirmed a finding of reasonable suspicion when a detective who attended the ATF training saw the defendant in a high crime area grab his waistband then run when the detective approached him.[338] They did not discuss the training in any

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332. *Murray*, 213 A.3d at 581 (Traynor, J., dissenting).

333. Id. (quoting testimony of Matthew Rosaio, Officer, Wilmington Police Dep't).

334. See id. at 581–82.

335. Commonwealth v. Harrison, No. 15-P-1609, 2017 WL 838230, at *1 (Mass. App. Ct. Mar. 3, 2017); see also Commonwealth v. Jean, No. 14-P-1088, 2015 WL 9306684, at *2 (Mass. App. Ct. Dec. 21, 2015) (upholding a trial court's admission of an officer's testimony regarding the "characteristics of an armed gunman" and declining to decide whether it was a lay or expert opinion, noting instead that it is "'more akin to a description of the modus operandi of' persons who carry illegal firearms" (quoting Commonwealth v. Dennis, 604 N.E.2d 48, 50 (Mass. App. Ct. 1992))).

336. The court described the training as:

> The ATF curriculum provided that a person carrying an unlicensed firearm often carried it loose, in a pocket or waistband to make it accessible. Borges also learned the physical measures or 'security checks' that a person would perform on the unholstered weapon to prevent it from moving or falling from his person. Such 'security checks' involve 'touching or adjusting the waist numerous times.' Borges had implemented that training in at least fifty gun investigations.

Harrison, 2015 WL 9838230, at *1 n.4.

337. Id. at *1–2.

338. Commonwealth v. Mitchell, No. 1209 WDA 2014, 2015 WL 7076982, at *4 n.3 (Pa. Super. Ct. June 16, 2015); see also Commonwealth v. Brown, 64 A.3d 1101, 1108–09 (Pa. Super. Ct. 2013) (affirming a lower court finding of reasonable suspicion in part based on

detail—it was just mentioned in passing in a footnote along with the officer's thirteen years of experience as reasons for "giving due weight to the reasonable inferences" he drew.[339]

The Court of Appeals in Wisconsin took a different approach. In *State v. Pugh*, the court found no reasonable suspicion despite an officer's claim that the defendant was blading his body, which he was trained on in his "extensive training regarding the characteristics of armed individuals."[340] The *Pugh* court discarded the officer's claim of blading as providing reasonable suspicion, saying:

> That leaves Pugh not keeping the front surface of his body parallel to a line extending from one officer to the other—that is, turning his body, or, to use [the officer]'s word, "blading"—as he backed away from them. But how does a person walk away from another . . . without turning his or her body to some degree? Calling a movement that would accompany *any* walking away "blading" adds nothing to the calculus except a false patina of objectivity.[341]

Pugh is the sole example of a state court's discussion turning to what the characteristic of an armed person *actually means*. When the Court of Appeals of Wisconsin delved into what blading means in this context—turning one's body—the opinion became almost sarcastic in its discard of it as a claimed justification for reasonable suspicion.[342]

While the general trend in these cases is to defer to officers' training within the CAP framework, the Court of Appeals in Wisconsin's opinion in *Pugh* demonstrates how courts can interrogate precisely what is meant by the characteristics—what it shows and what it does not show—and articulate how meaningless the framework or characteristic is. Blading is just turning the body. A bulge is just a bulge. A security check could be a check for a phone or wallet. Clothing weighted to one side could be a heavy keychain or a pocket full of change.

In his concurrence in *Terry*, Justice John Marshall Harlan made clear that to have the right to disarm someone, an officer "must first have a right . . . to be in his presence."[343] When there is no crime being investigated except the perceived possibility of weapons possession, without knowledge of its legality, that should not suffice for a stop. The

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the corporal attending "an ATF seminar on 'Characteristics of an Armed Gunman'" (quoting Suppression Court Opinion, Sep. 20, 2011, at 7–8)).

339. *Mitchell*, 2015 WL 7076982, at *4, n.3.

340. State v. Pugh, 826 N.W.2d 418, 420–24 (Wis. Ct. App. 2012) (quoting testimony of Timothy Keller, Officer, Milwaukee Police Dep't).

341. Id. at 423–24 (footnote omitted) (quoting Timothy Keller, Officer, Milwaukee Police Dep't).

342. Id.

343. Terry v. Ohio, 392 U.S. 1, 32 (1968) (Harlan, J., concurring) ("In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a forcible stop.").

inquiry should end there. But even if suspicion of gun possession suffices for a stop, it should not automatically suffice for a frisk, too, given the complete lack of engagement with the question of present dangerousness. The officer's creation of a perceived safety risk by stopping someone because the officer thinks that person may have a gun should not give cause for a frisk. State court decisions about use of the CAP framework do not engage with this circular problem, nor do they engage with the critical questions of legality of gun possession or present dangerousness.

IV. CHALLENGING THE CAP FRAMEWORK THROUGH FOCUS ON (UN)RELIABILITY

Lawyers and legal scholars largely rely on constitutional law to counteract perceived overreach by police, especially in the context of proactive policing tactics. Scholars have suggested a revamp of the Fourth and Fourteenth Amendments,[344] or change through legislation,[345] or systemic civil rights litigation.[346] All are appropriate and potentially effective options.

Yet, more short-term strategies are needed to supplement these systemic and mostly long-term solutions. Constantly, people are stopped and harassed and arrested based on the CAP framework.[347] Some are even killed.[348] The unbridled discretion of police officers inherent within the CAP framework is an urgent problem.

Setting aside the social and societal issues inherent in the use of the CAP framework, the framework's key problem is that its characteristics do not reliably predict who is armed and do nothing to determine whether suspected gun possession is legal or illegal. The characteristics are so broad that instead of effectively directing officers to those who might be armed, the CAP framework encourages officers to stop nearly anyone. This Part proposes a focus on the reliability (or unreliability) of the CAP framework.

The Supreme Court in *Florida v. Harris* found that deference to "bona fide" police training programs is legally appropriate.[349] But the *Harris*

344. See Harmon & Manns, supra note 13, at 63 ("Scholars have argued that if the Fourth Amendment and Fourteenth Amendment doctrines do not prevent the proactive use of stops and frisks, the doctrines should change to accommodate these concerns.").

345. See id. at 65–70 (highlighting various effective state-level policies that have regulated the coercive aspects of policing and aligned accountability mechanisms).

346. See id. (explaining how civil rights litigation in New York City led to the creation of the Office of the Inspector General for the NYPD to assess the practices of the department).

347. See Skene, Witness, supra note 21 (describing how neighborhood residents near the Baltimore shooting of a teenager "said the shooting was just the latest example of Baltimore police treating Black communities poorly").

348. See supra section II.D.

349. See Florida v. Harris, 568 U.S. 237, 246–47 (2013) (holding that, if there is evidence of a police dog's satisfactory performance in a training program, "a court can presume . . . that the dog's alert provides probable cause to search").

Court made clear that the deference is not absolute and left an opening for reliability challenges.[350] Existing discovery and evidentiary rules provide the tools to obtain the information about the CAP framework necessary to challenge its use. Section IV.A advocates for offensive uses of existing discovery and evidentiary rules to obtain information about the CAP framework and officers' training in it. Section IV.B discusses framing of reliability arguments to capitalize on the opportunity given in *Harris* and argues for analogizing to the court's gatekeeping function when considering expert testimony. This twofold approach can be used to challenge the CAP framework and other checklist-style methods of proactive policing.

A. *Obtaining Necessary Information*

The first step to stopping unconstitutional police behavior based on the CAP framework is understanding the framework. Attorneys and scholars should not merely accept the framework at face value, as so often happens in the trial courtroom.[351] Instead, they must gather the information themselves to evaluate the reliability of the framework that is being utilized.

A judge cannot actually determine whether training and experience in a particular framework suffice to establish reasonable articulable suspicion without knowing what that training and experience are. Professor William Stuntz argued that "[c]ourts cannot know the things they need to know in order to do a good job of defining liability rules."[352] Stuntz therein suggested that courts do not have the knowledge or tools they need to evaluate police behavior to see whether it complies with *Terry*.[353] Relatedly, Professor Ric Simmons argued that the *Terry* standard has remained "ambiguous" because neither police nor courts have the tools they need to meaningfully assess the accuracy of officers' claims of reasonable articulable suspicion.[354] Instead, the *Terry* standard has become "a legal term of art," dictated not by probability measures or an analysis of whether there is a connection between the cited behavior and suspected crime but rather by "years of precedents in which certain fact patterns have been approved by courts based solely on the experience and expertise of police officers."[355]

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350. See id. at 247 (describing how a defendant must have the opportunity to challenge evidence of a dog's reliability).

351. See supra section III.C.

352. Stuntz, supra note 261, at 1227.

353. Id.

354. See Ric Simmons, Quantifying Criminal Procedure: How to Unlock the Potential of Big Data in Our Criminal Justice System, 2016 Mich. St. L. Rev. 947, 949–50 (explaining that the *Terry* standard has remained ambiguous because police and courts have "lacked the necessary tools to evaluate the accuracy of their predictions with any precision").

355. Id. at 961.

As Stuntz and Simmons argue, judges accepting at face value an officer's training and experience or expertise in the CAP framework may not have the knowledge or tools they need to truly evaluate it. Litigants can change that,[356] and they should, because certain courts are more likely to realize the problems inherent in the CAP framework.[357] The Wisconsin Court of Appeals' notable sarcasm when discussing blading in *State v. Pugh* is a prime example.[358] When the *Pugh* Court looked at what blading actually means rather than deferring to the officer's training, it rejected it as a basis for a privacy intrusion.[359] Likewise, the New Jersey Comptroller rejected the RAS Checklist as unconstitutional upon examining the content (or lack thereof) of its corresponding training.[360]

Discovery rules can be an effective vehicle for obtaining information about the CAP framework or similar proactive policing tactics. While specific discovery rules vary by jurisdiction,[361] they all provide the teeth needed for an argument in favor of disclosing training materials when police cite their training in the CAP framework or other proactive policing tactics. For example, discovery rules relating to expert testimony can be cited in discovery demands to obtain information about the CAP framework when officers are offered as experts in the framework.[362] Even

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356. In the context of challenging blading as a justification for a stop or search, Professor Hochman Bloom suggested that "advocates and trial court judges . . . seek evidence that factors were predictive of criminality before permitting their use to justify the Fourth Amendment intervention." Bloom, supra note 95, at 1181. It would certainly be ideal to have information about whether the factors are predictive of criminality, but it is unrealistic to think courts will require or that police departments will have this information. Nonetheless, the suggestions made in this Part are to push trial courts towards similar considerations, which is possible even without data—does the framework really mean anything, do the characteristics truly predict whether someone is armed, or is the framework just a disguise for blanket stop and frisk authorization?

357. See Bloom, supra note 95, at 1168–69 ("Massachusetts courts have been at the forefront of acknowledging an important paradox: nervous or evasive behavior during police interactions is disproportionately attributed to young people of color, but this behavior is itself the result of racialized policing.").

358. See supra section III.C.2.

359. See State v. Pugh, 826 N.W.2d 418, 420–24 (Wis. Ct. App. 2012) (holding that "the officers had no objective reasonable suspicion to justify a *Terry* seizure").

360. Comptroller Report, supra note 82, at 11–13. The New Jersey Comptroller did a thorough investigation of Street Cop, the private police training company that created the RAS Checklist, to determine whether state money should continue to be used to fund New Jersey police officers' participation in it. Id. at 1–2. The Comptroller's investigation included an analysis of the RAS Checklist and accompanying training and concluded that it was unconstitutional. Id. at 9–16.

361. See Daniel S. McConkie, The Local Rules Revolution in Criminal Discovery, 39 Cardozo L. Rev. 59, 82–86 (2017) (discussing differences between local discovery rules).

362. For example, Federal Rule of Criminal Procedure 16 requires disclosure of the "bases and reasons" for an expert's opinion, along with other information about the expert. Fed. R. Crim. P. 16(a)(1)(G). State discovery rules tend to have comparable requirements. See, e.g., Md. R. 4-263(D)(8)(A) (requiring disclosure of, among other things, "the substance of the expert's findings and opinions, and a summary of the grounds for each opinion").

when officers are not offered as experts, discovery demands can be based on the fact that training materials are in the government's (police department's) possession and necessary to prepare a defense.[363]

When prosecutors are not willing to comply with discovery requests for training materials and courts are unwilling to compel them, public records requests can lead to the same result. In many cases, Freedom of Information Act requests or states' versions of public information requests are relatively straightforward and are often already a familiar tool to scholars and litigants.[364]

The Federal Rules of Evidence and most states' rules of evidence provide for pretrial hearings—even outside of the context of proposed expert testimony—when "justice so requires" to determine the qualification of a witness to give proffered testimony or the admissibility of certain evidence.[365] At any such hearing, even if discovery was not provided pretrial regarding an officer's training and the substance of the CAP framework, questions can be posed to gain information and arguments can be made about the framework's unreliability.

B. *Reliability and Analogy to Expert Testimony*

Whether explicitly when officers are offered as experts in the CAP or a similar framework[366] or through analogy when they are not, rules and law surrounding the introduction of expert testimony are useful frames for gathering information and provide a lens for the court to use when evaluating a proactive policing tactic. The goal of analogizing to expert testimony is to engage the court in questions about the framework's reliability, like how often it works, how often it fails, and in the case of the CAP framework, how many characteristics are needed before making a stop.

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363. The Federal Rules of Criminal Procedure Rule 16 requires the government to "permit the defendant to inspect and to copy . . . papers, documents, data . . . or copies or portions of any of these items" when they are in the government's "possession, custody, or control" and are "material to preparing the defense." Fed. R. Crim. P. 16(E).

364. This author was able to obtain a copy of the BPD's CAP training materials just thirteen days after the BPD's Legal Affairs Division received a Maryland Public Information Act request.

365. Fed. R. Evid. 104. States' evidentiary rules often mirror this or provide more of a right to a pretrial hearing. See, e.g., N.J. R. Evid. 104(a) (noting that "[t]he court shall decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible" and "may hear and determine such matters out of the presence or hearing of the jury"); see also Colo. R. Evid. 104(a), (c) (providing pretrial rulings on the same preliminary questions and allowing for hearings "when the interests of justice require").

366. Officers are often admitted as experts in the CAP framework. See supra note 315 and accompanying text.

The Supreme Court has made its deference to "bona fide" police training programs clear.[367] In evaluating whether a drug-detection dog's alert sufficed to establish probable cause to search a car, the Court in *Florida v. Harris* noted that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert," even when two of the three alerts in the particular case appeared to be false positives.[368] The *Harris* Court went a step further, noting, "even in the absence of formal certification," successful completion of a training program that "evaluated his proficiency" would suffice, stating, "law enforcement units have their own strong incentives to use effective training and certification programs."[369] But the *Harris* Court went on to say where the defendant challenges the reliability, "the court should weigh the competing evidence," leaving open the possibility of the defense challenging the program's adequacy.[370] Reliability considerations are especially appropriate because the CAP framework is presented as scientific and evidence-based.

When police are offered as experts in the CAP framework, there is typically an entitlement to a pretrial hearing on the framework's reliability.[371] When a trial court is faced with proposed expert testimony, whether scientific in nature or not, the judge must act as a gatekeeper to "ensure that any and all [expert] testimony . . . is not only relevant, but reliable."[372] While an expert's qualifications "may bear on the reliability of his proffered testimony, they are by no means a guarantor of reliability."[373] Certainly in situations in which an officer is proffered as an expert in the CAP (or similar) framework, the requirements of Rule 702 and *Daubert* apply.

In advance of such a hearing, the bases for an officer's opinion—the parameters of the CAP framework, including the characteristics and any training or proof to support them—should be provided, per applicable discovery rules.[374] When this information is not provided, the hearing itself

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367. See Florida v. Harris, 568 U.S. 237, 246–47 (2013) (finding a drug detection dog's reliability was established based on its certification from a bona fide law enforcement training program).

368. Id. at 246.

369. Id. at 247.

370. Id. at 248.

371. For example, a *Daubert* hearing in jurisdictions that have adopted it. Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 597 (1993) (requiring evidentiary hearings in which the trial judge must ensure "that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand").

372. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147 (1999) (internal quotation marks omitted) (quoting *Daubert*, 509 U.S. at 589). This is required both by Fed. R. Evid. 702 and by *Daubert* and its progeny.

373. Quiet Tech. DC–8, Inc. v. Hurel–Dubois UK Ltd., 326 F.3d 1333, 1341 (11th Cir. 2003).

374. See supra note 362 and accompanying text.

can be used as a tool for discovery through questioning about the contours of the CAP framework and its scientific justification.

Even when officers provide lay testimony about the CAP framework, arguments about its adequacy fit squarely within the opening given by the *Harris* Court. The CAP framework is not reliable, and according to *Harris*, the defense is allowed to challenge its adequacy.[375] The DOJ's estimates that more than 80% of people exhibiting characteristics of an armed person are *not armed*,[376] or that 96.3% of the BPD's stops uncovered nothing unlawful,[377] are useful facts to cite to set the stage for the stark unreliability and inadequacy of the framework.[378]

Superimposing the CAP framework on the expert witness analysis pushes questions about the method's reliability to the forefront. This information includes inquiries about the error rates and false positives (how often police suspect someone unarmed to be armed), and about how many characteristics are needed before reasonable suspicion someone is armed. This information is critical for courts to begin to understand the exceedingly high error rates associated with this sort of proactive policing, and its overall unreliability.

CONCLUSION

The CAP framework provides cover for officers who are "gun-hunting." Almost no matter the circumstances, the CAP framework gives officers something to point to as justification for stopping a civilian, despite the framework's unreliability in accurately identifying whether the civilian has a weapon, whether that weapon is legally possessed, and whether the civilian is presently dangerous. The CAP framework leaves absolute discretion in officers' hands. This discretion has been, and continues to be, abused.

Creating a long, broad list of characteristics that might, or might not, mean a person is armed is not "making a science out of [an officer's] sixth sense."[379] The CAP framework is just pseudoscience shielded by "a false patina of objectivity,"[380] but when that patina is removed, all that is left is an overbroad excuse for police to stop whomever they choose.

The CAP framework is but one of many proactive policing frameworks vulnerable to abuse. Past failure of the Fourth Amendment to protect

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375. Florida v. Harris, 568 U.S. 237, 246–47 (2013).

376. DOJ C.R. Div. Investigation, supra note 43, at 95. While courts may consider a less than 20% accuracy rate to be good enough for reasonable articulable suspicion, shifting the conversation to screening of expert testimony can shift courts' opinions regarding the adequacy of the CAP framework.

377. DOJ C.R. Div. Investigation, supra note 43, at 28.

378. See, e.g., EEOC v. Ethan Allen, Inc., 259 F. Supp. 2d 625, 636 (2003) (barring expert testimony with a one-in-three error rate).

379. Eckholm, supra note 23.

380. State v. Pugh, 826 N.W.2d 418, 424 (Wis. Ct. App. 2012).

against ever-expanding *Terry* stops and frisks as part of proactive policing programs should not discourage advocates from challenging them. Creative policing tactics must be met with creative challenges if we are to slow the wave of unconstitutional police action.