Nos. SJC-10420, SJC-10421

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

COMMONWEALTH

v.

JAMAL MARTIN

COMMONWEALTH

v.

MARK NARCISSE

On Appeal from Judgments of the Boston Municipal Court

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AND CHARLES HAMILTON HOUSTON INSTITUTE AS AMICI CURIAE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Page

Federal Cases

State Cases

OTHER AUTHORITIES

STATEMENT OF ISSUES

1. Whether the Court should overrule Commonwealth v. Fraser, which allows police officers to perform a protective frisk in the absence of a lawful Terry stop or any quantum of suspicion that the individual is involved with criminal activity.

2. Whether the Court should place limits should on consideration of the fact that a stop took place in a high crime area given that this is a term which is routinely used to describe neighborhoods which are defined by race.

STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Massachusetts (ACLUM), an affiliate of the American Civil Liberties Union (ACLU), is a non-profit membership organization which has as its sole purpose the defense of civil rights and civil liberties. It is the position of ACLUM that the rights guaranteed by the Fourth Amendment and Article 14 of the Declaration of Rights are among the most important protections afforded to individual under out constitutional frame

of government. ACLUM has frequently appeared in this Court, both as counsel and amicus curiae, in cases in which these rights have been asserted. ACLUM joined with the Committee for Public Counsel Services in seeking rehearing in Commonwealth v. Fraser, 410 Mass. 541 (1991).

The Charles Hamilton Houston Institute for Race and Justice at Harvard Law School (CHHIRJ) continues the unfinished work of Charles Hamilton Houston, one of the Twentieth Century's most talented legal scholars and litigators. The CHHIRJ marshals resources to advance Houston's dreams for a more equitable and just society. It brings together students, faculty, practitioners, civil rights and business leaders, community advocates, litigators, and policymakers to focus on, among other things, reforming criminal justice policies.

STATEMENT OF THE CASE

The prior proceedings are set forth in the brief for the appellant at p. 2.

STATEMENT OF FACTS

The prior proceedings are set forth in the brief for the appellant at pp. 3-6.

SUMMARY OF ARGUMENT

The searches challenged by the defendants in Commonwealth v. Martin and Commonwealth v. Narcisse arise out of a common factual and legal setting. Boston police officers on patrol in Dorchester neighborhoods approached an individual on the street and, without having a basis for a lawful Terry stop or any belief that the approached individuals were involved in a crime, conducted a protective search for weapons. The Appeals Court, relying in both cases on the assertion by the police that the incident occurred in a high-crime area, approved the searches under the authority of Commonwealth v. Fraser. As we argued in Fraser, ACLUM and CHHIRJ believe that a protective search conducted by police officers in the absence of a lawful stop violates both the Fourth Amendment and Art. 14 and that, when combined with generalized reliance on the defendant's presence in a high-crime area, effectively sanctions reduced constitutional

protection for the residents of minority neighborhoods.

ARGUMENT

I. FRASER VIOLATES THE FOURTH AMENDMENT RULE OF TERRY V. OHIO AND SHOULD BE OVERRULED.

Commonwealth v. Fraser, 410 Mass. 541 (1991) eviscerates the rule of Terry v. Ohio, 392 U.S. 1 (1968), by allowing police officers to perform protective searches during suspicionless street encounters. Under Fraser, all that a police officer needs before performing a protective search is "some legitimate basis" for being in the approached individual's presence and a belief that the individual is armed. Id., 410 Mass. at n.4. That standard, to the extent that it can be considered one, flatly contradicts the rule of Terry, which requires a **constitutional** basis, i.e., articulable suspicion of criminal activity, as a prerequisite to any protective search.

A. An Officer May Not Perform A Protective Search For Weapons During A Non-Seizure Encounter Unless The Officer First Has A Constitutional Basis For Being In the Person's Presence.

Under Terry, a protective search for weapons is unconstitutional unless the "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." Terry, 392 U.S. at 30.

Accordingly, Terry imposes a two-step requirement before a police office may perform a protective search. First, the officer must have a reasonable belief that the approached individual is or was involved in criminal activity. Second, the officer must have a reasonable belief that the approached individual is armed and presently dangerous.

The United States Supreme Court made clear then, and has made clear since, **that the latter cannot precede the former.** See Adams v. Williams, 407 U.S. 143, 146 (1972) ("**So long as the officer is entitled to make a forcible stop,** and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose." (emphasis added)); Sibron v. New York, 392 U.S. 40, 64 (1968) ("The police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. **Before he places a hand on the person of a citizen in search of anything, he must have constitutionally**

adequate, reasonable grounds for doing so." (emphasis added)).

Indeed, just this past term, the Supreme Court reaffirmed the Terry two-step in Arizona v. Johnson, 129 S.Ct. 781 (2009):

> **First, the investigatory stop must be lawful.** That requirement is met in an on-the-street encounter, Terry determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a crime. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

Id., 129 S.Ct. at 784 (emphasis added). Accordingly, there can be no doubt that "reasonable suspicion" of criminal activity, i.e., a constitutionally lawful stop, is a **necessary predicate** to any protective search.

B. Fraser's Legitimate Basis Rule Is Erroneous.

Fraser replaces the carefully crafted "lawful stop" requirement of Terry, with a meaningless rule - pronounced in a footnote - that an officer need only have "some legitimate basis for being in immediate proximity to the person." Fraser, 410 Mass. at 545

n.4 ("[w]hile the justification for an officer's proximity to a suspect frequently is a Terry stop, a pat-down also may be permissible in other situations where the officer necessarily comes into contact with a person he considers dangerous."). By removing the constitutional predicate from the equation, Fraser grants police officers standardless and unconstrained discretion to search citizens who **are not suspected of a crime.** As such, Fraser represents a breathtaking departure from Fourth Amendment jurisprudence. [1]

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[1] The suspicionless nature of a Fraser search is particularly offensive to the Fourth Amendment because it is the precise evil that the Framers intended to stamp out. See Boyd v. United States, 116 U.S. 616, 625-30 (1886) (discussing the pre-Revolutionary "writs of assistance" in Massachusetts and the New England colonies, which permitted roving searches for contraband); see also Tracey Maclin, The Complexity of the Fourth Amendment: A Historical Review, 77 B.U. L. Rev. 925, 939-46 (1997). It is well-settled that "[a] search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000) (explaining the "limited circumstances in which . . . regimes of suspicionless searches" were upheld); see also Chandler v. Miller, 520 U.S. 305, 309 (1997) (the "category of constitutionally permissible suspicionless searches" is "closely guarded"). In the limited instances where such suspicionless searches were upheld, the purpose of the search was at least divorced from any law enforcement aim. See, e.g., Edmond, 531 U.S. at 38. In addition, the searches were at least cabined by programmatic safeguards in order "to assure that the individual's reasonable expectation of privacy [was] not subject to

Fraser's "legitimate basis" cannot be squared with Terry and therefore should be overturned or limited. The entire justification of the rule appears to arise from the distinction between seizure and nonseizure encounters. See Fraser, 410 Mass. at 545 n.4 ("This case is anomalous in that the pat-down of the defendant was not preceded by a forcible stop, the prototypical situation addressed in Terry. Office Columbo simply patted down the defendant in the course of a nonseizure field interrogation.").

While the distinction between seizure and nonseizure encounters may matter for some purposes, it does not implicate the standard for performing a protective search. Justice Harlan addressed this

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the discretion of the officer in the field." Delaware v. Prouse, 440 U.S. 648, 654-655 (1979) (internal quotations omitted); see also United States v. Brignoni-Ponce, 422 U.S. 873, 882 (1975) ("[T]he reasonableness requirement of the Fourth Amendment demands something more than the broad and unlimited discretion sought by the Government."). Here by contrast, the proffered purpose of the Fraser rule, is to provide law enforcement officers with the ability to protect themselves while investigating criminal activity, see Commonwealth v. Knowles, 451 Mass. 91, 97 (2008) (explaining that the "legitimate need" that necessarily brings an officer in the presence of an approached person is the duty of police officers to investigate crimes), and there are no apparent guidelines or procedures in place to protect against arbitrary exercise of that discretion.

point squarely in Terry, finding that reasonable suspicion is always a necessary predicate to a protective search, even during nonseizure encounters:

> 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.** Any person, including a policeman, is at liberty to avoid a person he consider dangerous. **If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence.** That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person addressed has an equal right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that **the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.**

Id. at 32-33 (emphasis added); see also United States v. Place, 462 U.S. 696, 702 n.4 (1983) (endorsing Justice Harlan's conclusion).[2]

[2] This is because, "[a]nything less would invite intrusions upon constitutionally guaranteed rights

Fraser does not address this language from Terry and instead relies on an incomplete quote from Professor Wayne LaFave's treatise to derive support for its "legitimate basis" standard. See Fraser, 410 Mass. at 545 n.4 ("A protective frisk of a suspect under the principles of Terry may be warranted where there is 'some legitimate basis for the officer being in the immediate proximity of the person.'" (quoting Wayne R. LaFave, 3 Search and Seizure § 9.4(a) at 499 (2d ed. 1987) - today at vol. 4 § 9.6(a) at 616-618 (4th ed. 2004)).

But this passage from Professor LaFave's treatise does not suggest that an officer may initiate a frisk after a suspicionless encounter. In fact, the full passage from Professor LaFave's treatise makes clear that the only "legitimate basis" for initiating a frisk is a constitutional one:

> Harlan's basic point is eminently sound. Although, as is noted below, there will sometimes be some other proper reason (e.g., to execute a search warrant, to arrest another person, or to conduct an investigatory stop of some other person) for being in

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based on nothing more substantially than inarticulate hunches." Id. at 21.

> the presence of the person who is believed to present the risk, the fact remains that a frisk for self-protection cannot be undertaken when the officer has unnecessarily put himself in a position of danger by not avoiding the individual in question. This means that in the absence of some legitimate basis for the officer being in immediate proximity to the person, a degree of suspicion that the person is armed which would suffice to justify a frisk if there were that basis will not alone justify such a search. For example, if a policeman sees a suspicious bulge which possibly could be a gun in the pocket of a pedestrian who is not engaged in any suspicious conduct, the officer may not approach him and conduct a frisk. And this is so even though the bulge would support a frisk had there been a prior lawful stop. Likewise, if an officer, lacking the quantum of suspicion required by Terry to make a forcible stop, instead conducts a non-seizure field interrogation, he may not frisk the person interrogated upon suspicion he is armed; in such a case the officer may protect himself by not engaging in the confrontation.

LaFave, supra, § 9.6(a) at 617-618.[3]

[3] Nor can the Fraser rule draw support from Professor LaFave's reference to "some other proper reason" for the officer being in the approached person's presence. For each of the examples listed by Professor LaFave - "to execute a search warrant, to

Several federal and district courts around the country have agreed by explicitly recognizing Terry's reasonable suspicion prerequisite, and rejecting protective searches where the apprehended person was not suspected of a crime. See, e.g., United States v. Burton, 228 F.3d 524, 528 (4th Cir. 2000) ("An officer may encounter citizens and attempt to question them without implicating the Fourth Amendment. But during such police-citizen encounters, an officer is not entitled, without additional justification, to conduct a protective search. To conduct such a protective search, an officer must first have reasonable suspicion supported by articulable facts that criminal activity may be afoot."); United States v. Gray, 213 F.3d 998, 1000 (8th Cir. 2000) ("the requirement that a protective frisk be based upon reasonable suspicion that criminal activity is afoot explains why this type of search is normally preceded by an investigatory stop based upon an officer's suspicion of criminal activity"); United States v. Ubiles, 224 F.3d 213,

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arrest another person, or to conduct an investigatory stop of some other person" - the officer has a constitutional basis for being in the individual's presence.

217-18 (3d Cir. 2000) ("[N]or does a mere allegation that a suspect possesses a firearm, as dangerous as that may be, justify an officer in stopping a suspect absent the reasonable suspicion required by Terry . . . ."; United States v. Veltri, 2008 WL 5099645, at *4 (S.D. W. Va. Dec. 2, 2008) ("'If and when a policeman has a right . . . to disarm a person for his own protection, he must first have a right not to avoid him but to be in his presence.'" (quoting Terry, 392 U.S. at 32 (Harlan, J., concurring))); United States v. Alston, 2005 WL 2033388, at *4 (E.D. Pa. Aug. 22, 2005) ("'the right to frisk . . . depends upon the reasonableness of a forcible stop to investigate a suspected crime.'" (quoting Terry, 392 U.S. at 33 (Harlan, J., concurring))); United States v. Dudley, 854 F. Supp. 570, 580 (S.D. Ind. 1994) ("[I]f the stop itself is unlawful, [Supreme Court precedent does not] authorize the police to search the suspects . . . for weapons, even if the officers reasonable fear for their safety.") (citations omitted); Gomez v. United States, 597 A.2d 884, 891 (D.C. 1991) ("[T]he seizure could not be justified on the notion that it would be dangerous to chat with [the defendant] and his companions without restricting their liberty. No

matter how appealing the cart may be, the horse must precede it."); Greeno v. State, 861 N.E.2d 1232 (Ind. 2007) ("Officer safety is always a legitimate concern, but standing alone officer safety cannot form the basis for a valid investigatory stop"); State v. Giltner, 537 P.2d 14 (1975) (the fact that the approached individual was armed on a prior occasion "might have been an important factor in determining the legality of the frisk itself," but in absence of a legal Terry stop, could not justify a pat frisk during a nonseizure "field interrogation").

There is simply no basis in Fourth Amendment principles for permitting warrantless, suspicionless searches based solely on a perceived threat to officer safety. And permitting such searches absent any meaningful standards, grants officers unbridled discretion to engage any person on the street and subject them to the "serious intrusion" and "great indignity" of a police pat-down. Terry, 392 U.S. at 29.

II. BECAUSE IT IS NOT BASED ON DEFINED STANDARDS AND HAS THE EFFECT OF CONDONING OTHERWISE UNLAWFUL SEARCHES IN MINORITY NEIGHBORHOODS, CONSIDERATION OF PRESENCE IN A SO-CALLED "HIGH-CRIME AREA" TO JUSTIFY A SEARCH FOR WEAPONS SHOULD BE LIMITED AND ALLOWED ONLY IF SUPPORTED BY EVIDENCE OF CRIMINAL ACTIVITY SPECIFIC TO THE AREA AND RELEVANT TO THE DETERMINATION OF DANGEROUSNESS.

In finding that a search was permissible in these cases, the Appeals Court relied, with somewhat limited evidentiary support, on the fact that the incidents took place in a "high-crime" area. However, as this Court recently noted, caution must be exercised in considering the character of a neighborhood as a high-crime area as a factor justifying a search "because many honest, law-abiding citizens live and work in high-crime areas [and] [t]hose citizens are entitled to the protections of the Federal and State Constitutions, despite the character of the area." Commonwealth v. Gomes, 453 Mass. 506, 512 (2009) (quoting Commonwealth v. Holley, 52 Mass. App. Ct. 659, 663 (2001)). See also, Commonwealth v. Johnson, 454 Mass. 159, 163 (2009) ("[S]o-called high crime areas are inhabited and frequented by many law-abiding citizens who are entitled to be protected against being stopped and frisked just because of the neighborhood where they live, work, or visit."). Such

caution is demanded, we believe, because all too often the character of a neighborhood described as a high-crime area is defined by race.

Using presence in a high-crime area as a factor justifying a search has been extensively criticized for the disproportionate burden it places on minority communities. See Andrew Guthrie Ferguson & Damien Bernache, The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis, 57 Am. U. L. Rev. 1587, 1592 and authorities cited at nn. 19-23 (2008) [hereinafter "High-Crime Area" Question] (calling the term "high crime area" "racially biased, class biased, [and] targeted to affect communities of color"); Stanley F. Goldman, To Flee or Not to Flee—That Is the Question: Flight as Furtive Gesture, 37 Idaho L. Rev. 557, 564 (2001) ("[A]reas known for heavy criminal activity are often populated by the economically disadvantaged and by minorities."); I. Bennett Capers, Policing, Race, and Place, 44 Harv. C.R.-C.L. L. Rev. 43, 63 (2009).

In particular, most communities that police designate as "high crime" are comprised of African Americans and Hispanic Americans, see David A. Harris,

Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked, 69 Ind. L.J. 659, 677-78 (1994), effectively making race an indicator of criminality. See Jeffrey Fagan & Garth Davies, Street Stops and Broken Windows: Terry, Race, and Disorder in New York City, 28 Fordham Urb. L.J. 457, 460 n.17 (2000). And it has been suggested that police officers associate minorities with greater crime and greater risk to the police. E.g., Tracey Maclin, Terry v. Ohio's Fourth Amendment Legacy: Black Men and Police Discretion, 72 St. John's L. Rev. 1271, 1312 (1998) (noting that police are "more anxious in minority neighborhoods than any place else").[4]

The collective result of these factors is that people of color, and particularly young men, are more likely to be stopped and more likely to be searched. Recent studies have documented the alarming extent to which racial minorities are stopped and searched on the streets of major American cities. See, e.g., Ian Ayres and Jonathan Borowsky, A Study of Racially

[4] Indeed, the Terry Court acknowledged that "[t]he wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain," would not stop after the decision of the Court. Terry, 392 U.S. at 14-15.

Disparate Outcomes in the Los Angeles Police Department, http://www.aclu-sc.org/documents/view/47 (2008); Center for Constitutional Rights, Racial Disparity in NYPD Stops-and-Frisks, http://ccrjustice.org/files/reports/Report_CCR_NYPD_Stop_and_Frisk.pdf (2009); Andrew Gelman, Jeffrey Fagan, & Alex Kriss, An Analysis of the NYPD's Stop-and-Frisk Policy in the Context of Claims of Racial Bias, 103 J. Am. Stat. Ass'n 813 (2007); See also Eliot Spitzer, The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General, http://www.oag.state.ny.us/media_center/1999/dec/stp_frsk.pdf (1999).

The experience in Massachusetts appears to be no exception. In a 1990 report, the Attorney General concluded that "Boston police officers engaged in improper, and unconstitutional, conduct in the 1989-90 period with respect to stops and searches of minority individuals in the Roxbury, Dorchester, and Mattapan communities." James Shannon, Attorney General of Massachusetts, Report of the Attorney General's Civil Rights Division on Boston Police Department Practices 46 (1990) A sampling of appellate decisions in the

years since then, while not a wholly reliable indicator, provides some insight into the ongoing frequency of stops in our own neighborhoods.[5]

Moreover, as one judge has observed, "[t]he real harm done [when race is effectively used to justify suspicion] is not fully apparent because we usually do not hear of the cases of the innocent people who are stopped by the police." United States v. Prandy-Binett, 995 F.2d 1069, 1075 (D.C. Cir. 1993) (Edwards, J., dissenting); see Greg Ridgeway, Analysis of Racial Disparities in the New York Police Department's Stop, Question and Frisk Practices, http://www.rand.org/pubs/technical_reports/TR534

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[5] See Commonwealth v. Lyles, 453 Mass. 811 (2009) (Roxbury); Commonwealth v. Bell, 74 Mass. App. Ct. 1106 (2009) (Roxbury); Commonwealth v. Dasilva, 74 Mass. App. Ct. 1106 (2009) (Roxbury); Commonwealth v. Cornelius, 73 Mass. App. Ct. 1117 (2009) (Dorchester); Commonwealth v. Myton, 71 Mass. App. Ct. 1116 (2008) (Hyde Park); Commonwealth v. Sage S., 71 Mass. App. Ct. 1113 (2008) (Dorchester); Commonwealth v. DePeiza, 449 Mass. 367 (2007) (Dorchester); Commonwealth v. Sykes, 449 Mass. 308 (2007) (Dorchester); Commonwealth v. Skillman, 66 Mass. App. Ct. 1104 (2007) (Roxbury); Commonwealth v. Nunez, 70 Mass. App. Ct. 752 (2007) (South End); United States v. Wright, 485 F.3d 45 (1st Cir. 2007) (Dorchester); Commonwealth v. Barbosa. 65 Mass. App. Ct. 1120 (2006) (Roxbury); Commonwealth v. Richards, 65 Mass. App. Ct. 1104 (2006)(Roxbury); Commonwealth v. Clarke, 56 Mass. App. Ct. 1103 (2002) (Dorchester); Commonwealth v. Holley, 2 Mass. App. Ct. 659, 663 (2001) (Roxbury)

(2007)(estimating that 90% of stops in New York are not followed by arrest or summons to appear in court).

Notwithstanding these concerns, neither this Court nor the U.S. Supreme Court has provided clear standards for determining what is a "high-crime area," allowing the meaning of the term to be determined from case to case and locality to locality. "The result is an extraordinary body of case law, in which strikingly similar behaviors in high crime areas lead to wildly different outcomes." Margaret Raymond, Down on the Corner, Out in the Street: Considering the Character of the Neighborhood in Evaluating Reasonable Suspicion, 60 Ohio St. L.J. 99, 120-22 (1999). And even though Terry requires police officers detaining individuals to "point to specific . . . facts" that "reasonably warrant that intrusion," Terry, 392 U.S. at 12, it is often the case that the factual basis for the determination that a particular location in a high-crime area is little more than an assertion in the testimony of the arresting officer. See Ferguson & Bernache, "High-Crime Area" Question, supra, at 1591.

To be sure, this Court acknowledged in Gomes and Johnson the problems attendant on characterizing a

neighborhood as a high-crime area. Other courts have been similarly wary of relying heavily on the high-crime area factor. See, e.g., United States v. Montero-Camargo, 208 F.3d 1122, 1138 (9th Cir. 2000) ("We must be particularly careful to ensure that a 'high crime' area factor is not used with respect to entire neighborhoods or communities in which members of minority groups regularly go about their daily business, but is limited to specific, circumscribed locations where particular crimes occur with unusual regularity."); People v. Bower, 597 P.2d 115, 119 (Cal. 1979)("Many citizens . . . are forced to live in areas that have 'high crime' rates or they come to these areas to shop, work, play, transact business, or visit relatives or friends."). But if the courts of the Commonwealth are to continue to consider presence in a high-crime area as a factor justifying a protective search, such consideration should be allowed only if supported by sufficient evidence of criminal activity specific to the area and relevant to the determination of dangerousness.

The standards for such a determination were thoughtfully addressed by the U.S. Court of Appeals for the First Circuit in United States v. Wright, 485

F.3d 45, 53-54 (2007), where the court held, that the character of a stop's location was a factual question which should take into account "(1) the nexus between the type of crime most prevalent or common in the area and the type of crime suspected in the instant case ... (2) limited geographic boundaries of the 'area' or 'neighborhood' being evaluated ... and (3) temporal proximity between evidence of heightened criminal activity and the date of any stop or search at issue."[6]

The requirement of such proof is neither impracticable nor inconsistent with effective law enforcement. As the trial court found in United States v. Wright, the Boston Police Department already has in place a system for mapping criminal incidents which is kept current. Such systems are generally available and in use and are considered to be a useful

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[6] These standards are more fully discussed in Ferguson & Bernache, "High-Crime Area" Question, supra, at 11622-1640, proposing that "First, the area in question would have to be demonstrated to be marked by a high incidence of particularized criminal activity in comparison to neighboring areas with objective and verifiable data. Second, the area at issue would have to be narrowly tailored to a certain geographic location (perhaps including particular blocks, housing complexes parks or intersections) and would have to be current, limited to a temporal finding of recent crime activity. Third, the nexus between the particularized criminal activity and the officer's observations would have to be demonstrated." Id. at 1628

component of police management. Indeed, as noted in a brief submitted to the U.S. Supreme Court, the National Association of Police Organizations stated that "[s]ophisticated data collection, geographical computer and other mapping, and detailed geographical analysis systems have all become an essential part of crime prevention" and that the fact that a location is a high-crime area can be demonstrated by verifiable and quantifiable data." Ferguson & Bernache, "High-Crime Area" Question, supra, at 1625.1625.

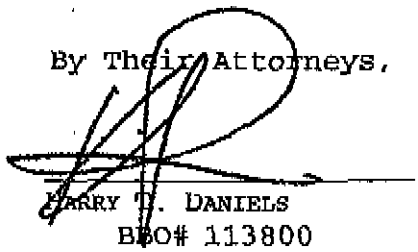
CONCLUSION

For the reasons discussed above, Amici respectfully urge this Court to (1) overrule or limit the rule of Commonwealth v. Fraser, and (2) define standards, similar to those stated in United States v. Wright, to govern the consideration of a neighborhood's profile in determining the lawfulness of a protective search.

Respectfully submitted,

THE AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS AND CHARLES HAMILTON HOUSTON INSTITUTE FOR RACE AND JUSTICE

By Their Attorneys,



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