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STOP THE “STOP AND FRISK?” HOW *FLOYD V. CITY OF NEW YORK* WILL LIMIT THE POWER OF LAW ENFORCEMENT ACROSS THE NATION

by JESSICA L. FANGMAN

Amid heated debate and controversy, Judge Shira A. Scheindlin found the New York Police Department’s (NYPD) application of the “stop and frisk” street patrol method in violation of the constitutional rights of the citizens it was designed to protect.¹ Stop and frisk is a law enforcement mechanism, which was found constitutional in *Terry v. Ohio*, and allows an officer to stop an individual when there is a reasonable suspicion the person “might be about to commit a crime or is in the process of committing a crime.”² An

officer that has reasonable suspicion can conduct a frisk or pat down of the person to determine whether the individual is carrying a weapon.³

THE CASE AND THE COURT'S FINDING

In 2013, a group of individuals filed suit against New York City, alleging the NYPD's implementation of the stop and frisk police method "violated both the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution."⁴ After a lengthy bench trial, Judge Scheindlin found "nine of the stops and frisks were unconstitutional – that is, they were not based on reasonable suspicion."⁵ The court further found that while five stops were constitutional, the frisks following those stops were unconstitutional.⁶ Finally, five of the nineteen stops and frisks presented for review at trial were found to be constitutional.⁷ Judge Scheindlin held that not only did the NYPD's employment of stop and frisk police tactics infringe upon Fourth Amendment rights, but "the city adopted a policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data," which is a violation of the Equal Protection Clause of the Fourteenth Amendment.⁸

In her opinion, Judge Scheindlin cited statistics that were prepared for the trial, including that between January 2004 and June 2012, the NYPD conducted over 4.4 million stops.⁹ While the goal of the stop and frisk is to retrieve weapons and prevent crime, "in 98.5 percent of the 2.3 million frisks, no weapon was found."¹⁰ The heated racial argument is due in part to the following statistics: of the 4.4 million stops, 52 percent were black, 31 percent were Hispanic, and 10 percent were white.¹¹ Judge Scheindlin concedes that "any one stop is a limited intrusion in duration and deprivation of liberty," but argues that each stop is also a demeaning and humiliating experience.¹²

FORMER MAYOR BLOOMBERG'S COMMENTS POST-RULING

New York City's former mayor Michael Bloomberg immediately addressed the August 2013 ruling at a news conference along with NYPD Police Commissioner, Ray Kelly.¹³ Former Mayor Bloomberg is confident that the NYPD's stop and frisk practice has made New York the safest big city in America.¹⁴ Since inception of stop and frisk in New York City, 8,000 guns have been

taken off the streets, as well as some 80,000 other weapons.¹⁵ Former Mayor Bloomberg offered some statistics: "Today, we have the lowest percentage of teenagers carrying guns of any major city across our country – and the possibility of being stopped acts as a vital deterrent, which is a critically important byproduct of Stop-Question-Frisk. The fact that fewer guns are on the street now shows that our efforts have been successful. There is just no question that Stop-Question-Frisk has saved countless lives. And we know that most of the lives saved, based on the statistics, have been black and Hispanic young men."¹⁶

AN UNCONSTITUTIONAL POLICE PRACTICE?

Those who criticize the stop and frisk policing method often do so because it conflicts with an individual's constitutional rights. The New York Civil Liberties Union (NYCLU) found that no research has ever proven the effectiveness of the practice, and the small number of arrests, summons, and guns recovered demonstrate that the practice is ineffective.¹⁷ In fact, crime statistics do not support the claim that New York City is safer because of the practice. For example, while violent crimes fell 29 percent from 2001 through 2010, reports show that other large cities within the U.S. have also experienced a decline in violent crimes, and these cities do not employ stop and frisk.¹⁸

In response to the criticism that stop and frisk is a racially biased policing method, former Mayor Bloomberg stated that the NYPD fights crime wherever crime is occurring, and they don't worry if their work doesn't match up to a census chart.¹⁹ As a result, New York City reports declining rates in gun possession, fewer shootings, and fewer homicides. Former Mayor Bloomberg concluded his comments by stating: "Let's be clear: People have a right to walk down the street without being targeted by the police," but "people also have a right to walk down the street without being killed or mugged."²⁰

NOT JUST NEW YORK

Stop and frisk is not a police method solely implemented in New York City or the U.S.; England has its own version of the policing method, known as the "stop and search."²¹ England's stop and search policy is governed by the Police and Criminal Evidence Act of 1984 (PACE), which provides that "the police

are required to have ‘reasonable suspicion’ that the person stopped is in possession of stolen or prohibited articles.”²² PACE offers a detailed discussion of what constitutes reasonable suspicion.²³ In part, PACE provides that reasonable suspicion “cannot be based on generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.”²⁴ However, more often than not, race plays a leading role in the police officer’s decision of who to stop.²⁵

In England, the purported racial profiling methods of the stop and search has also generated staunch opposition to the stop and search policing technique. Since 1995, the number of recorded stops and searches of Asians have remained between 1.5 and 2.5 times the rate for Caucasians, and for African Americans, it is usually between 4 and 8 times the rate than for Caucasians.²⁶ Additionally, while roughly one million stop and searches take place a year, only 9 percent lead to an actual arrest.²⁷

CONCLUSION

This ruling does not command the NYPD to halt its stop and frisk tactics, but rather, it compels the court and the NYPD to address the constitutional concerns.²⁸ Judge Scheindlin has “called for a federal monitor to oversee broad reforms, including the use of body-worn cameras for some patrol officers.”²⁹ Law enforcement, citizens, and lawmakers must work together to uphold the constitutional rights of our citizens and protect our streets. In considering how the stop and frisk method can be improved, Former Cook County State’s Attorney Richard Devine believes that the “limits of reasonable suspicion must be recognized,” and there must be sufficient guidance for police officers so they can properly implement stop and frisk type policies and exercise their authority responsibly.³⁰ Until such guidance is provided, the potential value of stop and frisk as a policing practice might not be recognized.

NOTES

1 Joseph Goldstein, Judge Rejects New York’s Stop-and-Frisk Policy, N.Y. TIMES, Aug. 13, 2013, at A1 (2013 WLNR 19949367), *available at* http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html?_r=0.

2 Delores Jones-Brown, Jaspreet Gill & Jennifer Trone, Stop, Question & Frisk Policing Practices in New York City: A Primer, at 2 (John Jay College of Criminal Justice, 2010) *available at* http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf.

3 *Id.*

4 *Floyd v. City of New York*, No. 08 Civ. 1034(SAS), 2013 WL 4046209, 3 (2d Cir. Aug. 12, 2013).

5 *Id.* at 6.

6 *Id.*

7 *Id.*

8 *Id.* at 7.

9 *Id.* at 3.

10 *Id.*

11 *Id.* at 4.

12 *Id.* at 2.

13 *Bloomberg vows to appeal federal judge's ruling that stop-and-frisk policy violated civil rights in press conference*, NY Daily News, Aug. 12, 2013, *available at* <http://www.nydailynews.com/news/politics/bloomberg-vows-appeal-federal-judge-ruling-stop-stop-and-frisk-policy-article-1.1424630>.

14 *Id.*

15 *Id.*

16 *Id.*

17 Stop and Frisk Facts, New York Civil Liberties Union, *available at* <http://www.nyclu.org/node/1598>.

18 NYCLU citing New York Crime Statistics, *available at* <http://www.city-data.com/crime/crime-New-York-New-York.html>; see also Federal Bureau of Investigations Uniform Crime Reports, *available at* <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012>.

19 *Id.*

20 *Id.*

21 Niamh Eastwood, Stop-and-Frisk: Not Just an American Problem, OPEN SOCIETY FOUNDATIONS (Oct. 24, 2013, 12:34 PM), <http://www.opensocietyfoundations.org/voices/stop-and-frisk-not-just-american-problem>.

22 Geraldine Van Bueren & Simon Woolley, Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales, 15 (Equality and Human Rights Commission), *available at* http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf.

23 *Id.* at 16.

24 *Id.*

25 *Id.* at 5.

26 *Id.* at 13.

27 Avon and Somerset Police Stop and Search Figures 'Double,' BBC NEWS, Sept. 24, 2013, *available at* <http://www.bbc.co.uk/news/uk-england-somerset-24218308?print=true>.

28 Goldstein, *supra* note 1.

29 *Id.*

30 Interview with Richard Devine, Partner at Meckler, Bulger, Tilson, Marick & Pearson, LLC (Oct. 8, 2013).