



Unit 4

Stop-and-Frisk

Unit 4
Stop-and-Frisk: Fourth Amendment Violation or Necessary for Public Safety?

Unit Questions

How should we resolve claims that certain police practices violate the principal of equality before the law? Is stop-and-frisk necessary to public safety? When does a police practice amount to a violation of the Fourth Amendment?

Length of Unit

This unit can be completed in four lessons of about one hour each.

Overview

Some controversies arise when our shared values and principles conflict with one another. Police “stop-and-frisk” policy is one such issue. In stop-and-frisk, police officers stop, question, and conduct a pat-down search of pedestrians or occupants of cars. Some police leaders contend that a stop-and-frisk program is useful to promote public safety. Of course, if stop-and-frisk is not effective, it can be an invasive practice often implemented in a discriminatory way. The conflicting values that arise from stop-and-frisk are public safety on the one hand, and privacy and equality on the other.

This unit will allow students the opportunity to explore and evaluate this issue through a variety of nonfiction sources, evaluating the strengths and weaknesses of authors’ arguments. The focus of this unit is on the close reading of texts, and on building and supporting an argument.

Unit Objectives and Standards

By the end of this unit, students will be able to:

- Explain the purposes of stop-and-frisk and the issues the policy raises.
 - [NSCG III.D.2](#), [NSCG III.D.1](#);
 - [MI-HSCE 8.3.3](#), [MI-HSCE C3.4.3](#);
 - [CCSS.ELA-LITERACY.RH.9-10.2](#);
 - [C3 D2.Civ.10.9-12](#)

- Describe the tension between the values underlying the stop-and-frisk debate.
 - [NSCG II.D.4](#)
 - [MI-HSCE 2.2.3](#), [MI-HSCE 2.2.5](#)

- Summarize the facts and identify the legal issues in stop-and-frisk cases.
 - [NSCG V.B.5](#);
 - [MI-HSCE P2.3](#), [MI-HSCE P2.4](#), [MI-HSCE C6.1.2](#);

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- o [CCSS.ELA-LITERACY.SL.9-10.3](#), [CCSS.ELA-LITERACY.SL.9-10.4](#);
- o [C3 D4.2.9-12](#)

Anticipated Student Understanding/Challenges to Understanding

This unit assumes students have already studied fundamental values and principles of America’s constitution and that they have an understanding of how to read nonfiction documents and evaluate an author’s argument.

Materials Needed

What we provide:

- Unit readings and handouts
- Teacher answer keys

What you provide:

- Hard copies of handouts
- A stopwatch for the debate

Unit Assessment

- Students will engage in a class debate about how to implement a stop-and-frisk policy.

References

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- Bill Bratton, *Bill Bratton: You Can’t Police Without Stop-And-Frisk*, HERE AND NOW (Feb. 25, 2014), <http://hereandnow.wbur.org/2014/02/25/bill-bratton-nypd>
- Dylan Matthews, *Here’s what you need to know about stop and frisk — and why the courts shut it down*, WASHINGTON POST (Aug. 13, 2013), <https://www.washingtonpost.com/news/wonk/wp/2013/08/13/heres-what-you-need-to-know-about-stop-and-frisk-and-why-the-courts-shut-it-down/>
- *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013)
- Kimbriell Kelly et al., *What Happens When Police are Forced to Reform*, FRONTLINE (Nov. 13, 2015), <http://stories.frontline.org/what-happens-when-police-are-forced-to-reform>
- Matthew McKnight, *The Stop-and-frisk Challenge*, THE NEW YORKER (Mar. 27, 2013), <http://www.newyorker.com/news/news-desk/the-stop-and-frisk-challenge>
- Michael R. Bloomberg, *Michael Bloomberg: ‘Stop and frisk’ keeps New York Safe*, THE WASHINGTON POST (Aug. 18, 2013), https://www.washingtonpost.com/opinions/michael-bloomberg-stop-and-frisk-keeps-new-york-safe/2013/08/18/8d4cd8c4-06cf-11e3-9259-e2aaf5a5f84_story.html

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- Rocco Parascandola et. al., *Exclusive: Huge drop in stop-and-frisk as NYC crime increases raises fear that cops are reluctant to confront criminals*, NEW YORK DAILY NEWS (June 5, 2015, 2:30 AM), <http://www.nydailynews.com/new-york/nyc-crime/exclusive-big-fall-stop-and-frisk-criminals-bolder-article-1.2247406>
- Ryan Devereaux, *'We Were Handcuffing Kids For No Reason': Stop-And-Frisk Goes On Trial*, THE NATION (Mar. 28, 2013), <https://www.thenation.com/article/we-were-handcuffing-kids-no-reason-stop-and-frisk-goes-trial/>

Lessons/Activities

Lesson 1: Stop-and-frisk Overview

Students will use the Nonfiction Source Evaluation Chart to learn background information and analyze the different positions of the stop-and-frisk debate.

Students will be able to:

- Analyze non-fiction texts to evaluate the stop-and-frisk policy.
- Examine different viewpoints on the stop-and-frisk policy by evaluating the author's argument, tone and purpose.
- Describe the different arguments of the stop-and-frisk debate.

Lesson 2: Analysis of Court Opinion

Students will read and analyze a district court opinion concerning the issue of stop-and-frisk in NYC.

Students will be able to:

- Analyze a district court opinion evaluating the stop-and-frisk practice.
- Analyze non-fiction articles to evaluate the stop-and-frisk policy.
- Examine different viewpoints on the stop-and-frisk policy by evaluating the author's argument, tone and purpose.

Lesson 3: Stop-and-frisk Evaluating the Positions

Students will develop an evidence-based argument for their position in the stop-and-frisk debate.

Students will be able to:

- Evaluate the arguments for stop-and-frisk.
- Use evidence to support their position.
- Prepare for a debate.

Lesson 4: Stop-and-frisk Debate

Students will participate in a debate about stop-and-frisk.

Students will be able to:

- Debate over a proposal to implement the stop-and-frisk policy.
- Use textual evidence support their argument.

Lesson 1

Does NYC’s stop-and-frisk policy fairly balance the interests of privacy, equality and public safety?

Lesson Objectives

Students will be able to:

- Analyze non-fiction texts to evaluate the stop-and-frisk policy.
- Examine different viewpoints on the stop-and-frisk policy by evaluating the author’s argument, tone and purpose.
- Describe the different arguments of the stop-and-frisk debate.

Materials

- Handout 1: Stop-and-Frisk Evidence Packet
- Handout 2: Nonfiction Source Evaluation Chart

Lesson Assessments

- Author and argument evaluation

Instructional Activities

Anticipatory Set

- Students will respond to the following prompt:

Imagine you are a student in New York City. As you are walking to school with your backpack, two police officers approach you. The police officers ask for your identification and ask if you are carrying any weapons. Although you give the officers your identification and tell them you are not carrying any weapons, the officers ask to look through your backpack. You tell the officers that you do not consent to being searched, however, the one of the officers looks through your backpack anyway as the other officer begins to pat you down.

Do you think the officer’s conduct is legal? Do any constitutional rights protect you from the officer’s actions?

Direct Instruction

- Distribute **Handout 1: Stop-and-Frisk Evidence Packet**. Instruct students to turn to page 1, read the Fourth Amendment, and respond to the questions. When students have finished responding to the questions on their own, ask students to share their ideas with a partner before engaging in a class discussion about the following questions:
 - What does the Fourth Amendment protect?

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- Should there be limitations to the Fourth Amendment? If so, in what circumstances?
- If necessary, guide the students to bring up the idea of public safety, and discuss examples of when public safety should limit the right to privacy.

Guided Practice

- Inform students that the focus of this unit will be analyzing the controversial police practice known as stop-and-frisk. Students will begin to learn about this issue by analyzing nonfiction sources. Distribute **Handout 2: Nonfiction Source Evaluation** and briefly discuss the chart with students, noting that the chart is broken up into three categories (sourcing, corroboration, and close reading) and each category contains a number of questions that will guide students' analysis of nonfiction sources. Instruct students to work with a partner to read through the chart and discuss why it is important to consider each category when analyzing a nonfiction source.
- Students will share their reactions to the Nonfiction Source Evaluation chart with the class. Use this time to ask students if there are any aspects of the chart they don't understand.
- Instruct students to turn to page 2 of the Stop-and-Frisk Evidence Packet: *Here's what you need to know about stop-and-frisk*. Students will use the questions from the Nonfiction Source Evaluation chart to guide their analysis of the article. Students will read through the article and work with a partner to respond to the sourcing and close reading questions.
- Discuss the students' responses to the close reading and sourcing questions and engage in a larger discussion about the issues raised by the stop-and-frisk program, answering the following questions:
 - What is stop-and-frisk?
 - Why is stop-and-frisk controversial?
 - Who does the program affect?
 - What is the purpose of the stop-and-frisk program? Is it effective?
 - What are the different sides of the debate?
- Tell students they will be asking similar questions as they read a set of documents with different viewpoints regarding stop-and-frisk. Their goal is to decide who has the most compelling argument.

Independent Practice

- In pairs, students will read an op-ed by former Police Commissioner Bill Bratton, *You Can't Police Without Stop-and-Frisk*, on page 6 of the Stop-and-Frisk Evidence Packet, and answer the questions from the Nonfiction Source Evaluation chart.

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Closure

- Once students have completed their responses to the reading, engage in a class discussion about non-fiction sources, highlighting why it is important to think about the questions posed in the Nonfiction Source Evaluation chart. Students can write down their responses after the discussion as an exit ticket.

Homework

- Read *Shooting victim's family begs de Blasio: 'We need stop-and-frisk'*, on page 38 of the Stop-and-Frisk Evidence Packet, and *Exclusive: NYC stop-and-frisk plunges as crime climbs*, on page 40. Respond to the questions from the Nonfiction Source Evaluation Chart.

Handout 2

Nonfiction Source Evaluation

(adapted from Stanford Historical Education Group, Historical Thinking Chart,
<https://sheg.stanford.edu/historical-thinking-chart>)

Nonfiction Reading Skill	Questions	Students should be able to . . .	Prompts
Sourcing	<ul style="list-style-type: none"> Who wrote this? When and where was it written? What is the author’s perspective or stake in the argument? Who is the intended audience? Why was it written? Is it reliable? Why? Why not? 	<ul style="list-style-type: none"> Identify the author’s position on the event. Identify and evaluate the author’s purpose in producing the document. Hypothesize what the author will say before reading the document. Evaluate the source’s trustworthiness by considering genre, audience, and purpose. 	<ul style="list-style-type: none"> The author probably believes . . . I think the audience is . . . Based on the source information, I think the author might . . . I do/ don’t trust this document because . . .
Close Reading	<ul style="list-style-type: none"> What claims does the author make? What evidence does the author use? What is the strongest argument? Why? What is the weakest argument? What language (words, phrases, images, symbols) does the author use to persuade the document’s audience? How does the document’s language indicate the author’s perspective? 	<ul style="list-style-type: none"> Identify the author’s claims about an event. Evaluate the evidence and reasoning the author uses to support claims. Evaluate author’s word choice; understand that language is used deliberately. 	<ul style="list-style-type: none"> I think the author chose these words in order to . . . The author is trying to convince me . . . The author claims . . . The evidence used to support the author’s claims is . . .
Corroboration	<ul style="list-style-type: none"> What do other documents say? Do the documents agree? If not, why? What are other possible documents? What documents are most reliable? 	<ul style="list-style-type: none"> Establish what is probable by comparing documents to each other. Recognize disparities between accounts. 	<ul style="list-style-type: none"> The author agrees/disagrees with . . . These documents all agree/ disagree about . . . Another document to consider might be . . .

Lesson 2

Does NYC’s stop-and-frisk policy fairly balance the interests of the Fourth Amendment and protecting public safety?

Lesson Objectives

- Analyze a district court opinion evaluating the stop-and-frisk practice
- Analyze non-fiction articles to evaluate the stop-and-frisk policy
- Examine different viewpoints on the stop-and-frisk policy by evaluating the author’s argument, tone and purpose

Materials

- Handout 1: Stop-and-Frisk Evidence Packet
- Handout 3: Responses to *Floyd v. City of New York*
- Teacher’s Guide: *Floyd v. City of New York*

Lesson Assessments

- Responses to *Floyd v. City of New York*

Instructional Activities

Anticipatory Set

- Students will respond to the following questions on their own and discuss their responses as a class.
 - How does your approach to analysis differ when you are analyzing a court opinion vs. when you are analyzing a newspaper article?
 - How is it similar?
 - What questions do you emphasize in analyzing a court opinion?
 - What questions from Nonfiction Source Evaluation chart can you use to analyze a court opinion?
- As student share their responses, create a list of questions on the board.

Guided Practice

- Inform students that today’s lesson will continue to look at the issue of stop-and-frisk by analyzing a federal district court opinion issued in 2013 that evaluated whether the city’s search practices violated the Constitution. Instruct students to turn to page 8 in the Stop-and-Frisk Evidence Packet. Distribute **Handout 3: Responses to *Floyd v. City of New York***. Read through the court opinion as a class and use the *Floyd v. City of New York*

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Teacher’s Guide (below) to guide students’ understanding and analysis. As they read, students should annotate the opinion, highlighting important information and responding to the questions posed.

- After the class has read through the opinion, students will work in pairs to respond to the questions in Handout 3. Students will share out their responses with the class. Remind students that the plaintiffs in *Floyd* did not seek to end the use of stop-and-frisk. Rather, the plaintiffs wanted to reform stop-and-frisk to comply with constitutional limits.

Independent Practice

- In pairs, students will read ‘*We were Handcuffing Kids for No Reason*’: *Stop-And-Frisk Goes on Trial* on page 24 of the Stop-and-Frisk Evidence Packet, and *The Stop-and-Frisk Challenge* on page 34. Students should respond to the questions from the Nonfictions Source Evaluation Chart.

Closure

- At the end of class, students will respond to the following prompt:
 - What is the most compelling argument that supports the stop-and-frisk practice?
What is the most compelling argument that opposes the stop-and-frisk practice? Is there an alternative police practice that better achieves the policy’s underlying goals?

Homework

- Students will read *Michael Bloomberg: ‘Stop-and-frisk’ keeps New York safe* on page 43 the Stop-and-Frisk Evidence Packet, and *Stop-and-frisk Protects Minorities* on page 46. Students should respond to the questions on the Nonfiction Source Evaluation Chart. Before lesson 3, students should complete all the readings in Handout 1 and answer the source evaluation questions for each reading.

Teacher's Guide
Floyd v. City of New York

*What court decided this case?
Is this a federal court or a state court?*

Who are the parties to the case?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID FLOYD, LALIT CLARKSON, DEON DENNIS, and DAVID OURLICHT, individually and on behalf of a class of all others similarly situated,

Plaintiffs,

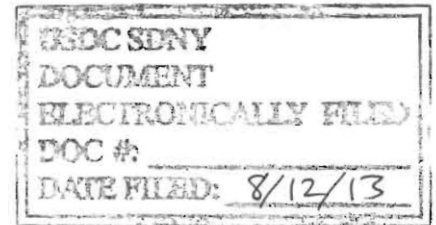
- against -

THE CITY OF NEW YORK,

Defendant.
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OPINION AND ORDER

08 Civ. 1034 (SAS)



I. INTRODUCTION 1
II. EXECUTIVE SUMMARY 4

The following excerpt is the court's summary of the opinion. The rest of this 198 page long opinion is omitted.

This document is a teacher's manual for the opinion. As the class reads through the opinion, the annotations provide places for students to stop and think in order to emphasize key points and further student comprehension.

SHIRA A. SCHEINDLIN, U.S. District Judge:

Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.

— *Railway Express Agency v. People of State of New York*, 336 U.S. 106, 112–13 (1949) (Jackson, J., concurring)

It is simply fantastic to urge that [a frisk] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’

— *Terry v. Ohio*, 392 U.S. 1, 16–17 (1968)

Whether you stand still or move, drive above, below, or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or arrest you. Such subjective, promiscuous appeals to an ineffable intuition should not be credited.

— *United States v. Broomfield*, 417 F.3d 654, 655 (7th Cir. 2005) (Posner, J.)

I. INTRODUCTION

New Yorkers are rightly proud of their city and seek to make it as safe as the largest city in America can be. New Yorkers also treasure their liberty. Countless individuals have come to New York in pursuit of that liberty. The goals of liberty and safety may be in tension, but they can coexist — indeed the Constitution mandates it.

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values the judge
considers?*

This case is about the tension between liberty and public safety in the use of a proactive policing tool called “stop and frisk.” The New York City Police Department (“NYPD”) made 4.4 million stops between January 2004 and June 2012. Over 80% of these 4.4 million stops were of blacks or Hispanics. In each of these stops a person’s life was interrupted. The person was detained and questioned, often on a public street. More than half of the time the police subjected the person to a frisk.

Plaintiffs — blacks and Hispanics who were stopped — argue that the NYPD’s

use of stop and frisk violated their constitutional rights in two ways: (1) they were stopped without a legal basis in violation of the Fourth Amendment, and (2) they were targeted for stops because of their race in violation of the Fourteenth Amendment. Plaintiffs do not seek to end the use of stop and frisk. Rather, they argue that it must be reformed to comply with constitutional limits. Two such limits are paramount here: *first*, that all stops be based on “reasonable suspicion” as defined by the Supreme Court of the United States;¹ and *second*, that stops be conducted in a racially neutral manner.²

ntiffs want to reform stop and frisk?

I emphasize at the outset, as I have throughout the litigation, that this case is not about the effectiveness of stop and frisk in deterring or combating crime. This Court’s mandate is solely to judge the *constitutionality* of police behavior, *not* its effectiveness as a law enforcement tool. Many police practices may be useful for fighting crime — preventive detention or coerced confessions, for example — but because they are unconstitutional they cannot be used, no matter how effective. “The enshrinement of constitutional rights necessarily takes certain policy choices off the table.”³

Why is this important? How does this relate to what the plaintiffs seek?

This case is also not primarily about the nineteen individual stops that were the subject of testimony at trial.⁴ Rather, this case is about whether the City has a *policy* or *custom*

¹ See generally U.S. CONST. amend. IV; *Terry v. Ohio*, 392 U.S. 1 (1968).

² See generally U.S. CONST. amend. XIV § 1; *Whren v. United States*, 517 U.S. 806, 813 (1996).

³ *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

⁴ The law requires plaintiffs to produce evidence that at least some class members have been victims of unconstitutional stops. See U.S. CONST. art. III.

of violating the Constitution by making unlawful stops and conducting unlawful frisks.⁵

The Supreme Court has recognized that “the degree of community resentment aroused by particular practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security.”⁶ In light of the very active and public debate on the issues addressed in this Opinion — and the passionate positions taken by both sides — it is important to recognize the human toll of unconstitutional stops. While it is true that any one stop is a limited intrusion in duration and deprivation of liberty, each stop is also a demeaning and humiliating experience. No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life. Those who are routinely subjected to stops are overwhelmingly people of color, and they are justifiably troubled to be singled out when many of them have done nothing to attract the unwanted attention. Some plaintiffs testified that stops make them feel unwelcome in some parts of the City, and distrustful of the police. This alienation cannot be good for the police, the community, or its leaders. Fostering trust and confidence between the police and the community would be an improvement for everyone.

fective?

Plaintiffs requested that this case be tried to the Court without a jury. Because plaintiffs seek only injunctive relief, not damages, the City had no right to demand a jury. As a result, I must both find the facts and articulate the governing law. I have endeavored to exercise my judgment faithfully and impartially in making my findings of fact and conclusions of law based on the nine-week trial held from March through May of this year.

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⁵ See *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978) (establishing the standards under 42 U.S.C. § 1983 for municipal liability for constitutional torts by employees).

⁶ *Terry*, 392 U.S. at 14 n.11.

II. EXECUTIVE SUMMARY

Plaintiffs assert that the City, and its agent the NYPD, violated both the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. In order to hold a municipality liable for the violation of a constitutional right,

*Remember the
defendant is the City
of New York*

plaintiffs “must prove that ‘action pursuant to official municipal policy’ caused the alleged constitutional injury.”⁸ “Official municipal policy includes the decisions of a government’s lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.”⁹

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The Fourth Amendment protects all individuals against unreasonable searches or seizures.¹⁰ The Supreme Court has held that the Fourth Amendment permits the police to “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.”¹¹ “Reasonable suspicion is an objective standard; hence, the subjective intentions or motives of the officer making the stop are irrelevant.”¹² The test for whether a stop has taken place in the context of a police encounter is whether a reasonable person would have felt free to terminate the encounter.¹³ “[T]o proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.”¹⁴

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The Equal Protection Clause of the Fourteenth Amendment guarantees to every

⁸ *Cash v. County of Erie*, 654 F.3d 324, 333 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 1741 (2012) (quoting *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011)).

⁹ *Connick*, 131 S. Ct. at 1359.

¹⁰ *See infra* Part III.B.

¹¹ *United States v. Swindle*, 407 F.3d 562, 566 (2d Cir. 2005) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)) (some quotation marks omitted).

¹² *United States v. Bayless*, 201 F.3d 116, 133 (2d Cir. 2000).

¹³ *See Florida v. Bostick*, 501 U.S. 429 (1991).

¹⁴ *United States v. Lopez*, 321 Fed. App’x 65, 67 (2d Cir. 2009) (quoting *Arizona v. Johnson*, 555 U.S. 323, 326–27 (2009)).

person the equal protection of the laws. It prohibits intentional discrimination based on race. Intentional discrimination can be proved in several ways, two of which are relevant here. A plaintiff can show: (1) that a facially neutral law or policy has been applied in an intentionally discriminatory manner; or (2) that a law or policy expressly classifies persons on the basis of race, and that the classification does not survive strict scrutiny. Because there is rarely direct proof of discriminatory intent, circumstantial evidence of such intent is permitted. “The impact of the official action — whether it bears more heavily on one race than another — may provide an important starting point.”¹⁵

The following facts, discussed in greater detail below, are uncontested:¹⁶

- Between January 2004 and June 2012, the NYPD conducted over 4.4 million *Terry* stops.
- The number of stops per year rose sharply from 314,000 in 2004 to a high of 686,000 in 2011.
- 52% of all stops were followed by a protective frisk for weapons. A weapon was found after 1.5% of these frisks. In other words, in 98.5% of the 2.3 million frisks, no weapon was found.
- 8% of all stops led to a search into the stopped person’s clothing, ostensibly based on the officer feeling an object during the frisk that he suspected to be a weapon, or immediately perceived to be contraband other than a weapon. In 9% of these searches, the felt object was in fact a weapon. 91% of the time, it was not. In 14% of these searches, the felt object was in fact contraband. 86% of the time it was not.
- 6% of all stops resulted in an arrest, and 6% resulted in a summons. The remaining 88% of the 4.4 million stops resulted in no further law enforcement action.
- In 52% of the 4.4 million stops, the person stopped was black, in 31% the person

or frisking a person
Based on these standards, do these numbers seem high?

¹⁵ *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010).

¹⁶ *See infra* Part IV.A.

was Hispanic, and in 10% the person was white.

- In 2010, New York City's resident population was roughly 23% black, 29% Hispanic, and 33% white.
- In 23% of the stops of blacks, and 24% of the stops of Hispanics, the officer recorded using force. The number for whites was 17%.
- Weapons were seized in 1.0% of the stops of blacks, 1.1% of the stops of Hispanics, and 1.4% of the stops of whites.
- Contraband other than weapons was seized in 1.8% of the stops of blacks, 1.7% of the stops of Hispanics, and 2.3% of the stops of whites.
- Between 2004 and 2009, the percentage of stops where the officer failed to state a specific suspected crime rose from 1% to 36%.

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Both parties provided extensive expert submissions and testimony that is also discussed in detail below.¹⁷ Based on that testimony and the uncontested facts, I have made the following findings with respect to the expert testimony.

With respect to plaintiffs' Fourth Amendment claim,¹⁸ I begin by noting the inherent difficulty in making findings and conclusions regarding 4.4 million stops. Because it is impossible to *individually* analyze each of those stops, plaintiffs' case was based on the imperfect information contained in the NYPD's database of forms ("UF-250s") that officers are required to prepare after each stop. The central flaws in this database all skew toward underestimating the number of unconstitutional stops that occur: the database is incomplete, in that officers do not prepare a UF-250 for every stop they make; it is one-sided, in that the UF-250 only records the officer's version of the story; the UF-250 permits the officer to merely check a series of boxes, rather than requiring the officer to explain the basis for her suspicion;

*Why is the
information in
the database
flawed?*

¹⁷ See *infra* Part IV.B.

¹⁸ See *infra* Part IV.B.2.

and many of the boxes on the form are inherently subjective and vague (such as “furtive movements”). Nonetheless, the analysis of the UF-250 database reveals that *at least* 200,000 stops were made without reasonable suspicion.

The actual number of stops lacking reasonable suspicion was likely far higher, based on the reasons stated above, and the following points: (1) Dr. Fagan was unnecessarily conservative in classifying stops as “apparently unjustified.” For example, a UF-250 on which the officer checked only Furtive Movements (used on roughly 42% of forms) and High Crime Area (used on roughly 55% of forms) is not classified as “apparently unjustified.” The same is true when only Furtive Movements and Suspicious Bulge (used on roughly 10% of forms) are checked. Finally, if an officer checked only the box marked “other” on either side of the form (used on roughly 26% of forms), Dr. Fagan categorized this as “ungeneralizable” rather than “apparently unjustified.” (2) Many UF-250s did not identify *any* suspected crime (36% of all UF-250s in 2009). (3) The rate of arrests arising from stops is low (roughly 6%), and the yield of seizures of guns or other contraband is even lower (roughly 0.1% and 1.8% respectively). (4) “Furtive Movements,” “High Crime Area,” and “Suspicious Bulge” are vague and subjective terms. Without an accompanying narrative explanation for the stop, these checkmarks cannot reliably demonstrate individualized reasonable suspicion.

With respect to plaintiffs’ Fourteenth Amendment claim,¹⁹ I reject the testimony of the City’s experts that the race of crime suspects is the appropriate benchmark for measuring racial bias in stops. The City and its highest officials believe that blacks and Hispanics should

*ther
standard that would
be more appropriate?*

be stopped at the same rate as their proportion of the local criminal suspect population. But this

¹⁹ See *infra* Part IV.B.3.

reasoning is flawed because the stopped population is overwhelmingly innocent — not criminal.

There is no basis for assuming that an innocent population shares the same characteristics as the criminal suspect population in the same area. Instead, I conclude that the benchmark used by plaintiffs' expert — a combination of local population demographics and local crime rates (to account for police deployment) is the most sensible.

Based on the expert testimony I find the following: (1) The NYPD carries out more stops where there are more black and Hispanic residents, even when other relevant variables are held constant. The racial composition of a precinct or census tract predicts the stop rate *above and beyond* the crime rate. (2) Blacks and Hispanics are more likely than whites to be stopped within precincts and census tracts, even after controlling for other relevant variables.

mean? Why is this significant?

This is so even in areas with low crime rates, racially heterogenous populations, or predominately white populations. (3) For the period 2004 through 2009, when any law enforcement action was taken following a stop, blacks were 30% more likely to be arrested (as opposed to receiving a summons) than whites, for the same suspected crime. (4) For the period 2004 through 2009, after controlling for suspected crime and precinct characteristics, blacks who were stopped were about 14% more likely — and Hispanics 9% more likely — than whites to be subjected to the use of force. (5) For the period 2004 through 2009, all else being equal, the odds of a stop resulting in any further enforcement action were 8% *lower* if the person stopped was black than if the person stopped was white. In addition, the greater the black population in a precinct, the less likely that a stop would result in a sanction. Together, these results show that blacks are likely targeted for stops based on a lesser degree of objectively founded suspicion than whites.

What do you find most surprising about these facts?

With respect to both the Fourth and Fourteenth Amendment claims, one way to

prove that the City has a custom of conducting unconstitutional stops and frisks is to show that it acted with deliberate indifference to constitutional deprivations caused by its employees — here, the NYPD. The evidence at trial revealed significant evidence that the NYPD acted with deliberate indifference.²⁰

As early as 1999, a report from New York’s Attorney General placed the City on notice that stops and frisks were being conducted in a racially skewed manner. Nothing was done in response. In the years following this report, pressure was placed on supervisors to increase the number of stops. Evidence at trial revealed that officers have been pressured to make a certain number of stops and risk negative consequences if they fail to achieve the goal.²¹ Without a system to ensure that stops are justified, such pressure is a predictable formula for producing unconstitutional stops. As one high ranking police official noted in 2010, this pressure, without a comparable emphasis on ensuring that the activities are legally justified, “could result in an officer taking enforcement action for the purpose of meeting a quota rather than because a violation of the law has occurred.”²²

In addition, the evidence at trial revealed that the NYPD has an unwritten policy of targeting “the right people” for stops. In practice, the policy encourages the targeting of young black and Hispanic men based on their prevalence in local crime complaints.²³ This is a form of racial profiling. While a person’s race may be important if it fits the description of a

*forms of intentional
discrimination?*

²⁰ See *infra* Part IV.C.

²¹ See *infra* Part IV.C.2.

²² 2010 Memorandum of Chief of Patrol James Hall, Plaintiffs’ Trial Exhibit (“PX”) 290 at *0096.

²³ See *infra* Part IV.C.3.

particular crime suspect, it is impermissible to subject all members of a racially defined group to heightened police enforcement because some members of that group are criminals. The Equal Protection Clause does not permit race-based suspicion.

Much evidence was introduced regarding inadequate monitoring and supervision of unconstitutional stops. Supervisors routinely review the *productivity* of officers, but do not review the facts of a stop to determine whether it was legally warranted. Nor do supervisors ensure that an officer has made a proper record of a stop so that it can be reviewed for constitutionality. Deficiencies were also shown in the training of officers with respect to stop and frisk and in the disciplining of officers when they were found to have made a bad stop or frisk. Despite the mounting evidence that many bad stops were made, that officers failed to make adequate records of stops, and that discipline was spotty or non-existent, little has been done to improve the situation.

What factors have contributed to the failures of the policy?

What changes could be made to remedy these failures?

One example of poor training is particularly telling. Two officers testified to their understanding of the term “furtive movements.” One explained that “furtive movement is a very broad concept,” and could include a person “changing direction,” “walking in a certain way,” “[a]cting a little suspicious,” “making a movement that is not regular,” being “very fidgety,” “going in and out of his pocket,” “going in and out of a location,” “looking back and forth constantly,” “looking over their shoulder,” “adjusting their hip or their belt,” “moving in and out of a car too quickly,” “[t]urning a part of their body away from you,” “[g]rabbing at a certain pocket or something at their waist,” “getting a little nervous, maybe shaking,” and “*stutter[ing]*.”²⁴ Another officer explained that “usually” a furtive movement is someone

²⁴ 4/18 Trial Transcript (“Tr.”) at 4047–4049 (emphasis added).

“hanging out in front of [a] building, sitting on the benches or something like that” and then making a “quick movement,” such as “bending down and quickly standing back up,” “going inside the lobby . . . and then quickly coming back out,” or “all of a sudden becom[ing] very nervous, very aware.”²⁵ If officers believe that the behavior described above constitutes furtive movement that justifies a stop, then it is no surprise that stops so rarely produce evidence of criminal activity.

ough to warrant a stop and frisk? Can you think of a better term?

I now summarize my findings with respect to the individual stops that were the subject of testimony at trial.²⁶ Twelve plaintiffs testified regarding nineteen stops. In twelve of those stops, both the plaintiffs and the officers testified. In seven stops no officer testified, either because the officers could not be identified or because the officers dispute that the stop ever occurred. I find that nine of the stops and frisks were unconstitutional — that is, they were not based on reasonable suspicion. I also find that while five other stops were constitutional, the frisks following those stops were unconstitutional. Finally, I find that plaintiffs have failed to prove an unconstitutional stop (or frisk) in five of the nineteen stops. The individual stop testimony corroborated much of the evidence about the NYPD’s policies and practices with respect to carrying out and monitoring stops and frisks.

In making these decisions I note that evaluating a stop in hindsight is an imperfect procedure. Because there is no contemporaneous recording of the stop (such as could be achieved through the use of a body-worn camera), I am relegated to finding facts based on the often conflicting testimony of eyewitnesses. This task is not easy, as every witness has an

²⁵ 5/9 Tr. at 6431–6433.

²⁶ *See infra* Part IV.D.

interest in the outcome of the case, which may consciously or unconsciously affect the veracity of his or her testimony. Nonetheless, a judge is tasked with making decisions and I judged the evidence of each stop to the best of my ability. I am also aware that a judge deciding whether a stop is constitutional, with the time to reflect and consider all of the evidence, is in a far different position than officers on the street who must make split-second decisions in situations that may pose a danger to themselves or others. I respect that police officers have chosen a profession of public service involving dangers and challenges with few parallels in civilian life.²⁷

*act
the ability of
witnesses to give
impartial testimony?*

In conclusion, I find that the City is liable for violating plaintiffs' Fourth and Fourteenth Amendment rights. The City acted with deliberate indifference toward the NYPD's practice of making unconstitutional stops and conducting unconstitutional frisks. Even if the City had not been deliberately indifferent, the NYPD's unconstitutional practices were sufficiently widespread as to have the force of law. In addition, the City adopted a policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data. This has resulted in the disproportionate and discriminatory stopping of blacks and Hispanics in violation of the Equal Protection Clause. Both statistical and anecdotal evidence showed that minorities are indeed treated differently than whites. For example, once a stop is made, blacks and Hispanics are more likely to be subjected to the use of force than whites, despite the fact that whites are more likely to be found with weapons or contraband. I also conclude that the City's highest officials have turned a blind eye to the evidence that officers are

²⁷ "Throughout the country, police work diligently every day trying to prevent crime, arrest those who are responsible, and protect victims from crimes that undermine their dignity and threaten their safety. They work for relatively low pay for the risks that they take, and although in some communities their role is respected and admired, in other communities they are vilified and treated as outcasts." CHARLES OGLETREE, *THE PRESUMPTION OF GUILT* 125 (2012).

conducting stops in a racially discriminatory manner. In their zeal to defend a policy that they believe to be effective, they have willfully ignored overwhelming proof that the policy of targeting “the right people” is racially discriminatory and therefore violates the United States Constitution. One NYPD official has even suggested that it is permissible to stop racially defined groups just to instill fear in them that they are subject to being stopped at any time for any reason — in the hope that this fear will deter them from carrying guns in the streets. The goal of deterring crime is laudable, but this method of doing so is unconstitutional.

I recognize that the police will deploy their limited resources to high crime areas. This benefits the communities where the need for policing is greatest. But the police are not permitted to target people for stops based on their race. Some may worry about the implications of this decision. They may wonder: if the police believe that a particular group of people is disproportionately responsible for crime in one area, why should the police *not* target that group with increased stops? Why should it matter if the group is defined in part by race?²⁸ Indeed, there are contexts in which the Constitution permits considerations of race in law enforcement operations.²⁹ What is clear, however, is that the Equal Protection Clause prohibits the practices described in *this* case. A police department may not target a racially defined group for stops *in general* — that is, for stops based on suspicions of general criminal wrongdoing — simply

²⁸ I note again that based on the uncontested statistics, *see infra* Part IV.A, the NYPD’s current use of stop and frisk has not been particularly successful in producing arrests or seizures of weapons or other contraband.

²⁹ For example, as discussed at length in this Opinion, race is a permissible consideration where there is a specific suspect description that includes race. *See, e.g., Brown v. City of Oneonta, New York*, 221 F.3d 329, 340 (2d Cir. 2000).

because members of that group appear frequently in the police department's suspect data.³⁰ The Equal Protection Clause does not permit the police to target a racially defined group as a whole because of the misdeeds of some of its members.

To address the violations that I have found, I shall order various remedies including, but not limited to, an immediate change to certain policies and activities of the NYPD, a trial program requiring the use of body-worn cameras in one precinct per borough, a community-based joint remedial process to be conducted by a court-appointed facilitator, and the appointment of an independent monitor to ensure that the NYPD's conduct of stops and frisks is carried out in accordance with the Constitution and the principles enunciated in this Opinion, and to monitor the NYPD's compliance with the ordered remedies.

Lesson 3
Should stop-and-frisk be implemented?

Lesson Objectives

Students will be able to:

- Evaluate the arguments for stop-and-frisk.
- Use evidence to support their position.
- Prepare for a debate.

Materials

- Handout 4A: Debate preparation for Group A
- Handout 4B: Debate preparation for Group B

Lesson Assessments

- Debate planning chart

Instructional Activities

Anticipatory Set

- At the end of the previous lesson, students responded to the following prompt:
 - What is the most compelling argument that supports the stop-and-frisk practice?
What is the most compelling argument that opposes the stop-and-frisk practice? Is there an alternative way that better achieves the underlying policy goals?
- Allow students two or three minutes to review and edit their responses. Students will exchange their responses with a partner and read through their partner's response. Students will discuss how their responses compare and discuss what they found to be most compelling about each argument.

Direct Instruction

- Divide the class into two groups. Distribute **Handout 4A** to Group A and **Handout 4B** to Group B.
- Inform students that today's class will focus on preparing for the stop-and-frisk debate. Explain the structure of the fishbowl debate to students:
 - During the debate, there will be seven seats in the center of the room, each side of the argument will have three seats and the mayor (can be a student or teacher) will sit between the two sides. The remainder of the seats will form a larger circle around this center.

Unit 4: Lesson 3
Stop-and-Frisk

- Before the debate begins, each side will have two minutes to give an introduction, providing an overview of their key points. The six students in the center will then begin the discussion about whether stop-and-frisk should be implemented. The students will focus on using evidence from the text to support their arguments.
- Students on the perimeter will take notes on the arguments that are made and can join the discussion by tapping and replacing students from the inner group once they have made at least three statements. The mayor will take notes on the discussion and will ultimately decide whether stop-and-frisk should be implemented.

Guided Practice

- Copy the following Debate Prep Process on the board and walk through each step:
 1. List the strongest arguments that support your position. List at least three pieces of evidence that supports those arguments.
 2. Looking at the arguments together, what common themes emerge (e.g., right to privacy, need for public safety, etc.)? How do your arguments support those themes?
 3. Optional: Using these themes as a frame for your arguments, revise your arguments and evidence to emphasize this theme.
 4. Think about how the opposing side will attack your theme and your argument. How will you respond to those attacks?
 5. Discuss the opposing side's strongest arguments and how you counter those arguments.
 6. Draft your opening and closing arguments to highlight the theme and the overall arguments.
- To prepare for the debate, students need to think about the strongest arguments that support their position and the evidence that best supports those arguments. Once students have developed their arguments, they will work together to think about a theme that best supports those arguments. Themes appeal to larger ideas such as the right to privacy or the need for police protection and public safety. Students should look back at their readings to see what themes the authors emphasize. Once students have developed their themes, they may want to take a second look at their arguments to see how they can reshape the argument to fit the theme. This step is optional and is best suited for classes that have previously worked with building arguments around a theme. Students will also use this to shape their attacks on the opposing side's position and defend attacks on their position.

Independent Practice

- Students will use their notes from readings to complete the chart on Handout 4 and prepare for the debate.

Handout 4A
Debate Preparation for Group A

In 2015, [Forbes Magazine](#) ranked Detroit as the most dangerous city in America – it had a violent crime rate of 2,072 per 100,000 people and a murder rate of 45 per 100,000 people. To reduce the overall crime rate the mayor has proposed a number of solutions, including implementing a version of NYC’s stop-and-frisk policy. As one of the mayor’s chief advisors, you have been asked to research the issue and determine whether stop-and-frisk should be implemented. After careful consideration you have decided that the city **should** implement the stop-and-frisk policy. However, the mayor’s other chief advisor believes that the city should not implement the policy. The mayor has asked you to debate the issue with the other advisor in front of him so that he can decide how to proceed. Prepare a debate to defend your position. Think about the strongest arguments that support your position, how you will defend potential attacks on your position, and how you will attack the opposing side’s argument.

Opening Argument:

Closing Argument:

Debate Planning Chart

<p>What are the strongest arguments for your side?</p> <p>List three and include at least three pieces of evidence to support each argument.</p>	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a. b. c. 2. <ol style="list-style-type: none"> a. b. c. 3. <ol style="list-style-type: none"> a. b. c.
<p>What theme is created by these arguments? e.g. right to privacy, safety/ protection etc.</p>	
<p>How will the other side attack your positions? What is your defense?</p>	<p>Attacks:</p> <p>Defenses:</p>
<p>What are the strongest arguments for the other side? How can you respond to those arguments?</p>	<ol style="list-style-type: none"> 1. <p>Counter Argument:</p> 2. <p>Counter Argument:</p> 3. <p>Counter Argument:</p>

Handout 4B
Debate Preparation for Group B

In 2015, [Forbes Magazine](#) ranked Detroit as the most dangerous city in America – it had a violent crime rate of 2,072 per 100,000 people and a murder rate of 45 per 100,000 people. To reduce the overall crime rate the mayor has proposed a number of solutions, including implementing a version of NYC’s stop-and-frisk policy. As one of the mayor’s chief advisors, you have been asked to research the issue and determine whether stop-and-frisk should be implemented. After careful consideration you have decided that the city **should not** implement the stop-and-frisk policy. However, the mayor’s other chief advisor believes that the city should implement the policy. The mayor has asked you to debate the issue with the other advisor in front of him so that he can decide how to proceed. Prepare a debate to defend your position. Think about the strongest arguments that support your position, how you will defend potential attacks on your position, and how you will attack the opposing sides argument.

Opening Argument:

Closing Argument:

Debate Planning Chart

<p>What are the strongest arguments for your side?</p> <p>List three and include at least three pieces of evidence to support each argument.</p>	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a. b. c. 2. <ol style="list-style-type: none"> a. b. c. 3. <ol style="list-style-type: none"> a. b. c.
<p>What theme is created by these arguments? e.g. right to privacy, safety/ protection etc.</p>	
<p>How will the other side attack your positions? What is your defense?</p>	<p>Attacks:</p> <p>Defenses:</p>
<p>What are the strongest arguments for the other side? How can you respond to those arguments?</p>	<ol style="list-style-type: none"> 1. <p>Counter Argument:</p> 2. <p>Counter Argument:</p> 3. <p>Counter Argument:</p>

Lesson 4
The Debate

Lesson Objectives

Students will be able to

- Debate over a proposal to implement the stop-and-frisk policy.
- Use textual evidence support their argument.

Lesson Assessments

- Debate Performance
- Argument Evaluation

Instructional Activities

Anticipatory Set

- Review the steps of the debate with students.
- During the fishbowl debate, there will be seven seats in the center of the room and the remainder of the seats around the perimeter of the inner circle. In the center of the room, each side of the argument will have three seats at the debate and the mayor (can be a student or teacher) will sit between the two sides.
- Before the debate begins, each side will have two minutes to give an introduction, providing an overview of their key points. The six students in the center will then begin the discussion about whether stop-and-frisk should be implemented.
- Students on the perimeter will take notes on the arguments that are made and can join the discussion by tapping and replacing students from the inner group once they have made at least three statements. The mayor will take notes on the discussion and will ultimately decide whether stop-and-frisk should be implemented.

Guided Practice

- Have the students conduct the debate, under your guidance. Remind students that during the debate, they need to support their statements and arguments using evidence from the readings.

Independent Practice and Closure

Unit 4: Lesson 4
Stop-and-Frisk

- Ask the mayor to write some of the strongest ideas from each side on the board and elicit additional responses from the class. Students will choose one of the ideas from each side of the debate and respond to the following questions:
 - Why is this the strongest argument to support/refute the implementation of stop-and-frisk?
 - What does this argument appeal to (ethos, pathos, logos)? Is it an effective appeal?
 - What are the limitations of this argument?
 - What would strengthen this argument?