Stop and Frisk
Evidence Packet

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Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

a. What does the Fourth Amendment protect?

b. Should there be limitations to the Fourth Amendment. If so, in what circumstances?

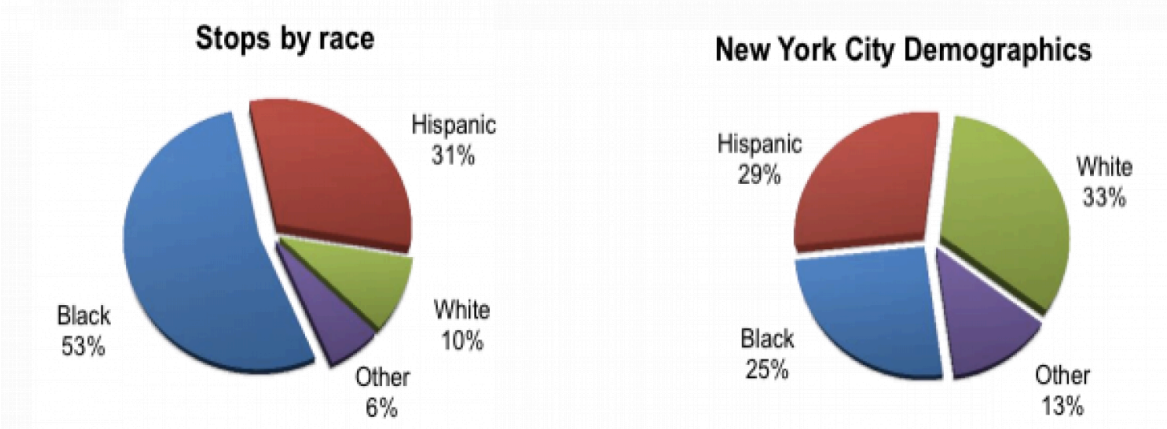
Here's what you need to know about Stop and Frisk – and why the courts shut it down

By Dylan Matthews
Washington Post - August 12, 2013

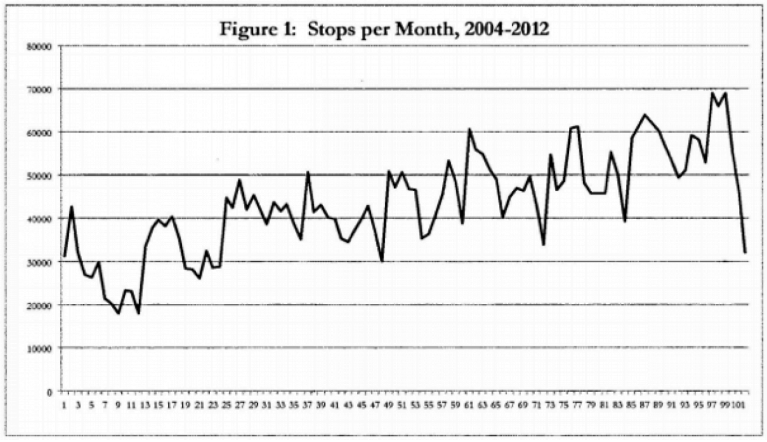
Shira Scheindlin, a U.S. District Court judge for the Southern District of New York, has ruled that New York City's "stop and frisk" policy violates the Fourteenth Amendment's promise of equal protection, as black and Hispanic people are subject to stops and searches at a higher rate than whites. Mayor Michael Bloomberg responded by deriding Scheindlin for not acknowledging the policy's benefits, noting that "nowhere in her 195 page decision does she mention the historic cuts in crime or the number of lives that have been saved."
But what, exactly, does "stop and frisk" entail? Is it racially biased? Does it actually reduce crime? Here's what you need to know.

What is stop and frisk?
"Stop, question and frisk" is an NYPD policy wherein police will detain and question pedestrians, and potentially search them, if they have a "reasonable suspicion" that the pedestrian in question "committed, is committing, or is about to commit a felony or a Penal Law misdemeanor."

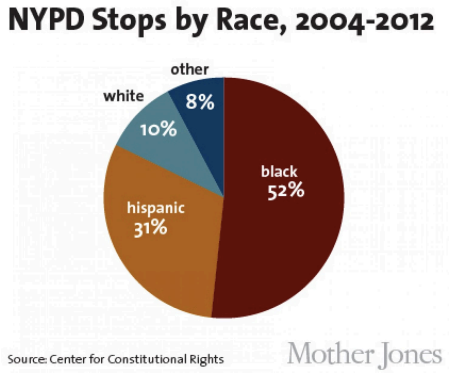
How many stops are conducted? Who gets stopped?
According to a report from the Public Advocate's office, 532,911 stops were conducted in 2012, down from 685,724 in 2011. The vast majority of those stops were of black or Hispanic people:



And the pace is increasing, as this chart by Jeffrey Fagan at Columbia Law School shows:

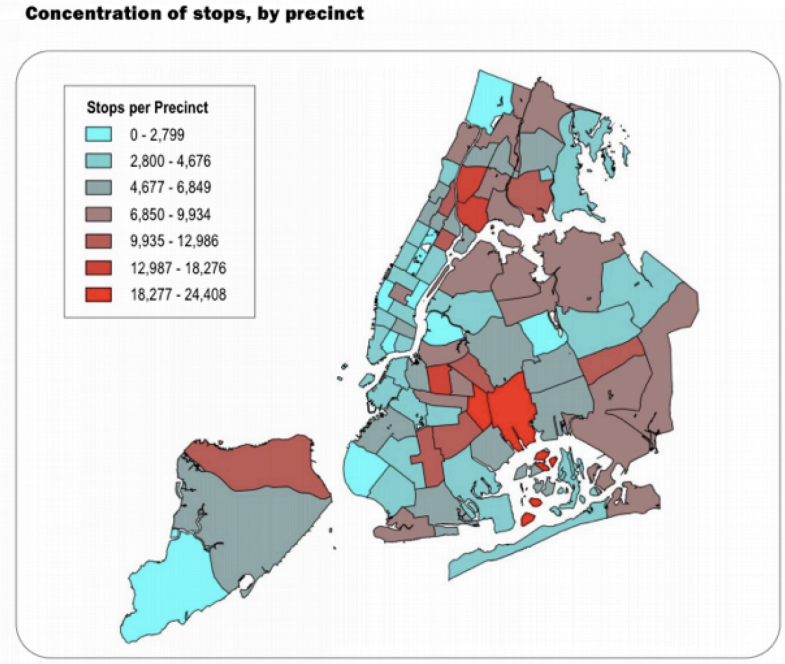


According to the New York Civil Liberties Union, 97,296 stops were conducted in 2002. That's less than a fifth of the number of stops conducted in 2012. The racial breakdown in 2012 in keeping with patterns over the past decade, according to this chart from Adam Serwer and Jaeah Lee at Mother Jones:



Note that the number of stops does not capture how many individual people are stopped, as many individuals are stopped multiple times.

Where are people stopped?



The precincts doing the most stops tend to be in Brooklyn — particularly East New York, Starret City, Brownsville and Ocean Hill, but also Bed-Stuy, Bushwick and Flatbush — and the Bronx, with a few in Staten Island, Jamaica in Queens and Harlem thrown in for good measure. By contrast, the areas with the least stops tend to be ones with lots of white people: Midtown, Little Italy, Chelsea and Central Park in Manhattan, and Greenpoint in Brooklyn.

What accounts for why there are more stops in some areas than in others?

It depends whom you ask. The Bloomberg administration says that it's focusing stops on areas with lots of crime. But Fagan found that even if you control for the crime rate, the racial makeup of a precinct is a good predictor of the number of stops.

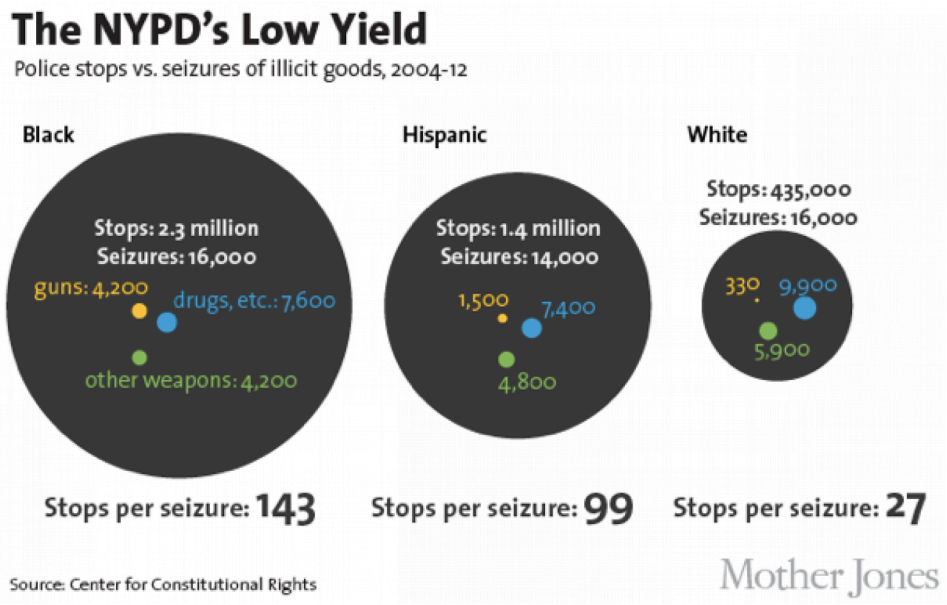
"The percent Black population and the percent Hispanic population predict higher numbers of stops, controlling for the local crime rate and the social and economic characteristics of the precinct," Fagan's report explains. "The crime rate is significant as well, so the identification of the race effects suggests that racial composition has a marginal influence on stops, over and above the unique contributions of crime."

That finding holds up both in earlier years — such as 1998 and 1999, which Fagan analyzed with Andrew Gelman and Alex Kiss — as well the time period since Fagan's initial report came out in 2010.

Tracey Meares, a Yale law professor, explains that if the NYPD were doing what it claims, then a scatterplot with the number of stops on the Y axis and the crime rate on the X axis would show a linear relationship -- meaning that stops would straightforwardly increase along with the crime rate. That doesn't happen. "What you see is that that relationship is curvilinear and it's concave, so the police districts in the middle get a lot more stops than you'd think that they should be getting based on the crime rate," Meares says. That suggests some racial bias in the implementation of stop and frisk.

How many stops result in arrests or tickets?

Not a whole lot. Serwer and Lee have another chart:



Wow, that looks super-biased on the part of the NYPD. But its's not the only study.

The NYPD commissioned a study by the RAND Corp. — in particular Greg Ridgeway, acting director of the National Institute for Justice (the Department of Justice's research arm) — which concluded that "black pedestrians were stopped at a rate that is 20 to 30 percent lower than their representation in crime-suspect descriptions. Hispanic pedestrians were stopped disproportionately more, by 5 to 10 percent, than their representation among crimesuspect descriptions would predict." Ridgeway also found that the NYPD "frisked white suspects slightly less frequently than they did similarly situated nonwhites" and that "black suspects are slightly more likely to have been frisked than white suspects stopped in circumstances similar to the black suspects."

However, Fagan has levied a fairly devastating set of objections to Ridgeway's methodology. Among other issues, the RAND study tries to match up stops to compare how whites and blacks are treated but in doing so fails to account for basic things like which potential crime prompted the stop and how reasonable the cop's suspicion was. The sample of officers the RAND study looks at isn't representative, and the benchmark they use to determine the races of those stopped is derived from analysis of violent crimes, which make up a tiny fraction of stops. Fagan concludes that "the analyses in the report are unreliable and methodologically flawed to the extent that it is not reliable evidence that racial bias is absent in NYPD stop and frisk activity."

Does it reduce crime?

"Anyone who says we know this is bringing the crime rate down is really making it up," Fagan says. Others wouldn't put it that harshly, but the evidence does seem to suggest that stop and frisk is, at best, ineffective, and, at worst, actively alienates communities with whom the police need to engage.

There have been three studies to date evaluating the effectiveness of stop and frisk. The first, an unpublished paper by NYU's Dennis Smith and SUNY Albany's Robert Purtell, found "statistically significant and negative effects of the lagged stop rates on rates of robbery, burglary, motor vehicle theft, and homicide and no significant effects on rates of assault, rape, or grand larceny," according to a summary here. "They also found evidence of 'declining returns to scale' (i.e., diminishing effects over time) of the effects of police stops on most of the offenses they analyzed but increasing returns to scale for robbery."

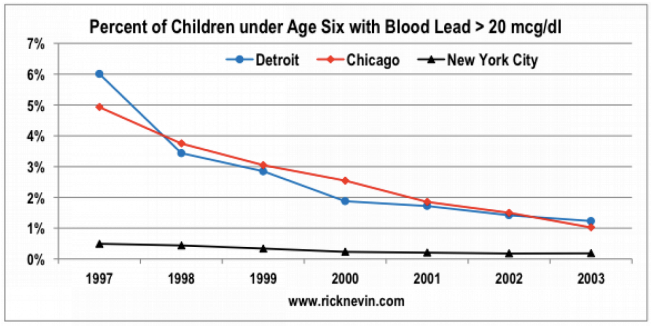
The second, by University of Missouri-St Louis's Richard Rosenfeld and Arizona State's Robert Fornango, throws cold water on even Smith and Purtell's modest positive findings on robbery and burglary. They find the stops "show few significant effects of several SQF [stop, question, and frisk] measures on precinct robbery and burglary rates."

The third, by Hebrew University's David Weisburd and George Mason's Cody Telep and Brian Lawton, analyzes where stop and frisk incidents occur to determine whether the program counts as "hot spots" policing, a strategy with demonstrable effectiveness wherein police target resources in geographic areas with heavy crime. The researchers find that the pattern of stops is consistent with a hot spots approach. But this says nothing about the effectiveness of this particular type of hot spots policing . "Given the possible negative impacts of SQF policing, both on citizens who live in such areas, and the primarily young and minority population that is the main subject of SQFs, we suspect especially in the long run that this approach will lead to unintended negative consequences," the authors write.

That much is obvious: Stop and frisk is alienating the communities it targets. It's done so since the late 1990s, when stop and frisk incidents ratcheted considerably and culminated in the death of Amadou Diallo, an innocent 22-yearold West African immigrant who was shot 41 times by NYPD officers as part of a stop. That spurred an investigation by the New York attorney general's office, then headed by Eliot Spitzer, into that policing program. Such incidents have real costs. Fagan, Meares, and NYU's Tom Tyler note that there's a huge research literature showing that perceptions of police legitimacy matter for crime rates, and we know that invasions of privacy like stops and searches, particularly when conducted rudely, damage police legitimacy.

Are there other possible explanations for the crime drop?

This is the real kicker. As Kevin Drum says in Mother Jones, the thing driving the drop in crime in New York, as everywhere, might not have anything to do with policing. It's likely the removal of lead from gasoline and house paint, he argues. Several studies have found that lead exposure can damage children's brain development, affecting their behavior. Rick Nevin, and economist and a leading researcher on crime and lead questions, notes that there has been far more progress on removing lead in New York City than in other large cities like Chicago or Detroit:



New York's lead removal efforts are commendable and are a more than adequate explanation of why it's seen sharper crime drops than other cities. There's no reason to credit alienating policies like stop and frisk here.

What now?

Judge Scheindlin has named Peter Zimroth, a former lawyer for the City of New York now at Arnold & Porter, to oversee the NYPD. She also mandated a number of other remedies, including a requirement that some police officers wear cameras, changes to training and disciplinary policies, and a process to devise broader reforms to stop and frisk that involves "representatives of religious, advocacy, and grassroots organizations; NYPD personnel andrepresentatives of police organizations; the District Attorneys' offices…the Mayor's office, the NYPD, and the lawyers in this case; and the non-parties that submitted briefs: the Civil Rights Division of the DOJ, Communities United for Police Reform, and the Black, Latino, and Asian Caucus of the New York City Council." The city will almost certainly appeal, and a higher court could issue a stay on Scheindlin's ruling, but for the time being it's the binding policy on stop and frisk.

Available at 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/

Bill Bratton: You Can't Police Without Stop-And-Frisk

Interview of Bill Bratton February 25, 2015
Full Interview available at http://hereandnow.wbur.org/2014/02/25/bill-bratton-nypd

New York City Police Commissioner Bill Bratton is pictured February 18, 2014. (Andrew Burton/Getty Images)

Bill Bratton ran the New York City Police Department (NYPD) from 1994 to 1996 under the Giuliani administration. He is credited with helping to bring down crime in that city during his short tenure.

Bratton is now back in New York City after a stint running the police department in Los Angeles. He has vowed to make the changes that his boss — new Mayor Bill de Blasio — wants, including the overhaul of the controversial stop-and-frisk practice, which has been criticized for unfairly targeting minorities.

Still, Bratton defends stop-and-frisk, which he calls "stop, question and frisk."

"You cannot police without it," Bratton tells *Here & Now*'s Jeremy Hobson. "If you did not have it, then you'd have anarchy."

Interview Highlights: Bill Bratton

On how he plans to improve the relationship between residents and police

"We're going about it in several ways. One of the most significant directions we're going is to reduce the number of 'stop, question and frisk' stops by the members of the department. This is a campaign commitment by the newly elected mayor Bill de Blasio. And his selection of me as his police commissioner was that we both believed that there were too many stops in years past and that the city would be better off with fewer stops."

On the need for 'stop, question and frisk'

"Stop, question and frisk is a basic tool of policing — not only American policing, around the world. But in United States, it's defined by the Terry vs. Ohio Supreme Court decision back in the 1960s, which articulated when police can stop and for what purpose. So every police department in America every day does it."

"The way it was practiced here for the last number of years is that it was overused. And it's the overuse that then created the negative reaction to the basic policy itself. And the confusion about whether you can police with or without it. You cannot police without it, I'm sorry. It's — if you did not have it, then you'd have anarchy, being quite frank with you."

On what went wrong with 'stop, question and frisk' in New York City

"A system was devised where twice a year when we graduate our recruit classes, which number in excess of 1,000 officers, that those officers would be surged or assigned into the 10 or 12 highest crime neighborhoods, effectively to make up for the fact that those precincts had lost a lot of full-time officers that normally would have been assigned there when the department had almost 41,000. The problem with that is that those officers, while the most recently trained, were the least experienced. And they were put into neighborhoods where they were, from my perspective, inadequately supervised — there'd be one sergeant covering 10 to 12 of these officers, who were assigned in pairs. And so if they were making stops — and they were encouraged to be very active in making stops — if they were doing it incorrectly, if they were not doing it according to the law, if they were not doing it according to policies and procedures, very often there would be nobody there to correct that inappropriate or incorrect behavior. And so the habits of a 20-year career form very quickly in that first year. So I think that policy, while it's a sound policy, in its implementation was where the flaws occurred."

On translating New York City's success in lowering crime to other major U.S. cities

"There is no one-size-fits-all. It's a combination of things. Much the same as a doctor looking at patients, each patient is different — how much medicine you use for what illness. So that's where good mayors and good police chiefs come in to play, in terms of what is the appropriate level of the size of the police force, what is the appropriate activities they engage in. Essential in all instances is to get community cooperation, support and trust. So that's one of the reasons why in New York there's so much attention being focused on reducing the stop, question and frisk activities, because particularly in the minority neighborhoods of the city — and unfortunately those areas of the city that have the highest crime rates are some of our minority neighborhoods — that you need the trust, cooperation and collaboration of community residents to really have an impact on crime. Police can't do it alone. You can't arrest your way out of the problem."

Available at http://hereandnow.wbur.org/2014/02/25/bill-bratton-nypd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

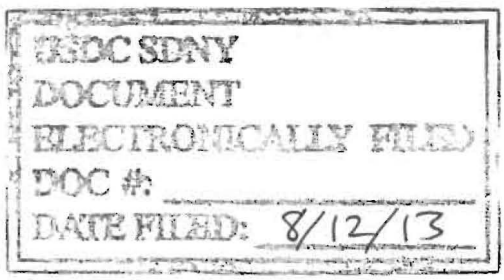
- against -

THE CITY OF NEW YORK,

Defendant.

OPINION AND ORDER

08 Civ. 1034 (SAS)



SHIRA A. SCHEINDLIN, U.S.D.J.:

> 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.

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]

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]

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*

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[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.

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,

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[7] *See Ligon v. City of New York,* No. 12 Civ. 2274, 2013 WL 628534 (S.D.N.Y. Feb. 14, 2013).

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]

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]

The Equal Protection Clause of the Fourteenth Amendment guarantees to every

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[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

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[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%.

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;

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

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[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. 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.

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

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[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.

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.

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

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[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]

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

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[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

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[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.

POLICE AND LAW ENFORCEMENT

‘We Were Handcuffing Kids For No Reason’: Stop-And-Frisk Goes On Trial

At the same time that Brooklyn residents poured into the streets over the killing of Kimani Gray, NYPD officers took the stand to describe the department’s racist tactics.

By Ryan Devereaux

MARCH 28, 2013 The Nation

Protestors rally near the federal courthouse where the class-action lawsuit Floyd v. City of New York is being argued. (AP Photo/Seth Wenig.)

On Saturday, March 23, sixteen year-old Kimani Gray was buried in Cypress Hills Cemetery in Brooklyn, surrounded by family and friends. Gray had been killed two weeks earlier by a pair of plainclothes New York City police officers, who shot him seven times on an East Flatbush sidewalk. The officers claim the teenager pointed a gun at them, but witnesses, along with family and friends, vehemently dispute the NYPD's narrative. In the days before Gray's funeral, hundreds of residents filled the street to display their outrage. Dozens were arrested, some as young as thirteen. As mourners prepared to lower the teen's metallic-blue casket into the ground, a young man in a black T-shirt featuring a picture of Gray broke from the crowd and sat in the grass next to a headstone. Resting his elbows on his knees, he lowered his head and began to cry.

The day before Gray was buried, civil rights attorneys in lower Manhattan wrapped up their first week of arguments in Floyd v. City of New York, a landmark class action lawsuit accusing the NYPD of violating the constitutional rights of hundreds of thousands of young men of color not unlike Kimani Gray. As with the protests following the death of Ramarley Graham in February of 2012— shot in his own home, unarmed, by a plainclothes officer in search of a gun—the anger in the streets was further fueled by deep-seated frustration with the NYPD's stop-and-frisk program, which overwhelmingly targets young men of color—sometimes leading to brutal and even deadly force.

Roughly 4.4 million people have been stopped by the NYPD during the joint tenure of Police Commissioner Ray Kelly and Mayor Michael Bloomberg, according to official government data. Nearly nine out of ten have been released without an arrest or summons. About 86 percent of those stopped have been black or Latino. In 2011, the NYPD's 67th precinct, which patrols the neighborhood where Gray was shot, ranked 16th among other city precincts in overall stops. The 67th came in second, however, when it came to stops that failed to prove wrongdoing: nearly 94 percent of the encounters resulted in no charges.

"They do it to a lot of people over here," said Kelly Fraser, 19, who told *The Nation* that Gray was like "a little brother" to her. "They always messing with you for no reason."

Lawyers for the plaintiffs in the Floyd trial hope to prove that stopping people "for no reason" is part of department-wide NYPD practice that is in violation of both the 4th and 14th amendment. The trial began in two packed courtrooms, one where the actual proceedings are taking place for the next several weeks, and another where an overflow of New York City residents, activists, politicians and local attorneys crowded onto courtroom benches, surrounding chairs and open spaces on the floor. They watched intently as the opening statements unfolded via a live feed.

"This case is about much more than numbers," Darius Charney, an attorney with the Center for Constitutional Rights, which is representing the plaintiffs said. "It's about people."

"There is a wide gap between what the New York Police Department's stop-and-frisk-related policies and procedures say on paper and how they actually operate in practice in the precincts and on the streets of New York City," he added.

The NYPD's authority to stop, question and, if needed, search individuals is not being challenged. Instead, attorneys for the plaintiffs hope to convince Judge Shira Scheindlin to reign in a police practice that has resulted in millions of stops, many of which were unconstitutional. The case turns not only on the testimony of the plaintiffs, but also on allegations and recordings made by active NYPD officers who claim that they are forced to abide by a rigidly-enforced quota system.

While the vast majority of NYPD stops do not end as tragically as that of Kimani Gray, an untold number provoke feelings of degradation and humiliation. Nicholas Peart, a plaintiff in the Floyd suit, is a 24 year-old African American public housing resident who took custody of his 12 and 13 year-old brothers, as well as his 20 year-old disabled sister, when his mother died of cancer two years ago. He works for a Harlem-based leadership program for youth. Peart says he has been stopped by police at least five times without cause. The first stop took place at gunpoint, he says, on his 18th birthday. It was August 5, 2006 and Peart had traveled to the Upper West Side to celebrate with family. Around 5AM, he was sitting on a bench with a cousin and out of town friend, when they witnessed a car accident. That's when several police cars pulled up.

"The officers came out with their guns pointed at us," Peart testified. "They demanded that we get down on the ground."

He says he complied in a matter of seconds. A pat-down commenced.

"They patted over my basketball shorts and I was touched," Peart testified. When asked to clarify what he meant, Peart struggled for words.

"You could feel them touching you in the groin area?" Judge Scheindlin asked.

"Yes," Peart replied.

"I was embarrassed," he went on, "...I felt I didn't belong on 96th Street and Broadway, you know," Peart testified, adding, "I felt criminalized."

Following the pat down, Peart was told to stand up. He gave an officer his ID. "Happy birthday," the officer said as he returned it.

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Three days into the trial lawyers for the plaintiffs shifted focus from the NYPD's street stops to the internal incentive structure that allegedly motivates them. Active-duty officer Adhyl Polanco testified that the department's stops are the result of a quota system overseen by supervisors. Police stop-and-frisks are recorded on forms known as UF-250s, or simply 250s. Polanco testified that supervisors put a premium on overall numbers of 250s, arrests and summons, with little regard for anything else.

"There came a point in time in 2009 where they came very hard with the quotas. They call it productivity." Polanco testified. Every day, he and his fellow officers would return from patrol, report to

their platoon commander, “and specifically tell him what we had done for that night.”

”They will never question the quality,” he added. ”They will question the quantity...How we got them, they don’t really care about.”

Polanco began secretly recording these meetings at the Bronx’s 41st precinct, in the summer of 2009. He told the court he did so because he didn’t think people would believe him otherwise. The recordings, which were played in court, reveal senior officers–including two sergeants, an inspector, a lieutenant and three police union delegates–ordering officers to generate specific numbers in a given month. ”They wanted 20 and one,” Polanco said. ”20 summonses and one arrest per month, per officer, at least.”

His superiors were “very clear,” he testified. ”It’s either you do it, it’s non-negotiable, or you’re going to become a Pizza Hut delivery man.”

Polanco said the punishments for falling short of quotas ranged from losing a longtime partner, low evaluation scores, retraining and denial of days off or overtime requests.

”They can make your life very miserable,” he said.

In some cases, officers who failed to meet their supervisors’ expectations would be called to a scene where a young man would be in handcuffs against a wall, he said. The officer would then be ordered to ”either issue the summons, issue the 250, or even arrest the person.”

Polanco testified that in 2009 he was asked more than twenty times to write a 250 attesting to an incident he did not observe. He also said that officers with low numbers might be forced to have superiors accompany them on their rounds–a practice known as "driving the sergeant" or "driving a supervisor." Superior officers would "tell you to go 250 this guy, go summons this guy, go arrest this guy. You have absolutely no discretion."

"We were handcuffing kids for no reason," Polanco testified, adding that "any group of black kids or Hispanic kids" was fair game. "Sometimes they will ask me to summons them. We will ask the supervisor why. And they will say unlawful assembly or something like that."

Testimony from another Bronx police officer, Pedro Serrano, 43, represented the first time he was speaking out publicly. Currently a patrol officer at the NYPD's 40th precinct, which in 2011 recorded the highest number of stops in the borough, Serrano repeated Polanco's claim that supervisors expected officers make one arrest and issue 20 summonses per month. Like Polanco, Serrano began recording roll call meetings, as well as conversations with his supervisors. In one recording played before the court, a voice belonging to his precinct's integrity control officer, according to Serrano, is heard using the phrase, "looking for five," referring to summonses. The phrase "five, five and five" was heard in another recording played for the court. This time the man was identified as a lieutenant.

Serrano testified that failing to meet the precinct's quotas translated in low evaluation marks. From 2010 to 2011, his scores dropped in every evaluation category. In 2012, he recorded more

arrests and summonses, he testified, but his evaluations stayed the same because he performed only two stop-and-frisks for the entire year.

His supervisor, Captain Martine Materasso, explained that half of his score was based on “arrests, 250s, and the summonses,” Serrano testified, adding that he “immediately responded that that was a quota and that it wasn′t written anywhere.″ Materasso leaned back in her chair, smiled and responded, ″I can do that.″

Attorneys for the plaintiffs displayed NYPD Operations Order 52, used by Materasso to justify Serrano’s grade. ″Department managers can and must set performance goals,″ it read. Asked how he interpreted the order, Serrano said, ″It says ′Quota, quota, quota, quota and quota.′″

In a different conversation recorded by Serrano, Deputy Inspector Christopher McCormack told him that robberties in the precinct were on the rise, adding ″We′re still one of the most violent commands in the city.″ McCormack told Serrano that in such a violent neighborhood, carrying out just two 250s in a year was “not fair to the public.” Officers must zero in on ″the right people, at the right time, at the right location,″ McCormack added.

″What am I supposed to do?” Serrano eventually asked his commanding officer. “Is it stop every black and Hispanic?″

After more back and forth, McCormick told him, ″I told you at roll call, and I have no problem telling you this, male blacks 14 to 20, 21.″

For Serrano, a Latino father of four, the idea of targeting individuals based on their age, race and geographic location does not sit well. "It's very simple," he testified. "I have children. I try to be a decent person," he said. Serrano then began to choke up on the witness stand. Fighting back tears, the officer paused.

"As a Hispanic, walking around in the Bronx, I have been stopped many times," Serrano said. "It's not a good feeling. I promised as an officer I would respect everyone to my abilities. I just want to do the right thing. That's all."

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Two days after Serrano's testimony—and the day after Kimani Gray's funeral—activists visited the East Flatbush home where Gray was shot. They chanted at police who were present, shared a moment of silence and eventually moved on to demonstrate at the 67th precinct.

Across the street, a half dozen teenage African American boys, dressed in hooded sweatshirts and low-slung pants, looked on. As the protesters prepared to leave, a black car with two men in the front seats pulled forward. The vehicle stopped in front of the group. A white man with short hair sitting in the front passenger seat noticed one of the boys. Gesturing at one of the teenagers, the man smiled and said "Hey."

"Hey," a 19-year-old who asked to be identified as Brad replied. While they exchanged pleasantries it was clear their relationship was not rooted in friendship.

"I'll see you later," the man in the car said, pointing and smiling as the vehicle pulled away. As the car drove off, Brad put his hand to his head like a telephone. "Call me," he said sarcastically.

The men were plainclothes police officers, Brad and his friends said. If a reporter had not been present or if at had been at night, they said the officers may have gotten out of the car. "At night they would've jumped out on us," one of the teens said. His friend agreed, "At night they do everything."

Available at http://www.thenation.com/article/we-were-handcuffing-kids-no-reason-stop-and-frisk-goes-trial/

MARCH 27, 2013 **The New Yorker**

THE STOP-AND-FRISK CHALLENGE

BY MATTHEW MCKNIGHT

Fighting crime in New York City—like in any large metropolis—comes with many challenges. There are more than eight million residents in the five boroughs, and many hundreds of thousands more people travel to and through the city each day. In contrast, the police department employs only about thirty-four thousand uniformed officers. A department so outnumbered is bound to make mistakes—crimes go unsolved, innocent people are falsely accused, criminals remain unpunished.

And while many New Yorkers conduct their days without interference from police officers, the relationship between law enforcement and communities that the N.Y.P.D. has determined contain high concentrations of crime—thus requiring a heightened police presence—is a complicated, quarrelsome one. In Brooklyn's East Flatbush neighborhood, demonstrations that have been alternately prayerful and violent continue two weeks after two officers fatally shot sixteen-year-old Kimani Gray, who they contend drew his gun first. While the investigation into Gray's killing continues, and while his family and the community work through their grief, the policy that arguably led indirectly to his death—a policy that Police Commissioner Raymond Kelly and Mayor Michael Bloomberg have vigorously enforced and defended—is facing a serious challenge in court.

The plaintiffs in Floyd v. City of New York, a class-action lawsuit regarding the N.Y.P.D.'s stop-and-frisk practices that went to trial last week, contend that stop-and-frisk practices violate the Fourth Amendment's prohibition against unreasonable searches and seizures and the Equal Protection Clause of the Fourteenth Amendment. But that's the legal wording. In a press briefing a few days before the trial began, David Ourlicht, one of the four named plaintiffs, put the violations he feels into more everyday terms:

> I don't [want to] have to walk outside and have that thought in the back of my mind: "This time will they shoot me or will I get beat up? Will I go to jail for something I didn't do?" I want to be able to move on and not have to feel that. I don't want my friends to have to feel that anymore. I don't want my—when I have kids, I don't want them to feel that.

American history brims with reasons why some citizens must fight harder than others to have a fair shot: economic inequality, political maneuvering, unfair policies, simple and single-minded discrimination. Thankfully, there are also stories of redress in our past. The Floyd case may never reach the stature of 1954's Brown v. Board of Education, but if the plaintiffs are successful, it would be a major step in addressing all-too-legitimate grievances that minority communities have against big-city law-enforcement agencies. Perhaps the most striking feature of this case is that, unlike other attempts to end discriminatory policing through the court system, Floyd stands a good chance of succeeding.

In two rulings issued last May, Federal District Court Judge Shira Scheindlin moved the case beyond the point at which racial-profiling claims like this one typically get stalled. To get any lawsuit heard in court, a plaintiff must establish that they have standing—that is, they must show that they have suffered an actual injury, whether physical, mental, financial, or otherwise. If the plaintiffs in this case had been seeking only monetary damages, ordinary standing would have been enough. But in a 1982 case, Los Angeles v. Lyons, the Supreme Court set a higher standard for anyone who sought to use the court system to force a change in police tactics. That case focussed on a man named Adolph Lyons, who was stopped for a traffic violation by officers who, without provocation, put him in a choke-hold. In its decision, the Court said that Lyons could sue for financial compensation but that he did not have standing to seek an injunction that would force L.A.'s police to stop using the hold, and that in order to establish standing, he'd have to "establish a real and immediate threat" that the same thing would happen again—not just to anyone, but to him specifically. It's on these grounds that other, similar suits have failed, and New York tried to bring Floyd to an end in the same way. But stop-and-frisk is different: because it is so pervasive in areas of the city, so likely to happen to those who look a certain way, the program itself may end up being its own undoing. "The simplest way to address the defendants' concern [about standing]," Scheindlin wrote in her ruling (http://ccrjustice.org/files/5-16-12%20Floyd%20Class%20Cert%20Opinion%20and%20Order.pdf), "is by noting that David Ourlicht, the fourth plaintiff, indisputably does have standing…" as he was stopped "three times in 2008 and once again in 2010, after this lawsuit was filed." Moreover, as Scheindlin continued, "the police department has conducted over 2.8 million stops over six years and its paperwork indicates that, *at the very least*, 60,000 of the stops were unconstitutional (because they were based on nothing more than a person's 'furtive movement')." (The italics are Scheindlin's.) And because Scheindlin saw Ourlicht as having standing, all the other plaintiffs—named and unnamed—automatically have it as well, as part of the class bringing the lawsuit.

The city argues that, despite these figures—and in contrast to data that the plaintiffs' attorneys will present about the discriminatory effect of stop-and-frisk—there is not enough of a "disparate impact" on minority communities to constitute a "discriminatory purpose." It will say that the N.Y.P.D. justifiably sends more personnel into black and Latino neighborhoods, that the officers go where the crime is. And it will point to the "Stop, Question and Frisk Report Worksheet," which officers are required to fill out after

they stop someone, as a way of legitimizing their actions—and hedge against any claim of unlawful racial profiling. The forms include choices like "fits description," "furtive movements," and "wearing clothes/disguises commonly used in commission of crime" as reasons for a stop.

Justifications like these have been enough for a court to consider a stop constitutionally permissible, even if the real motivation was race, based on a precedent set in a 1996 Supreme Court decision. The Court took up a case in which Michael Whren and James Brown claimed unreasonable search and seizure (http://www.law.cornell.edu/supct/html/95-5841.ZO.html) during a traffic stop by Washington, D.C., officers. When the two were stopped for a legitimate traffic violation, one of the officers saw that Whren was in possession of crack cocaine, resulting in federal drug charges for the two. The legal dispute arose when the plaintiffs contended that the officers used the traffic violation as a pretext to conduct a search motivated by race. The Court unanimously ruled the search permissible, saying that, because the officers had probable cause to stop Whren and Brown, their reasons for doing so did not matter. Writing for the Court, Justice Scalia said, "the Fourth Amendment (http://www.law.cornell.edu/supct-cgi/get-const?billofrights.html#amendmentiv)'s concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." (Italics in the original.) In New York City, the combination of the Whren decision and the justifications for stop-and-frisk encouraged by the N.Y.P.D. has left communities with legitimate suspicions of and reasons to fear law enforcement less protected, not more. Floyd might be a step toward addressing that, toward resetting the balance of power between citizens and the police who are supposed to serve them.

In a 2007 *Yale Law Journal* article, Eric F. Citron argued for a different understanding of the language of the Fourth Amendment than the one established by Whren and its successors—an understanding that "places a decreased emphasis on the rights of individual citizens and focuses instead on the responsibilities of the actors who wield the state's powers of investigation and enforcement." "The language of individual privacy rights," he continues, "directs our attention away from a more general skepticism of an unbridled police that ought to animate our interpretation of the Fourth Amendment."

A case like Floyd is an opportunity for the country to reconsider that interpretation. But there are realities that work against the plaintiffs' case. New York City is safer than it was even ten years ago, and it is now the safest big city in the country. The rates of murder and other violent crimes in the city have steeply declined. Though there is no clear answer for why that has happened, it is likely that, even if it is not the major factor that Mayor Bloomberg and Commissioner Kelly claim, the stop-and-frisk program has been successful in at least some capacity. It may be difficult to argue with demonstrable reductions in crime, but a case like Floyd, as Judge Scheindlin has shown in her rulings up to this point, requires a finer look at law-enforcement policies and how they affect whole communities. There's a larger cost to a program like stop-and-frisk. If the N.Y.P.D. is bolstered by a

court ruling in its favor, who could blame David Ourlicht for not wanting to raise the children he might one day have in the city that results? The Mayor and the Police Commissioner may justify their actions—both publicly and to themselves—by saying they're keeping their citizens safer, but they should, at some point, have to offer the people they represent some basic empathy, too.

Above: Teen-agers are stopped by police in the Melrose neighborhood of the Bronx. Photograph by Nina Berman/Noor, from her series documenting stop-and-frisk procedures.

Matthew McKnight is a Web producer at newyorker.com.

METRO EXCLUSIVE

Shooting victim's family begs de Blasio: 'We need stop-and-frisk'

By Aaron Feis, Jennifer Bain, Aaron Short and Laura Italiano

May 31, 2015 | 7:15am

Photo: AP

A surge in New York City murders — including four people slain in just five bloody hours as the weekend began — has grieving family members begging Mayor de Blasio to bring back the NYPD's right to search for guns.

"We need stop-and-frisk," Stacey Calhoun, the devastated uncle of one of the four fatalities, said Saturday afternoon, tears filling his eyes over the nephew he had just lost.

Jahhad Marshall — a charismatic 23-year-old with a promising future as a chef — had died of a stray bullet to his back early that morning outside the Queensbridge Houses in Long Island City, police said.

"Somebody has to put their foot down," the anguished uncle said.

"A lot of people would agree with stop-and-frisk if it's for the safety among us," he said.

"They used to fight with their hands, he said. "It seems like all these kids have guns these days."

Marshall — apparently an innocent bystander to a pre-dawn playground shootout — was one of four fatalities in The Bronx, Queens and Brooklyn from Friday night into Saturday, bloodshed that began in The Bronx at 11:20 p.m. when a gunman fatally blasted Joel Rivera, 23, multiple times in the neck outside his home on Andrews Avenue.

Less than two hours later in the South Bronx, officers responding to a 911 call at East 143rd Street and Third Avenue found a 22-year-old man mortally wounded with multiple stab wounds.

Marshall was fatally shot at about 2:35 a.m. at the Queensbridge Houses, while an 18-year-old man and a 29-year-old woman received non-fatal gunshot wounds in the same hail of gunfire.

The fourth fatality was at the Marcus Garvey Houses in Brownsville, where a 40-year-old man was shot just before 4 a.m.

"It's scary how many guns are out here now," said a resident of the Brownsville project, who gave her name as Ann and her age as 72.

"They shouldn't just stop and frisk any of our young black men — but they need to do something about these guns," she said.

As another woman at the Marcus Garvey Houses said of stop-and-frisk, "They need to target it. With all these shootings, people getting killed, do it, but stop and frisk the guys you know from experience might have a gun, and not some kid who's trying to better his life and get out of here."

Stacey Calhoun holds a picture of his nephew, Jahrad Marshall, who was shot and killed.

Photo: William Miller

The carnage is just the latest in a string of murders and shoogings, which have been way up citywide this year over last year.

There were 133 murders between January 1 and May 30 this year, up 17.7 percent from the previous year, according to police statistics.

Shootings were up 7.7 percent over the same period — 434 this year as opposed to 403 last year.

Yet Mayor de Blasio gave the blandest of responses when asked by reporters Saturday about the previous night's four fresh corpses, ing which, as of Saturday night, all the killers remained at large.

"We are continuing to update our strategies," answered de Blasio, who has made banning stop-and-frisk a cornerstone of his administration.

"We saw this about the same time last year," the mayor said.

"We had a spike that we had to deal with, but we pushed it back," he said optimistically.

"We had real concerns, legitimate concerns last spring and we ended up with the best year on record in a generation in terms of lowering murder and lowering crime."

Overall, crime is down over last year, and the violence is "first and foremost a gang problem," the mayor said.

Jahhad Marshall

Photo: G.N. Miller

Available at http://nypost.com/2015/05/31/new-yorkers-plead-for-stop-and-frisk-amid-murder-surge/

EXCLUSIVE: NYC stop-and-frisk plunges as crime climbs

By Rocco Parascandola, Kerry Burke, Larry McShane
New York Daily News Friday, June 5, 2013

A dramatic drop in stop-and-frisk encounters has emboldened criminals and made cops more reluctant to take proactive police action, even as murders and shootings are on the rise in the city.

The frightening message — echoed by police supervisors and union leaders — comes as stop-and-frisk encounters are on pace to plunge by 42% this year, with 20,000 fewer street stops.

There were 11,652 stops across the city through June 3 — projecting to roughly 28,000 for the year, records obtained by the Daily News show. As the number of stops fell, the number of murders spiked 19.5% during the first five months of the year, the number of people shot is up 9.2% and the number of shooting incidents jumped 9%.

“What you’re seeing now are the perps carrying their guns because they’re not afraid to carry them,” said Ed Mullins, head of the Sergeants Benevolent Association. “We’ve created an atmosphere where we’ve handcuffed the police. We are sitting back, taking a less proactive approach.”

Stop-and-frisk activists say criminals are no longer afraid to carry guns because cops are afraid to make stops.

(Joe Marino for New York Daily News)

Mullins said the city’s criminal element has been operating without fear while cops have been somewhat neutered

in the last two years — and he wasn't the only one to raise the issue.

"Based on this year's drop . . . absent any other factor, you have to ask the question: Are the cops now reluctant to engage?" wondered one high-ranking police source.

Critics of the NYPD told The News there was no correlation between the two sets of numbers — while stop-and-frisk supporters said the lower frisk numbers led to the higher crime figures.

City cops, citing increased scrutiny from the NYPD's inspector general, the state attorney general and City Hall, say the cutback on stops is about self-preservation.

Top cop Bill Bratton said he wants police officers to make quality stops.

(Susan Watts/New York Daily News)

"Everyone is afraid to make stops," said one Brooklyn police supervisor. "No one wants to get jammed up. They're telling us the stops have to be quality stops. But if you make a stop, and you think it's a good one, and the guy has nothing on him, is that a good stop?"

Police Commissioner Bill Bratton has said he wants quality stops, not quantity, more police on the streets, and targeted, focused enforcement on known bad guys.

A Bronx officer said the message from City Hall was loud and clear to the rank and file.

“The guys I talk to all feel the same way: De Blasio doesn’t want stops,” the cop said Thursday. “The perps know what we’re doing. We’re not stopping as many people as we used to.”

In 2014, the first year of Mayor de Blasio’s administration, the number of stops was 47,412. The first-term mayor ran his campaign as a staunch critic of the Bloomberg administration’s policing policies.

In 2011, the NYPD conducted a record 694,482 stops — a number that has declined every year since.

But so has the city’s murder rate, dropping from 515 in 2011 to 419 the next year, 335 in 2013 and 333 last year.

Christopher Dunn, assistant legal director for the New York Civil Liberties Union, said history showed stop-and-frisks had no effect on crime data.

“We know from 25 years of NYPD data, including last year’s record low number of murders and record low number of stops, that reducing stops does not lead to more murders,” Dunn said. “The recent spike in shootings is troubling, but ramping up stops will do little more than further damage police-community relations.”

Available at http://www.nydailynews.com/new-york/nyc-crime/exclusive-big-fall-stop-and-frisk-criminals-bolder-article-1.2247406

The Washington Post

Opinions

Michael Bloomberg: 'Stop and frisk' keeps New York safe

By Michael R. Bloomberg August 18, 2013

Michael R. Bloomberg is mayor of New York.

New York is the safest big city in the nation, and our crime reductions have been steeper than any other big city's. For instance, if New York City had the murder rate of Washington, D.C., 761 more New Yorkers would have been killed last year. If our murder rate had mirrored the District's over the course of my time as mayor, 21,651 more people would have been killed. That's more than Georgetown University's student body, faculty and administrative staff.

Based on crime data, we know that more than 90 percent of those 21,651 individuals would have been black and Hispanic. Some of them would have been children.

But even one murder is too many, and last year New York City had 419. The Post never published an editorial lamenting the loss of those innocent lives. Nor has The Post published an editorial at any point during my 11½ years as mayor about the crime in our city's minority neighborhoods and its toll on innocent people. When our police officers were gunned down in the line of duty, there were no Post editorials about the lives and liberties they died protecting — nor about their sacrifice.

And yet this month, in two separate editorials, The Post lectured our police department about protecting the civil liberties of New Yorkers. The Post swallowed — hook, line and sinker — the attack leveled on the New York Police Department's (NYPD) practice of stopping, questioning and frisking by an ideologically driven federal judge who has a history of ruling against the police.

This judge ruled that our police officers on patrol — a majority of whom are black, Hispanic and other minorities — engaged in "indirect racial profiling." Never once in the judge's 197-page opinion did she mention the lives that have been saved because of the stops those officers made. Instead, throughout the recent trial, she showed disdain for our police officers and the dangerous work they do.

The men and women who protect our city from criminals and terrorists deserve better than to have their integrity impugned, in a courtroom or a newspaper, especially when the facts are so clearly on their side.

Here are the facts: In 2004, I signed a law banning racial profiling. Police Commissioner Ray Kelly and I have zero tolerance for it. We have worked hard to strengthen police-community relations, which are better today than at any point since the 1960s. Part of that work has involved giving black and Latino community leaders what they demand and deserve: a stronger police presence.

Unlike many cities, where wealthy areas get special treatment, the NYPD targets its manpower to the areas that suffer the highest crime levels. Ninety percent of all people killed in our city — and 90 percent of all those who commit the murders and other violent crimes — are black and Hispanic. It is shameful that so many elected officials and editorial writers have been largely silent on these facts.

Instead, they have argued that police stops are discriminatory because they do not reflect the city's overall census numbers. By that flawed logic, our police officers would stop women as often as men and senior citizens as often as young people. To do so would be a colossal misdirection of resources and would take the core elements of police work — targeting high-crime neighborhoods and identifying suspects based on evidence — out of crime-fighting. The absurd result of such a strategy would be far more crimes committed against black and Latino New Yorkers. When it comes to policing, political correctness is deadly.

That the proportion of stops generally reflects our crime numbers does not mean, as the judge wrongly concluded, that the police are engaged in racial profiling; it means they are stopping people in those communities who fit descriptions of suspects or are engaged in suspicious activity.

As a black Brooklyn detective with nearly 20 years on the job recently told the Daily News, "Stop-and-frisk is never about race. It's about behavior." If an officer sees someone acting in a manner that suggests a crime is afoot, he or she has an obligation to stop and question that person. That's Policing 101, and it's practiced all over the country. The difference is that in New York — unlike in many other cities — police officers are required to fill out a form every time they make a stop, identifying why the stop was made and the race of the person.

Of the 24 million interactions that New York police officers have with the public each year, about 500,000 — or 2 percent — involve a stop. The average officer on patrol makes about one stop every two weeks, hardly an excessive number.

Amazingly, out of several million stops that have happened over the past decade, the advocates who brought the case

could identify only 19 stops that they believe were unjustified — and the judge disagreed with them on a majority of even those handpicked cases, finding that 10 of the 19 stops were in fact justified, even though they did not lead to an arrest. By doing so, the judge acknowledged that stops that do not end in arrest are often legitimate; those scoping out a robbery, or lying in wait of a potential victim, can be stopped and deterred even if they cannot be arrested.

Nevertheless, the judge used a questionable analysis of police officers' paperwork, which found that only 6 percent of stops were unjustified, as a basis for imposing a court-appointed monitor to oversee the NYPD's practice of stop-question-frisk, as well as to mandate specific programmatic changes to policing, even though she has no experience in policing.

Her decision was hardly a surprise. Even before the case began, as media have reported, the judge offered strategic advice to the plaintiffs about how to file the lawsuit in a way that would ensure she heard it, rather than another judge. Blind justice gave way to brazen activism.

Every American has a right to walk down the street without being targeted by the police because of his or her race or ethnicity. At the same time, every American has a right to walk down the street without getting mugged or killed. Both are civil liberties — and we in New York are fully committed to protecting both equally, even when others are not.

Available at https://www.washingtonpost.com/opinions/michael-bloomberg-stop-and-frisk-keeps-new-york-safe/2013/08/18/8d4cd8c4-06cf-11e3-9259-e2aafe5a5f84_story.html

Stop-and-Frisk Protects Minorities

By MICHAEL BARONE
National Review August 23, 2013

New York City seems on the verge of making the same mistake that Detroit made 40 years ago. The mistake is to abolish the NYPD practice referred to as stop-and-frisk. It's more accurately called stop, question, and frisk. People were stopped and questioned 4.4 million times between 2004 and 2012. But the large majority were not frisked.

The effectiveness of this police practice, initiated by Mayor Rudy Giuliani in 1994 and continued by Mayor Michael Bloomberg, is not in doubt. The number of homicides — the most accurately measured crime — in New York fell from a peak of 2,605 in 1990 to 952 in 2001, Giuliani's last year in office, to just 414 in 2012.

Nevertheless, the three leading Democratic mayoral candidates in the city's September primary all have pledged to end stop-and-frisk. And last week, federal judge Shira Scheindlin, in a lawsuit brought by 19 men who have been stopped and frisked, found that the practice is unconstitutional and racially discriminatory.

Bloomberg has promised to appeal, and several of Scheindlin's decisions in high-profile cases have been reversed. But the leading Democratic candidates for mayor promise, if elected, to drop the appeal. The two leading Republican candidates support stop-and-frisk, but their chances of election seem dim in a city that voted 81 percent for Barack Obama in 2012.

What riles opponents of stop-and-frisk is that a high proportion of those stopped are young black and Hispanic males. Many innocent people undoubtedly and understandably resent being subjected to this practice. No one likes to be frisked, including the thousands of airline passengers who are every day. But young black and, to a lesser extent, Hispanic males are far, far more likely than others to commit (and be victims of) violent crimes, as Bloomberg points out. I take no pleasure in reporting that fact and wish it weren't so.

This was recognized by, among others, Jesse Jackson, who in 1993 said, "There is nothing more painful for me at this stage in my life than to walk down the street and hear footsteps and start to think about robbery and then look around and see it's somebody white and feel relieved."

You can get an idea about what could happen in New York by comparing it with Chicago, where there were 532 homicides in 2012. That's more than in New York, even though New York's population is three times as large. One Chicagoan who supports stop-and-frisk is the father of Hadiya Pendleton, the 15-year-old girl shot down a week after singing at Barack Obama's second inauguration. "If it's already working, why take it away?" he told the *New York Post*. "If that was possible in Chicago, maybe our daughter would be alive."

Chicago and New York both have tough gun-control laws. But bad guys can easily get guns in both cities. The difference, as the *New York Daily News*'s James Warren has pointed out, is that frequent stop-and-frisks combined with mandatory three-year sentences for illegal possession of a gun mean that bad guys in New York don't take them out on the street much. Stop-and-frisk makes effective the otherwise ineffective gun control that Bloomberg so strongly supports.

An extreme case of what happens when a city ends stop-and-frisk is Detroit. Coleman Young, the city's first black mayor, did so immediately after winning the first of five elections in 1973. In short order Detroit became America's murder capital. Its population fell from 1.5 million to 1 million between 1970 and 1990. Crime has abated somewhat since the Young years, but the city's population fell to 713,000 in 2010 — just over half what it was when Young took office.

People with jobs and families — first whites, then blacks — fled to the suburbs or farther afield. Those left were mostly poor, underemployed, in too many cases criminal — and not taxpayers. As a result, the city government went bankrupt last month.

New York has strengths Detroit always lacked. But it is not impervious to decline. After Mayor John Lindsay ended tough police practices, the city's population fell from 7.9 million in 1970 to 7.1 million in 1980.

Those who decry stop-and-frisk as racially discriminatory should remember who is hurt most by violent crime — law-abiding residents of high-crime neighborhoods, most of them black and Hispanic, people like Hadiya Pendleton.

— *Michael Barone is senior political analyst for the* Washington Examiner*.*

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