G3
The New Jim Crow vs. The New Jane Crow

Session Outline

1) Introductions and Context of the Discussion

2) The Current State of Child Welfare (racial disparities)

3) The Rise of Criminal Justice Reform

4) Racial Challenges in Criminal Justice (Floyd v. State of New York)

5) Parallels between the Criminal Legal System and the Child Welfare System

6) Differences between the Criminal Legal System and the Child Welfare System

7) Proposed Solutions/Best Practices
Training on ACS Investigations
Calls to the State Central Register (SCR)

What Happens:

• ACS begins an investigation w/in 24hrs
• Investigations last 60 days
During the Investigation

ACS will make contact with:

• Family being investigated (including parents, children and anyone else residing or frequenting in the home)
• School, daycare or anyone else caring for the children
• Doctors, therapists, anyone else treating the children (or parents)
• Neighbors, Landlord, Super etc
• Family members (on both sides of the family)
Parents’ Rights During Investigation (reality to be discussed later)

- Parents have the right to refuse ACS into the home (even if the police are present)
- Parents have the right to refuse ACS interview their children
- Parents have the right to be present during the interview with the children
- Parents have the right to refuse ACS’ request that their child remove their clothes to check for marks and bruises, etc
- Parents have the right to refuse to sign medical, educational and other releases
- Parents have the right to refuse to any and all services requested by ACS
- Parents have the right to refuse to have their children seen by a doctor; by SVU; by a child abuse doctor; by a sex abuse doctor; at the Child Advocacy Center (CAC). And parents should NEVER allow their children to be seen at the CAC w/o first speaking with a lawyer
- Parents have the right to raise a child however the heck they want w/o interference of the government. And ACS cannot interfere in that regard
- Parents have the right NOT to go a conference at ACS’ office
- Parents have the right to refuse all services for themselves and for their children
Reality of ACS Investigations

• ACS will try everything to get into the family’s home
• Police, Supervisor and threats of removal
• Entry Order (rarely happens) (law = ACS has right to see kids. The law does not say where)
• ACS can remove kids from school
• ACS is allowed to go a child’s school and interview them there w/o obtaining the parents’ permission first (unless the parents give school a letter affirmatively denying ACS or anyone else the permission to do so)
• When the call to the SCR comes from a mandated reporter ACS is very likely to remove the child(ren) and do an “investigation” later
• ACS will direct (boss) a parent to take a drug test, a parenting class, take a mental health evaluation, engage in therapy, enroll their children in services; move out of their home, enter a homeless shelter, terminate a relationship with their spouse, partner or significant other, obtain an order of protection, agree to preventative services (none of these are obligatory and a parent has the right to refuse all services)
What a parent should do when ACS knocks on the door

#1 Do **NOT** answer the door
#2 Do **NOT** speak through the door
#3 Do **NOT** get nervous if ACS leaves and comes back with the NYPD
#4 Do **NOT** get nervous if ACS threatens to remove your children
#5 Remain quiet and wait for ACS to put a letter under the door
#6 Call/text the Bronx Defenders hotline (347) 778-1266 and let them know that ACS is at your door; or call/text Make the Road NY hotline (347) 687-2550
#7 Begin to obtain positive support letters from teachers, school officials, daycare, pediatricians, therapists, etc
#8 Parents should NOT go to an ACS conference (‘Child Safety Conference – CSC) without having an advocate (of their own choosing) with them and ideally having spoken with a lawyer first
#9 Parents do NOT need to go for drug tests or any services
#10 When by ACS to do something, a parent should say “I am willing to do X, but my lawyer told me that I need to speak with them before I can agree to anything.”
What is considered maltreatment, neglect and/or abuse?

- Everything and anything
- Excessive corporal punishment (objects, leave a mark, more than 1x)
- Home alone (under 12 or has a disability)
- Domestic violence (generally children have to be present)
- Drug Use (use + must impact children)
- Sex Abuse
- Failure to Protect (from abuse of other parent/caretaker; from witnessing DV)
- Malnourishment
- Dirty home
- Dirty kids
- Medical Neglect (including not getting child to mental health appointments or medication)
- Mental Health (has to be mentally disabled + affects child)
- Cognitive issues
- Abandonment (not visiting child for more than 6 months)
- Educational Neglect
When a child is removed

• ACS has 24 hours (unless it is a Friday or holiday) to seek permission from the Court

• ACS must prove to the Court that the child would be at “imminent risk” of harm in the parents’ care

• The parent is entitled to a hearing called a “1028” hearing. These hearings take precedence over everything else on the court’s calendar and must be scheduled within three days and continue each day until the hearing concludes.

• Every time a child is removed or at risk of removal, a parent has the right to a hearing (either 1027 or 1028 hearing).

• If ACS or anyone other than the custodial parent removes a child from the custodial parent and fails to return the child within 24 hours or seek permission for the removal from Court within 24 hours, then the parent can file a Writ of Habeas Corpus in Family or Supreme Court (the Writ will be treated like a 1028 hearing and has the same level of urgency and legal standard – imminent risk).
ACS administrative investigation v. Court

ACS Investigation

• At the end of ACS’ 60 day investigation the parent(s) are supposed to receive a letter stating whether the investigation was “indicated” or “unfounded”
• If the investigation was “indicated” or “substantiated” or “founded” then the parent will have an ACS “record” until their youngest child in the family turns 28
• Parents are entitled to a Fair Hearing to challenge these findings.
• ACS may not even file a case in court and the parent can still have an ACS record
• The record is sealed except to employers/entities that work with children (e.g., schools, daycares, foster care agencies, etc)
• This record is not available over the internet via a paid website like criminal records
• This record is not available to employers/entities that do not work with children

Court

• The Court case and one’s record with ACS/State are two very different things
• Win or lose in Court and the Court record is sealed, but it has no automatic effect on the record one has with ACS
• One still needs to request a Fair Hearing to challenge their record with ACS, even if the Court case is dropped, dismissed or ends favorably for the parent.
Common Myths

• That you have to let ACS into the home
• That just one parent to a child can have their rights terminated
• That ACS can Order a parent to do something (e.g. take a drug test)
• That a parent loses their rights when ACS removes their child (in fact the parent still has legal custody of that child – meaning they get to make all decisions related the child)
Quiz

• Do parents have to open the door for ACS?
• What if the police are present?
• What is the only circumstance that a parent has to open the door for ACS?
• What should a parent do if ACS knocks on the door and does not have an Entry Order?
• Does a parent have to agree to preventative services?
• Does a parent have to agree to take a drug test?
• What is a CSC?
• What is a CAC?
• Does a parent have to attend either?
• What should a parent do to prevent their child from being interviewed at school by ACS?
• Can a parent have an “indicated” case w/ ACS, but have won their family court case?
• How long does an indicated case remain part of a parent’s record?
• Who has access to the indicated cases?
Children with Traumatic Separation: Information for Professionals

Introduction

The relationship with a parent or primary caregiver is critical to a child’s sense of self, safety, and trust. However, many children experience the loss of a caregiver, either permanently due to death, or for varying amounts of time due to other circumstances. Children may develop posttraumatic responses when separated from their caregiver. The following provides information and suggestions for helping children who experience traumatic separation from a caregiver.

Children and Traumatic Stress

Chronic separation from a caregiver can be extremely overwhelming to a child. Depending on the circumstances and their significance, the child can experience these separations as traumatic. They may be sudden, unexpected, and prolonged, and can be accompanied by additional cumulative stressful events. Situations in which a potentially traumatic separation from the caregiver can occur include:

- Parental incarceration
- Immigration
- Parental deportation
- Parental military deployment
- Termination of parental rights

While this fact sheet addresses traumatic separation between children and caregivers, the information also applies to other traumatic separations such as with siblings or close relatives.

Challenges for Children with Traumatic Separation

Children who develop posttraumatic responses to separation from a caregiver present clinically similar to children who have childhood traumatic grief, a condition that occurs when the circumstances related to the death impinge on the grieving process. However, different challenges are present for children whose caregivers are still alive than for those whose caregivers have died. For example, children with
Children with Traumatic Separation: Information for Professionals

The National Child Traumatic Stress Network

www.NCTSN.org

traumatic separation have valid reasons to hope for a reunion with the caregiver even if that reunion could not happen for many years or at all. Hoping for reunification with the caregiver can complicate the child's ability or desire to adjust to current everyday life and to develop healthy coping strategies.

For some children, the most traumatic aspect of the separation is exposure to frightening events, such as witnessing a parent being handcuffed prior to incarceration; witnessing a caregiver's beating or rape during immigration; or not knowing whether the caregiver is currently safe (as in cases of deportation or deployment).

Often children are separated from their parents and/or siblings when professionals remove them from the home to protect them from an abusive or neglectful parent or from witnessing domestic violence. Children too young to fully understand the danger may perceive the separation from the caregiver as the traumatic experience. Other children may minimize traumatic experiences (e.g., child abuse, domestic violence) that led to the separation; they may identify the separation itself rather than the abuse or violence, as the worst or traumatic aspect of their experience.

Professionals must recognize, assess, and address in treatment both the circumstances under which the separation occurred (e.g., witnessing an arrest) and the underlying cause of the separation (e.g., abuse of the child), regardless of which the child identifies as “worst” or most traumatic.

Oscar, a thirteen year-old boy from Central America, lives with relatives who previously migrated to the United States. His mother had paid an acquaintance to transport him on the long, dangerous journey to these relatives because she feared the prevalence of gangs recruiting teens into drug use, the violence and looting in their town, and the lack of educational opportunities. He experienced harrowing events on the way, including seeing women assaulted and a lack of food and shelter. Once across the border, Oscar was taken into custody and detained for a time. Still fears for his own safety has lost contact with his family, and worries about their safety back home.

**Separation from a Parent: Posttraumatic Responses**

Following a very frightening event, children may develop posttraumatic responses that can include the following:

- Intrusive thoughts
- Nightmares
- Disturbing images of the separation reenacted in play or depicted in art
- Avoiding reminders of what happened, such as people, places, situations, or things associated with the traumatic event
- Negative beliefs about oneself, others, or the event
- Negative changes in mood (e.g., sadness, anger, fear, guilt, shame)
- Changes in behavior (e.g., increased anger, aggressiveness, oppositional behaviors, irritability, sleep problems, withdrawal)
- Self-destructive thoughts, plans, or actions
- Difficulty with thinking, attention, or concentration problems
- Physical symptoms (e.g., stomach aches, headaches)

If a child who has experienced a separation from a caregiver reacts in these ways, the child may be having a traumatic response that can overwhelm his or her ability to cope and can interfere with the child’s self-perception, ability to be with friends, or performance in school. (For more information go to http://www.nctsn.org/trauma-types/traumatic-grief).

In addition to having posttraumatic symptoms related to the separation from the parent, the child may face other challenges:

- **Viewing the absent parent as “all good”:** Placing the absent caregiver in a positive light or as viewing that caregiver as “perfect” may contribute to seeing the current caregiver as “not as good” or to constantly comparing the original and current caregivers. The child may feel the need to choose between caregivers or may feel “split loyalty”—that caring about or loving one caregiver will imply a betrayal of the other. The child may demonstrate devotion to the absent caregiver (so as not to disappoint him or her) by defying the current caregiver (especially when believing the absent person will return). When this occurs, the child may develop significant externalizing behavior problems (e.g., oppositional behavior), have multiple placement disruptions, and may lose the ability to trust—often seen in youth with complex trauma. This sometime rigid view of the “perfect” absent caregiver also can be the source of anger toward the people or system the child feels is responsible for keeping them apart.

**Jasmine is 12 years old. Her mother has been in prison since she was 5, and her aunt became her full time kinship caregiver when she was 8. She visits her mother every other month. Her aunt does everything she can to make her happy. Jasmine is polite, not overly affectionate, and is usually well behaved. However, when her aunt sets limits or restricts her use of screen time, Jasmine gets angry and yells, “You’re not my mother. You can’t tell me what to do. She’s the only one I’ll listen to!”**

- **Minimizing or denying previous traumatic experiences that led to the separation:** Children removed from the caregiver’s care due to caregiver abuse or neglect may minimize or deny these traumatic experiences. They may identify the separation itself as the worst or only traumatic aspect of their experience, rather than events that led to their placement in foster or kinship care. Rather than acknowledging the caregiver’s role in the separation, they may blame a system, other people, or even themselves. These children may have inaccurate information, and very young children may be confused or not understand fully the safety reasons for the removal. Clinicians should be aware of the child’s previous trauma history and address the
separation clinically in the context of other traumatic events, in addition to understanding the child’s thoughts and feelings about the separation.

- **Overly negative beliefs about the absent caregiver:** Children may mistakenly believe that a caregiver’s deportation or his or her medical, psychiatric, or substance abuse problem was the caregiver’s intentional choice to abandon him or her, rather than an illness or a result of circumstances beyond the caregiver’s control. This belief can lead to the child blaming the caregiver, holding on to negative feelings (e.g., sadness, anxiety, anger) and engaging in problematic behaviors (e.g., aggressive or oppositional behavior, self-injury, substance use, running away) in an attempt to cope with those feelings and regain some sense of control of the experience.

- **Negative self-beliefs:** Many children believe that something they did or did not do caused the caregiver to leave. Inaccurate self-blame leads many children to feel bad about themselves or to participate in negative behaviors in order to receive the punishment they may feel they deserve.

- **Emotional distance:** Some children avoid caring about anyone or anything, possibly to keep from being hurt again. In some cases, the child may wish that the absent caregiver never return or act as if the absent caregiver has died. This type of self-protection prevents the child from living in the present, receiving needed support, and experiencing positive relationships. It may lead to shutting down feelings and avoiding people, relationships, and situations that lead to upsetting emotions.

**Helping Children with Traumatic Separation**

Here are tips for working with children experiencing traumatic separation:

- **Guide caregivers on how to talk to children:** Caregivers struggling with how to talk to children affected by traumatic separation can begin by asking the child what he or she believe happened with respect to the separation, and explore what he or she believes will happen in the future. Caregivers help children when they provide honest, age-appropriate information about the separation, to the extent that they know what occurred. As the situation evolves, caregivers can update children as appropriate. At times, the truth includes saying, “I don’t know the answer to that, but when I do I will tell you.” Encourage caregivers to listen to the child’s questions and correct any misinformation or confusion.
■ **Address related traumatic experiences:** When children have experienced traumatic separation due to suspected endangerment (e.g., removal from a situation of abuse or neglect; domestic violence; fleeing a warzone), clinicians need to address not only the separation from the caregiver, but also the traumatic experiences leading to the separation (e.g., the child abuse or neglect; domestic violence; war experiences). Children often need specific guidance during therapy to recognize and process these experiences.

■ **Help child gain mastery over trauma related symptoms:** Although mental health treatment involves helping the child adjust to the separation, it is crucial also to address the child’s related trauma reactions. Help the child gain mastery over his or her trauma-related symptoms through teaching trauma-focused interventions—coping strategies and identifying trauma reminders that may lead to trauma responses—and, ultimately, re-gaining a sense of control.

■ **Suggest ways for the child to maintain connections:** It may help the child to have memorabilia (e.g., pictures, objects from a previous home, a scrapbook) to preserve positive memories of and stay connected to the absent caregiver. Help the current caregiver with his/her feelings about having such reminders available. When visitation is appropriate and allowed, work with the caregiver to determine the best time, place, and way for the child to meet with the person and be available for follow-up.

■ **Coordinate outside resources and referrals:** Due to transitions in living situations, ongoing and longstanding supports may have changed. Review available support systems and people; identify adults at school and at home to whom the child can turn when needing comfort. If the child needs to build and strengthen relationships with peers, consider referring the caregiver for additional help to identify activities or sources of potential friendships. Keep in mind any specific needs that the caregiver indicates.

■ **Monitor the Impact on you:** Take time to consider how working with cases of traumatic separation is affecting you, as a clinician. These can be challenging cases. These children need support, patience, and understanding—and so do you.

■ Help is available for children with traumatic loss. For more information on helping children with traumatic loss go to www.NCTSN.org
Synopsis
Background: African-American and Latino residents filed § 1983 actions alleging that city’s police department’s stop and frisk policy violated their constitutional rights.

Holdings: The District Court, Shira A. Scheindlin, J., held that:

1. public interest would not be harmed by permanent injunction requiring department to cease its practice of making unlawful stops and frisks without reasonable suspicion;

2. appointment of independent monitor was warranted;

3. immediate reforms were required to end department’s constitutional violations;

4. department would be required to institute pilot project in which body-worn cameras would be worn by officers; and

5. department had to adopt formal written policy specifying limited circumstances in which it was legally permissible to stop person on suspicion of trespass.

Ordered accordingly.

West Headnotes (15)

[1] Injunction
Grounds in general; multiple factors

Plaintiffs seeking permanent injunction must demonstrate that: (1) they have suffered irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering balance of hardships between plaintiffs and the defendant, remedy in equity is warranted; and (4) public interest would not be disserved by permanent injunction.

Cases that cite this headnote

[2] Civil Rights
Criminal law enforcement; prisons

Public interest would not be harmed by permanent injunction requiring city police department to cease its practice of making unlawful stops and frisks without reasonable suspicion, despite city’s concern that interference in department’s stop and frisk practices might have detrimental effect on crime control; there was significant evidence that unlawfully aggressive police tactics were not only unnecessary for effective policing, but were in fact detrimental to mission of crime reduction, and public interest in liberty and dignity under Fourth Amendment, and public interest in equality under Fourteenth Amendment trumped whatever modicum of added safety might theoretically have been gained by unconstitutional stops and frisks. U.S.C.A. Const.Amends. 4, 14.

Cases that cite this headnote

[3] Equity
Grounds of jurisdiction in general
Scope of district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

Cases that cite this headnote

[4] **Injunction**
- Specificity, vagueness, overbreadth, and narrowly-tailored relief

It is essence of equity jurisdiction that court issuing injunction is only empowered to grant relief no broader than necessary to cure effects of harm caused by violation.

Cases that cite this headnote

[5] **Civil Rights**
- Criminal law enforcement; prisons

Appointment of independent monitor to oversee reform of city police department’s stop and frisk practices was warranted following entry of permanent injunction after it was determined that those practices violated Fourth Amendment’s prohibition against unreasonable searches and seizures and Fourteenth Amendment’s prohibition against racial discrimination, where city declined to cooperate in joint undertaking to develop remedies ordered by court, and monitor would facilitate early and unbiased detection of non-compliance or barriers to compliance. U.S.C.A. Const.Amends. 4, 14.

2 Cases that cite this headnote

[6] **Civil Rights**
- Criminal law enforcement; prisons

Following entry of permanent injunction against city police department’s stop and frisk policy, immediate reforms required to end department’s constitutional violations included revisions to policies and training materials relating to stop and frisk and to racial profiling, changes to stop and frisk documentation to require separate explanation of why pat-down, frisk, or search was performed and to require officers to provide stopped pedestrians with stated reasons for stop, and development of improved system for monitoring, supervision, and discipline, where current training materials indicated that presence of wallet, cell phone, or pen could justify frisk, officers targeted young black and Hispanic males for stops based on appearance of those groups in crime complaints, and current documentation consisted mainly of checkboxes that officers could and often did check by rote, thus facilitating post-hoc justifications for stops. U.S.C.A. Const.Amends. 4, 14.

4 Cases that cite this headnote

[7] **Arrest**
- Reasonableness; reason or founded suspicion, etc

In order to conduct stop, police officer must have individualized, reasonable suspicion that person stopped has committed, is committing, or is about to commit crime. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[8] **Arrest**
- Justification for pat-down search

To proceed from stop to frisk, police officer must reasonably suspect that person stopped is armed and dangerous. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote
Justification for pat-down search

Arrest

Duration of detention and extent or conduct of investigation or frisk

Purpose of frisk incident to investigatory stop is not to discover evidence of crime, but to allow officer to pursue his investigation without fear of violence, and thus frisk must be strictly limited to whatever is necessary to uncover weapons that could harm officer or others nearby. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[10] Arrest

Duration of detention and extent or conduct of investigation or frisk

When officer lawfully pats down suspect’s outer clothing and feels object whose contour or mass makes its identity as contraband immediately apparent, officer may seize contraband. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote


Duration of detention and extent or conduct of investigation or frisk

If, in conducting frisk during investigatory stop, officer reasonably suspects that felt object in suspect’s clothing is weapon, then officer may take whatever action is necessary to examine object and protect himself, including removing object from stopped person’s clothing. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[12] Arrest

Grounds for Stop or Investigation

Arrest

Profiling

Race may only be considered in targeting individuals for investigatory stop where stop is based on specific and reliable suspect description. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[13] Civil Rights

Criminal law enforcement; prisons

Following entry of permanent injunction against city police department’s stop and frisk policy, department would be required to institute pilot project in which body-worn cameras would be worn for one-year period by officers on patrol in one precinct per borough with highest number of stops; video recordings would provide contemporaneous, objective record of stops and frisks, allowing for review of officer conduct by supervisors and courts, knowledge that exchange was being recorded would encourage lawful and respectful interactions on part of both parties, and recordings would diminish sense on part of those who filed complaints that it was their word against police, and that authorities were more likely to believe police.

2 Cases that cite this headnote

[14] Civil Rights

Criminal law enforcement; prisons

Implementation of joint remedial process for developing supplemental reforms to bring city police department’s stop and frisk policy into compliance with Fourth and Fourteenth Amendments was warranted following entry of permanent injunction. U.S.C.A. Const.Amends. 4, 14.

2 Cases that cite this headnote
Civil Rights

Criminal law enforcement; prisons

City police department whose practice of stopping and frisking residents of private residential apartment buildings had been found to violate Fourth Amendment was required to adopt formal written policy specifying limited circumstances in which it was legally permissible to stop person outside building on suspicion of trespass. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

Attorneys and Law Firms


OPINION AND ORDER

SHIRA A. SCHEINDLIN, District Judge:

I. INTRODUCTION

In an Opinion issued today I found the City of New York liable in the Floyd case for violating the Fourth and Fourteenth Amendment rights of the plaintiff class because of the way the New York City Police Department (“NYPD”) has conducted stops and frisks over the past decade (the “Liability Opinion”). In an Opinion issued in January 2013, I found that the Ligon plaintiffs, representing a putative class of people stopped outside buildings participating in the Trespass Affidavit Program (“TAP”) in the Bronx, were entitled to preliminary injunctive relief based on violations of their Fourth Amendment rights.

The purpose of this Opinion (the “Remedies Opinion”) is to determine what remedies are appropriate in these cases. I address both cases in one Opinion because the remedies necessarily overlap. Each requires that the NYPD reform practices and policies related to stop and frisk to conform with the requirements of the United States Constitution. I stress, at the outset, that the remedies imposed in this Opinion are as narrow and targeted as possible. To be very clear: I am not ordering an end to the practice of stop and frisk. The purpose of the remedies addressed in this Opinion is to ensure that the practice is carried out in a manner that protects the rights and liberties of all New Yorkers, while still providing much needed police protection.

II. REMEDIES IN FLOYD

A. The Court Has the Power to Order Broad Equitable Relief

1. Plaintiffs Satisfied the Requirements for a Permanent Injunction

*672 Plaintiffs seeking a permanent injunction must demonstrate: (1) that they have suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the *672 plaintiffs and the defendant, a remedy
in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. Plaintiffs may satisfy the first two factors by demonstrating that they are likely to be deprived of their constitutional rights in the future by the acts they seek to have enjoined. The evidence discussed in the Liability Opinion shows that plaintiffs have suffered violations of their Fourth and Fourteenth Amendment rights, and that the prevalence of the practices leading to those violations creates a likelihood of future injury. Thus, plaintiffs have satisfied the first two requirements for obtaining permanent injunctive relief.

The balance of hardships tilts strongly in favor of granting a permanent injunction in Floyd. That is, the burden on the plaintiff class of continued unconstitutional stops and frisks far outweighs the administrative hardships that the NYPD will face in correcting its unconstitutional practices.

The right to physical liberty has long been at the core of our nation’s commitment to respecting the autonomy and dignity of each person: “No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

Ensuring that people are not seized and searched by the police on the streets of New York City without a legal basis is an important interest meriting judicial protection.

Eliminating the threat that blacks and Hispanics will be targeted for stops and frisks is also an important interest. In addition to the significant intrusion on liberty that results from any stop, increased contact with the police leads to increased opportunities for arrest, even when the reason for the arrest was not the reason for the stop. As a result, targeting racially defined groups for stops—even when there is reasonable suspicion—perpetuates the stubborn racial disparities in our criminal justice system.

Although the costs of complying with the permanent injunction in Floyd will be significant, they are clearly outweighed by the urgent need to curb the constitutional abuses described in the Liability Opinion.

With regard to the public interest, the City has expressed concern that interference in the NYPD’s stop and frisk practices may have a detrimental effect on crime control. However, as previously noted, I am not ordering an end to stop and frisk. Moreover, it has been widely reported that as the number of recorded stops has decreased over the past year, the crime rate has continued to fall. The United States Department of Justice (“DOJ”)

has pointed out that “there is significant evidence that unlawfully aggressive police tactics are not only unnecessary for effective policing, but are in fact detrimental to the mission of crime reduction.” By strictly adhering to the rule of law, the NYPD will achieve greater cooperation between police officers and the communities they serve. Fostering trust in the police will “promote, rather than hinder, [the] NYPD’s mission of safely and effectively fighting crime.”

Furthermore, as in Ligon, it is “‘clear and plain’ ” that the public interest in liberty and dignity under the Fourth Amendment, and the public interest in equality under the Fourteenth Amendment, trumps whatever modicum of added safety might theoretically be gained by the NYPD making unconstitutional stops and frisks. This Opinion does not call for the NYPD to abandon proactive policing and return to an earlier era of less effective police practices. Rather, the relief ordered below requires the NYPD to be even more proactive: proactive not only about crime control and prevention, but also about protecting the constitutional rights of the people the NYPD serves. The public interest will not be harmed by a permanent injunction requiring the NYPD to conform its practices to the Constitution.

*674 2. The Court’s Broad Authority to Enter Injunctive Relief

[3] [4] “[T]he scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” At the same time, it is “‘the essence of equity jurisdiction’ that a court is only empowered ‘to grant relief no broader than necessary to cure the effects of the harm caused by the violation.’”

“Discretion to frame equitable relief is limited by considerations of federalism, and remedies that intrude unnecessarily on a state’s governance of its own affairs should be avoided.”

Nevertheless, as the DOJ notes, “courts have long recognized—across a wide range of institutional settings—that equity often requires the implementation of injunctive relief to correct unconstitutional conduct, even where that relief relates to a state’s administrative practices.” Courts ... must not shrink from their obligation to enforce the constitutional rights of all persons.” This duty is not curtailed when constitutional violations arise in the context of law enforcement. Rather, where “there is a persistent pattern of police misconduct,

injunctive relief is appropriate."15

I have always recognized the need for caution in ordering remedies that affect the internal operations of the NYPD,16 the nation’s largest municipal police force and an organization with over 35,000 members.19 I would have preferred that the City cooperate in a joint undertaking to develop some of the remedies ordered in this Opinion.20 Instead, the City declined *675 to participate, and argued that “the NYPD systems already in place”—perhaps with unspecified “minor adjustments”—would suffice to address any constitutional wrongs that might be found.21 I note that the City’s refusal to engage in a joint attempt to craft remedies contrasts with the many municipalities that have reached settlement agreements or consent decrees when confronted with evidence of police misconduct.22

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B. Equitable Relief

Federal Rule of Civil Procedure 65(d) requires that “[e]very order granting an injunction ... must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.”23 These specificity provisions are “‘no mere technical requirements,’ ” but were “‘designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.’ ”24 The specificity provisions also ensure “‘that the appellate court knows precisely what it is reviewing.’ ”25

Compliance with the prohibition on the incorporation of extrinsic documents is “‘essential,’ unless the enjoined party acquiesces to the extrinsic reference.”26 The City has not acquiesced to any extrinsic reference. Thus, while the sections below refer to NYPD documents that must be revised, the ordered relief is contained *676 entirely within the four corners of this Opinion.27

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1. Appointment of a Monitor to Oversee Reforms

Because of the complexity of the reforms that will be required to bring the NYPD’s stop and frisk practices into compliance with the Constitution, it would be impractical for this Court to engage in direct oversight of the reforms.

As a more effective and flexible alternative, I am appointing an independent monitor (the “Monitor”) to oversee the reform process. I have chosen Peter L. Zimroth to serve as Monitor.

Mr. Zimroth, a partner in the New York office of Arnold & Porter, LLP, is a former Corporation Counsel of the City of New York, and the former Chief Assistant District Attorney of New York County. In both of these roles, Mr. Zimroth worked closely with the NYPD. A graduate of Columbia University and Yale Law School—where he served as Editor in Chief of the Yale Law Journal—he also served as a law clerk on the Supreme Court of the United States and a federal prosecutor. He taught criminal law and criminal procedure as a tenured professor at the New York University School of Law.

Mr. Zimroth has also been appointed to many positions in public service. The Chief Judge of the New York Court of Appeals appointed him as one of three directors of New York’s Capital Defender Office. He has also served on the Mayor’s Committee on the Judiciary, and on the boards of two schools for children with special needs. He has been a member of the House of Delegates of the American Bar Association, the Executive Committee of the New York City Bar Association, and the Board of Directors of the Legal Aid Society.

It is within the power of a district court to order the appointment of a monitor to oversee judicially ordered reforms.28 The DOJ recommended the appointment of a monitor in this case, in the event that the Court found the City liable. Based on “decades of police reform efforts across the country,” the DOJ concluded that “the appointment of a monitor to guide implementation of ... injunctive relief may provide substantial assistance to the Court and the parties and can reduce unnecessary delays and litigation over disputes regarding compliance.”29 In addition, the DOJ noted:

[T]he experience of the United States in enforcing police reform injunctions teaches that the appointment of an independent monitor is a critically important asset to the court, the parties, and the community in cases involving patterns or practices of unlawful conduct by law enforcement officials. A court-appointed monitor in this case would help the Court ensure that ... any pattern or practice ... is effectively and sustainably remedied.30

The appointment of a monitor will serve the interests of all stakeholders, including the City, by facilitating the early and unbiased detection of non-compliance or barriers to compliance. By identifying problems promptly, the Monitor will save the City time and resources.31
I also note that the Monitor will have a distinct function from the other oversight entities identified by the City, such as the NYPD’s Internal Affairs Bureau, federal prosecutors, the Civilian Complaint Review Board, and "the public electorate." The Monitor will be specifically and narrowly focused on the City’s compliance with reforming the NYPD’s use of stop and frisk—although this will inevitably touch on issues of training, supervision, monitoring, and discipline. Finally, the Monitor will operate in close coordination with this Court, which retains jurisdiction to issue orders as necessary to remedy the constitutional violations described in the Liability Opinion. I now specify the Monitor’s role and functions:

1. The Monitor will be subject to the supervision and orders of the Court.

2. The Monitor will not, and is not intended to, replace or assume the role or duties of any City or NYPD staff or officials, including the Commissioner. The Monitor’s duties, responsibilities, and authority will be no broader than necessary to end the constitutional violations in the NYPD’s stop and frisk practices described in the Liability Opinion.

3. The Monitor’s initial responsibility will be to develop, based on consultation with the parties, a set of reforms of the NYPD’s policies, training, supervision, monitoring, and discipline regarding stop and frisk. These reforms (the “Immediate Reforms”) are outlined below in Part II.A.2. They will be developed as soon as practicable and implemented when they are approved by the Court.

4. After the completion of the Joint Remedial Process, described below in Part II.A.4, the Monitor will work with the Facilitator and the parties to develop any further reforms necessary to ending the constitutional violations described in the Liability Opinion. These reforms (“Joint Process Reforms”) will be implemented upon approval by the Court.

5. The Monitor will inform the City of the milestones the City must achieve in order to demonstrate compliance and bring the monitoring process to an end.

6. The Monitor will regularly conduct compliance and progress reviews to assess the extent to which the NYPD has implemented and complied with the Immediate and Joint Process Reforms.

7. The Monitor will issue public reports every six months detailing the NYPD’s compliance with the Immediate and Joint Process Reforms. The Monitor will also file these reports with the Court.

8. The Monitor will work with the parties to address any barriers to compliance. To the extent possible, the Monitor should strive to develop a collaborative rather than adversarial relationship with the City.

9. The Monitor may request the Court to modify the Immediate and Joint Process Reforms, if evidence shows that such modifications are warranted.

10. The Monitor may request technical assistance from outside experts. He may also employ staff assistance as he finds reasonable and necessary.

11. The City will be responsible for the reasonable costs and fees of the Monitor, his staff, and any experts he retains.

12. The Monitor’s position will come to an end when the City has achieved compliance with the Immediate and Joint Process Reforms.

2. Immediate Reforms Regarding Stop and Frisk

Ending the constitutional violations inherent in the NYPD’s current use of stop and frisk will require reforms to a number of NYPD policies and practices. It would be unwise and impractical for this Court to impose such reforms at this time, prior to input from the Monitor and the participants in the Joint Remedial Process ordered below. Instead, as noted above, the development of reforms will take place in two stages. First, the Monitor will develop, in consultation with the parties, an initial set of reforms to the NYPD’s policies, training, supervision, monitoring, and discipline regarding stop and frisk (the “Immediate Reforms”). These reforms will be developed and submitted to the Court as soon as practicable, and implemented when they are approved. Second, the Monitor will work with the parties and other stakeholders to develop, through the Joint Remedial Process, a more thorough set of reforms (the “Joint Process Reforms”) to supplement, as necessary, the Immediate Reforms. The development of the Joint Process Reforms is discussed below in Part II.A.4.

If the parties, together with the Monitor, are unable to develop agreed-upon Immediate Reforms, the Court will
order the parties to draft proposed revisions to specific policies and training materials, as the parties have already done quite effectively in Ligon. Indeed, the remedies proposed in Ligon may provide a useful model for some aspects of the Immediate Reforms.

Based on the liability and remedies evidence presented at trial, the Immediate Reforms must include the following elements:

*679 a. Revisions to Policies and Training Materials Relating to Stop and Frisk and to Racial Profiling

First, the NYPD should revise its policies and training regarding stop and frisk to adhere to constitutional standards as well as New York state law. The constitutional standards include the standards for: what constitutes a stop, when a stop may be conducted, when a frisk may be conducted, and when a search into clothing or into any object found during a search may be conducted. Although the standards may sometimes require the informed use of discretion, they are not complicated and should be stated in policies and training as clearly and simply as possible.

To summarize: an encounter between a police officer and a civilian constitutes a stop whenever a reasonable person would not feel free to disregard the officer and walk away. The threat or use of force is not a necessary or even typical element of stops. Encounters involving nothing more than commands or accusatory questions can and routinely do rise to the level of stops, provided that the commands and questions would lead a reasonable person to conclude that he was not free to terminate the encounter. In order to conduct a stop, an officer must have individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. The officer must be able to articulate facts establishing a minimal level of objective justification for making the stop, which means more than an inchoate and unparticularized suspicion or hunch. “Furtive movements” are an insufficient basis for a stop or frisk if the officer cannot articulate anything more specific about the suspicious nature of the movement. The same is true of merely being present in a “high crime area.” Moreover, no person may be stopped solely because he matches a vague or generalized description—such as young black male 18 to 24—without further detail or indicia of reliability.

[8] [9] [10] [11] To proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous. The purpose of a frisk is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. Thus, the frisk must be strictly limited to whatever is necessary to uncover weapons that could harm the officer or others nearby. When an officer lawfully pats down a suspect’s outer clothing and feels an object whose contour or mass makes its identity as contraband immediately apparent, the officer *680 may seize the contraband. If an officer reasonably suspects that a felt object in the clothing of a suspect is a weapon, then the officer may take whatever action is necessary to examine the object and protect himself, including removing the object from the clothing of the stopped person.

The erroneous or misleading training materials identified in the Liability Opinion must be corrected, including the Police Student Guide’s overbroad definition of “furtive behavior;” the misleading training on “unusual firearms” implying that the presence of a wallet, cell phone, or pen could justify a frisk, or search; the complete lack of training on the constitutional standard for a frisk—reasonable suspicion that a stopped person is armed and dangerous; and the failure to include self-initiated stops (which make up 78% of street stops) in the role-playing at Rodman’s Neck. These training reforms will be in addition to those discussed below in the section of this Opinion relating to Ligon.

[12] Second, the NYPD should revise its policies and training regarding racial profiling to make clear that targeting “the right people” for stops, as described in the Liability Opinion, is a form of racial profiling and violates the Constitution. Racially defined groups may not be targeted for stops in general simply because they appear more frequently in local crime suspect data. Race may only be considered where the stop is based on a specific and reliable suspect description. When an officer carries out a stop based on reasonable suspicion that a person fits such a description, the officer may consider the race of the suspect, just as the officer may consider the suspect’s height or hair color. When a stop is not based on a specific suspect description, however, race may not be either a motivation or a justification for the stop. In particular, officers must cease the targeting of young black and Hispanic males for stops based on the appearance of these groups in crime complaints. It may also be appropriate to conduct training for officers on the effect of unconscious racial bias.
Third, it is unclear at this stage whether Operations Order 52 ("OO 52"), which describes the use of performance objectives to motivate officers, requires revision in order to bring the NYPD’s use of stop and frisk into compliance with the Fourth and Fourteenth Amendments. The evidence at trial showed that OO 52’s use of “performance goals” created pressure to carry out stops, without any system for monitoring the constitutionality of those stops. However, the use of performance goals in relation to stops may be appropriate, once an effective system for ensuring constitutionality is in place. Because the perspective of police officers and police organizations *681 will be particularly valuable to clarifying the role of performance goals in the reform of stop and frisk, these issues should be addressed as part of the Joint Remedial Process rather than the Immediate Reforms.

Finally, I note that where legitimate uncertainty exists regarding the most efficient means of reform, and the parties have differing views, it may be feasible for the Monitor to test the alternatives by applying them in different precincts and studying the results. In some contexts, the size of the NYPD makes it possible, and desirable, to resolve practical disagreements through the rigorous testing and analysis of alternatives at the precinct level before applying these reforms to the department as a whole.

b. Changes to Stop and Frisk Documentation

Both the trial record and the Liability Opinion document, in detail, the inadequacy of the NYPD’s methods of recording Terry stops. The UF–250, used by officers in the field to record the basis for stops, is flawed and must be revised. Officers are also required to record stop and frisk activity in memo books, otherwise known as activity logs. Quarterly audits of these memo book entries have revealed significant deficiencies in record keeping practices in virtually every precinct throughout the City. The proper use of activity logs to record stop and frisk activity must be emphasized in training, as well as enforced through supervision and discipline. I first address the UF–250 and then the activity logs.

i. UF–250

As described in the Liability Opinion, the current UF–250 consists mainly of checkboxes that officers can and often do check by rote, thus facilitating post-hoc justifications for stops where none may have existed at the time of the stop. The UF–250 must be revised to include a narrative section where the officer must record, in her own words, the basis for the stop. The narrative will enable meaningful supervisory oversight of the officer’s decision to conduct the stop, as well as create a record for a later review of constitutionality.

As an independent monitor of the New Orleans Police Department ("NOPD") recently noted, “the overwhelming belief of experts [is] that a narrative field in which the officers describe the circumstances for each stop would be the best way to gather information that will be used to analyze reasonable suspicion” and, relatedly, “prevent [r]acially biased policing.” The NOPD monitor noted that the City of Oakland recently revised its data collection system to include “a narrative field in which officers are required to state, in their own words, their basis for having reasonable suspicion for a stop.” The Oakland Police Department added this narrative field “because it was the best way to evaluate whether individual officers possessed the requisite reasonable suspicion for a Terry stop.” The Philadelphia Police Department has also included a narrative field in its stop form. Similarly, Professor Walker, a nationally recognized authority on police accountability, opined that a form for recording stops must contain a sufficiently detailed narrative that a reviewer can determine from the narrative alone whether the stop was based on reasonable suspicion.

The UF–250 should also be revised to require a separate explanation of why a pat-down, frisk, or search was performed. The evidence at trial revealed that people were routinely subjected to these intrusions when no objective facts supported reasonable suspicion that they were armed and dangerous. It is apparent that some officers consider frisks to be a routine part of a stop. Because this misconception is contrary to law, the revised UF–250 should include a separate section requiring officers to explain why the stopped person was suspected of being armed and dangerous.

Furthermore, both the DOJ and plaintiffs recommend that the UF–250 contain a tear-off portion stating the reason for the stop, which can be given to each stopped person at the end of the encounter. A 2007 RAND report, commissioned by the NYPD, similarly recommended that “[f]or a trial period in select precincts, the NYPD could require that officers give an information card to those stopped pedestrians who are neither arrested nor issued a summons.” Any form or card given to stopped persons...
should provide the stated reasons for the stop, the badge numbers of the stopping officers, and information on how to file a complaint.

Finally, the UF–250 should be revised to simplify and improve the checkbox system used to indicate common stop justifications. It may also be necessary to reduce the number of “stop factor” boxes in order to permit easier analyses of patterns in the constitutionality of stops.45

In addition to changing the UF–250, officers should be further trained in its use. As discussed in the Liability Opinion, some officers check certain boxes (or combinations of boxes) reflexively as part of “scripts,” including “Furtive Movements” and “Area Has High Incidence of Reported Offense of Type Under Investigation.”46 Officers must understand that if a stop is based on these factors, the officer must provide additional detail in the narrative field—for example, what was the specific nature of the furtive movement, and why was it suspicious? What was the geographic scope of the “high crime area,” and what was the officer’s specific basis for believing it has a high incidence of the suspected crime?

ii. Activity Logs

All uniformed officers are required to provide narrative descriptions of stops in *683 their activity logs whenever a UF–250 is prepared.47 In practice, this does not take place. Evidence at trial showed that throughout the class period, officers consistently failed to record stops in their logs, or provided insufficient detail for a supervisor to meaningfully review the constitutionality of the stop. This problem is best addressed through training, supervision, and monitoring.48

iii. Specific Relief Ordered

The NYPD, with the assistance of the Monitor, is directed to revise the UF–250 to address the criticisms expressed in the Liability Opinion and the direction given in this Opinion, and to provide training with respect to the new form. The NYPD is further ordered, again with the assistance of the Monitor, to ensure that activity logs are completed with the required specificity, and to implement measures to adequately discipline officers who fail to comply with these requirements.

b. Change of the UF–250

In light of the complexity of the UF–250, officers should be further trained in its use. As discussed in the Liability Opinion, some officers check certain boxes (or combinations of boxes) reflexively as part of “scripts,” including “Furtive Movements” and “Area Has High Incidence of Reported Offense of Type Under Investigation.” Officers must understand that if a stop is based on these factors, the officer must provide additional detail in the narrative field—for example, what was the specific nature of the furtive movement, and why was it suspicious? What was the geographic scope of the “high crime area,” and what was the officer’s specific basis for believing it has a high incidence of the suspected crime?

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The NYPD, with the assistance of the Monitor, is directed to revise the UF–250 to address the criticisms expressed in the Liability Opinion and the direction given in this Opinion, and to provide training with respect to the new form. The NYPD is further ordered, again with the assistance of the Monitor, to ensure that activity logs are completed with the required specificity, and to implement measures to adequately discipline officers who fail to comply with these requirements.

iv. Additional Activity Logs

In addition to changing the UF–250, officers should be further trained in its use. As discussed in the Liability Opinion, some officers check certain boxes (or combinations of boxes) reflexively as part of “scripts,” including “Furtive Movements” and “Area Has High Incidence of Reported Offense of Type Under Investigation.” Officers must understand that if a stop is based on these factors, the officer must provide additional detail in the narrative field—for example, what was the specific nature of the furtive movement, and why was it suspicious? What was the geographic scope of the “high crime area,” and what was the officer’s specific basis for believing it has a high incidence of the suspected crime?

*684 In light of the complexity of the supervision, monitoring, and disciplinary reforms that will be required to bring the NYPD’s use of stop and frisk into compliance with the Fourth and Fourteenth Amendments, it may be appropriate to incorporate these reforms into the Joint Remedial Process negotiations described below. However, to the extent that the Monitor can work with the parties to develop reforms that can be implemented immediately, the Monitor is encouraged to include those reforms in the proposed Immediate Reforms.

For example, based on the findings in the Liability Opinion, there is an urgent need for the NYPD to institute policies specifically requiring sergeants who witness, review, or discuss stops to address not only the effectiveness but also the constitutionality of those stops, and to do so in a thorough and comprehensive manner.49 To the extent that Integrity Control Officers witness or review stops, they too must be instructed to review for constitutionality.49 The Department Advocate’s Office must improve its procedures for imposing discipline in response to the Civilian Complaint Review Board’s (“CCRB”) findings of substantiated misconduct during stops. This improvement must include increased deference to credibility determinations by the CCRB, an evidentiary standard that is neutral between the claims of complainants and officers, and no general requirement of

corroborating physical evidence. Finally, the Office of the Chief of Department must begin tracking and investigating complaints it receives related to racial profiling.60

**d. FINEST Message**

As soon as practicable, the NYPD should transmit a FINEST message explaining the outcome of the *Floyd* litigation and the need for the reforms described above.61 The FINEST message should summarize in simple and clear terms the basic constitutional standards governing stop and frisk, the constitutional standard prohibiting racial profiling, and the relation between these standards and New York state law. The message should order all NYPD personnel to comply immediately with those standards.

### 3. Body–Worn Cameras

The subject of police officers wearing “body-worn cameras” was inadvertently raised during the testimony of the City’s policing expert, James K. Stewart. The following discussion took place:

A,... But what happens is the departments a lot of times may not have ... expertise and they may need some technical assistance like body worn cameras is an example and how much technology and where you store the information and stuff like that. They may not have it. And there may be other issues like psychological ideas about—

THE COURT: What do you think of body worn cameras?

THE WITNESS: I think it’s a good idea. We recommended it in Las Vegas. And we’re doing it in Phoenix as well.

THE COURT: Thank you.

... A. But I have no opinion in this case with respect to body worn cameras.62

*685* The use of body-worn cameras by NYPD officers would address a number of the issues raised in the Liability Opinion. In evaluating the constitutionality of individual stops, I explained the difficulty of judging in hindsight what happened during an encounter between a civilian and the police.63 The only contemporaneous records of the stops in this case were UF–250s and short memo book entries—which were sometimes not prepared directly after a stop, and which are inherently one-sided. Thus, I was forced to analyze the constitutionality of the stops based on testimony given years after the encounter, at a time when the participants’ memories were likely colored by their interest in the outcome of the case and the passage of time. The NYPD’s duty to monitor stop and frisk activity is similarly hamstrung by supervisors’ inability to review an objective representation of what occurred.64

Video recordings will serve a variety of useful functions. *First*, they will provide a contemporaneous, objective record of stops and frisks, allowing for the review of officer conduct by supervisors and the courts. The recordings may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore, such as baggy pants or a hoodie.65 *Second*, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties.66 *Third*, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police, and that the authorities are more likely to believe the police.67 Thus, the recordings should also alleviate some of the mistrust that has developed between the police and the black and Hispanic communities, based on the belief that stops and frisks are overwhelmingly and unjustifiably directed at members of these communities. Video recordings will be equally helpful to members of the NYPD who are wrongly accused of inappropriate behavior.

[13] Because body-worn cameras are uniquely suited to addressing the constitutional harms at issue in this case, I am ordering the NYPD to institute a pilot project in which body-worn cameras will be worn for a one-year period by officers on patrol in one precinct per borough—specifically the precinct with the highest number of stops during 2012. The Monitor will establish procedures for the review of stop recordings by supervisors and, as appropriate, more senior managers. The Monitor will also establish procedures for the preservation of stop recordings for use in verifying complaints in a manner that protects the privacy of those stopped. Finally, the Monitor will establish procedures for measuring the effectiveness of body-worn cameras in
reducing unconstitutional stops and frisks. At the end of
the year, the Monitor will work with the parties to
determine whether the benefits of the cameras outweigh
their financial, administrative, and other costs, and
whether the program should be terminated or expanded.
The City will be responsible for the costs of the pilot
project.

It would have been preferable for this remedy to have
originated with the NYPD, which has been a leader and
innovator in the application of technology to policing, as
Compstat illustrates. Nevertheless, there is reason to
hope that not only civilians but also officers will benefit
from the use of cameras. When a small police department
in Rialto, California introduced body-worn cameras,
"[t]he results from the first 12 months [were] striking.
Even with only half of the 54 uniformed patrol officers
wearing cameras at any given time, the department over
all had an 88 percent decline in the number of complaints
filed against officers, compared with the 12 months
before the study." While the logistical difficulties of
using body-worn cameras will be greater in a larger police
force, the potential for avoiding constitutional violations
will be greater as well.

4. Joint Remedial Process for Developing
Supplemental Reforms

A community input component is increasingly common in
consent decrees and settlements directed at police
reform. The DOJ has recognized the importance of
community input in its recent consent decrees and other
agreements with police departments. The landmark
Collaborative Agreement approved in 2002 by Judge
Susan J. Dlott of the Southern District of Ohio as the
settlement of class claims against the Cincinnati Police
Department has been widely recognized as a successful
model for other police reform.

Although the remedies in this Opinion are not issued
on consent and do not arise from a settlement, community
input is perhaps an even more vital part of a sustainable
remedy in this case. The communities most affected by
the NYPD’s use of stop and frisk have a distinct
perspective that is highly relevant to crafting effective
reforms. No amount of legal or policing expertise can
replace a community’s understanding of the likely
practical consequences of reforms in terms of both liberty
and safety.

It is important that a wide array of stakeholders be offered
the opportunity to be heard in the reform process: members of the communities where stops most often take
place; representatives of religious, advocacy, and
grassroots organizations; NYPD personnel and
representatives of police organizations; the District
Attorneys’ offices; the CCRB; representatives of groups
concerned with public schooling, public housing, and
other local institutions; local elected officials and
community leaders; representatives of the parties, such as
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.

If the reforms to stop and frisk are not perceived as
legitimate by those most affected, the reforms are unlikely
to be successful. Neither an independent Monitor, nor a municipal administration, nor this Court can speak
for those who have been and will be most affected by the
NYPD’s use of stop and frisk. The 2007 RAND report,
relied on by the City at trial, recognized the importance of
“ongoing communication and negotiation with the
community about [stop and frisk] activities” to
“maintaining good police-community relations.” It is
surely in everyone’s interest to prevent another round of
protests, litigation, and divisive public conflicts over stop
and frisk.

Drawing on this Court’s broad equitable powers to
remedy the wrongs in this case, I am ordering that all
parties participate in a joint remedial process, under the
guidance of a Facilitator to be named by the Court. I
hereby order the following specific relief:

1. All parties shall participate in the Joint Remedial
Process for a period of six to nine months to develop
proposed remedial measures (the “Joint Process
Reforms”) that will supplement the Immediate
Reforms discussed above. The Joint Process
Reforms must be no broader than necessary to bring
the NYPD’s use of stop and frisk into compliance
with the Fourth and Fourteenth Amendments.

2. The Joint Remedial Process will be guided by
the Facilitator, with such assistance as the
Facilitator deems necessary and in consultation
with the Monitor.

3. The initial responsibility of the Facilitator
will be to work with the parties to develop a
time line, ground rules, and concrete milestones
for the Joint Remedial Process. The Cincinnati
Collaborative Procedure and subsequent DOJ
consent decrees and letters of intent may be used as models.76

4. At the center of the Joint Remedial Process will be input from those who are most affected by the NYPD’s use of stop and frisk, including but not limited to the people and organizations noted above. Input from academic and other experts in police practices may also be requested.

5. The Facilitator will convene “town hall” type meetings in each of the five boroughs in order to provide a forum in which all stakeholders may be heard. It may be necessary to hold multiple meetings in the larger boroughs in order to ensure that everyone will have an opportunity to participate. The Facilitator will endeavor 688 to prepare an agenda for such meetings, through consultation with the various interested groups prior to the meeting. The Monitor will also attend these meetings to the extent possible.

6. The NYPD will appoint a representative or representatives to serve as a liaison to the Facilitator during the Joint Remedial Process.

7. The Facilitator may receive anonymous information from NYPD officers or officials, subject to procedures to be determined by the parties.

8. When the parties and the Facilitator have finished drafting the Joint Process Reforms, they will be submitted to the Court and the Monitor. The Monitor will recommend that the Court consider these Reforms he deems appropriate, and will then oversee their implementation once approved by the Court.

9. In the event that the parties are unable to agree on Joint Process Reforms, the Facilitator will prepare a report stating the Facilitator’s findings and recommendations based on the Joint Remedial Process, to be submitted to the parties, the Monitor, and the Court. The parties will have the opportunity to comment on the report and recommendations.

10. The City will be responsible for the reasonable costs and fees of the Facilitator and the Joint Remedial Process.

III. REMEDIES IN LIGON

In a January 8, 2013 Opinion and Order, amended on February 14, 2013, I granted the Ligon plaintiffs’ motion for a preliminary injunction, and proposed entering several forms of preliminary relief.77 I postponed ordering that relief until after a consolidated remedies hearing could be held in Ligon and Floyd.78 That hearing has now concluded. The defendants in Ligon have submitted drafts of the documents discussed in the proposed relief section of the February 14 Opinion, the Ligon plaintiffs have proposed revisions to those drafts, and the defendants have responded to the proposed revisions.79

Having reviewed the parties’ submissions, I am now imposing the final order of preliminary injunctive relief in Ligon. The reasons for the ordered relief, which must be stated pursuant to Federal Rule of Civil Procedure 65(d)(1)(A), are the reasons stated in the February 14 Opinion.

As set forth in the February 14 Opinion, the relief falls into four categories: policies and procedures; supervision; training; and attorney’s fees. Attorney’s fees and costs will be rewarded as appropriate on application. With regard to policies and procedures, I am ordering the proposed relief from the February 14 Opinion as elaborated below.

With regard to the remaining two categories of relief—supervision and training—I am ordering the proposed relief from the February 14 Opinion, as restated below, and I am also appointing the Monitor from Floyd, Mr. Zimroth, to oversee the detailed implementation of these orders. 689 I am delegating the oversight of the Ligon remedies regarding supervision and training to the Monitor because there is substantial overlap between these remedies and the injunctive relief concerning supervision and training in Floyd. For example, both sets of remedies will require alterations to supervisory procedures for reviewing stops, as well as the revision of the NYPD Legal Bureau’s slide show at Rodman’s Neck.

The purpose of consolidating the remedies hearings in Ligon and Floyd was to avoid inefficiencies, redundancies, and inconsistencies in the remedies process.80 This purpose can best be fulfilled by placing both the preliminary injunctive relief in Ligon and the permanent injunctive relief in Floyd under the direction and supervision of the Monitor.

For the foregoing reasons, the Monitor is directed to oversee the City’s compliance with the following orders.
A. Policies and Procedures

First, as proposed in the February 14 Opinion, the NYPD is ordered to adopt a formal written policy specifying the limited circumstances in which it is legally permissible to stop a person outside a TAP building on a suspicion of trespass. Specifically, the NYPD is ordered to amend Interim Order 22 of 2012 (“IO 22”) by deleting the paragraph labeled “NOTE” on page 2 of IO 22, and inserting the following paragraphs in its place:

A uniformed member of the service may approach and ask questions of a person (that is, conduct a Level 1 request for information under DeBour) if the uniformed member has an objective credible reason to do so. However, mere presence in or outside a building enrolled in the Trespass Affidavit Program is not an “objective credible reason” to approach. A uniformed member of the service may not approach a person merely because the person has entered or exited or is present near a building enrolled in the Trespass Affidavit Program.

Under the Fourth Amendment to the United States Constitution, a person is stopped (temporarily detained) if under the circumstances a reasonable person would not feel free to disregard the police and walk away. A uniformed member of the service may not stop a person on suspicion of trespass unless the uniformed member reasonably suspects that the person was in or is in the building without authorization.

Mere presence near, entry into, or exit out of a building enrolled in the Trespass Affidavit Program, without more, is not sufficient to establish reasonable suspicion for a stop on suspicion of trespass.

The NYPD is ordered to draft a FINEST message explaining the revisions to IO 22 and the need for those revisions. The FINEST message attached as Exhibit 1 to the Ligon Plaintiffs’ Brief Concerning Defendants’ Remedial Proposals will serve as a model. The draft will be provided to the Monitor and then to the Court for approval prior to transmission, with a copy to plaintiffs’ counsel.

B. Remaining Relief

The Monitor is directed to oversee the City’s compliance with the remaining orders discussed below. Plaintiffs do not object to many of the draft revisions submitted by the City in response to the proposed orders. Where the parties disagree, the Monitor is authorized to resolve the dispute by submitting a proposed order for the Court’s approval.

As a model for resolving the parties’ disputes, the Monitor may use this Court’s revision of IO 22, as presented above. In arriving at a compromise between the parties’ proposed language, I aimed to articulate the relevant legal standards as simply and clearly as possible. The goal must be to communicate the law to officers in a way that will be understood, remembered, and followed. In general, plaintiffs’ proposed revisions to the City’s draft materials make the achievement of this goal more likely. I note that the Monitor may depart from the City’s draft materials even when they do not contain legally erroneous language, if doing so would decrease the likelihood of constitutional violations.

1. Supervision

First, the City is ordered to develop procedures for ensuring that UF–250s are completed for every trespass stop outside a TAP building in the Bronx. A “stop” is defined as any police encounter in which a reasonable person would not feel free to terminate the encounter.

Second, the City is ordered to develop and implement a system for reviewing the constitutionality of stops outside TAP buildings in the Bronx. Needless to say, any system developed must not conflict with the supervisory reforms ordered in Floyd. To the extent that supervisory review reveals that a stop has not conformed with the revised version of IO 22 described above, the supervisor will ensure that the officer has a proper understanding of what constitutes a stop and when it is legitimate to make a stop. Copies of all reviewed UF–250s shall be provided to plaintiffs’ counsel.

2. Training

The City is ordered to revise the NYPD’s training materials and training programs to conform with the law
as set forth in the February 14 Opinion. The instruction must be sufficient to uproot the longstanding misconceptions that have affected stops outside of TAP buildings in the Bronx. It must include, but need not be limited to, the following reforms: (1) The revised version of IO 22 described above must be distributed to each Bronx NYPD member, and then redistributed two additional times at six-month intervals. (2) The stop and frisk refresher course at Rodman’s Neck must be altered to incorporate instruction specifically targeting the problem of unconstitutional trespass stops outside TAP buildings. Training regarding stops outside TAP buildings must also be provided to new recruits, as well as any officers who have already attended the Rodman’s Neck refresher course and are not scheduled to do so again. (3) Chapter 16 of the Chief of Patrol Field Training Guide must be revised to reflect the formal written policy governing trespass stops outside TAP buildings described above. (4) SQF Training Video No. 5 must be revised to conform with the law set forth in the February 14 Opinion and must be coordinated with the relief ordered in Floyd. The revised video must state that the information contained in the earlier video was incorrect and explain why it was incorrect.

IV. CONCLUSION
The defendant in Floyd and the defendants in Ligon are ordered to comply with the remedial orders described above. The Clerk of the Court is directed to close the Ligon defendants’ motion regarding proposed remedies. [No. 12 Civ. 2274, Dkt. No. 112]

SO ORDERED.

All Citations
959 F.Supp.2d 668

Footnotes


4 See Association of Surrogates & Supreme Court Reporters Within City of New York v. State of New York, 966 F.2d 75, 79 (2d Cir.1992), modified on reh’g, 969 F.2d 1416 (2d Cir.1992) (noting that “state budgetary processes may not trump court-ordered measures necessary to undo a federal constitutional violation,” provided that the equitable relief is proportional to the constitutional infraction).

5 Floyd, 283 F.R.D. at 158–59 (quoting Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891)).

6 See, e.g., MICHELLE ALEXANDER, THE NEW JIM CROW 6–7 (2010) (“No other country in the world imprisons so many of its racial or ethnic minorities.... In Washington, D.C., ... it is estimated that three out of four young black men (and nearly all those in the poorest neighborhoods) can expect to serve time in prison.”). Another collateral consequence of stops was highlighted in the recently settled case of Lino v. City of New York, No. 106579/10, 32 Misc.3d 1207(A), 2011 WL 2610501 (Sup.Ct.N.Y.Co. June 24, 2011), in which the NYPD agreed to purge personal information from its stop database. Plaintiffs—including named plaintiff Clive Lino—had alleged that the NYPD was using personal information from the stop database to conduct criminal investigations. See John Caher, NYPD Agrees to Purge Stop–Frisk Databank, N.Y. L.J., August 8, 2013.


8 See, e.g., Tamer El–Ghobashy & Michael Howard Saul, New York Police Use of Stop–and–Frisk Drops: Plummet in
Disputed Tactic Tracks Overall Decrease in Crime, Wall St. J., May 6, 2013 (noting that UF–250s fell 51% in the first three months of 2013 compared to 2012, while crime fell 2.7% and murders fell 30% through April 28 compared to 2012). I note, however, that the number of unrecorded stops may have increased over the same period as a result of misleading training at the NYPD’s new stop and frisk refresher course at Rodman’s Neck. See Liability Opinion at Part IV.C.5 (citing, inter alia, 4/25 Trial Transcript (“Tr.”) at 5119–5124 (Shea)); Ligon v. City of New York, 925 F.Supp.2d 478, 537–38 (S.D.N.Y.2013).


Id. at 10. Even NYPD Commissioner Raymond Kelly has recognized that the misuse of stop and frisk can contribute to community mistrust. In 2000, he criticized “dubious stop-and-frisk tactics” instituted after his first period as Police Commissioner that had “sowed new seeds of community mistrust.” Kevin Flynn, Ex–Police Head Criticizes Strategies, NY. Times, Apr. 5, 2000.

Cf. Ligon, 925 F.Supp.2d at 540–43.


City of New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114, 144 (2d Cir.2011) (quoting Forschner Grp., Inc. v. Arrow Trading Co., 124 F.3d 402, 406 (2d Cir.1997)).

Association of Surrogates, 966 F.2d at 79.

DOJ Inj. Mem. at 7 (citing Brown v. Platea, —— U.S. ——, 131 S.Ct. 1910, 179 L.Ed.2d 969 (2011); Brown v. Board of Educ., 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955)). See also id. at 7 n. 3 (criticizing the City’s citation of inapposite cases “for the proposition that federal courts should decline to enter injunctive relief that requires operational changes to a State’s institutions”).


Allee v. Medrano, 416 U.S. 802, 815, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974). Accord DOJ Inj. Mem. at 8–9 (collecting cases and noting that pursuant to statutory authorities “the United States has itself sought and secured the implementation of remedial measures to reform police misconduct in dozens of law enforcement agencies,” including measures that “directly address systemic deficiencies in the way officers conduct stops and searches”).

See, e.g., Patrolmen’s Benevolent Ass’n of City of New York, Inc. v. City of New York, No. 97 Civ. 7895(SAS), 2000 WL 1538608, at *3–4 (S.D.N.Y. Oct. 18, 2000) (declining to impose injunction on the NYPD where doing so would have been “an undue intrusion into a matter of state sovereignty”).

See Def. Inj. Mem. at 1.

See 1/31 Tr. at 101; 1/28/13 Letter from Jonathan C. Moore et al., Counsel for Plaintiffs, to the Court (proposing collaborative procedure involving all the parties in Floyd, Ligon, and Davis, a court-appointed facilitator, and the views of major stakeholders). The City rejected this proposal. See 1/31 Tr. at 9–10.

6/12/13 Defendant’s Post–Trial Memorandum of Law (“Def. Mem.”) at 24–25. Accord Def. Inj. Mem. at 7–18. The City also argues that no remedy is required because improper stops can be addressed by individual suits for damages. See Def. Inj. Mem. at 6. The DOJ counters that if individual suits were an effective remedy for police misconduct, courts would not have found it necessary to impose injunctive relief in so many police misconduct cases. See DOJ Inj. Mem. at 9 & n. 5 (also citing arguments from Daryl J. Levinson, Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs, 67 U. Chi. L.Rev. 345, 354–57 (2000)). I note that individual suits for damages are particularly ineffective as a remedy for unconstitutional stops, where individuals often do not know what the basis for their stop was, and thus cannot know whether the stop lacked a legal basis or was influenced improperly by race. In
addition, while the indignity of an unconstitutional stop is a serious harm, few of those stopped will be motivated to dedicate their time and resources to filing a lawsuit—especially where the standard for recovery may require proof of Monell liability.


See, e.g., United States v. City of New York, 717 F.3d 72, 97 (2d Cir.2013).

DOJ Inj. Mem. at 11. Accord 5/15 Tr. at 7435 (plaintiffs’ remedies expert Professor Samuel Walker testifying that if liability is found, the appointment of an independent monitor is “necessary”).

DOJ Inj. Mem. at 5.

See id. at 16 (“Without an independent monitor, the Court will be forced to depend on motions practice between the parties to assess progress; a costly, contentious, inefficient, and time-consuming process.”).

Id. at 18 (citing Def. Inj. Mem. at 13). In particular, as the DOJ notes, “it is not realistic to ask ‘the public electorate’ to monitor the police department to ensure that the department’s stop-and-frisk practices are consistent with the Constitution.” Id. at 20 (citing United States v. Carolene Prods. Co., 304 U.S. 144, 152 n. 4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938)). If it is true that 76% percent of black voters in New York City disapprove of stop and frisk, as found in a recent Quinnipiac University poll, then the persistence of this policy in heavily black communities might indicate the failure “of those political processes ordinarily to be relied upon to protect minorities,” and thus might justify “more searching judicial inquiry.” Carolene Prods., 304 U.S. at 152 n. 4, 58 S.Ct. 778; Quinnipiac University, New Yorkers Back Ban on Take–Out Foam More Than 2–1, at 8 (Feb. 28, 2013), http://www.quinnipiac.edu/images/polling/nyc/nyrc02282013.pdf/ (19% of blacks approve and 76% disapprove of “a police practice known as stop and frisk, where police stop and question a person they suspect of wrongdoing and, if necessary, search that person”).

The Monitor’s role will also be distinct from the broad advisory role of the NYPD Inspector General envisioned in NY. City Council Introductory No. 1079 of 2013.

In particular, the City has not yet provided input regarding specific reforms. See Def. Inj. Mem. at 18 (declining to offer a remedy “other than to respectfully direct the Court to the trial record for an assessment of the remedies evidence”); 6/12/13 Defendant’s Post–Trial Memorandum of Law at 24–25 (declining to propose remedies).

See 7/8/13 Defendants’ Proposed Remedial Relief (“Ligon Def. Rem.”).
36 See Ligon, 925 F.Supp.2d at 541–45.

37 See Liability Opinion at Part III.B; Ligon, 925 F.Supp.2d at 541–44.

38 There could be a simple way to ensure that officers do not unintentionally violate the Fourth Amendment rights of pedestrians by approaching them without reasonable suspicion and then inadvertently treating them in such a way that a reasonable person would not feel free to leave. Officers could, for example, begin De Bour Level 1 and 2 encounters by informing the person that he or she is free to leave. There is no constitutional requirement for officers to inform people that they are free to leave. Cf. Ohio v. Robinette, 519 U.S. 33, 35, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996) (holding that the Fourth Amendment does not require “that a lawfully seized defendant must be advised that he is ‘free to go’ before his consent to search will be recognized as voluntary”); Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (“While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent.”). Nevertheless, the Constitution does not prohibit a police department from adopting this policy or a court from ordering it as a means of avoiding unconstitutional stops, where—as here—officers have been incorrectly trained on the definition of a stop.

39 See Liability Opinion at Part IV.C.5.

40 See infra Part III.

41 See Liability Opinion at Parts IV.C.3, V.B.1.

42 Plaintiffs’ policing expert Lou Reiter testified that “there are circumstances where productivity goals are consistent with generally accepted [police] practices.” 4/24 Tr. at 4917. The City’s policing expert, James K. Stewart, testified that performance goals are a necessary part of monitoring and supervision:

In policing, there are disincentives to engaging in some activities, because they are dangerous, they are in unsterile conditions and chaotic conditions, and the officers may not engage in that but yet spend their time on random patrol. They are not out there doing what the department wants them to do, but they do show up and they show up in uniform. The reason that ... you have to count the activities is to ensure that those officers do respond ... to the calls for assistance of help, they do address the community issues....

5/17 Tr. at 7756.

43 See 5/16 Tr. at 7457 (Walker).

44 See Pl. Findings ¶ 197 (citing Plaintiffs’ Trial Exhibit (“PX”) 450; Defendant’s Trial Exhibit (“DX”) G6).

45 See, e.g., Liability Opinion at Part IV.B.2.


47 Id. at 46.

48 Id.

49 See id.

50 See 5/16 Tr. at 7456–7458 (Walker). Professor Walker testified that a description of reasonable suspicion for a stop will generally require no more than three lines of text. See id. at 7458.

Data Collection Systems: Promising Practices and Lessons Learned 38 (United States Department of Justice 2000), and noting that a tear-off form has been used in Great Britain for more than a decade).


See Report of Jeffrey Fagan, Ph.D. (Oct. 15, 2010), PX 411 (“Fagan Rpt.”) at 49 (describing the analytical difficulties created by the number of possible combinations of stop factors and suspected crimes).

Suspicious Bulge is another factor—albeit less often used than Furtive Movements and High Crime Area—that should require greater specificity or a narrative description.

See Operations Order 44 (9/11/08), PX 96. In addition, the Chief of Patrol recently directed all officers in the patrol borough to include nine categories of information in every activity log entry for a stop. The categories include: the date, time and location of the stop; the name and pedigree of the person stopped; the suspected felony or penal law misdemeanor; an explanation of the suspicion that led to the stop (such as “looking into windows,” or “pulling on doorknobs”); whether the suspect was frisked; the sprint or job number, if applicable; and the disposition of the stop. The Chief of Patrol’s memo also requires officers to elaborate the basis for a stop in the “Additional Circumstances/Factors” section of the UF–250, to photocopy every activity log entry for a stop, and to attach the photocopy to the UF–250 before submitting it to a supervisor. See DX J13.

See infra Part II.B.2.C. I recognize the risk of inefficiency if officers record the same information on UF–250s and in their activity logs. Professor Walker argued in favor of requiring both, but also expressed concerns regarding inefficiencies. See 5/16 Tr. at 7458, 7480. If the parties can agree upon an improved procedure during the Joint Remedial Process described below, those improvements can be included in the Joint Process Reforms.

5/15 Tr. at 7440. The National Institute of Justice, which the City’s policing expert, James K. Stewart, directed from 1982 to 1990, notes that “the management and culture of a department are the most important factors influencing police behavior.” National Institute of Justice, Police Integrity, available at http://www.nij.gov/topics/law-enforcement/legitimacy/integrity.htm# note2. Ultimately, ending unconstitutionality in stop and frisk may require changing the culture of the NYPD so that officials and officers view their purpose not only as policing effectively, but policing constitutionally as well. If so, the NIJ’s first recommendation for improving the integrity of a department is to “[a]ddress and discipline minor offenses so officers learn that major offenses will be disciplined too.” Id.

See Liability Opinion at Part IV.CAb.

See id.

See id. at Part IV.C.6.

The NYPD’s “FINEST” messaging system allows the transmission of legal directives to the NYPD’s commands. See, e.g., 5/10/12 Finest Message Regarding Taxi/Livery Robbery Inspection Program, Ex. 1 to 7/24/13 Plaintiffs’ Brief Concerning Defendants’ Remedial Proposals (“Ligon Pl. Rem.”).

5/17 Tr. at 7817–7818.

See Liability Opinion at Part IV.D.

See id. at Part IV.C.4.

By creating an irrefutable record of what occurred during stops, video recordings may help lay to rest disagreements that would otherwise remain unresolved.

If, in fact, the police do, on occasion, use offensive language—including racial slurs—or act with more force than necessary, the use of body-worn cameras will inevitably reduce such behavior.


See 5/16 Tr. at 7521 (Walker).


Cf. 5/16 Tr. at 7522 (Professor Walker discussing the legitimacy of reforms). As a general matter, police departments “depend upon public confidence, public trust, and public cooperation.” *Id.* at 7520. This principle applies no less in the context of stop and frisk.

*Cf. United States v. City of Los Angeles*, 288 F.3d 391, 404 (9th Cir.2002) (remanding to the district court for a hearing on the permissive intervention of community groups in a DOJ lawsuit against the Los Angeles Police Department, and emphasizing the importance of not “marginalizing those ... who have some of the strongest interests in the outcome”).

RAND Report at 44.

The equitable power of district courts to order processes involving community input is well-established. See, e.g., *United States v. Yonkers Bd. of Educ.*, 635 F.Supp. 1538, 1545 (S.D.N.Y.1986), aff’d, 837 F.2d 1181 (2d Cir.1987) (ordering the Yonkers public school system to organize “community meetings with minority groups and organizations to solicit support and assistance in the dissemination of magnet program availability”); Pl. Inj. Mem. at 11–13 (collecting cases and scholarship).

See *Tyehimba*, 2001 WL 1842470; Pl. Inj. Mem. at 15. In the interests of conserving resources and speeding the development of the Joint Process Reforms, the Joint Remedial Process will not involve the development of an independent analysis by a panel of paid experts, as proposed by plaintiffs in Pl. Inj. Mem. at 10. The participants in the Joint Remedial Process may rely on any sources of facts deemed useful by the Facilitator, including this Court’s findings in the Liability Opinion.


See *Ligon*, 925 F.Supp.2d at 543–44.


See Exhibit A to *Ligon* Def. Rem.


For the materials used in drafting the Court’s revision, see *Ligon* Def. Rem. at Ex. A; *Ligon* Pl. Rem. at 1–4; *Ligon* Def. Reply at 2–4.

See, e.g., *Ligon* Pl. Rem. at 7–8 (proposing revisions to the City’s draft slide show for officer training at Rodman’s Neck to emphasize the “free to leave” standard, where confusion might otherwise arise).