The New York Times

July 10, 2012

# Courts Putting Stop-and-Frisk Policy on Trial

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New York City's accelerating use of police stop-and-frisk tactics has brought a growing chorus of opponents who have been matched in intensity only by the officials who defend the policy. But recent rulings by federal and state courts have now cast judges as the most potent critics of the practice, raising sharp questions about whether the city has sidestepped the Constitution in the drive to keep crime rates low.

The inescapable conclusion is that the city will eventually have to redefine its stop-and-frisk policy, legal experts say, and that the changes — whether voluntary or forced — will fundamentally alter how the police interact with young minority men on the streets.

Some legal experts say the police could be pushed into reducing the numbers of street stops of New Yorkers by hundreds of thousands a year, and that the proportion of stop-and-frisk subjects who are black and Latino would be sharply reduced.

A settlement last year of a class-action case involving stop-and-frisk policies in Philadelphia laid out a model that, if followed in New York, could call for the courts to supervise an imposed system of police monitoring and accountability.

The courts have been energized to step in, some lawyers say, as the debate has intensified over police tactics that have brought legal challenges, academic analysis and news coverage. "The decisions show that the courts are suspicious of the current police practices," said Michael C. Dorf, a constitutional law professor at Cornell.

Randolph M. McLaughlin, a law professor at Pace University, said the new judicial attention was a product of the numbers: More than 80 percent of those stopped in New York are black or Latino, and last year there were 686,000 stops, with this year's numbers heading higher.

"People are starting to wonder: 'What's really going on here? Is this a racial policy?' And judges read the newspaper too," Professor McLaughlin said.

In May, a federal judge granted class-action status to a civil suit filed on behalf of people who were frisked on the streets and released. The judge, Shira A. Scheindlin, of Federal District Court

in Manhattan, condemned what she called the city's "deeply troubling apathy towards New Yorkers' most fundamental constitutional rights."

Separately, in recent weeks in two cases involving teenagers caught with guns, a midlevel state appeals court in Manhattan overturned weapons convictions. In those cases, too, there was a burst of judicial hostility toward police policies in minority neighborhoods.

In the first case, the majority opinion in the 3-to-2 decision from a panel of the court, the Appellate Division of State Supreme Court in Manhattan, said a "gradual erosion of this basic liberty can only tatter the constitutional fabric upon which this nation was built."

The city says that the stop-and-frisk program, which dates to the 1990s, is concentrated in high-crime areas, and is not targeted at minorities. Mayor Michael R. Bloomberg says it "saves lives" and the city has fought its critics in court. On Tuesday, the police commissioner, Raymond W. Kelly, would not speculate about whether court rulings might hurt the city's efforts to curb crime. "I don't know what the courts are going to do," he said.

Mr. Kelly has taken steps that he said could reduce the number of stop-and-frisk encounters, including better training of officers. But both he and the mayor have suggested the judicial branch was out of step with most New Yorkers' goal of keeping crime rates low.

The city has said it is pursuing appeals of all of the rulings. In an interview, Michael A. Cardozo, who as the city's corporation counsel serves as its top lawyer, argued that the recent decisions were not part of any larger trend in the courts. He noted that the issue before the federal judge was merely whether the suit was appropriately a class action and that the state appeals rulings involved split courts analyzing the detailed facts of specific searches. "I don't know that you can draw a conclusion that there's some major change," he said.

The decision to appeal the rulings is risky, lawyers say, because it could lead to appeals court rulings clearing the way for fuller judicial criticism. If the federal appeals court in New York were to approve Judge Scheindlin's ruling or to simply decline to hear the city's appeal, a trial is expected as soon as this fall.

David Rudovsky, the lead lawyer in a similar class-action case against Philadelphia that led to a settlement last year, said that the views that Judge Scheindlin expressed in May suggested that however the case comes to a conclusion, significant changes should be anticipated in New York's stop-and-frisk policy.

"One would expect a fairly substantial change in the number of stops," Mr. Rudovsky said. "And you would expect fewer stops of minority young men."

Critics of New York's policies say the results — a small percentage of the stops produced an arrest — do not warrant the intrusion on lives and the lost respect for law enforcement by a generation of young men stopped on the city streets.

Darius Charney, a lawyer at the Center for Constitutional Rights, which is handling the New York class-action case, said the suit was seeking independent oversight of the New York Police Department. He said that even when stop-and-frisk numbers climbed sharply over the last decade, the city would not "even acknowledge it has a problem."

In the two teenagers' gun cases, the city is appealing to the state's highest court, the Court of Appeals. That could open the way for the state's chief judge, Jonathan Lippman, who has forged numerous liberal rulings during his tenure, to help redefine complex legal precedents that set out stop-and-frisk rules.

"These two cases might create the perfect opportunity for the Court of Appeals" to wade into the controversy over police tactics, said Vincent Bonventre, an expert on the court who is a professor at Albany Law School.

Some experts on police practices said the Court of Appeals might consider it time to update its stop-and-frisk rulings.

Eugene J. O'Donnell, a professor at the John Jay College of Criminal Justice, called one court precedent on the issue "laughably complex" in ways that can be confusing to officers who must make quick decisions in dangerous situations.

"How can you be legitimately following the law, when no one can explain what the law means?" he said.

In the interview, Mr. Cardozo, whose office is handling the stop-and-frisk appeals, noted that appeals courts regularly approve stop-and-frisk searches. But some lawyers said that tendency was what made the recent rulings against the city so notable.

Professor Bonventre said it seemed the majority in the Manhattan appeals court rulings was announcing what amounted to a new policy: "We are going to start looking at these stop-and-frisks a lot more closely."

Alain Delaquérière and Wendy Ruderman contributed reporting.