

On August 12, 2013, Judge Shira Scheindlin issued two opinions and orders in the *Floyd v. City of New York* federal class action lawsuit alleging the New York City Police Department's (NYPD) stop and frisk practices violate the Fourth and Fourteenth Amendments.<sup>1</sup> The [first opinion](#), nearly 200 pages, addresses whether or not the plaintiffs proved the NYPD's stop and frisk practices are unconstitutional during the nine-week bench trial held March through May 2013. Judge Scheindlin decided the NYPD engages in unconstitutional stop and frisk practices, including racial profiling against Black and Latino New Yorkers. The [second order](#) addresses the remedies (or reforms) that are necessary to bring NYPD stop and frisk practices into compliance with the U.S. Constitution. Because the remedies following the preliminary injunction ordered in *Ligon*, a separate case involving individuals stopped outside of buildings that participate in the Trespass Affidavit Program in the Bronx, overlap with the relief in *Floyd*, Judge Scheindlin addressed both cases in one opinion. This document summarizes only the *Floyd* remedies.

### **Did the Court order the NYPD to stop engaging in stops and frisks?**

No, the NYPD can still engage in stops and frisks. The U.S. Supreme Court in 1968, in a decision called *Terry v. Ohio*, 392 U.S. 1 (1968), authorized police officers to stop individuals where an officer has "reasonable articulable suspicion" that a crime may occur. This means a police officer must be able to articulate specific facts that give him or her a basis to reasonably suspect that criminal activity "may be afoot"<sup>2</sup> Moreover, this suspicion must be individualized, i.e. those articulable facts must apply to the specific person being stopped. In *Floyd*, Judge Scheindlin decided that the NYPD is violating the law by systematically stopping and frisking people without an individualized belief that they are engaged in criminal activity and are instead stopping them and on the basis of race. This means the Court determined the NYPD is engaging in an unwritten policy of racial profiling.

### **Remedy #1: Appointment of a Monitor**

Judge Scheindlin appointed an independent monitor, who will report to the Court, to oversee the stop and frisk reform process. Peter L. Zimroth, currently a partner at a New York City law firm Arnold & Porter, LLP, will serve as the monitor. He is the former Corporation Counsel for the City of New York and Chief Assistant District Attorney in Manhattan. He has an extensive resume including teaching criminal law and criminal procedure at New York University School of Law and represented a whistle-blower police officer before the Knapp Commission in 1971.<sup>3</sup>

### **Why is a court-appointed independent monitor important to reforming the NYPD's stop and frisk practices?**

- We want real change to happen, and history tells us the NYPD will not implement meaningful reforms on its own. It is also not practical for Judge Scheindlin herself to be involved with the day-to-day reforms, but a monitor can be.
- A monitor helps save everyone, including the City, time and resources. He will be able to detect non-compliance or barriers to reforms early in the process.

<sup>1</sup> *Floyd v. City of New York* was brought by CCR with law firms Beldock, Levine and Hoffman and Covington & Burling, LLP.

<sup>2</sup> *United States v. Swindle*, 407 F.3d 562, 566 (2d Cir. 2005) (quoting *United States v. Sokolow*.)

<sup>3</sup> D. Goodman, "Court-Appointed Police Monitor Has Fought for City and Against It," *New York Times*, Aug. 13, 2013, available at <http://www.nytimes.com/2013/08/14/nyregion/court-appointed-police-monitor-has-fought-for-city-and-against-it.html?ref=nyregion&r=1&>.

- The monitor will coordinate closely with Judge Scheindlin, who continues to have power to order the NYPD to take additional steps towards change.

### **What will the court-appointed monitor do?**

- Help develop the necessary reforms, subject to approval by the Court, to the NYPD's policies, training, supervision, monitoring and discipline regarding stop and frisk. Many of these reforms will be developed together with the *Floyd* plaintiffs, the City, and community stakeholders through a Joint Remedial Process (described further below).
- Determine milestones the City must achieve to demonstrate compliance with the Court's orders and bring the monitoring to a close.
- On a regular basis, conduct compliance and progress reviews to assess the extent to which the NYPD has implemented and complied with the reforms ordered by the Court.
- Publish public reports, to be filed with the Court, every six months detailing the NYPD's compliance with the ordered reforms.
- Ask the Court to modify reforms if evidence shows changes are warranted.
- Seek technical assistance from outside experts and hire staff as he finds reasonable and necessary.

### **How is a court-appointed monitor different from the proposed Inspector General and other NYPD oversight entities?**

- A court-appointed monitor is distinct from, though complementary to, the Inspector General, proposed by Int. No. 1079. CCR believes New York City needs both. Mr. Zimroth's appointment as a court-monitor is time-limited and only involves stop and frisk practices, while the Inspector General will serve a permanent research and review function for a wide array of police practices. In addition Mr. Zimroth is empowered to require the City's compliance with Court-ordered reforms to stop-and-frisk, while the IG can only recommend changes to the Mayor and Police Commissioner.<sup>4</sup>
- The role of a court-appointed monitor is different than the NYPD's Internal Affairs Bureau, federal prosecutors, the Civilian Complaint Review Board, or City Counsel and its committees.

### **For how long will the court-appointed monitor serve?**

- The monitor's position ends when the City achieves compliance with the reforms ordered by Judge Scheindlin and those that will be implemented by the joint-remedy process.

### **Who will pay for the court-appointed monitor?**

- The City will be responsible for costs and fees of the monitor, his staff, and any experts he retains.

## **Remedy #2: Immediate Reforms to Stop and Frisk Practices**

The Court ordered the monitor to develop, in consultation with the parties, an initial set of reforms to the NYPD's policies, supervision, monitoring, training, and discipline regarding stop and frisk, which she calls "immediate reforms." These reforms are to be developed and submitted to the Court as soon as practicable and implemented once they are approved.

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<sup>4</sup> The *Floyd* plaintiffs submitted a letter to the Court explaining the difference. It is available at [www.ccrjustice.org/floyd](http://www.ccrjustice.org/floyd).

## What changes will occur as “immediate reforms”?

Judge Scheindlin ordered the immediate reforms to include the following elements:

- First, revision to the policies and training materials related to stop and frisk and racial profiling. The Court provided some guidance here, including training that stopping “the right people” is a form of racial profiling and violates the Constitution.
- Second, revisions to the documentation of stop, question and frisk encounters and to the training and discipline related to documentation of stops and frisks. Specifically, a new UF-250 form will be developed to include: a narrative portion; a separate explanation for why a frisk or search was performed; improvements to the checkbox portion of the UF-250; and possibly a tear-off form stating the reason for the stop, badge numbers of stopping officer and how to file a complaint.
- Third, Judge Scheindlin encouraged the parties, to the extent possible, to work with the monitor to develop immediate reforms to supervision, monitoring, and discipline. She provided some examples including improving the NYPD’s procedures for imposing discipline where the CCRB determines a police officer engaged in misconduct during a stop encounter.
- Fourth, the NYPD must transmit a message to every officer explaining the *Floyd* outcome, correct legal standard for stops and frisks, and the need for the immediate reforms she describes in the opinion and order.

## Remedy #3: Joint-Remedy Process (and the reforms developed as part of the process)

Judge Scheindlin agreed with [Communities United for Police Reform](#) (CPR), the Black, Latino and Asian Caucus of the New York City Council (BLAC) and the *Floyd* plaintiffs that community input is critical to meaningful reform to the NYPD stop and frisk practices. She specifically stated that “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.”

## What is the joint-remedy process?

- A process that includes community stakeholders and the parties working together to develop proposed remedial measures, in addition to the “immediate reforms” described in Remedy #2.
- Judge Scheindlin recognized that: “At the center of the Joint Remedy Process will be input from those who are most affected by the NYPD’s use of stop and frisk[.]”
- Judge Scheindlin ordered the joint-remedy process to last six to nine months.
- The process will be guided by a facilitator to be appointed by the Court.
- The facilitator will initially work with the parties to develop a time line, ground rules and concrete milestones for the joint-remedy process. (The Court cited the Cincinnati Collaborative Process and DOJ Consent Decrees as models to consider.)
- The facilitator will convene “town hall” meetings in each of the five boroughs. The facilitator will prepare an agenda for the town halls through consultation with the interested groups prior to the meeting.
- The NYPD will appoint at least one representative to serve as a liaison to the facilitator during the joint-remedy process.
- The facilitator may receive anonymous information from NYPD officers or officials.
- At the end of the joint-remedy process, the parties and the facilitator will submit to the Court and the monitor a set of reforms. The monitor will recommend to the Court the ones he thinks are appropriate.

## **Who will be involved in the joint remedy process?**

- A wide array of stakeholders will be involved in the joint reform process including: 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 Attorney's offices; the CCRB; representatives of groups concerned with public schooling, public housing, and other local institutions; local elected officials and community leaders; Communities United for Police Reform; Civil Rights Division of DOJ; and the Black, Latino and Asian Caucus of the New York City Council.

## **What types of reforms may result from the joint-remedy process?**

- Whether and how NYPD Operations Order 52, describing the use of "performance goals", should be modified.
- Improvements to the documentation of stops and frisks, for example, whether UF-250s and memo books are both necessary for each encounter.
- Any other reforms necessary to bring the NYPD's stop-and-frisk policies and practices into compliance with the Constitution

## **Remedy #4: Body-Worn Cameras**

Judge Scheindlin ordered the NYPD to institute a pilot project in which body-worn cameras will be worn for one-year by officers on patrol in the one precinct in each borough with the highest number of stops in 2012. According to the NYPD UF-250 data, this would be the 75<sup>th</sup> Precinct in Brooklyn, the 103<sup>rd</sup> Precinct in Queens, the 120<sup>th</sup> Precinct in Staten Island, the 23<sup>rd</sup> Precinct in Manhattan, and the 40<sup>th</sup> Precinct in the Bronx.

## **What is the purpose of body-worn cameras?**

- The purpose of body-worn cameras is to provide a contemporaneous, objective record of stops and frisks conducted by NYPD officers, thereby making it easier to decide if a stop was constitutional.

## **How will the body-worn cameras pilot project be established and what will happen at the end of the year?**

- The monitor is primarily tasked with setting up the pilot project.
- The monitor will establish the procedures for preservation of recordings and use of the recordings by the NYPD in a manner that protects the privacy of individuals stopped.
- The monitor will establish procedures for measuring the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks.
- The City will pay for the costs of the pilot project.
- At the end of the year, the parties will work with the monitor to determine if the benefits of the cameras outweigh the costs and whether the program should be terminated or expanded.