

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

DAVID FLOYD, et al,

Plaintiffs,

-against-

CITY OF NEW YORK, et al,

Docket No. 08CV1034(SAS)

Defendants. ECF case

----- X

BRIEF OF *AMICUS CURIE* THE BLACK, LATINO AND ASIAN CAUCUS OF THE
COUNCIL OF THE CITY OF NEW YORK IN FURTHER SUPPORT OF
PLAINTIFFS' REQUEST TO INCLUDE THE COMMUNITY IN
A COLLABORATIVE PROCESS TOWARDS REFORM

Dated: March 4, 2013

TABLE OF CONTENTS

Table of Authoritiesi-ii

STATEMENT OF INTEREST OF THE BLACK, LATINO AND ASIAN CAUCUS OF THE COUNCIL OF THE CITY OF NEW YORK1

ARGUMENT2

I. THE BLAC CAUCUS SUPPORTS PLAINTIFFS’ REQUEST TO INCLUDE THE COMMUNITY IN A COLLABORATIVE PROCESS BECAUSE THE COMMUNITY HAS DEMONSTRATED ITS WILLINGNESS TO COLLABORATE, THE NYPD HAS FAILED TO RESPOND TO THE COMMUNITY’S CONCERNS AND THE RESULTING DIVISION BETWEEN THE TWO PARTIES REQUIRES AN ENFORCED COLLABORATIVE PROCESS TO RESTORE COMMUNICATION2

A. A Diverse Cross-Section of New York City Communities Want to Contribute to a Dialogue about Reforming NYPD Street Encounters3

B. Absent a Court-Ordered Collaborative Process, the NYPD Will Not Participate in Meaningful Dialogue with Community Members5

C. Precedent Exists for Including the Community in a Court-Ordered Collaborative Process for Reform6

CONCLUSION.....8

TABLE OF AUTHORITIES

Federal Cases – New York

<u>Floyd, et al, v. City of New York, et al</u> , 08 Civ. 1034 (SAS) “Status Conf. 1/31/13” Tr. at 102-14-16.....	7
<u>Daniels, et al, v. City of New York, et al</u> , 99 Civ. 1695(SAS).....	5
<u>Ligon, et al v. City of New York, et al</u> , 12 Civ. 2274 (SAS).....	5

Federal Cases – Ohio

<u>Tyehimba v. City of Cincinnati, et al</u> , C-1-99-317 (So. Dist. Ohio) “Order Establishing Collaborative Process”.....	6
<u>In Re Cincinnati Policing</u> , C-1-99-317 (So. Dist. Ohio) “Collaborative Agreement”	7

New York Statutes

N.Y.C. Charter, Section 28.....	1
N.Y.C. Charter, Section 29.....	1

New York City Council Hearings

“Oversight – The New York City Police Department and Its Use of Stop, Question and Frisk.” Committee on Civil Rights, City Council, City of New York (October 23, 2012) transcript available at http://legistar.council.nyc.gov/Calendar.aspx?Mode=Today	4, 6
“Oversight – The New York City Police Department and Its Use of Stop, Question and Frisk.” Committee on Civil Rights, City Council, City of New York (October 24, 2012) transcript available at http://legistar.council.nyc.gov/Calendar.aspx?Mode=Today	4

Other Authorities

Christie Thompson, “Momentum Builds in the Fight Against Stop-and-Frisk” The Nation (October 31, 2012) available at http://www.thenation.com/article/170944/momentum-builds-fight-against-stop-and-frisk#sthash.KACZzA4n.dpuf	3, 5
James Barron, “Times Sues City Police, Saying Information Has Been Illegally Withheld,” NYTimes.com (December 21, 2010), available at http://www.nytimes.com/2010/12/22/nyregion/22nypd.html?_r=0	5

Kathleen Horan, “Stop and Frisk Comes Under Fire at Public Hearing” WNYC Radio, (October 23, 2012) <http://www.wnyc.org/blogs/wnyc-news-blog/2012/oct/23/stop-and-frisk-comes-under-fire-public-hearing/>3

Kia Gregory, “A Watcher of the Police Says He Is Now a Target” NYTimes.com (September 9, 2012), available at <http://www.nytimes.com/2012/09/10/nyregion/chronicler-of-police-says-his-arrest-was-payback-for-harlem-video.html?pagewanted=all>5

Paul DeBenedetto, “Hundreds Attend Stop-and-Frisk Hearing to Support New Law” DNAinfo.com (October 25, 2012), available at <http://www.dnainfo.com/new-york/20121025/jamaica/hundreds-attend-stop-and-frisk-hearing-support-new-law#ixzz2MExeqANh>.....3

Ross Tuttle and Erin Schneider, “Stopped-and-Frisked: 'For Being a F**king Mutt' [VIDEO]” The Nation (October 8, 2012) available at <http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video>4

Tom McKee, “Ten Years Later: Cincinnati police/community relations much improved” WCPO News (March 6, 2011), available at http://www.wcpo.com/dpp/news/news_archives/Ten-years-later%3A--cincinnati-police_community-relations-much-improved#sthash.rF38037M.dpuf.6

“Bloomberg Angered by Overturned Conviction In Stop-And-Frisk Case” CBS News (June 29, 2012), available at <http://newyork.cbslocal.com/2012/06/29/bloomberg-angered-by-overturned-conviction-in-stop-and-frisk-case/>5

“CPR Members Testify at City Hall in Support of the Community Safety Act.” Communities United for Police Reform (October 11, 2012) available at <http://changethenypd.org/news/cpr-members-testify-city-hall-support-community-safety-act>3

“Marchers Protest NYPD’s Stop and Frisk Tactics”, ABC Local News (June 18, 2012) available at http://abclocal.go.com/wabc/story?section=news/local/new_york&id=87040234

“Stop-and-Frisk Data”, NYCLU, available at <http://www.nyclu.org/content/stop-and-frisk-data>.....4

“The Seattle Collaborative Process for Improving Police-Community Relations”, available at http://www.seattle.gov/council/oparb/reports/201201collab_process_oparb.pdf.....7

STATEMENT OF INTEREST OF THE BLACK, LATINO AND ASIAN
CAUCUS OF THE COUNCIL OF THE CITY OF NEW YORK

The Black, Latino and Asian Caucus (“BLAC” or “the Caucus”) of the Council of the City of New York (the “Council”) is composed of 27 Council Members, with at least one member from each of the five boroughs in the City of New York (the “City”). Each member of BLAC represents a City Council District with approximately 155,000 constituents. BLAC represents over 4 million New Yorkers, approximately 73% of whom are Black or Latino. The BLAC’s mission is to ensure that the City Council addresses issues of particular concern to the City’s Black, Latino and Asian communities.

Members of the Caucus work closely with the New York Police Department (“NYPD”) precincts in their districts and are concerned with the quality of the communication between the community and the police. In their charter-mandated roles as elected officials and as members of their local community boards, each member has a duty to consult with and advise the NYPD in matters relating to the welfare of the residents of their districts. N.Y.C. Charter, Section 28. Additionally, as members of the Council of the City of New York, each has an oversight responsibility for each city agency, including the NYPD. Moreover, certain members serve on the Public Safety Committee of the Council, which has specific oversight authority for the NYPD. N.Y.C. Charter, Section 29.

For over a decade, the NYPD’s policy of stopping, questioning and frisking people without individualized suspicion has been an issue that City residents have brought to the Caucus’ attention through informal complaints to their district offices by constituents, meetings with stakeholder groups and community leaders, litigation, rallies, hearings, and news coverage.

In the past year, however, the Caucus members, along with their constituents, became heavily involved in the discussion surrounding the NYPD’s Stop, Question and Frisk (or “SQF”)

policy. Councilmembers called three public hearings in October 2012. Community leaders, individuals routinely subjected to stop and frisks, the NYPD, experts, lawyers and academics were all invited by the Council to testify about the impact of the SQF policy. Members also proposed four bills aimed at reforming stop and frisk encounters. While members of the communities affected by NYPD's stop and frisk policy have participated with overwhelming responsiveness to the Council's inquiries, the NYPD has repeatedly refused to meaningfully participate in those hearings.

The Caucus' ultimate goal is to create a healthy, respectful and engaged dialogue between their constituents and the police to ensure public and police safety, as well as mutual respect. The present state of polarization and lack of communication between the police and the communities they serve undermines the legitimacy of law enforcement, eviscerates the people's belief that they are safe from the police, and ultimately threatens to destroy the fundamental trust and cooperation between the police and the communities that is required to allow people to be free and empowered in their communities.

Therefore, for the reasons below, the BLAC Caucus supports Plaintiffs' request to include the community in a collaborative process towards reforming the NYPD's street encounter policy.

ARGUMENT

- I. THE BLAC CAUCUS SUPPORTS PLAINTIFFS' REQUEST TO INCLUDE THE COMMUNITY IN A COLLABORATIVE PROCESS BECAUSE THE COMMUNITY HAS DEMONSTRATED ITS WILLINGNESS TO COLLABORATE, THE NYPD HAS FAILED TO RESPOND TO THE COMMUNITY'S CONCERNS AND THE RESULTING DIVISION BETWEEN THE TWO PARTIES REQUIRES AN ENFORCED COLLABORATIVE PROCESS TO RESTORE COMMUNICATION.

The BLAC seeks to participate in this matter because their constituents' active engagement with the SQF policy, combined with the NYPD's unresponsiveness, has proven that, in order to truly establish a productive, positive relationship between the community and the police department, the two must be brought together in a collaborative process towards reform.

A. A Diverse Cross-Section of New York City Communities Want to Contribute to a Dialogue about Reforming NYPD Street Encounters.

Through testimony at council hearings, public commentary on reform bills, "open mic" sessions at rallies, handwritten posters at marches, through social media and interviews with journalists, New York City communities have vociferously made their opposition to NYPD's stop and frisk policy heard. Their voices have represented a diverse range of communities and expressed a range of opinions; but all have been serious, sincere and vital to understanding the full impact of the NYPD's stop and frisk in New York City.¹

The three public hearings held in October 2012 were standing-room only and demonstrated remarkable community participation. Approximately 200 New Yorkers testified at the October 10, 2012 hearing at City Hall and later that month, 60 more people testified at public hearings in Brooklyn and Queens.² Hundreds of concerned constituents attended both the Brooklyn and Queens public hearings, each of which lasted three hours.³

¹ Communities United for Police Reform. "CPR Members Testify at City Hall in Support of the Community Safety Act." Posted on October 11, 2012, available at <http://changethenypd.org/news/cpr-members-testify-city-hall-support-community-safety-act>, last visited on March 1, 2013.

² *Id.* and Christie Thompson, "Momentum Builds in the Fight Against Stop-and-Frisk" *The Nation* (October 31, 2012) available at <http://www.thenation.com/article/170944/momentum-builds-fight-against-stop-and-frisk#sthash.KACZzA4n.dpuf>.

³ Kathleen Horan, "Stop and Frisk Comes Under Fire at Public Hearing" *WNYC Radio*, (October 23, 2012) <http://www.wnyc.org/blogs/wnyc-news-blog/2012/oct/23/stop-and-frisk-comes-under-fire-public-hearing/> and Paul DeBenedetto, "Hundreds Attend Stop-and-Frisk Hearing to Support New Law" *DNAinfo.com* (October 25, 2012), available at <http://www.dnainfo.com/new-york/20121025/jamaica/hundreds-attend-stop-and-frisk-hearing-support-new-law#ixzz2MExeqANh>.

Substantively, the testimonies confirmed that disproportionately large numbers of young Black and Latino men are routinely subjected to unlawful, aggressive and degrading street encounters with police. In 2011, of the 685, 724 people stopped by the NYPD, 87% of those people were Black or Latino and 88% of them were innocent.⁴ In her opening remarks, Councilmember Deborah Rose described stop and frisk as “one of the most pressing civil rights issues of these times”.⁵

Many of those stopped also testified that police used abusive language and threats during the street encounters. Several constituents compared their own experiences of needlessly aggressive policing to a recording released by The Nation on October 8, 2012 during which an officer called a teenager a “f—cking mutt” and threaten to break his arm.⁶ “Brklyn Tr.” at 51:22-52:5 and 106:3-109:7.

In addition to constituents’ overwhelming participation at public hearings, proving their eagerness to participate in reform, the Caucus has also witnessed an unprecedented organizing effort over the past year including a wide range of stakeholders. Individuals have collaborated in Cop Watch activities, Know Your Rights workshops, lobbying efforts, silent marches, rallies and social media campaigns.⁷ The very existence of this long-term, multi-dimensional and diverse campaign establishes that New York City’s communities have invested their time, money and energy in this issue to ensure that their voices are heard. They are already organized and

⁴ “Stop-and-Frisk Data”, NYCLU, available at <http://www.nyclu.org/content/stop-and-frisk-data>.

⁵ “Oversight – The New York City Police Department and Its Use of Stop, Question and Frisk.” Committee on Civil Rights, City Council, City of New York (October 23, 2012) transcript available at <http://legistar.council.nyc.gov/Calendar.aspx?Mode=Today> (“Bklyn Tr.”) at pages 6:5-6. See also the transcript from the Queens hearing on October 24, 2012 at the same web location (“Qns Tr.”).

⁶ Ross Tuttle and Erin Schneider, “Stopped-and-Frisked: ‘For Being a F**king Mutt’ [VIDEO]” The Nation (October 8, 2012) available at <http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video>.

⁷ “Marchers Protest NYPD’s Stop and Frisk Tactics”, ABC Local News (June 18, 2012) available at http://abclocal.go.com/wabc/story?section=news/local/new_york&id=8704023.

prepared to be included in the reform process and that they have valuable experiences and solutions ready to be shared.

B. Absent a Court-Ordered Collaborative Process, the NYPD Will Not Participate in Meaningful Dialogue with Community Members.

In contrast to the vigorous engagement of community members, the NYPD has failed to meaningfully participate in City Council hearings,⁸ failed to respond to FOIL requests,⁹ suppressed attempts to record street encounters,¹⁰ failed to comply with the Stipulation of Settlement agreed to in Daniels, et al. v. City of New York, et al., 99 Civ. 1695(SAS) or reform or properly retrain officers in Jaenean Ligon, et al v. City of New York, et al., 12 Civ. 2274 (SAS). Indeed, the Mayor and Police Commissioner Ray Kelly have repeatedly defended the stop and frisk policy, even in defiance of appellate courts decisions finding the encounters illegal.¹¹ Despite being confronted consistently with community complaints, judicial findings, concerned legislators, the NYPD has refused to acknowledge the policy's adverse effects on community safety and the efficacy of law enforcement efforts.

The NYPD's unresponsiveness to the community's concerns has further heated the tension already smoldering beneath more than a decade of aggressive street encounters. Police and community relations are strained in the communities where stop and frisk is practiced heavily. "Bklyn Tr." 58:17-25, 75:3-76:2, 92:8-94:14. Residents not only avoid street encounters with

⁸ Christie Thompson, "Momentum Builds in the Fight Against Stop-and-Frisk" The Nation (October 31, 2012), available at <http://www.thenation.com/article/170944/momentum-builds-fight-against-stop-and-frisk#sthash.KACZzA4n.dpuf>

⁹ James Barron, "Times Sues City Police, Saying Information Has Been Illegally Withheld," NYTimes.com (December 21, 2010), available at http://www.nytimes.com/2010/12/22/nyregion/22nypd.html?_r=0.

¹⁰ Kia Gregory, "A Watcher of the Police Says He Is Now a Target" NYTimes.com (September 9, 2012), available at <http://www.nytimes.com/2012/09/10/nyregion/chronicler-of-police-says-his-arrest-was-payback-for-harlem-video.html?pagewanted=all>.

¹¹ "Bloomberg Angered By Overturned Conviction In Stop-And-Frisk Case" CBS News (June 29, 2012), available at <http://newyork.cbslocal.com/2012/06/29/bloomberg-angered-by-overturned-conviction-in-stop-and-frisk-case/>.

police, but they avoid all contact with the police, even in matters of crime and safety. This polarization is, by itself, a danger to the community, as Councilmember Jumaane Williams remarked at the Brooklyn hearing. “Bklyn Tr.” at 15:25-16:22 and see Councilmember Rose’s opening remarks on “Queens Tr.” 7-25-8:23.

We have learned from the past ten years of debate surrounding stop and frisk that, absent a court-ordered collaboration, the NYPD is not going to engage the community in a process of reforming its street encounter policies. Restoring open communication depends on a court-ordered collaborative process.

C. Precedent Exists for Including the Community in a Court-Ordered Collaborative Process for Reform.

More than ten years ago in Cincinnati, Ohio, in a class action alleging illegal policing policies, including racial profiling, District Court Judge Susan Dlott ordered that a Court-appointed Special Master manage a “collaborative process” between the community, experts and the police department to serve the dual purposes of restoring trust between the divided parties and creating a blueprint for reform. See Bomani Tyehimba v. City of Cincinnati, et al, C-1-99-317 (So. Dist. Ohio) “Order Establishing Collaborative Process” at Section 3(a).

Ten years later, the Collaborative’s hard work is “paying significant dividends for the city’s quality-of-life.”¹² Most significantly, the police and the community have restored open communication and have successfully cooperated in making public safety their priority. Id. Since the Cincinnati Collaborative Agreement was ordered in 2001, other cities have looked to it, not only as a model for brainstorming meaningful reforms, but also as a crucial part of the process of

¹² Tom McKee, “Ten Years Later: Cincinnati police/community relations much improved” WCPO News (March 6, 2011), available at http://www.wcpo.com/dpp/news/news_archives/Ten-years-later%3A--cincinnati-police_community-relations-much-improved#sthash.rF38037M.dpuf.

reconciling two parties torn apart by an emotionally charged, politically sensitive history of distrust.¹³

The tension between the NYPD and the communities where stop and frisk is heavily practiced easily compares to the atmosphere in Cincinnati prior to the collaborative agreement. Corporation Counsel's remarks at a recent status conference with the Court also attested to the wide divide between the communities opposed to stop and frisk and the NYPD : "Your Honor, don't forget, we engaged in settlement discussion with a magistrate a long time ago and the parties were so far apart ..." "Status Conf. 1/31/13" Tr. at 102-14-16. A necessary piece of restoring trust and reuniting these divided parties is an enforcement of a collaborative process rather than simply a new set of policies.

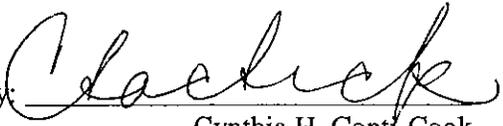
The collaborative process will serve the dual purposes of creating a blueprint for widely-recognized and respected reform, but more importantly, it will serve to improve community-police relationships, foster an atmosphere throughout the community of mutual respect and trust, and reduce friction between the community and its police department. See In Re Cincinnati Policing, "Collaborative Agreement", Section IV(10). This will benefit everyone: the communities that are most impacted will feel—and be—more safe; police officers who fight crime in those communities will receive greater cooperation from community members; and the City will see a reduction in the constant political strife and high financial costs that are endemic to hyper-aggressive, unaccountable policing practices.

¹³ Id. and "The Seattle Collaborative Process for Improving Police-Community Relations", available at http://www.seattle.gov/council/oparb/reports/201201collab_process_oparb.pdf.

CONCLUSION

For the foregoing reasons, *amicus curie*, the Black, Latino and Asian Caucus of the Council of the City of New York, respectfully request that this Court grant Plaintiffs' request to include the community in a collaborative process towards reform.

Dated: Brooklyn, New York
March 4, 2013

By: 

Cynthia H. Conti-Cook
Bar# CC0778
Leo Glickman
Bar#LG3644
Stoll, Glickman & Bellina, LLP
475 Atlantic Avenue 3rd Floor
Brooklyn, NY 11217
(718) 852-3710
(718) 852-3586
cconti-cook@stollglickman.com

*Of Counsel to the Black, Latino and
Asian Caucus of the Council of the City of New York*