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Judge Rejects New York's Stop-and-Frisk Policy

By JOSEPH GOLDSTEIN

A federal judge ruled on Monday that the stop-and-frisk tactics of the New York Police Department violated the constitutional rights of minorities in the city, repudiating a major element in the Bloomberg administration's crime-fighting legacy.

The use of police stops has been widely cited by city officials as a linchpin of New York's success story in seeing murders and major crimes fall to historic lows. The police say the practice has saved the lives of thousands of young black and Hispanic men by removing thousands of guns from the streets.

But the judge, Shira A. Scheindlin, found that the Police Department resorted to a "policy of indirect racial profiling" as it increased the number of stops in minority communities. That has led to officers' routinely stopping "blacks and Hispanics who would not have been stopped if they were white."

The judge called for a federal monitor to oversee broad reforms, including the use of body-worn cameras for some patrol officers, though she was "not ordering an end to the practice of stop-and-frisk."

In her 195-page decision, Judge Scheindlin concluded that the stops, which soared in number over the last decade as crime continued to decline, demonstrated a widespread disregard for the Fourth Amendment, which protects against unreasonable searches and seizures by the government, as well as the 14th Amendment's equal protection clause.

Mayor Michael R. Bloomberg angrily accused the judge of deliberately denying the city "a fair trial" and said the city would file an appeal.

Striking a defiant tone, Mr. Bloomberg said, "You're not going to see any change in tactics overnight." He said he hoped the appeal process would allow the current stop-and-frisk practices to continue through the end of his administration because "I wouldn't want to be responsible for a lot of people dying."

The judge found that for much of the last decade, patrol officers had stopped innocent people without any objective reason to suspect them of wrongdoing. But her criticism went beyond the conduct of police officers.

"I also conclude that the city's highest officials have turned a blind eye to the evidence that officers are conducting stops in a racially discriminatory manner," she wrote, citing statements that Mr. Bloomberg and the police commissioner, Raymond W. Kelly, have made in defending the policy.

Judge Scheindlin ordered a number of remedies, including a pilot program in which officers in at least five precincts across the city will wear cameras on their bodies to record street encounters. She also ordered a "joint remedial process" — in essence, a series of community meetings — to solicit public comments on how to reform the department's tactics.

The judge named Peter L. Zimroth, a partner in Arnold & Porter L.L.P., and a former corporation counsel and prosecutor in the Manhattan district attorney's office, to monitor the Police Department's compliance with the United States Constitution. The installation of a monitor will leave the department under a degree of judicial control that is certain to shape the policing strategies under the next mayor.

Judge Scheindlin's decision grapples with the legacy of Terry v. Ohio, a 1968 ruling by the Supreme Court, which held that stopping and frisking was constitutionally permissible under certain conditions. But she said that changes to the way the New York Police Department employed the practice were needed to ensure that the street stops were carried out in a manner that "protects the rights and liberties of all New Yorkers, while still providing much needed police protection."

The judge found that the New York police were too quick to deem suspicious behavior that was perfectly innocent, in effect watering down the legal standard required for a stop.

"Blacks are likely targeted for stops based on a lesser degree of objectively founded suspicion than whites," she wrote.

She noted that officers routinely stopped people partly on the basis of "furtive movements," a category that officers have testified might encompass any of the following: being fidgety, changing directions, walking in a certain way, grabbing at a pocket or looking over one's shoulder.

"If officers believe that the behavior described above constitutes furtive movement that justifies a stop, then it is no surprise that stops so rarely produce evidence of criminal activity," Judge Scheindlin wrote.

She found that in their zeal to identify concealed weapons, officers sometimes stopped people on the grounds that the officer observed a bulge in the person's pocket; often it turned out that the bulge was caused not by a gun but by a wallet.

"The outline of a commonly carried object such as a wallet or cellphone does not justify a stop or frisk, nor does feeling such an object during a frisk justify a search," she ruled.

She emphasized what she called the "human toll of unconstitutional stops," noting that some of the plaintiffs testified that their encounters with the police left them feeling that they did not belong in certain areas of the city. She characterized each stop as "a demeaning and humiliating experience."

"No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life," she wrote.

One of the plaintiffs in the case, Lalit Clarkson, 31, a union organizer, said after the ruling that "the stop-and-frisk policy criminalizes a whole race and community of people, just for going to work, going to get some food, going on a train to go downtown."

The decision, he said, represents the legal system's validation of what the black community has known for a long time: that the stop-and-frisk tactics rely on racial profiling.

"What we know, in our community, to be the truth, has never before gone through a massive legal process" and been "shown, point by point, step by step" to be true, he said.

The judge's ruling, in Floyd v. City of New York, a 2008 class-action lawsuit that represents the broadest legal challenge to the department's practices, follows a two-month nonjury trial in Federal District Court in Manhattan earlier this year. Her decision cites testimony of about a dozen black or biracial men and one woman who described being stopped, as well as the conclusions of statistical experts who studied police paperwork describing some 4.43 million stops between 2004 and the middle of 2012.

But the stops were not the end of the problem, Judge Scheindlin found. After officers stopped people, they often conducted frisks for weapons, or searched the subjects' pockets for contraband, like drugs, without any legal grounds for doing so. Also, she found that during police stops, blacks and Hispanics "were more likely to be subjected to the use of

force than whites, despite the fact that whites are more likely to be found with weapons or contraband."

About 83 percent of the stops between 2004 and 2012 involved blacks and Hispanics, even though those two demographics make up just slightly more than 50 percent of the city's residents. Mr. Bloomberg and Mr. Kelly have explained that disparity by saying it mirrored the disproportionate percentage of crimes committed by young minority men. But Judge Scheindlin dismissed the Police Department's rationale.

"This might be a valid comparison if the people stopped were criminals," she wrote, explaining that there was significant evidence that the people being stopped were not criminals. "To the contrary, nearly 90 percent of the people stopped are released without the officer finding any basis for a summons or arrest."

Rather, Judge Scheindlin found, the stops overwhelmingly involved minority men because police commanders had come to see them as "the right people" to stop.

"It is impermissible to subject all members of a racially defined group to heightened police enforcement because some members of that group are criminals," she wrote.

Mr. Bloomberg pledged that lawyers for the city, in appealing to the United States Court of Appeals for the Second Circuit, would argue that the judge was biased against the police. As evidence, he cited the fact that the judge, who has overseen numerous stop-and-frisk cases over the last decade, had encouraged the plaintiffs to steer the Floyd case into her courtroom by marking it as related to an earlier case she had overseen.

The mayor said the judge did "not understand how policing works" and had misinterpreted what the Constitution allowed.