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Moving Beyond Stop-and-Frisk

By I. BENNETT CAPERS

MY husband and I are about the same age and build, wear the same clothes and share the same gender, but I am far more likely to be stopped by the police. This isn't because I have a criminal record or engage in furtive movements. Nor is my husband a choirboy. Statistically speaking, it's because I'm black and he's white.

Even before Judge Shira A. Scheindlin of the Federal District Court in Manhattan issued her courageous opinion in the two-month civil rights trial of Floyd v. City of New York on Monday, the numbers bore this out.

Since 2004, the New York Police Department has stopped more than four million individuals, approximately 84 percent of whom have been black or Hispanic. In one recent year, stops of whites amounted to approximately 2.6 percent of the white population; in contrast, stops of blacks amounted to just over 21 percent of the black population.

According to Jeffrey A. Fagan, a statistician at Columbia Law School who testified on behalf of the plaintiffs, blacks and Hispanics are more likely to be targeted than similarly situated whites, even after adjusting for precinct crime rates, racial demographics and other social and economic factors. For too many officers, male + black = reasonable suspicion.

Judge Scheindlin has thus confirmed what many of us suspected all along. A large number of these stops and frisks failed to satisfy the minimal constitutional requirements that the Supreme Court put in place with its decision in Terry v. Ohio in 1968: for a stop, reasonable and articulable suspicion that a person is engaged in a crime, and for a frisk, reasonable and articulable suspicion that a person is armed and dangerous.

Even more important, Judge Scheindlin found that many stops were based almost entirely on race, in violation of the 14th Amendment's guarantee of equal protection under the law, and that the city has long responded with deliberate indifference.

But even if these practices were constitutional, they're still a bad idea. Of course, one wouldn't know that listening to Mayor Michael R. Bloomberg and other true believers, who insist that aggressive stop-and-frisks have reduced violent crime. But they're wrong.

The most obvious reason is the brute numbers. For every 100 individuals stopped and frisked, only about 6 are arrested, often for minor offenses like marijuana possession. The success rate

for finding a gun borders on the nonexistent: 1 in every 1,000 stops. In fact, purely random stops have produced better results.

For another thing, the government's reasoning is empirically suspect, and conflates correlation with causation. The homicide rate has been dropping during the time that stop-and-frisk has been policy. By its defenders' logic, stop-and-frisk works — even though there are many other reasons for the drop in homicides. Moreover, when the number of stops dropped by 20 percent last year, there should have been a corresponding rise in homicides. There wasn't.

And there is a more important argument that isn't captured by the numbers. Aggressive stop-and-frisks sow community distrust of the police and actually inhibit crime control, creating a generation of disaffected minority youths who believe that cops are racists.

Last, the pro-stop-and-frisk camp ignores the strategies other cities have employed to reduce crime without violating civil liberties, like "focused deterrence," which works with communities to go after the few individuals who are typically responsible for driving up crime rates.

None of this means that stop-and-frisk should be junked. As Judge Scheindlin made clear, she is "not ordering an end" to stop-and-frisks. She's ordering the police to follow the law.

When my students ask, what should a cop do to "follow the law," I think back to Martin McFadden, the detective in Terry v. Ohio. Detective McFadden, a veteran of the Cleveland police, saw two men he thought were acting suspiciously. But he didn't immediately stop or frisk them. Instead, he took up a post to watch them.

It soon became clear that the men were scoping out a location for a robbery. He watched as one man walked by the spot several times; he then watched the other go through the same motions. Only then, based on his belief that he had seen enough to think the men were "casing a job, a stickup," did he stop and frisk the men, finding two guns.

That's reasonable suspicion. That's good police work.

Instead, the New York Police Department has watered down the standard so that almost any black or Hispanic male can be deemed suspicious without need for further investigation. That means me. Now imagine if it meant you, too.

That still leaves the question, "What now?" Mayor Bloomberg is sure to appeal Judge Scheindlin's decision, both in the court of appeals and the court of public opinion. But that's not the only option.

He could actually welcome Judge Scheindlin's decision to appoint an independent monitor to supervise reform. Mr. Bloomberg already claims crime reduction as part of his legacy. It's not too late for him to claim that and more: that he reduced crime and finally did so in a way that was fair, egalitarian and not racially discriminatory. And it's certainly not too late for his successor.

Just imagine what a legacy that would be. And not just for the mayor, but for New York City as well.

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