

THE LEGACY OF STOP AND FRISK: ADDRESSING THE VESTIGES OF A VIOLENT POLICE CULTURE

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It was very confusing to me Before that incident I thought [the police] were heroes. When they violated me like that, it was like seeing Batman or Superman slap a baby.

—*Riko Guzman*

*Stopped and frisked in front of his own home at eleven years old.*¹

In the introduction to his famous essay, *Violence and the Word*, Robert Cover explained that law and legal interpretive acts exact violence upon individuals.² He noted that “[a] judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur.”³ This statement is especially true in the context of police-citizen encounters. The law that governs police has been consistently interpreted to justify violence against the very individuals they are charged with protecting. For many years, the New York City Police Department (“NYPD”) has engaged in a practice known as “Stop and Frisk.” This policy allows officers, based on reasonable suspicion that criminal activity is afoot, to engage in investigatory stops and to conduct a pat down of the outer clothing of the individual if there is reasonable suspicion that the suspect is armed. Unfortunately, this policy symbolizes

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1. Jesse Alejandro Cottrell, “*Stop and Frisk*” *May Be Working—But Is It Racist?*, ATLANTIC (Jan. 23, 2013, 10:24 AM), <http://www.theatlantic.com/national/archive/2013/01/stop-and-frisk-may-be-working-but-is-it-racist/267417/> (quoting Riko Huzman, discussing the first time he was stopped and frisked at his Bronx, New York, home).

2. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

3. *Id.*

Cover's explanation of how laws and legal interpretation can justify violence. Although police had previously engaged in these stop-and-frisk tactics, the Supreme Court's landmark 1968 decision in *Terry v. Ohio*⁴ gave this practice the imprimatur of an acceptable law enforcement tool to investigate and prevent violent crime.⁵ In *Terry*, the Court authorized a narrow window of police behavior to stop and frisk individuals based on reasonable suspicion of criminal activity and reasonable suspicion of armed danger.⁶ As practiced in New York, however, many critics argue that stop and frisk does not comport with *Terry* at all, and many view the stop-and-frisk policy as it is currently implemented as an extreme bastardization of the practice the Court actually authorized. Stop and frisk has long been a controversial law enforcement measure, particularly among black and Latino communities, two groups who disproportionately are subject to this policy. For example, in 2011, 87% of those stopped by the NYPD were black or Latino.⁷ In 2013, in *Floyd v. City of New York*,⁸ a federal judge found the City liable for a pattern and practice of racial profiling and unconstitutional stop and frisks.⁹ While the *Floyd I* decision stopped short of ending stop and frisk, many advocates hoped that it would result in remedial measures.¹⁰ Then mayor, Michael Bloomberg, decried the ruling and filed a quick appeal to the Court of Appeals for the Second Circuit, claiming, "It's a dangerous decision made by a judge who doesn't understand how policing works."¹¹ The Second Circuit stayed the remedial ruling and then removed Judge Shira Schindler from the case alleging that she was not impartial.¹²

Many scholars have relentlessly challenged the constitutional frailty of stop and frisk and the racially discriminatory aspects of the policy as the court highlighted in *Floyd I*. Although the investigation and prevention of violent crime are important law enforcement goals, stop and frisk has not proved to be an effective law enforcement tool. Not only do police rarely find the weapons for which they purportedly have a "reasonable suspicion" to exist, but these police-citizen encounters inflict needless violence on law-

4. 392 U.S. 1 (1968).

5. *Id.* at 30.

6. *Id.*

7. *Stop-and-Frisk Data*, N.Y.C. L. UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Aug. 16, 2014).

8. (*Floyd I*), 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

9. *Id.* at 561.

10. *Id.* at 563.

11. Christopher Mathias, *Bloomberg Decries "Dangerous" Stop-and-Frisk Ruling, Promises Appeal*, HUFFINGTON POST (Aug. 12, 2013, 6:03 PM), http://www.huffingtonpost.com/2013/08/12/bloomberg-stop-and-frisk_n_3744102.html.

12. David Rudovsky & Lawrence Rosenthal, *Debate: The Constitutionality of Stop-and-Frisk in New York City*, 162 U. PA. L. REV. ONLINE 117, 118 (2013).

abiding citizens who are merely going about their daily routine.¹³ The individuals who have been subjected to this policy live in constant fear that they will be stopped, harassed, and physically harmed by the very police officers who are responsible for protecting their communities.

While there is an abundance of analysis regarding the detrimental impact of the stop-and-frisk policy, particularly the allegations of racial discrimination, an under examined facet of this policy and its implementation is the inherently violent nature of these encounters. The “frisk,” or pat down, necessarily connotes a physical touching, but personal accounts of stop-and-frisk encounters reveal a disturbing pattern of violence towards those stopped. In *Terry*, Chief Justice Warren explicitly recognized the intrusiveness such behavior had on the targeted suspect when Chief Justice Warren vehemently argued, “[I]t is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’”¹⁴ Not only did Chief Justice Warren recognize the true nature of these encounters, but it also had great insight into the impact that these encounters would have on people. Warren further noted, “It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.”¹⁵ Additionally there is little attention devoted to the long-term effects that police violence might have on the individuals and community as a whole. Clearly, New York’s stop-and-frisk policy has evolved into a tactic whose purpose is to intimidate and harass vulnerable classes of individuals—poor, racial, and ethnic minorities. There are numerous accounts of aggressive police tactics, ranging from physical violence to verbal abuse, that demonstrate the culture of violence surrounding these police encounters. Ironically, the same individuals who have experienced violence at the hands of police are often those most in need of police protection. In fact, as members of the community, these individuals may possess valuable information useful to police in their own crime-prevention endeavors.

The days of stop and frisk, at least as an official policy of the NYPD, appear to be numbered as intense scrutiny and negative publicity have weakened public support for the policy. Not only has the NYPD been found liable for a pattern of racial discrimination,¹⁶ but New York City’s current mayor, Thomas de Blasio, has also

13. Adam Gabbatt, *Stop-and-Frisk: Only 3% of 2.4m Stops Result in Conviction, Report Finds*, THEGUARDIAN (Nov. 14, 2013, 1:18 PM), <http://www.theguardian.com/world/2013/nov/14/stop-and-frisk-new-york-conviction-rate>.

14. *Terry v. Ohio*, 392 U.S. 1, 17–18 (1968).

15. *Id.* at 18.

16. *Floyd I*, 959 F. Supp. 2d 540, 590 (S.D.N.Y. 2013).

vowed to end the policy.¹⁷ Despite improvements and monitoring, the *legacy* of the stop and frisk will surely survive. The culture of violence is undoubtedly imbued within the institutional fabric of the police department, and abuses will likely continue. Also unfortunate are the physical and emotional scars that are indelibly seared in the memories of the hundreds of thousands of residents who have endured this violence for so long.

Part I of this Essay explains the controversial stop-and-frisk policy as it has been implemented in New York City and explores arguments for and against the use of such tactics to prevent and investigate crime. Part II explains the inherent violence the NYPD has employed in numerous stop-and-frisk encounters. Part III argues that the institutional nature of practices such as stop and frisk and other aggressive police strategies create a culture that cultivates misconduct within police departments, imposes unfair burdens on residents of these communities, and undermines the legitimacy of law enforcement. The violence visited upon those who have been subject to these practices will have a lasting impact that serves only to perpetuate the violence in the affected communities. In conclusion, Part IV offers solutions to counteract institutional police misconduct associated with stop and frisk and other aggressive police tactics. Any successful reform must be organizational in nature and must include various stakeholders to ensure sustainable and politically legitimate reforms.

I. STOP AND FRISK: THE POLICY, ITS PROBLEMS, AND ITS PROPONENTS

A. *The Policy: Terry v. Ohio and the New York Criminal Code*

In 1968, the Supreme Court decided *Terry v. Ohio* a case that would become one of the most important criminal procedure cases of the twentieth century.¹⁸ Although officers had long been stopping suspects and conducting searches of their person with less than probable cause, *Terry* officially recognized the constitutionality of this practice. While sidestepping the issue of whether investigatory stops were themselves reasonable under the Fourth Amendment, the Court decided that if officers had a reasonable suspicion that criminal activity was afoot and the officer had a reasonable suspicion that the suspect was armed, the officer could conduct a pat down or “frisk” of the outer clothing of the individual.¹⁹ Even though the plaintiff argued that the officers should have probable cause, rather than just reasonable suspicion, the Court held that the lower reasonable suspicion standard was sufficient.²⁰ The Court

17. Gabbatt, *supra* note 13.

18. *See Terry*, 392 U.S. 1.

19. *Id.* at 30.

20. *Id.* at 27.

explicitly noted that even without judicial approval, officers were likely to continue to conduct such searches for their safety, even in the absence of probable cause.²¹ Thus, even though *Terry* came in the midst of the Warren Court's "due process revolution," civil libertarians do not view the decision as a success story.²²

Of course, New York and many other states already had statutes that permitted officers to conduct these stops. The original New York law provided that:

1. A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the offenses specified in section five hundred fifty-two of this chapter, and may demand of him his name, address and an explanation of his actions.
2. When a police officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the police officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.²³

Currently, the statute called "Temporary questioning of persons in public places," reads:

1. In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.
2. [Applies to court officers only]

21. *Id.* at 14.

22. See Carol S. Steiker, *Terry Unbound*, 82 MISS. L.J. 329, 357–58 (2013) (lamenting the direction in which *Terry* was taken by the Rehnquist Court).

23. N.Y. CRIM. PROC. LAW § 180-a (McKinney 1969).

3. When upon stopping a person under circumstances prescribed in subdivisions one and two a police officer or court officer, as the case may be, reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.²⁴

B. *The Problems: Public Scrutiny and Legal Challenges*

1. *The Attorney General Report*

New York's stop-and-frisk policy came under intense scrutiny following the fatal police shooting of Amadou Diallo, an unarmed African immigrant whom police shot at forty-one times.²⁵ After the shooting, the New York State Attorney General's Office conducted the first comprehensive analysis of stop-and-frisk data.²⁶ The Attorney General's report found that "blacks and Hispanics were significantly more likely than whites to be 'stopped' after controlling for race-specific precinct crime rates and precinct population composition by race."²⁷ The Attorney General's report also found problems with the reasons that officers provided for their stops. For example, on approximately 23.5% of the forms, the officers did not provide enough information to determine if there was reasonable suspicion, and on an additional 15.4% of the forms, the reasons that officers *did* provide were not sufficient for reasonable suspicion.²⁸

Despite the report's findings, the Attorney General did not order an end to the policy. In fact, New York increased the intensity of its stop-and-frisk practice between 1999 and the *Floyd I*²⁹ decision in 2013.³⁰ As David Harris noted, "[I]n 2002, the NYPD conducted 97,000 stops and frisks; by 2011, the total had increased to nearly

24. N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2014).

25. Jane Fritsch, *4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, at A1.

26. N.Y. STATE OFFICE OF THE ATTORNEY GEN., THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES: A REPORT TO THE PEOPLE OF THE STATE OF NEW YORK FROM THE OFFICE OF THE ATTORNEY GENERAL (1999), available at http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil_rights/stp_frsk.pdf.

27. *Id.* at 121.

28. *Id.* at 160, 162.

29. 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

30. N.Y. STATE OFFICE OF THE ATTORNEY GEN., A REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT'S STOP-AND-FRISK PRACTICES 5 (2013), available at http://www.ag.ny.gov/pdfs/OAG_REPORT_ON_SQF_PRACTICES_NOV_2013.pdf.

700,000.”³¹ He further noted that “[t]he disproportionate racial impact of these stops and frisks has also continued: over eighty percent of the stops and frisks in the years 2002 through 2011 were people of color.”³²

2. *Class Action Law Suits*

In 1999, the Center for Constitutional Rights³³ challenged the NYPD’s practices of racial profiling and unlawful stops and frisks in *Daniels v. City of New York*.³⁴ The suit also sought to have the court disband the NYPD’s notorious Street Crime Unit (“SCU”). Although the City initially defended the suit, alleging that the plaintiffs did not have standing, the City eventually agreed to settle the case. In December 2003, Judge Scheindlin approved a settlement agreement that required the NYPD to develop and maintain a written antiracial profiling policy that complies with the U.S. and New York State Constitutions.³⁵ The settlement also required that the NYPD collect information regarding officers who engaged in stops and frisks, and their supervisors, to determine whether and to what extent the stops and frisks are based on reasonable suspicion. Further, this settlement also imposed requirements on the NYPD to engage in public education efforts, including joint public meetings with class members and representatives on its racial profiling policy and to participate in workshops at approximately fifty city high schools regarding the legal rights of those subjected to stop and frisks.

Judge Scheindlin oversaw the settlement in *Daniels* through 2007, but “significant non-compliance with the consent decree”³⁶ and the continued and increasing blatant racial disparities led to the filing of another federal class-action case, *Floyd I*.³⁷ In *Floyd I*, the

31. David A. Harris, *Across the Hudson: Taking the Stop and Frisk Debate Beyond New York City*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 853, 854 (2013).

32. *Id.*

33. *About CCR*, CENTERFORCONSTITUTIONALRIGHTS, <http://www.ccrjustice.org/about-ccr> (last visited Aug. 16, 2014).

34. No. 1:99-CV-01695 (S.D.N.Y. filed Mar. 8, 1999); see also *Daniels v. City of New York*, CIV. RTS. LITIG. CLEARINGHOUSE, <http://www.clearinghouse.net/detail/php?id=12023> (last visited Sep. 26, 2014) (providing a detailed description of the case and access to court documents); *Daniels, et al. v. the City of New York*, CENTERFORCONSTITUTIONALRIGHTS, <http://ccrjustice.org/ourcases/past-cases/daniels%2C-et-al.-v.-city-new-york> (last visited Sep. 26, 2014).

35. *Daniels, et al. v. the City of New York*, CENTERFORCONSTITUTIONALRIGHTS, *supra* note 34; see also *Daniels v. City of New York*, CIV. RTS. LITIG. CLEARINGHOUSE, *supra* note 34 (providing a summary of the case docket and access to court documents including the settlement agreement).

36. *Daniels, et al. v. the City of New York*, CENTERFORCONSTITUTIONALRIGHTS, *supra* note 34; see also *Daniels v. City of New York*, CIV. RTS. LITIG. CLEARINGHOUSE, *supra* note 34.

37. See *Floyd I*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

plaintiffs alleged that NYPD officers engaged in a practice of unreasonable, suspicionless, and racially discriminatory stops in violation of both the Fourth Amendment's prohibition against unreasonable searches and seizures and the Fourteenth Amendment's Equal Protection Clause barring racial discrimination.³⁸ Based on numerous factual findings (discussed in Subpart I.C), on August 12, 2013, Judge Scheindlin found the NYPD liable for a pattern and practice of racial profiling and unconstitutional stops and frisks.³⁹ Rather than order an end to stop and frisk, the court ordered the appointment of an independent monitor, Peter L. Zimroth, to oversee the reform process.⁴⁰ Among other things, the reforms focused on changes to the way that stops are conducted, including the revision of the form used by officers to record stops to include narrative sections where officers will have to explain the reasons for stops and frisks.⁴¹ Additionally, the judge suggested the implementation of a one-year pilot program in which officers in one precinct in each borough would wear cameras on their bodies.⁴²

The Bloomberg administration appealed the ruling, and the Court of Appeals for the Second Circuit ordered a stay pending the appeal.⁴³ New York's recently elected mayor, Tom de Blasio, however, campaigned with the promise to end stop and frisk.⁴⁴

C. *Empirical Evidence of Racial Discrimination*

There is a tremendous amount of data demonstrating that the NYPD implemented stop and frisk in a racially discriminatory manner.⁴⁵ According to the findings in *Floyd*, between January 2004 and June 2012, the NYPD made 4.4 million stops.⁴⁶ Over 80% of people stopped were black or Latino.⁴⁷ The court also found that the racial composition of a precinct or census tract predicts the stop

38. *Id.* at 556.

39. *Id.* at 562.

40. *Floyd v. City of New York (Floyd II)*, 959 F. Supp. 2d 668, 676 (S.D.N.Y. 2013); *Floyd I*, 959 F. Supp. 2d at 667.

41. *Floyd II*, 959 F. Supp. 2d at 681–82.

42. *Id.* at 685.

43. *Ligon v. City of New York*, 736 F.3d 118, 129 (2d Cir. 2013).

44. Michael Barbaro, *The Ad Campaign: De Blasio Speaks Against Stop-and-Frisk Tactics*, CITY ROOM: BLOGGING FROM FIVE BOROUGHES (Aug. 19, 2013, 1:00 PM), <http://cityroom.blogs.nytimes.com/2013/08/19/the-ad-campaign-de-blasio-speaks-against-stop-and-frisk/>.

45. See N.Y. STATE OFFICE OF THE ATTORNEY GEN., *supra* note 30, at 16 (“The data analyzed for this report confirms that the racial disparities found in the identities of people stopped by the NYPD persist at and beyond the point of arrest.”); Mathew Blotch et al., *Stop, Question and Frisk in New York Neighborhoods*, N.Y. TIMES (July 11, 2010), <http://www.nytimes.com/interactive/2010/07/11/nyregion/20100711-stop-and-frisk.html?ref=nyregion&r=0>.

46. *Floyd I*, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013).

47. *Id.* at 574.

rate *above and beyond* the crime rate.⁴⁸ From 2004 through 2009, when any law enforcement action was taken following a stop, blacks were 30% more likely to be arrested (as opposed to receiving a summons) than whites for the same suspected crime.⁴⁹ From 2004 through 2009, blacks who were stopped were about 14% more likely—and Latinos 9% more likely—than whites to be subjected to the use of force.⁵⁰ In 2009 alone, blacks and Latinos represented 84% of the people stopped, although blacks only compose 26%—and Latinos 27%—of the population of New York City.⁵¹ The New York Civil Liberties Union (“NYCLU”) also reported similar racial disparities. In 2012, the NYCLU reported that of those stopped, 55% were black, 32% were Latino, and 10% were white.⁵²

D. Empirical Evidence That Stop and Frisk is an Ineffective Law-Enforcement Tool

In addition to the claims of racial discrimination, many opponents of practices such as stop and frisk believe that such polices are ineffective and do not prevent or deter crime.⁵³ Multiple studies conducted during different time periods demonstrate that stop and frisk is an ineffective law enforcement tool. The NYCLU reported that in 2012, there were 532,911 stops, and of those 473,644 (89%) were innocent.⁵⁴

Factual findings from *Floyd* also are instructive here. The opinion notes that while “52% of all stops were followed by a protective frisk for weapons[,] [a] weapon was found after [only] 1.5% of these frisks.”⁵⁵ This means that 98.5% of the time, officers found no weapon.⁵⁶ “Weapons were seized in 1.0% of the stops of

48. *Id.* at 560.

49. *Id.*

50. *Id.*

51. *NYPD Stop-and-Frisk Statistics: 2009 and 2010*, CENTERFORCONSTITUTIONALRIGHTS, <http://ccrjustice.org/files/CCR-Stop-and-Frisk-Fact-Sheet-2010.pdf> (last visited Aug. 16, 2014).

52. *Stop-and-Frisk Data*, *supra* note 7.

53. Donald Braman, *Stop-and-Frisk Didn't Make New York Safer*, ATLANTIC (Mar. 26, 2014, 3:26 PM), <http://www.theatlantic.com/national/archive/2014/03/stop-and-frisk-didnt-make-new-york-safer/359666/> (“[T]he NYPD adopted order-maintenance policing, including stop-and-frisk, and crime went down. But the increase in frisks and arrests didn’t predate the drop in crime; it came *after* the drop in crime.”); Gabbat, *supra* note 13 (explaining that the 2.4 million stops from 2009 to 2012 “resulted in almost 150,000 arrests, but only half of those led to a conviction or a guilty plea”); Jamil Smith, *Stopping and Frisking, but Not Finding*, MSNBC (Aug. 29, 2013, 11:22 AM), <http://www.msnbc.com/melissa-harris-perry/stopping-and-frisking-not-finding?lite=> (“[T]hey’re finding just over one gun per 1,000 stops, and mostly not in the places they’re searching, or amongst the people they’re stopping. It’s one thing to suspect for no reason; another to suspect for no reason, and produce no results.”).

54. *Stop-and-Frisk Data*, *supra* note 7.

55. *Floyd I*, 959 F. Supp. 2d at 558.

56. *Id.*

blacks, 1.1% of the stops of Latinos, and 1.4% of the stops of whites.”⁵⁷ “Between 2004 and 2009, the percentage of stops where the officer failed to state a specific suspected crime rose from 1% to 36%.”⁵⁸ Only “6% of stops resulted in an arrest, and 6% resulted in a summons.”⁵⁹ “The remaining 88% of the 4.4 million stops resulted in no further law enforcement action.”⁶⁰

The Center for Constitutional Rights reported similar findings. Weapons were recovered in only 7201 stops in 2009, which is only 1.25% of all stops.⁶¹ Furthermore, David Greenberg, who has conducted one of the most comprehensive empirical analyses of the impact of stop and frisk on crime, determined that there was “no evidence that misdemeanor arrests reduced levels of homicide, robbery, or aggravated assaults.”⁶² These statistics demonstrate that not only is there no factual basis upon which to arbitrarily stop and frisk blacks and Latinos but that the actual basis of the law—to prevent and deter crime—is nonexistent.

E. Proponents' Arguments

Despite the arguments against stop and frisk, the policy does have its supporters. The supporters of New York City's stop-and-frisk policy argue that it is extremely effective at reducing crime and that, contrary to belief, it benefits minority groups. After many attacks from the media, then mayor, Michael Bloomberg (2002–2013), defended this policy in the opinion section of the *Washington Post*. He argued: “New York is the safest big city in the nation, and our crime reductions have been steeper than any other big city's. For instance, if New York City had the murder rate of Washington, D.C., 761 more New Yorkers would have been killed last year.”⁶³

Bloomberg went on to rebut critics' claims that the practice was racially discriminatory, as so many more blacks and Latinos were stopped than whites, by claiming that more than 90% of the would-be victims that stop and frisk has saved were black or Latino.⁶⁴ He noted that he banned racial profiling in 2004, but insisted that the simple reality of the situation is that blacks and Latinos commit crimes at a higher rate than the other citizens of New York City, including 90% of the murders and violent crime in the city.⁶⁵ He

57. *Id.* at 559.

58. *Id.*

59. *Id.* at 573.

60. *Id.* at 558–59.

61. *NYPD Stop-and-Frisk Statistics: 2009 and 2010*, *supra* note 51.

62. Braman, *supra* note 53.

63. Michael R. Bloomberg, *Michael Bloomberg: “Stop and Frisk” Keeps New York Safe*, WASH. POST (Aug. 18, 2013), http://www.washingtonpost.com/opinions/michael-bloomberg-stop-and-frisk-keeps-new-york-safe/2013/08/18/8d4cd8c4-06cf-11e3-9259-e2aaf5a5f84_story.html.

64. *Id.*

65. *Id.*

ended this argument with a bold statement: “When it comes to policing, political correctness is deadly.”⁶⁶

Ray Kelly served as the Police Commissioner during the Bloomberg era and during the height of stop and frisk (2002–2013). He agrees with Bloomberg that the violent crime rate plummeted because of new police policies—including stop and frisk. In remarks delivered to City Hall, transcribed into an article for the *New York Daily News*, he pointed to the fact that “[i]n the first 11 years of Mayor Bloomberg’s tenure there were 7,363 fewer murders in New York City compared to the 11 years prior to the Mayor taking office.”⁶⁷ And although he concedes that minority groups are more often targeted for these stops, he said that it is poor and minority communities that benefit most from the reduction in violent crime. He argues:

Last year 97 percent of all shooting victims were black or Hispanic and reside in low-income neighborhoods. Public housing where five percent of the city’s population resides experiences 20 percent of the shootings. There were more stops with suspicious activity in neighborhoods with higher crime because that’s where the crime is.⁶⁸

Former New York Mayor Rudy Giuliani is generally credited with approving the implementation of the policy during his time as mayor between 1994 and 2001 in an effort to curb the high levels of violent crime. He spoke to Fox News in an on-air interview in October 2013 in response to the negative reception Police Commissioner Ray Kelly received at Brown University (the audience booed him off stage).⁶⁹ Giuliani remains a staunch advocate of the policy, claiming that it saved “10,000–20,000” lives with eight out of ten of those being minority lives, and that overall murder in the city was reduced by an outstanding 80% during the Giuliani-Bloomberg years.⁷⁰ Giuliani also claims that stop and frisk has had positive effects on counterterrorism efforts in the city. He has lauded police for their “proactive” role in crime prevention and is proud that officers are not “sitting back” and waiting until a crime happens to take action to arrest.⁷¹

Proponents eschew the racial disparities and argue that police disproportionately stop minorities because minorities are

66. *Id.*

67. *New York Police Commissioner Ray Kelly Calls Stop-and-Frisk Decision “Disturbing and Offensive” (Transcript)*, NYDAILYNEWS.COM (Aug. 12, 2013, 3:01 PM), <http://www.nydailynews.com/news/politics/new-york-police-commissioner-ray-kelly-comments-stop-and-frisk-decision-article-1.1424689>.

68. *Id.*

69. *Rudy Giuliani on How Stop-and-Frisk Policy Saves Lives*, FOX NEWS (Oct. 30, 2013, 5:36 PM), <http://www.video.foxnews.com/v/2786391922001/rudy-giuliani-on-how-stop-and-frisk-policy-saves-lives/#sp=show-clips>.

70. *Id.*

71. *Id.*

disproportionately involved in violent crimes. Despite this argument, statistics show that in 2011, officers recorded instances of violent criminal activity in only 10.5% of stops.⁷²

II. NOT YOUR GRANDFATHER'S *TERRY* STOP: THE VIOLENT NATURE OF STOP-AND-FRISK ENCOUNTERS

A. *The Inherent Violence of Stop and Frisk*

While scholars, judges, and activists have heavily scrutinized New York's stop-and-frisk policy, one underexamined aspect of the policy is the inherent violence associated with these encounters. Stop and frisk, as it is practiced in New York and many communities, is not a mere inconvenience. Nor does it resemble the cursory pat downs and whisks of the wand that many airline passengers experience prior to boarding a plane. A substantial amount of evidence demonstrates that during these encounters, officers are physically and verbally abusive to those they stop, as discussed in this Part. This evidence includes interviews, videos, and audio recordings. The *Terry* decision is replete with references to the intrusive nature of these stops, and the Court noted that "[e]ven a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience."⁷³ Stops and frisks, as they occur in New York, certainly are even more intrusive than those envisioned by *Terry*. Furthermore, the sheer nature and volume of the stops, coupled with the evidence of racial discrimination, adds another layer of analysis and poses additional questions. Why are vulnerable groups singled out to experience this violence, and what are the lasting implications of that violence at the hands of police officers whose mission is to protect those vulnerable communities?

In 2011, the police used some level of force in more than one in five stops in New York City. Like the stops and frisks themselves, police officers disproportionately reserved the use of violence for racial minorities. According to the factual findings in *Floyd I*, between 2004 and 2012, in 23% of the stops of blacks and in 24% of the stops of Latinos, the officer recorded using force.⁷⁴ The number for whites was 17%. Similarly, the Center for Constitutional Rights reported that in 2009, violence was used against blacks 75,424 times, against Latinos 48,607 times, and against whites 10,041 times.⁷⁵

72. N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2011: NYCLU BRIEFING 4-5 (2012), available at http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf.

73. *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968).

74. *Floyd I*, 959 F. Supp. 2d 540, 559 (S.D.N.Y. 2013).

75. *NYPD Stop-and-Frisk Statistics: 2009 and 2010*, *supra* note 51.

The *Nation* obtained exclusive footage of a stop and frisk that underscores the violent and humiliating nature of these stops. On June 3, 2011, a Harlem teen named Alvin was stopped and questioned by several plainclothes NYPD officers.⁷⁶ Unbeknownst to the officers, Alvin captured the encounter on his cell phone in what is one of the few recordings of a stop and frisk. During the two-minute recording, officers failed to provide a legally valid reason for the stop, called him a racial epithet, and threatened him with violence.⁷⁷ During the stop, one officer said, "You want me to smack you?"⁷⁸ When Alvin inquires of the officer as to why he is threatening to arrest him, the officer replies, "For being a fucking mutt."⁷⁹ The officer physically places Alvin's arm behind his back and the officer says, "Dude, I'm gonna break your fuckin' arm, then I'm gonna punch you in the fuckin' face."⁸⁰

Felipe Carrion experienced a similarly violent encounter with police while standing outside of a shop he owned. He said that two officers confronted him, and "[t]hey asked me what I was doing in front of the shop and I said I was the owner."⁸¹ The officers told him that they did not believe he was the owner and asked him for identification.⁸² As Mr. Carrion reached for his identification, the officers shoved him against the wall.⁸³ Mr. Carrion says, "I was like, 'You're using police brutality. You're not supposed to be doing that. Let me show you ID.'"⁸⁴ The officers calmed down after Mr. Carrion showed them his identification, but not before they shoved him against the wall again and searched him.⁸⁵

Yet another violent encounter involved Christopher Graham, who said that officers stopped him as he was leaving a friend's apartment building.

76. Ross Tuttle & Erin Schneider, *Stopped-and-Frisked: "For Being a F**king Mutt,"* NATION (Oct. 8, 2012), <http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video>.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Ray Rivera, *Pockets of City See Higher Use of Force During Police Stops*, N.Y. TIMES (Aug. 15, 2012), <http://www.nytimes.com/2012/08/16/nyregion/in-police-stop-data-pockets-where-force-is-used-more-often.html?smid=pl-share>.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

The officers guided them to the wall of the building and began frisking them. . . . When the officer got to his groin area, Mr. Graham flinched, he said. "I said, 'Whoa, what are you doing?'" Mr. Graham recalled. "The cop put his hand on the back of my cap and, boom, smashed my head into the wall of the apartment, for no reason."⁸⁶

The result was an injured Mr. Graham, drenched in blood and requiring six stitches.⁸⁷ Graham, "who was neither arrested nor issued a summons in the stop, still bears a scar next to his left eye."⁸⁸

Still, there are other troubling examples. A sample of the testimonies of stop-and-frisk victims reveals the violent nature of these encounters. One person says,

My jeans were ripped. I had bruises on my face. My whole face was swollen. I was sent to the precinct for disorderly conduct. I got out two days later. The charges were dismissed. At central booking, they threw out the charge. No charge. I felt like I couldn't defend myself, didn't know what to do. No witnesses there to see what was going on. I just wish someone was there to witness it. I felt like no one would believe me. I couldn't tell anyone. I kept it in till now. . . . I still am scared.⁸⁹

Another account reveals the public humiliation police officers force subjects to endure during stops: "It's the difference between frisking somebody and going in [their] underwear or like putting gloves on outside, checking other people's private areas, and people's rectal area to see if they have drugs in them. It's just too much, outside—that's embarrassing."⁹⁰

These experiences are not isolated occurrences. According to a VERA Institute of Justice study, "45 percent of respondents reported that an officer had made a verbal threat during the course of at least one stop."⁹¹ "A nearly identical proportion of people surveyed (46 percent) reported that an officer had used force against them during the course of at least one stop."⁹²

86. *Id.*

87. *Id.*

88. *Id.*

89. CTR. FOR CONSTITUTIONAL RIGHTS, STOP AND FRISK: THE HUMAN IMPACT 5 (2012), <http://stopandfrisk.org/the-human-impact-report.pdf>.

90. *Id.*

91. JENNIFER FRATELLO ET AL., COMING OF AGE WITH STOP AND FRISK: EXPERIENCES, SELF-PERCEPTIONS, AND PUBLIC SAFETY IMPLICATIONS 12 (2013), available at <http://www.vera.org/sites/default/files/resources/downloads/stop-and-frisk-summary-report-v2.pdf>.

92. *Id.*

According to the young people interviewed, use of force typically occurred while an officer was frisking or searching them and often involved being pushed against a wall, although some people recalled officers twisting their arms and/or cuffing their hands while they were being patted down or searched. One in four (27 percent) survey respondents reported being involved in at least one stop in which the officer displayed his or her weapon.⁹³

Again, not only are racial minorities stopped and frisked with greater frequency, but blacks and Latinos also experience greater physical violence during these encounters. In 23% of the stops of blacks, and 24% of the stops of Latinos, the officer reported using force.⁹⁴ The number for whites was 17%.⁹⁵ From 2004 through 2009, blacks who were stopped were about 14% more likely, and Latinos who were stopped were about 9% more likely, than whites to be subjected to the use of force.⁹⁶

It is also important to note that while New York has received much recent attention for its aggressive policies, the practices are in no way limited to New York. Many cities use stop-and-frisk tactics—even though they may not use the moniker stop and frisk. In Boston, for example, the aggressive style of policing was known as “tipping kids upside down.”⁹⁷ This figure of speech connotes the violent nature of the contacts.

B. *The End of an Era?*

In January 2014, during his first month in office, Mayor de Blasio proposed to drop the appeal in *Floyd* and remand the case back to district court for settlement. The settlement would recognize a federal monitor appointed by the judge and include such other safeguards as the use of on-body cameras to monitor police stops.⁹⁸ Police unions, however, filed a motion to intervene in November 2013, arguing that their rights would be affected by the decision, and in February 2014, they filed a motion opposing the appeal and remand.⁹⁹ Nevertheless, the Court of Appeals for the Second Circuit granted the City’s motion for limited remand back to the U.S. District Court for the Southern District of New York. The panel decided not to take a position on the interveners’ motion,

93. *Id.* at 12–13.

94. *Floyd I*, 959 F. Supp. 2d 540, 559 (S.D.N.Y. 2013).

95. *Id.*

96. *Id.* at 560.

97. Craig S. Lerner, *Judges Policing Hunches*, 4 J.L. ECON. & POL’Y 25, 63–64 (2007).

98. Benjamin Weiser & Joseph Goldstein, *Mayor Says New York City Will Settle Suits on Stop-and-Frisk Tactics*, N.Y. TIMES (Jan. 30, 2014), <http://www.nytimes.com/2014/01/31/nyregion/de-blasio-stop-and-frisk.html>.

99. *Ligon v. City of New York*, 743 F.3d 362, 364–65 (2d Cir. 2014).

noting that the request would be better handled by the district court.¹⁰⁰ The ruling states as follows:

In the circumstances presented here, we believe it preferable that the motions be addressed there in the first instance, particularly because the appropriateness of intervention and the form it takes could well bear on settlement negotiations. Moreover, the District Court is better positioned to deal with the complexities that might arise during multi-faceted settlement negotiations in which a variety of interests must be accommodated.¹⁰¹

Although the litigation of stop and frisk continues, Mayor de Blasio and Police Commissioner Bill Bratton (once again) have taken steps to “modify” the practice.¹⁰² Bratton notes that the stop-and-frisk policy continues but that the NYPD has been implementing it in a constitutional and nondiscriminatory manner in the last year or so. In January 2014, Bratton stated “that the problems with stop-and-frisk in New York City had ‘more or less been solved,’ noting that there had been a 60 percent decrease in stops from 2012 to 2013.”¹⁰³ In the first three months of Mayor de Blasio’s mayoralty, police recorded 14,261 stops, compared with 99,788 in the same period of 2013.¹⁰⁴ Bratton stated that he hopes these changes can bring “the police and the public ‘together in a

100. *Id.* at 365.

101. *Id.*

102. Azi Paybarah, *Bratton on Counterterrorism, “Modifying” Stop-and-Frisk*, CAPITAL (May 7, 2014, 12:56 PM), <http://www.capitalnewyork.com/article/city-hall/2014/05/8544925/bratton-counterterrorism-modifying-stop-and-frisk>.

103. Stephanie Francis Ward, *Has “Stop and Frisk” Been Stopped?*, A.B.A. J. (Mar. 1, 2014, 6:39 AM), http://www.abajournal.com/magazine/article/has_stop_and_frisk_been_stopped/.

104. Anthony M. DeStefano, *NYPD Stops, Serious Crimes Down from Last Year*, POLICEONE.COM (May 8, 2014), <http://www.policeone.com/crime/articles/7164332-NYPD-stops-serious-crimes-down-from-last-year/>. Indeed, in November 2013, prior to Mayor de Blasio’s initial day in office, the NYPD Police Chief Philip Banks issued what has become known as “The Finest Message.” Rocco Parascandola, *NYPD Memo Clarifies What Cops Can and Can’t Do When They “Stop and Frisk,”* NYDAILYNEWS.COM (Nov. 25, 2013, 2:31 PM), <http://www.nydailynews.com/news/crime/nypd-stop-frisk-article-1.1528493>. Police sources claimed that the memo was to clarify the proper way to conduct a stop and frisk and “to correct the misinformation that has become part of the dialogue concerning the controversial tactic.” *Id.* Opponents of stop and frisk viewed the memo as an admission that racial profiling and other improper behavior occurred pursuant to the policy that they deemed to be a “fear campaign.” *Id.*

collaboration of mutual respect and mutual trust”¹⁰⁵ and has vowed to win back the minority community.¹⁰⁶

Despite Bratton’s comments, some critics disagree that the “old days” of stop and frisk are really over. For example, Robin Steinberg, executive director of the Bronx Defenders, claimed that as recently as January 2014, “[Eleven] young men were unlawfully stopped and frisked against the walls of the Bronx Defenders while one of [the office’s] investigators recorded it on his phone. No contraband or weapons were found on anyone and no arrests were made. It looked like stop-and-frisk as usual.”¹⁰⁷

III. THE VESTIGES OF VIOLENCE—THE LASTING IMPACT OF STOP AND FRISK

Whether or not the stop and frisk continues in its current form or has been sufficiently modified is debatable. It is certain, however, that the policy and other aggressive styles of policing have had numerous deleterious effects on the communities in which they are employed.¹⁰⁸ Ending or modifying the stop-and-frisk policy will not automatically restore legitimacy to law enforcement officials in areas where residents have suffered under these policies. Therefore, the next phase should involve evaluating the long-term effects of the policy and finding collaborative solutions to counteract the negative effects of stop and frisk while simultaneously keeping residents safe.

A. *NYPD’s Stop and Frisk Imposes a Racial Tax on Residents*

Racial profiling in general, and stop and frisk in particular, lead to the societal stigmatization of victims known as a “racial tax.”¹⁰⁹ Not only do those who have been repeatedly stopped and frisked suffer—but the entire targeted community suffers the psychological

105. Ward, *supra* note 103.

106. Keli Goff, *Exclusive: NYPD’s William Bratton Vows To Win Back the Black Community’s Trust*, ROOT (Apr. 2, 2014, 1:01 PM), http://www.theroot.com/articles/culture/2014/04/bill_bratton_talks_stop_and_frisk_with_the_root.html.

107. Ward, *supra* note 103.

108. One important impact that this Essay does not discuss is the monetary impact that litigating and settling police misconduct suits has on the municipality. For example, the Los Angeles Police Department paid approximately \$125 million to victims of police misconduct related to the Rampart Scandal. *Rampart Scandal Timeline*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/lapd/scandal/cron.html> (last visited Aug. 16, 2014). The City of Chicago was poised to pay \$33 million to settle several police misconduct suits. David Heinzmann, *Chicago to Pay \$33 Million to Settle 2 Cases of Police Misconduct*, CHI. TRIB. (Jan. 15, 2013), http://articles.chicagotribune.com/2013-01-15/news/ct-met-chicago-police-abuse-settlements-0115-20130115_1_eilman-case-police-misconduct-christina-eilman. New York will likely pay millions to settle the claims in *Floyd*.

109. Albert W. Alschuler, *Racial Profiling and the Constitution*, 2002 U. CHI. LEGAL F. 163, 213–14 (noting that Professor Randall Kennedy popularized the term “racial tax”).

and emotional harms of discriminatory practices. Stop and frisk and similar policies are more than just “mere inconvenience[s]”;¹¹⁰ when closely analyzed they operate to marginalize and stigmatize an entire community of people. Those who become targets of racial profiling suffer the emotional and psychological burden of racial profiling, and some members of minority groups have reported the psychological harms of humiliation and depression as a result of racial profiling.¹¹¹ The “broad taint of suspected criminality”¹¹² that burdens the entire ethnic or racial group that has been profiled has been referred to as a “racial tax.”¹¹³ Harvard Law School Professor Randall Kennedy widely publicized this term, which describes the additional burdens placed upon individual members of racial and ethnic groups because of their membership in that group.¹¹⁴ Furthermore, numerous scholars have cataloged the collateral consequences that involvement with the criminal justice system exacts upon poor, minority communities.¹¹⁵

B. Aggressive Police Tactics Result in Decreased Trust and Legitimacy

In general, negative perceptions about police officers create distrust amongst the public. This is particularly true in communities in New York City where officers aggressively stop and frisk community members. The VERA Institute of Justice¹¹⁶ reported that only 15% of respondents in their study believe the police are honest and 12% believe that residents of their neighborhood trust the police.¹¹⁷ Furthermore, the report noted that just four out of ten respondents said they would be comfortable seeking help from police if in trouble.¹¹⁸

110. Bob Van Voris, *Police Stop-and-Frisk Called “Degrading” to New Yorkers*, BLOOMBERG (Mar. 18, 2013, 2:41 PM), <http://www.bloomberg.com/news/2013-03-18/nyc-police-stop-and-frisk-policies-face-racial-bias-trial.html>.

111. U.S. DOMESTIC HUMAN RIGHTS PROGRAM, AMNESTY INT’L, *THREAT AND HUMILIATION: RACIAL PROFILING, DOMESTIC SECURITY, AND HUMAN RIGHTS IN THE UNITED STATES*, at xiv (2004), available at http://www.amnestyusa.org/racial_profiling/report/rp_report.pdf; Andrew E. Taslitz, *Respect and the Fourth Amendment*, 94 J. CRIM. L. & CRIMINOLOGY 15, 23–24 (2003) (discussing negative ramifications on innocent people stopped by police generally).

112. David A. Harris, *Using Race or Ethnicity as a Factor in Assessing the Reasonableness of Fourth Amendment Activity: Description, Yes; Prediction, No*, 73 MISS. L.J. 423, 454 (2003).

113. Alschuler, *supra* note 109, at 213.

114. *Id.* at 217.

115. See generally Christopher Wildeman & Bruce Western, *Incarceration in Fragile Families*, 20 FUTURE CHILD 157 (2010) (discussing the negative effects of incarceration on poor families), available at http://futureofchildren.org/futureofchildren/publications/docs/20_02_08.pdf.

116. *About Us*, VERA INST. JUST., <http://www.vera.org/about-us> (last visited Aug. 16, 2014).

117. FRATELLO ET AL., *supra* note 91, at 15.

118. *Id.*

This lack of trust and inability to cooperate with police has dangerous implications for communities, especially those communities that could benefit from partnerships between citizens and police to prevent and investigate crime. As Stephen Clark notes, "Corruption and brutality undermine the legitimacy of governmental authority and reduce the willingness of citizens to comply with the law."¹¹⁹ "Left unchecked, police misconduct often triggers racial tension because '[p]oor people of color bear the brunt of police abuse."¹²⁰ The failure to create these partnerships because of violent encounters has the perverse effect of perpetuating more violence.

Community policing is now the dominant model of policing used throughout the country, and it is premised upon the notion that public safety is improved when communities and police work together to set priorities and prevent crime. Therefore, the success of these partnerships depends largely upon the legitimacy of the police department and its goals. If citizens respect police and believe that police are treating them fairly, they are more likely to be cooperative. As Dan Kahan notes,

Citizens are more disposed to cooperate with police when institutions enjoy a high level of legitimacy. The perceived legitimacy of an institution, it has been shown, depends largely on whether citizens perceive that they are receiving fair and respectful treatment by police and other decision makers. In effect, citizens reciprocate respectful treatment with cooperation and obedience and disrespectful treatment with resistance.¹²¹

Thus, a failure to gain that legitimacy as a result of widespread discrimination and violence makes it more difficult for communities to see police officers and other law enforcement officials as partners in public safety. Given that the vast majority of those stopped and frisked had no contraband and were not arrested, police are likely stopping and frisking the very residents that might have been helpful to them in solving actual crimes. The discrimination and violence endured by residents frustrates and undermines the very

119. Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 2 (2009).

120. *Id.* (quoting SAMUEL WALKER, POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT 4 (2001)); see also Richard R. Johnson, *Citizen Expectations of Police Traffic Stop Behavior*, 27 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 487, 488 (2004) (noting that studies have shown that people are more likely to "defer to the law and refrain from illegal behavior" when police treat them fairly).

121. Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1525 (2002) (footnote omitted).

principle of community policing and community empowerment.¹²² Even in communities that experience high crime rates, the assumption must be that the majority of people are law abiding and want to live and raise their families in safe, secure neighborhoods. Although there seem to be competing values regarding crime reduction and community policing, there are ways to achieve this balance, and as James Foreman has noted, these competing values make the need for effective community policing relationships all the more urgent.¹²³

IV. VANQUISHING THE VESTIGES OF VIOLENCE: SOLUTIONS AND ISSUES FOR FURTHER STUDY

The formal stop-and-frisk policy, as the NYPD has implemented it for the past several decades, is unlikely to withstand scrutiny. The policy has rapidly lost public support, and the legal challenges have become too great to ignore. Many opponents of stop and frisk considered Judge Scheindlin's findings in the *Floyd* case to be a victory. Although she stopped short of finding the policy unconstitutional, she ordered several remedial measures based on the findings in the case (discussed in Subpart I.B.1). Mayor de Blasio's repeated promises to end the practice also signify a new era in policing. The disappearance of a policy, however, especially one as entrenched and polarizing as stop and frisk, will likely not end the practice of racial profiling and the violence that has become intertwined in the institutional fabric of the department. The NYPD department should immediately begin to engage in serious measures to remediate the harms the policy has caused and to mend its relationship with the community members who have been terrorized through this policy. The following Part introduces several ideas for further thought.

122. See Leena Kurki, *Restorative and Community Justice in the United States*, in 27 CRIME AND JUSTICE: A REVIEW OF RESEARCH 235, 246 (Michael Tonry ed., 2000) ("The goal of community empowerment is to improve relations with communities and to increase public trust and satisfaction with criminal justice agencies, especially among racial and ethnic minorities who are disparately affected in all phases of the system. The President's Commission on Law Enforcement and Administration of Justice suggested similar efforts to improve police relations with communities: 'It is a long-range, full-scale effort to acquaint the police and the community with each other's problems and to stimulate action aimed at solving those problems.'" (citations omitted)).

123. See James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 29 (2004) ("[Y]oung people in the inner-city communities operate in a complicated world of competing values and conflicting norms. 'Decent' and 'street' attitudes and behaviors co-exist within the same neighborhood, and often, within the same person. But my claim is that the presence of these conflicting attitudes—some of which are hostile to law enforcement—does not mean that an effective community policing relationship cannot be reached. Instead, it makes the need for such more urgent." (footnote omitted)).

A. *The NYPD Should Implement the Recommendations Set Forth in Floyd II*

Police scholars have long known that efforts to reform law enforcement agencies must be targeted to produce changes within the organizational structure of a police department in order to ensure sustainable, long-term reforms.¹²⁴ This is because police officers are not “independent agents” of the police agencies for which they work; rather, officers are individuals who operate within a “powerful organizational culture that significantly influences and constrains their judgments and conduct.”¹²⁵ Thus, even when authorities in New York City formally declare an end to the policy of stop and frisk, the cultural edifices of the policy will remain. Officials within the police department have been aware of the claims of unjustified violence, ineffectiveness, and racial discrimination that have become synonymous with stop and frisk. Despite this awareness, these grievances went unacknowledged and officers were allowed to increase their use of this policy with impunity—between 2002 and 2012, the number of stops and frisks conducted increased fivefold—from 97,296 stops in 2002 to 532,911 stops in 2012.¹²⁶ Simply removing the policy from the department will not remove the culture that cultivated and tolerated the abuse of stop and frisk. The institutional and organizational culture of the NYPD must undergo a dramatic transformation in order to regain legitimacy in the community.

There are several ways in which this organizational reform could be achieved. First, the NYPD should be required to implement the recommendations Judge Scheindlin noted in *Floyd II*. Her recommendation to appoint an independent monitor will bring greater legitimacy to the reform process as many citizens are unlikely to trust the NYPD to implement the changes on its own, even under the new leadership (William Bratton, who previously served other New York mayors as the police commissioner, has replaced Ray Kelly). The collection of data and the proposal for officers to wear cameras (which is currently limited to a pilot program) will do much to provide transparency about what actually happens during the stops and deter officers from committing flagrant constitutional and departmental violations.

124. See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 493–94 (2004) (arguing that police misconduct is institutional in nature); Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 496–97 (2008) (arguing that efforts to reduce police misconduct must focus on institutional and cultural reform of police agencies).

125. Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 381 (2010) (quoting Armacost, *supra* note 124, at 476).

126. *Stop-and-Frisk Data*, *supra* note 7.

If local authorities do not sufficiently spur the needed reforms, the federal government could use its authority pursuant to 42 U.S.C. § 14141 to require a set of reforms appropriate to specific issues facing the NYPD.¹²⁷ The U.S. Department of Justice has conducted investigations of the NYPD in the past, but they have never resulted in a consent decree or memorandum of agreement to require the NYPD to implement reforms that have been required in other jurisdictions. In several other jurisdictions, the federal government, pursuant to either consent decrees or negotiated memoranda of agreement, has required local police departments to implement reforms including development and maintenance of an early warning tracking system to identify and track individual police officers accused of abuse.¹²⁸ Other reforms include implementing changes in the complaint process and reforms related to *use of force* policies. One reform that New York might consider is having a heightened requirement for consent searches, which could drastically reduce the number of people searched, even if they are detained for questioning.

B. Stakeholder Participation in the Reform Process

One important feature that has often been lacking in other pattern or practice suits, but one that will be imperative for the success of the NYPD's reform, is meaningful involvement of affected stakeholders in the reform efforts.¹²⁹ Participation of the affected stakeholders, which includes police officers and community members alike, will be critical to the success of any reform process. It is possible to create police-citizen partnerships that result in safe

127. See 42 U.S.C. § 14141 (2012).

128. See, e.g., *United States v. City of Los Angeles*, No. CV 00-11769 GAF (RCx), at 6-7 (C.D. Cal. July 17, 2009), available at http://www.justice.gov/crt/about/spl/documents/US_v_LosAngeles_TA-Order_071709.pdf (mandating the continued use of a Training, Evaluation, and Management System ("TEAMS II") "in the manner in which it was intended—an early warning or risk management system"); *Buffalo City Police Agreement*, CIVIL RIGHTS LITIGATION CLEARINGHOUSE 20-23 (Sep. 19, 2002), <http://www.clearinghouse.net/chDocs/public/PN-NY-0004-0001.pdf> (requiring the creation of a management and supervision system for tracking excessive use of force incidents and complaints and using them to correct police officer conduct through evaluation and training, akin to an early warning system); *Memorandum of Agreement, United States Department of Justice and the District of Columbia and the D.C. Metropolitan Police Department*, U.S. DEPARTMENT OF JUST. § I(a)(2) (Jun. 13, 2001), <http://www.justice.gov/crt/about/spl/documents/dcmoa.php> ("[T]he Department of Justice has provided MPD with on-going technical assistance recommendations regarding its use of force policies and procedures, training, investigations, complaint handling, canine program, an early warning tracking system. Based upon these recommendations, MPD has begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues.")

129. See Simmons, *supra* note 124, at 538 (discussing the importance of stakeholder participation in the police reform process).

communities, while simultaneously preserving the rights of the community residents. Community residents can play an integral role in the recruitment and selection of officers who will serve their community. Finally, as Boston Police Commissioner Billy Evans recently conveyed to recruits at the police academy, “[Officers] shouldn’t come out of the academy now thinking of ourselves as soldiers ready for battle, but as problem-solvers in this city’s neighborhoods.”¹³⁰ After the fatal shooting death of Michael Brown in Ferguson, Missouri, and the civil unrest that followed, President Obama called for a review of the militarization of the nation’s local police departments.¹³¹

While the formal stop-and-frisk policy may be over as we know it, NYPD officers, and those in other cities, must come to see that continued stigmatization, marginalization, and victimization of community members only perpetuate the violence within communities—communities that officers have taken an oath to protect and serve.

130. Peter Gelzinis, *Boston’s New Top Cop Has Persevered*, BOSTONHERALD (Jan. 19, 2014), http://bostonherald.com/news_opinion/columnists/peter_gelzinis/2014/01/gelzinis_boston_s_new_top_cop_has_persevered.

131. Benjamin Landy, *Obama Orders Review of Police Militarization*, MSNBC (Aug. 23, 2014, 6:47 PM), <http://www.msnbc.com/msnbc/obama-orders-review-police-militarization>.
