STOP AND FRISK STOPPED! [UPDATED]

[Note **Update** below]

In a rather remarkable decision just handed down by Judge Shira Scheindlin in the Southern District of New York (SDNY), has found New York City's insidious stop and frisk policy violative of citizen's basic Constitutional rights. From the NYT:

> In a decision issued on Monday, the judge, Shira A. Scheindlin, ruled that police officers have for years been systematically stopping innocent people in the street without any objective reason to suspect them of wrongdoing. Officers often frisked these people, usually young minority men, for weapons or searched their pockets for contraband, like drugs, before letting them go, according to the 195-page decision.
>
> These stop-and-frisk episodes, 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, according to the ruling. It also found violations with the 14th Amendment.
>
> To fix the constitutional violations, Judge Scheindlin of Federal District Court in Manhattan said she intended to designate an outside lawyer, Peter L. Zimroth, to monitor the Police Department's compliance with the Constitution.

The full decision and order is here.

This is a very strong decision, and it is based

on trial evidence and specific findings of fact and conclusions of law that should give it some extra protection, compared to a straight legal decision alone, should the city appeal to the 2nd Circuit.

The court found that the practice violated both the 4th and 14th Amendments and denied equal protection. In so doing, the court basically confirmed that New York City had a standing policy that constituted blatant racial profiling. The court noted, in reference to the City's belligerent defense of such an unconstitutional policy:

> City acted w/deliberate indifference toward NYPD's practice of making unconstitutional stops and conducting unconstitutional frisks.

The "Applicable Law" portion contained in pages 15-30 (by the court's page numbering) is a hornbook primer on *Terry* stops and reasonable suspicion.

A few words from the court will close out this post:

> New Yorkers are rightly proud of their city and seek to make it as safe as the largest city in America can be. New Yorkers also treasure their liberty. Countless individuals have come to New York in pursuit of that liberty. The goals of liberty and safety may be in tension, but they can coexist – indeed the Constitution mandates it.
>
> ….
>
> In conclusion, I find that the City is liable for violating plaintiffs' Fourth and Fourteenth Amendment rights. The City acted with deliberate indifference toward the NYPD's practice of making unconstitutional stops and conducting unconstitutional frisks. Even if the City had not been deliberately

> indifferent, the NYPD's unconstitutional practices were sufficiently widespread as to have the force of law. In addition, the City adopted a policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data. This has resulted in the disproportionate and discriminatory stopping of blacks and Hispanics in violation of the Equal Protection Clause. Both statistical and anecdotal evidence showed that minorities are indeed treated differently than whites. For example, once a stop is made, blacks and Hispanics are 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. 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. In their zeal to defend a policy that they believe to be effective, they have willfully ignored overwhelming proof that the policy of targeting "the right people" is racially discriminatory and therefore violates the United States Constitution. One NYPD official has even suggested that it is permissible to stop racially defined groups just to instill fear in them that they are subject to being stopped at any time for any reason – in the hope that this fear will deter them from carrying guns in the streets. The goal of deterring crime is laudable, but this method of doing so is unconstitutional.

Bravo Judge Scheindlin, and thank you.

More like this please; the federal courts of America owe the citizens the duty of reeling in 4th Amendment abuses by governmental entities. This is a start, but the Obama Administration's

surveillance programs demonstrate there is a very long way to go.

UPDATE: I neglected to include the separate "Remedies Opinion" issued by Judge Scheindlin, here is the link for that.

A few words from the court about the intransigence of NYC and NYPD:

> I have always recognized the need for caution in ordering remedies that affect the internal operations of the NYPD, the nation's largest municipal police force and an organization with over 35,000 members. I would have preferred that the City cooperate in a joint undertaking to develop some of the remedies ordered in this Opinion. Instead, the City declined to participate, and argued that "the NYPD systems already in place" – perhaps with unspecified "minor adjustments" – would suffice to address any constitutional wrongs that might be found. I note that the City's refusal to engage in a joint attempt to craft remedies contrasts with the many municipalities that have reached settlement agreements or consent decrees when confronted with evidence of police misconduct. (footnotes omitted)

The defendant NYC and NYPD are very much not going to like Judge Scheindlin's remedies and, thus, likely will appeal on that basis. As I said above, the decision itself looks pretty solid for appeal, the remedies may be another matter. Professor Orin Kerr thinks the court may have gone too far in broad scope based on this paper he previously authored on 4th Amendment remedies in 2009.

I am a big fan of Professor Kerr's 4th Amendment analysis, but we occasionally differ. And we differ here. My review of Judge Scheindlin's remedies and order reflects a set of cures targeted and appropriate in purpose, and broad

only where necessary to effect said purpose (with possible exception of order to wear cameras). We shall see how they hold up on appeal, but the remedies look proper and necessary to me.