

Monitor: Officers Leery of Discipline

Say Cops At All Levels in Dark On Changes in Stop-and-Frisk Process

BY MARK TOOR | February 22, 2016

Many NYPD officers are confused about the new stop-and-frisk regulations that resulted from a 2013 Federal Court decision, and some failed to report stops because they feared discipline if a supervisor decided their action was unjustified, a court-appointed monitor said last week.

And supervisors are routinely approving stop-and-frisk reports that fall short of the department's standards, according to the monitor, Peter L. Zimroth.

'Unsure What's Expected'

"It is apparent from focus-group sessions and discussions with individual officers throughout the ranks that many police officers, including supervisors, are not well-informed as yet about the changes underway or the reasons for them and, therefore, have yet to internalize them," Mr. Zimroth said in a report filed Feb. 16 with U.S. District Judge Analisa Torres. "Many appear not to understand what is expected of them."

Mr. Zimroth, a former city Corporation Counsel who is a retired partner at the law firm of Arnold & Porter, emphasized that the NYPD remains in transition. Officers are still being trained in the new Patrol Guide rules drafted after U.S. District Judge Shira E. Scheindlin ruled that the department was using stop-and-frisk in a way that was unconstitutional and racially discriminatory.

"Of course, transformation of any large government organization is a difficult undertaking," he wrote. "...Training on the new policy is in its early stages. Assessment of the policy's implementation must wait until training is further along."

Fear of Holding Bag

Officers "often express fear they will face serious disciplinary action or not be indemnified in lawsuits over minor or inadvertent mistakes in documentation or for isolated cases of erroneous but good-faith stops or frisks," according to Mr. Zimroth's report.

"Actually, the new Patrol Guide Section 212-11 announces a contrary policy for the Police Department, and, as far as can be determined, officers have not been denied indemnification for minor infractions or reasonable, honest mistakes. Sergeants and other supervisors need to take an active role in trying to correct these misperceptions..."

The Patrol Guide section he referred to says in part, "The application of the law in this area can be complicated, and investigative encounters are fluid situations in which one event or observation can alter the level of suspicion or danger. A single erroneous judgment will not generally warrant referral to the Legal Bureau for training. However, members who evince a lack of comprehension of the core concepts of the law governing this procedure should be referred to the Legal Bureau."

He added, "Many officers do not appear to be aware of this provision in the new Patrol Guide."

Reinforcing Standard

The new rules restate those in *Terry v. Ohio*, the U.S. Supreme Court decision in 1968 that legitimized stop-and-frisk as a police tactic. The decision said that for a stop to be legally justified, an officer must be able to articulate a reasonable suspicion that the subject of the stop is, is about to be or was just involved in a crime. An officer who has reasonable suspicion that the subject is armed may pat him down for a weapon.

In the stop-and-frisk fever under former Mayor Michael Bloomberg, those rules were frequently ignored. The number of stops rose from 97,296 in 2002 to a record 685,724 in 2011. Stops then began to fall amid lawsuits, complaints from lawmakers and the public that the NYPD was overly aggressive with stops and an order from the Police Commissioner at the time, Raymond W. Kelly, to de-emphasize numbers in favor of making sure stops follow the law.

The current Police Commissioner, William J. Bratton, agreed with the new Mayor who appointed him, Bill de Blasio, that stops were overused under Mr. Bloomberg and Mr. Kelly. Last year the number fell to about 24,000.

Mr. Bloomberg had appealed Judge Scheindlin's ruling. Mayor de Blasio dropped the appeal, but it took until the end of October 2014 before the way was cleared for the reform process coordinated by Mr. Zimroth to begin.

A 7-Precinct Pilot

The NYPD is running a pilot program in seven precincts testing a new form for reporting stops that replaces the old UF-250. Officers in those commands are given a tear-off receipt for people who are stopped but not arrested. The receipt includes the officer's name, check-off boxes to explain the reason for the stop and phone numbers if the recipient wants to make a complaint.

"The NYPD found that in a significant num-

ber of stops, officers did not give the tear-off receipt to persons stopped but not arrested," the report said. "There are several possible reasons for this. For example, the officer might not have offered the receipt because of exigent circumstances; or the person stopped might have walked away before the receipt was offered; or, contrary to policy, the officer might not have offered the receipt."

A spot-check of stop reports by the NYPD's Quality Assurance Division found that 28 percent did not properly articulate reasonable suspicion, Mr. Zimroth wrote. Of the forms indicating a search was conducted, 27 percent "did not properly articulate reasonable suspicion for the frisk, and 16 percent of the forms documenting searches did not show an appropriate basis for the search."

'Signed Off Anyway'

"In almost every case in which QAD found insufficient basis for the stop, frisk or search, the supervisor in that command nonetheless had signed off on the report and noted there was sufficient basis for the stop, frisk or search," Mr. Zimroth wrote.

QAD identified 50 arrests last November and December that resulted from a stop-and-frisk encounter. "However, only six stop reports were prepared for the 50 arrests (a 12-percent compliance rate).

"One possible reason for these low compliance rates may be that some officers believe it is not necessary to prepare a stop report if an arrest is made, since other forms related to the arrest are prepared. If that is the reason, this belief does not comport with NYPD policy." Or, he said, the officers are afraid of discipline.

Detectives Endowment Association President Michael J. Palladino told the Daily News that more training and guidance might relieve the concerns of some cops. "However, given the countless oversight groups, relentless attacks by the press, and politicians laying down legislative and judicial land mines, cops have to be reluctant to act," he said.

Advocates' Diverging View

Two groups calling for change in the way the city is policed used the report as an occasion to criticize the department.

"Given the findings of the Zimroth report, it is clear that NYPD Commissioner Bill Bratton and other department leaders must take public and strong steps to make certain that the police personnel on the ground observe the rights of New Yorkers and follow the applicable legal and constitutional requirements laid out in the court's stop-and-frisk rulings," said Robert Gangi, director of the Police Reform Organizing Project.

"One concrete and helpful step would be to penalize supervisors and/or officers who fail to comply with the new rules; possible sanctions include loss of promotion opportunities or vacation days, being removed from posts that bring officers in contact with the public, having to submit to extra training, and dismissal."

"The fact that important changes are not being properly implemented by the department and enforced by supervising officers is unsurprising but of significant concern to impacted communities, given the NYPD's long history of insufficient accountability and transparency," said Alyssa Aguilera, speaking for Communities United for Police Reform.

Fewer But Not Better

She continued, "This report reinforces the notion that declines in the overall number of reported stops do not equate to reform. Black and Latino New Yorkers remain the highly disproportionate target of stops, with the vast majority of stops still not resulting in summons or arrest."

Leaders of two other police unions criticized Mr. Zimroth's report.

"As we expected, the increase in confusing paperwork is keeping our members from crime-fighting patrol," Patrick J. Lynch, president of the Patrolmen's Benevolent Association, said in a statement. "That, coupled with the potential career-damaging ramifications associated with taking appropriate police action, will further undermine proactive policing in this city. All in all, the changes are bad for the city and police officers but great for professional criminals."

Edward D. Mullins, president of the Sergeants Benevolent Association, said in an interview that Mr. Zimroth was calling for Sergeants to increase their responsibilities at a time when the department did not have enough people in that rank.

"Sergeants are supposed to be supervisors of patrol, but often they're running from job to job answering 911 calls themselves," he said. Further, he said, the new smart phones issued to police officers show the location of cars in the area—including the Sergeant's. "How can I sneak up on you when you know where I am?" he asked.