

Some Cops Haven't Filed Stop-and-Frisk Reports as Required

BY MARK TOOR | December 22, 2017

The NYPD's Federal Monitor overseeing changes in stop-and-frisk policy found that many officers are failing to complete revised reports when they stop someone, either because they fear punishment if the report is wrong or because they don't understand when to file it.

In a report filed Dec. 13 with U.S. District Judge Analisa Torres, the monitor, former City Corporation Counsel Peter Zimroth, referred to Police Commissioner James P. O'Neill's position that fixing stop-and-frisk "is a critical component of strengthening trust in the NYPD and improving its relationship with the diverse communities it serves."

Make It Legal

It was Mr. Zimroth's seventh report on the effort to bring the NYPD's stop-and-frisk efforts, which in 2013 were ruled unconstitutional and racially driven, into compliance with the U.S. Supreme Court's 1968 ruling in *Terry v. Ohio*. That ruling required that stops must be justified by an articulable suspicion that the subject was involved in criminality.

The report said the NYPD has made progress in revising policies and training methods and in instituting a performance-evaluation system that places less emphasis on stops and similar enforcement activities. But, it said, "alterations to written policy are not meaningful unless the changes are implemented and sustained in the field."

With the training and policy changes, the report said, "The monitor team no longer heard officers say that they feel pressure to make stops without regard for effectiveness or legality. Nevertheless, much remains to be done..."

"Some officers making stops do not file the required stop forms documenting them, in part because of what appears to be an exaggerated fear of discipline and lawsuits. The monitor has heard from some officers that completing stop reports 'is not worth the trouble,' even though there are more serious consequences for not documenting a stop in a report than for making inadvertent mistakes in a stop report.

Doing the Job?

"This is an issue for first-line supervisors (Sergeants and Lieutenants) who have a major role in identifying and documenting improper stops by their officers and correcting and training them. The monitor team has questions about whether this role is being sufficiently embraced."

On the supervision issue, the report said, "The new responsibility of supervisors to ensure that their officers' actions are constitutional is one of the most significant changes in the daily operations of the NYPD relating to this monitorship... The monitor team will be evaluating whether supervisors are actually evaluating the officers' actions."

When the new stop form was instituted, the report said, there were questions about whether the actions of supervisors were perfunctory, given that "there were many instances in which supervisors said there were sufficient grounds for a frisk or search when in fact the officer had not conducted a frisk or search."

50 Missing Reports

Some high-level officers "appear to have taken ownership" of the stop-and-frisk issue, the report said, but "to date, the monitor team has seen very few instances in which supervisors are noting on stop reports an insufficient basis for a stop, frisk or search."

The NYPD's Quality Assurance Division conducts a random sample of stop reports from every unit, in each quarter of the year, according to the report. For the second quarter of this year, QAD found that reasonable suspicion for the stop was articulated 71 percent of the time, reasonable suspicion for a frisk was articulated 88 percent of the time, and reasonable suspicion justifying a search was articulated 89 percent of the time.

But, the report said, "the NYPD has acknowledged that undocumented Level 3 Terry stops [which can result in a frisk] are a serious issue that needs to be addressed."

In the second quarter of this year, QAD identified 154 arrests that appeared to involve stops, but only 13 had a stop report associated with them. Investigations by the units involved found that 104 did not require a stop report, "often because the officer personally observed criminality or observed contraband in plain view and thus had probable cause," the report said. That left 50 arrests that should have had stop reports.

Officers still are not completing stop reports when required," the report said. "...It has been suggested that officers believe completing an arrest report is sufficient. If that condition is the source of failure to document stops, that is an error and not a deliberate decision to hide the fact of a stop."

Training should address that issue, the report said.