

## Lessons for Bosses

## Justifying the Stops At Stop-and-Frisk School

By MARK TOOR

The NYPD's Federal monitor for stop-and-frisk submitted a report on specifics of training for new Sergeants and Lieutenants, including ways to defuse complaints about new rules aimed at bringing stops in compliance with the law.

The report, issued Feb. 22 by former City Corporation Counsel Peter Zimroth, is part of the procedure ordered by a Federal Judge who concluded in 2013 that the aggressive stop-and-frisk program under former Mayor Michael Bloomberg was run in an unconstitutional fashion and driven by racial rather than crime-fighting considerations.

## Judicial Approval

U.S. District Judge Analisa Torres must approve each report as Mr. Zimroth guides the department from a helter-skelter stop-and-frisk policy to a lawful one. In the meantime, stops have plummeted from a high of 685,724



PETER ZIMROTH: Produced training guidelines.

in 2011 to fewer than 12,000 last year, even as crime, which was Mr. Bloomberg's justification for the growth of the program, has continued to drop.

"Many of you will be tasked with supervising officers who recently graduated from the Academy," according to the manual for instructors. "... Simply telling an officer 'it's not worth stopping anyone'

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will only quell the desire in these officers to do their jobs. It's up to you to teach them the right way and not the easy way out."

The manual and the accompanying slide presentation provided quotes from newly-promoted officers who once underwent the training: "They don't trust us," "they're taking our power away," "they don't want us to do our job" and "it's not worth stopping anyone."

Instructors are told to "de-bunk those statements."

If you're here, the manual said, the department obviously trusts you. It admitted that there are trust issues between the NYPD and the community, "some for good reason, and others because of fiction and myth," and that aggressive stop-and-frisks were one reason for the lack of trust.

## Look to Constitution

It continued, "Our power hasn't been taken away, but we are expected to do our jobs lawfully within the parameters of the Constitution...A large part of our job is to deter crime and to address it before the crime happens when we can. In order to do that, there are times when we must stop people based on reasonable suspicion."

To deal with the complaints, instructors show a clip from the film "Saving Private Ryan" that portrays soldiers complaining to their Captain, who listens but does not join in.



ANALISA TORRES: Her approval required.

"Use the video to remind the class that they are supervisors now and should not join in gripe sessions with their subordinates," the manual said. "Once they engage in that behavior, they are no longer the supervisor; rather, they have become one of the subordinates."

Mr. Zimroth reported in December that many officers were failing to complete reports when they stopped someone, either because they feared punishment if the report was wrong or because they didn't understand when to file it.

## People v. DeBour

Though the stop-and-frisk doctrine is based on the 1968 U.S. Supreme Court decision *Terry v. Ohio*, the department uses the four levels outlined in a State Court of Appeals decision, *People v. DeBour*, issued in 1976.

Under *DeBour*, "basically, officers have an increasing level of authority with inves-

tigative encounters based on the level of information they have," the manual said. "The more information an officer has, the more tools and authority they can use."

"At a Level 1 Request for Information, you are looking into something, you are investigating something, but it does not necessarily have to be a crime. It could relate to criminality but it could also relate to a public-safety function..."

"At Level 2, also known as an encounter conducted pursuant to your Common Law Right of Inquiry, you have more information and this information gives you a basis to start to focus on someone for suspected criminality."

## Reasonable Suspicion

Level 3, known as a "Terry stop," can occur when an officer "has a reasonable suspicion that a person is committing, has committed or is about to commit a felony or a Penal Law misdemeanor."

The fourth level is an arrest based on probable cause. The same encounter can escalate from Level 1 to Level 4.

The manual explained each of the levels and gave examples of encounters that met the standards, whether the subject could refuse to answer questions, whether he or she could be detained and whether a search to protect the officer's safety was indicated.

The manuals emphasize that friendly conversations and other social interactions with members of the public are not investigative encounters.