

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, LALIT CLARKSON,
DEON DENNIS, and DAVID
OURLICHT, on behalf of themselves and all
others similarly situated,

Plaintiffs,

08 Civ. 1034 (SAS)

-against-

THE CITY OF NEW YORK, *et al.*,

Defendants.

Amicus curiae brief of Communities United for Police Reform (CPR)*

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* The following members of Communities United for Police Reform, who are counsel to parties in *Floyd v. City of New York*, *Ligon v. City of New York* and *Davis v. City of New York*, have not participated in the preparation or submission of this brief: Center for Constitutional Rights, New York Civil Liberties Union, The Bronx Defenders, LatinoJustice PRLDEF, Legal Aid Society, and NAACP Legal Defense and Educational Fund.

Corporate Disclosure Statement

Pursuant to Federal Rule of Civil Procedure 26.1, counsel for proposed *amicus curiae* makes the following disclosures:

(1) *Amicus curiae* is a nonprofit, non-partisan campaign whose purpose is to secure increased transparency and accountability with respect to the operations of the New York City Police Department (“NYPD”) in New York City.

(2) *Amicus curiae* are not publicly held entities.

(3) None of the *amicus curiae* are parent, subsidiary, or affiliate of, or a trade association representing, a publicly held corporation, or other publicly held entity. No parent companies or publicly held companies have a 10% or greater ownership in *amicus curiae*.

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I. Introduction

Amicus Curiae Communities United for Police Reform (“CPR”) make this submission in an effort to bring the Court’s attention to the need for community involvement in the identification and determination of remedies in pending litigation concerning the New York City Police Department’s (“NYPD”) unconstitutional and discriminatory “Stop-and-Frisk” (“SQF”) practices. Simply put, based on the history of litigation, legislative reform, and public inquiry into the NYPD’s discriminatory practices, CPR believes the best way to address the NYPD’s unconstitutional and discriminatory policy is by creating a mechanism that will ensure that individuals and communities most affected by these practices can be heard with respect to solutions as well as the problem.

II. Statement of Interest

Communities United for Police Reform (“CPR”) is a non-partisan, multi-strategy campaign to end discriminatory and abusive policing practices in New York City. Bringing together community members, advocates, lawyers, researchers, and activists to work for change, the partners in this campaign come from all five boroughs, from all walks of life, and represent many of the communities most unfairly targeted by the NYPD. CPR works for lasting change that promotes public safety and policing practices based on cooperation and respect, rather than discriminatory targeting and harassment of communities.

CPR’s formal membership includes over 60 organizations¹ from across New York City, coming from a mix of sectors, history, and background. CPR emerged out of a multi-sector planning process among grassroots organizations (based in and led by communities most

¹ See Footnote on cover page.

affected by discriminatory policing),² policy and legal advocates, researchers and others to address the growing crisis of unlawful stops and frisks, and related discriminatory policing practices.

The operation of CPR is underscored by collaboration within and across sectors that have not always had the opportunity to work closely together on police accountability. CPR's work is structured to ensure that communities directly affected by the NYPD's unlawful and discriminatory policing practices have meaningful input and leadership in identification and implementation of strategies. Most areas of work are co-led by grassroots organizations that work with directly affected communities.

CPR has organized New Yorkers from across the city to speak out about the harms and ineffectiveness of stop-and-frisk and related discriminatory policing, including coordinating dozens of New Yorkers from across NYC to testify about their experiences at two New York City Council oversight hearings on the NYPD's stop-and-frisk practices, and a New York City Council legislative hearing on the "Community Safety Act" (a legislative package of reforms seeking greater NYPD accountability and transparency).

III. Argument

The full scope of the NYPD's discriminatory SQF practices cannot be uncovered or remedied without the involvement of the individuals and communities most directly affected by these practices. These communities are best positioned to provide the Court with critical information with respect to the impacts and consequences of these practices, and to identify

² Organizations within CPR include those that are based in and work directly with communities directly affected by stop-and-frisk abuses and related discriminatory policing, including: Black and Latina/o youth, communities of color, low-income communities, immigrants, people who are homeless, LGBT people; and women.

which reforms will mostly likely produce meaningful change to their daily interactions with NYPD officers while simultaneously ensuring and increasing public safety. Any changes to the NYPD's policies and practices must benefit from the input, support, and participation of directly impacted communities if they are to have any chance of producing long-term and sustainable change.

Engagement of communities directly impacted by the NYPD's SQF practices through existing formations, such as CPR, which represent collaborations between grassroots organizations representing directly impacted communities and legal and policy advocacy groups, provide a convenient mechanism for the communities most affected by the issues at stake in this litigation to be involved in systemic reform of discriminatory policing practices.

Such engagement of communities directly affected by unconstitutional policing practices in fashioning court-ordered remedies to such practices is not unprecedented. Recent history provides several examples of community groups, coalitions, and other umbrella organizations of people directly affected by discriminatory policing practices proving to be sources of valuable input to courts in identifying effective and appropriate changes to departmental policies and practices.

The community consultation process ultimately adopted in private litigation against the City of Cincinnati and a related DOJ investigation following the shooting death of Timothy Thomas at the hands of a Cincinnati police officer and the identification of a pattern and practice of use of excessive force against Black city residents provides a model of how significant community involvement in devising remedies aimed at producing sustainable reform over the

long run can be facilitated and supported by a federal court.³ In that case, the City of Cincinnati, the police union, the American Civil Liberties Union, and the Black United Front all signed onto a Collaborative Agreement in 2002 (the “Collaborative Agreement”)⁴ which laid out a blueprint for reform developed through extensive community consultation with directly impacted communities. The Collaborative Agreement entered in private litigation was instrumental to bringing about meaningful change to the Cincinnati Police Department: the city has seen a significant drop in the number of complaints against police officers, police and citizen confrontations leading to death, and lawsuits against the police department.⁵

In New Orleans, Community United for Change (“CUC”), a coalition of community groups in New Orleans, has been channeling community voices to lead efforts to reform the New Orleans Police Department (“NOPD”). CUC wrote to the United States Department of Justice (DOJ) in April 2010 seeking a federal investigation into the NOPD’s policing practices, two weeks before New Orleans Mayor Mitch Landrieu made a similar request. Once the DOJ commenced its investigation nearly a year later, CUC organized public meetings to give the DOJ direct information from affected communities to facilitate identification of systemic flaws in NOPD policy and practice and begin crafting solutions. The DOJ concluded in a March 16, 2011 report⁶ that there was a pattern and practice of abuse in the NOPD, leading it to initiate litigation

³ See Gregory Ridgeway, et al., *Police Community Relations in Cincinnati* (RAND 2009) available at http://www.cincinnati-oh.gov/police/downloads/police_pdf35550.pdf.

⁴ Cincinnati Black United Front, American Civil Liberties Union of Ohio Foundation, Inc., the City of Cincinnati, the Fraternal Order of Police, parties, *Collaborative Agreement* (April 11, 2002).

⁵ Jane Prendergast, *Changes in Policing*, Cincinnati.com, April 2, 2011, <http://news.cincinnati.com/article/AB/20110403/NEWS01/104030306/Changes-policing>.

⁶ *Investigation of the New Orleans Police Department*, United States Department of Justice Civil Rights Division (March 16, 2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf.

in U.S. v. The City of New Orleans,⁷ in which a consent decree between the City of New Orleans and the DOJ was recently entered. Members of directly affected communities were not only involved in identifying the problem, they were part of crafting the court-ordered solutions: community organizations came together to draft a “People’s Consent Decree” which informed the terms of the consent decree ultimately entered by the Court.⁸ CUC continued to provide input into the remedial process by filing a motion to intervene on August 7, 2012, participating in the consent decree’s fairness hearing on September 21, 2012, and submitting an amicus brief on February 20, 2013 opposing the City’s attempts to renege on its obligations under the consent decree.

In Portland, the Albina Ministerial Alliance Coalition for Justice and Police Reform (the “AMA Coalition”) has played a similar role in efforts to reform the Portland Police Bureau (“PPB”). Since its founding in 2003, the AMA Coalition has published an analysis of PPB data regarding pedestrian stops, compiled and submitted formal community demands, participated in meetings with city leaders, testified at public hearings, and like the CUC in New Orleans, contacted the DOJ on behalf of the community seeking an investigation into the PPB’s abuses. The AMA Coalition also provided crucial assistance to the federal investigation that began in June 2011 by providing information and witnesses to the DOJ staff. The AMA Coalition filed a motion to intervene in consent decree proceedings on January 8, 2013.⁹ The Court granted the

⁷ *U.S. v. City of New Orleans*, 12cv1924, Order and Reasons, Doc. Rec. 159, (E.D. La. Jan. 11, 2013) (entering consent decree).

⁸ The People’s Statement and Terms and Conditions for a Consent Decree By and Between the U.S. Department of Justice and The City of New Orleans/New Orleans Police Department, submitted to the U.S. Department of Justice (2010).

⁹ *U.S. v. City of Portland*, 12cv02265, Memorandum in Support of AMA Motion to Intervene (D.Oregon January 8, 2012).

AMA Coalition “enhanced amicus status” on February 19, 2013.¹⁰

In Los Angeles, the American Civil Liberties Union of Southern California (“ACLU-SC”), representing a coalition of community groups, moved to intervene¹¹ in the monitoring of the consent decree stemming from *U.S. v. City of Los Angeles*.¹² After a report¹³ commissioned by the Los Angeles Police Department (“LAPD”) from the Analysis Group was inconclusive on the existence or non-existence of racial profiling in LAPD practice following implementation of the consent decree, the ACLU-SC commissioned a separate report¹⁴ from Yale Law School to analyze the LAPD’s data. The Yale Law School report, also known as the Ayres Report, found severe racial disparities and prompted a public hearing to discuss the report and continuing issues around racial profiling. The hearing led to several changes and the creation of a “Constitutional Policing Unit.”

In the *U.S. v. Commonwealth of Puerto Rico*, the DOJ noted that the settlement agreement reforming the Puerto Rico Police Department reflects the input from community stakeholders and advocates.¹⁵ The settlement agreement itself requires the Puerto Rico Police Department to collaborate with community advocacy groups and seek assistance of community

¹⁰ *U.S. v. City of Portland*, 12cv02265, Opinion and Order, Doc. Rec. 32 (D.Oregon February 19, 2013).

¹¹ David Rosenzweig, *ACLU Seeks Role in Enforcing Police Reform Pact*, LA Times, Dec. 19, 2000, available at <http://articles.latimes.com/2000/dec/19/local/me-1981>.

¹² *U.S. v. City of Los Angeles*, Civ. No. 00-11769 GAF, Consent Decree (C.D.C.A 2001).

¹³ Analysis Group, Inc., *Pedestrian and Motor Vehicle Post-Stop Data Analysis Report* (July 2006), available at <http://www.analysisgroup.com/cases.aspx?id=1505>.

¹⁴ ACLU-SC, *New Report Shows Blacks and Hispanics Are Stopped, Searched, Frisked, and Arrested Disproportionately by the LAPD* (October 20, 2008), available at <http://www.aclu-sc.org/releases/view/102909>.

¹⁵ See Press Release, U.S. Department of Justice, *Justice Department Enters into Agreement to Reform the Puerto Rico Police Department* (December 1, 2012) (on file with author), available at <http://www.justice.gov/opa/pr/2012/December/12-crt-1542.html>.

advocates.¹⁶

In each of these instances, courts recognized the importance of hearing directly from individuals and communities directly impacted by discriminatory, unlawful and abusive policing practices such as those at issue in this litigation when fashioning appropriate remedies. In Cincinnati, a federal judge encouraged stakeholders to come together in a collaborative process to identify principles that should guide court ordered police reform, as well as concrete measures that would produce real change in the nature of police interactions with the city's residents, and gave the court's *imprimatur* to the remedies collectively identified by directly impacted communities. In a number of other jurisdictions, including New Orleans and Puerto Rico, the federal government actively sought out and incorporated the input of communities affected by challenged policing practices when developing the terms of court-ordered consent decrees. In others, including Portland, OR, courts have given special consideration to the input of directly impacted communities. New Yorkers, and particularly those from communities of color, low income communities, and other communities particularly targeted by the NYPD's SQF practices, should similarly be afforded an opportunity to directly be part of identifying solutions that will put an end to the NYPD's unconstitutional practices while ensuring the safety of all of the City's residents.

IV. Conclusion

In light of these experiences, as well as the history of police reform in New York City, CPR urges this Court to support and facilitate a process through which communities directly impacted by the issues which are the subject of this litigation can be heard in the development of

¹⁶ *U.S v. The Commonwealth of Puerto Rico*, 12cv2039, Agreement for the Sustainable Reform of the Puerto Rico Police Department (D.Puerto Rico, December 21, 2012).

remedies with respect to the NYPD's unconstitutional and discriminatory stop and frisk practices.

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