

APPENDIX B

**PLAINTIFFS' COUNSEL
RECOMMENDATIONS**

FLOYD COUNSEL JRP REFORM RECOMMENDATIONS

1. **Stop Receipt:** Officers should transmit the stop report serial number and their name and badge number to the person stopped at the time of the stop encounter, and the person stopped should then have the ability to retrieve the Electronic Stop Report from their stop in the NYPD's SQF database using the stop report serial number. This was Floyd Plaintiffs' original proposal to the Monitor and NYPD in Spring 2015 for implementing the "tear-off receipt" immediate reform provision set forth in the *Floyd* Remedial Order, and is also now specifically provided for in the DOJ's recent consent decree with the Baltimore Police Department.
2. **Documentation of Level 1 and 2 Encounters:** Officers should be required to electronically register that they conducted a level 1 or 2 encounter, noting the time, date, and location of the encounter, and race/ethnicity and gender of the civilian, and, in the case of Level 2 encounters in which a consent search was conducted, such search should also be noted.
3. **BWC Video Review:** Plaintiffs' counsel should be able to review a sampling of videos of recorded Level 1, 2, and 3 encounters from the pilot. Officers should record and tag ALL level 1 and 2 encounters. Supervisors should regularly review a sample of videos of officers Level 1, 2, and 3 encounters, to assess lawfulness and to determine whether appropriate reports were completed and, if completed, were accurate. QAD should review every video of a level 1, 2, and 3 encounters as part of both its "RAND" audit and SQF audit, for the same purposes.
4. **Discipline transparency:** DAO should issue disposition letters to complainants whose misconduct complaints were substantiated by CCRB and then referred to the NYPD for disciplinary action .
5. **Transitional Justice:** The focus group transcripts and Floyd's digests should be publicly filed; the JRP recommendations and reforms be publicized.
6. **Integrity Testers:** Integrity testers should be used to vet whether officers' stops are lawful and whether officers are properly distributing receipts.
7. **Community Surveys:** Surveys of the community that are administered and analyzed by an institution independent of the Monitor and the NYPD should measure compliance with the Floyd orders and should, going forward, measure the lawfulness of encounters, including but not limited to assessing: whether/when people feel free to leave, procedural justice, whether people are given stop receipts, how people experience alleged consent searches – e.g., whether officers ask for consent and whether people feel free to withhold consent
8. **Freedom to leave instructions:** Instructions to officers on freedom to leave, and conduct that leads to a reasonably belief that a person is not free to leave, should reflect data from focus groups and forums. This instruction should include, at a minimum, (1) that taking a person's identification (driver's license, etc) during the encounter constitutes a stop unless the officer affirmatively states at the time she asks for identification that the person does not have to provide the identification; and (2) that if a person asks, during a level 1 or 2 encounter, whether she is free to leave, the officer must respond with an affirmative and unequivocal yes. Again, such requirements are provided for in the recent DOJ-Baltimore PD Consent Decree.
9. **EIS Triggers:** EIS triggers should include: (i) Suppression decisions and adverse credibility determinations against the officer in criminal court, (ii) dismissed or declined prosecutions of DISCON, RA, OGA charges as well as large numbers of DISCON, RA and OGA arrests for 2 or more quarters in a given year; (iii) when supervisory review, Command Level self-

inspections and/or QAD audits flag a certain number of bad stops and/or bad stop reports by an officer – like 3 consecutive quarters of at least one unlawful stop and/or bad stop report; (iv) a certain number bad arrests and/or bad summonses in a given quarter; (v) frequent use of force during level 3 Terry stops; (vi) Re-implement the RAND Report recommendation for analyzing stop-and-frisk data to identify officers who are stopping too many minority pedestrians. Also per the RAND Report recommendations, there should be aggregate trigger information at unit levels – like precinct; platoon; etc. – and that should be within the evaluation of that unit’s leader

10. **Public Record of Investigative Encounters:** There should be a database, with appropriate privacy protections, for the public to report street encounters, including time, date and location.
11. **Performance Evaluations:** The current performance evaluation should be augmented to include a line in the officer profile that captures instructions and to include a business rule/direction to supervisors to review whether officers failed to document stops.
12. **Training Certifications:** Officers should be required to take pre- and post-training tests, and if they fail the post-test, then they should be required to repeat the training. There should also be some re-certification requirement.
13. **Community Monitoring and Policy Board:** Precinct level community boards that are distinct from existing community councils and that would review NYPD policies and trainings, weigh in on high profile discipline issues and complaints, and report to the NYPD on precinct interactions with that community. Precinct CO should report to CMPB.
14. **Directions and instruction on the context of flight:** Within the in-service training, or the trainings on policing impartially or implicit bias, the NYPD should provide context, drawn from the focus group testimony, about why people might run from officers.
15. **Historical training:** Trainings should include a history of the origins of American policing and American law enforcement mistreatment of communities of color.
16. **Commitment to accountability:** NYPD should communicate to officers that they will be held accountable and should not undermine accountability by suggesting they will not.

Davis JRP Reforms

Residents with Special Needs: Officers should be required to attend trainings that focus on the proper way to deal with residents with special needs.

Accountability: There should be mechanisms put in place that will ensure greater accountability for officers who conduct unlawful trespass stops. Additionally, there should be greater accountability for supervisors and commanding officers in monitoring and evaluating the quality of trespass stops.

NCOs- Many residents during the focus groups expressed a desire to have consistency and familiarity with the officers who patrol their buildings. Last year, NYPD began to roll out the NCO program, which can be used to address the residents' concerns. However, the residents need more information about the program and the program should be utilized consistently throughout all NYCHA developments. Residents need an information session about how they can find out who their NCOs will be, the difference between an NCO and other officers, and the function of NCOs. There should also be a mechanism in place that allows residents to provide feedback about the NCOs.

Stop Receipts: Officers should provide receipts after *every* stop. The receipts should include the officer's name, badge number, and information about how the individual can view his/her stop report. This has recently been required in the DOJ's recent consent decree with the Baltimore Police Department.

Documentation of Level 1 and 2 Encounters: Officers should be required to document when they conduct a level 1 or 2 encounter. There should be some type of documentation (e.g. business card) given to the individual involved in the encounter.

Independent Resident Oversight Board: There should be an independent oversight board comprised of NYCHA residents. This oversight board can be tailored to Resident Advisory Board or CCOP.

Complaints Process/Transparency: Residents do not feel like their complaints are being taken seriously. They would like to see a better follow up process, such as a letter describing the process or being able to go online to track their complaints. This pertains to all complaints, whether lodged at the police station or with the CCRB.

BWC Video: During the BWC pilot, vertical patrols will be recorded from start to finish of vertical patrols, so it vital that Plaintiffs' counsel have an opportunity to review a sample of the videos. Supervisors should also regularly review a sample of the videos of officers during vertical patrols to assess the performance of the officers. QAD should review every video of vertical patrols.

Resident Training: There should be a series of trainings for residents with the goal of preparing them to be an accountability tool for NYPD.

Memorandum

TO: Judge Ariel Belen

FROM: Plaintiffs' Counsel for *Ligon v. City of New York*

DATE: February 7, 2017

RE: *Ligon* recommendations for JRP reforms

1. Responsibility of TAP building owners

- The city provides security to TAP building owners at taxpayer expense. Many of our clients have complained, however, that the reason they face security problems in their buildings is that their landlords refuse to replace broken locks or light bulbs, or install other reasonable security measures such as a self-closing door. *Ligon* plaintiffs request that the JRP recommend that the NYPD impose some minimal investment in security by TAP building owners as a condition of enrolling in the program.

2. Documentation of Level 1 and 2 encounters.

- We join the recommendations of the other plaintiffs' counsel as well as our colleagues at CPR and the Legal Aid Society in recommending that the JRP endorse some method of recording Level 1 and Level 2 encounters. Our clients were unconstitutionally stopped multiple times by police who did not record the interactions; we believe that those police likely believed, wrongly, that they had only conducted level 1 or 2 encounters. Without capturing these interactions it will be difficult to properly monitor the constitutionality of the police department's investigative encounters.

3. Freedom to leave instructions.

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* regarding the request that officers be required to affirmatively assure people that they are free to leave an encounter that does not rise to a Level 3 stop. This instruction must particularly apply in encounters where the officer takes a person's identification, which happens many times during the trespass investigations that are the subject of our lawsuit.

4. Community surveys and/or a public documentation of encounters.

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* in supporting a more robust role for the community in monitoring investigatory encounters. *Floyd* plaintiffs have suggested that this be accomplished through creative use of community surveys during the monitorship. We join in this request but add that it is crystal clear from a myriad of sources that the CCRB is simply not an adequate forum for capturing the community's problems with police officers. In addition to the community surveys, the JRP should also endorse the creation of a system for community documentation of particular problematic investigatory encounters.

5. EIS triggers

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* in calling for the JRP's expansion of the incidents that trigger EIS review for officers. The triggers have to look not only at employees but also by line of supervision (so if subordinates of a particular supervisor have elevated rates of misconduct, that would also be flagged).

6. Plaintiffs' review of BWC video

- The BWC pilot will not achieve its goals unless there is a system for plaintiffs' counsel to randomly monitor BWC video of police activity inside of TAP buildings. We join the *Floyd* plaintiffs in this request.

7. Feedback Loop from Courts:

- Criminal and civil courts are often the only places that the underlying facts of stops, frisks, and arrests, can be fully aired. An officer in a trial or hearing must account for why they made a stop or arrest, and is subject to cross examination by an advocate for the person stopped/arrested. Judges across the city make tens or dozens of rulings every year that find that the underlying stop for an arrest was unconstitutional. These findings are never reported to the supervisor for the officer who made the stop/arrest. We would like the City to explore policies that allow for routine and meaningful feedback to be provided to a precinct from judges, District Attorneys, and defense attorneys. For example, when a case is dismissed because evidence procured through an illegal frisk is suppressed, the judge would be required to transmit this fact in some way to the arresting officer's supervisor. A similar feedback loop should be put into place where a judge in a civil rights case rules that the plaintiffs have shown that a police officer made a bad stop (this is being considered by the department already; the criminal court feedback loop is a more distant possibility at this time).

MEMORANDUM

To: The Honorable Ariel Belen (Ret.) and the Facilitation Team

From: Floyd Plaintiffs' Counsel

Re: Proposal for Disability Training Recommendation

Date: July 28, 2017

Overview

Counsel for the Plaintiffs in *Floyd v. City of New York* submit this memorandum in support of our proposal for a reform recommendation to include training with respect to disability, and issues related to it, in the New York City Police Department (NYPD)'s stop, question, and frisk (SQF) training. We strongly believe that such training should, at a minimum, include scenarios involving people with disabilities. Disability training is essential to the *Floyd* reform process because disability, like other situational and demographic characteristics, may factor into police officers' development of reasonable suspicion. Behavior and movements that may be symptoms or manifestations of disabilities are sometimes interpreted by officers as being suspicious. Therefore, to ensure that officers are aware of how disabilities, which may or may not be obvious or visible, factor into their interactions with civilians and their development of reasonable suspicion of criminality, they should be provided with adequate training related to the different types of disabilities and examples of how those disabilities may manifest themselves, especially during police encounters.

Currently, the Monitor's team is in the process of requesting information to provide to Plaintiffs' counsel, regarding what, if any, disability-related training the NYPD conducts for its officers. However, from what Plaintiffs' counsel has observed thus far of SQF training, there is a lack of clear engagement with the issue of disability. Thus, the inclusion of these concepts within the *Floyd* court-ordered SQF training remedies is "necessary to bring the NYPD's use of stop and frisk into compliance with the Fourth and Fourteenth Amendments." *Floyd* Rem. Ord, Dkt # 372 at 30.

I. Criminalization and Suspicion of Disability-Related Behavior

Much has been written about the criminalization of the behavior of people with disabilities.¹ A great deal of that coverage has focused on the school-to-prison pipeline and

¹ See, e.g., Strauss, Valerie, *The Washington Post*, Apr. 25, 2017, "Why are we criminalizing behavior of children with disabilities?" https://www.washingtonpost.com/news/answer-sheet/wp/2017/04/25/why-are-we-criminalizing-behavior-of-children-with-disabilities/?utm_term=.f01da5a1499a (discussing incidents like the arrest of an autistic student) (last visited June 26, 2017); see also Baptiste, Nathalie, *The American Prospect*, Aug. 4, 2016, "Korryn

police interactions with people with mental disabilities. However, there is a general need for police understanding of disability-related behaviors in other contexts, including those at the heart of the *Floyd* case, such as investigative encounters and car stops. While the NYPD has implemented Crisis Intervention Training, designed to teach officers how to interact with people in mental crisis or with mental disabilities², it is also important for officers to be aware of disabilities beyond those related to mental health, including physical, intellectual, and developmental disabilities.³

Movements and physical appearance related to disability may also be mistakenly characterized as suspicious behavior. During Plaintiffs' counsel's observation of the NYPD's armed suspect characteristics training on November 18, 2016⁴, the trainer told new officers an anecdote about mistakenly interpreting an individual's limp for a weapon and forcefully detaining the individual before discovering that he had a metal rod in his leg. The same trainer told a similar story about accidentally bursting a suspect's colostomy bag. More generally, police have also mistaken individuals with Cerebral Palsy for being drunk, and diabetics in distress have been deemed "threatening."⁵

In written testimony that he submitted at a hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights on law enforcement responses to people with disabilities, former San Francisco Police Sergeant Michael Sullivan, a nationally-recognized expert on disability issues in the law enforcement context, discussed the split-second judgments that officers often have to make about an individual's behavior and what it means for a particular situation.⁶ If officers are not aware that certain behaviors may be related

Gaines and the Criminalization of Disabilities," <http://prospect.org/article/korryn-gaines-and-criminalization-disabilities> (last visited June 26, 2017).

² New York City Police Department, *NYPD News*, Jan. 30, 2017, "NYPD Crisis Intervention Team Training," <http://nypdnews.com/2017/01/nypd-crisis-intervention-team-training/> (last visited July 27, 2017).

³ See National Association of the Deaf, Police and Law Enforcement, <https://www.nad.org/resources/justice/police-and-law-enforcement/> (last visited June 26, 2017); Walmsley, *Ebony*, *New Haven Register*, Jan. 26, 2014, "Epileptic Man Files Suit Against Hamden Police Over Use of Taser," <http://www.nhregister.com/general-news/20140126/epileptic-man-files-suit-against-hamden-police-over-use-of-taser> (last visited June 26, 2017).

⁴ Plaintiffs' counsel also recounted these anecdotes in an e-mail to the NYPD, the parties, and the Monitor's and Facilitator's teams dated November 22, 2016, detailing our comments on the November 18, 2016 armed suspects training.

⁵ Perry, David M. and Carter-Long, Lawrence, *The Atlantic*, "How Misunderstanding Disability Leads to Police Violence," May 6, 2014, <https://www.theatlantic.com/health/archive/2014/05/misunderstanding-disability-leads-to-police-violence/361786/> (last visited June 26, 2017).

⁶ Sullivan, Michael, Apr. 29, 2014 Statement for the Record, Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights at 2.

to a disability, and they mistakenly classify those actions or responses as criminal or suspicious, disabled individuals and officers alike are at a disadvantage. Sullivan, for example, discussed how a lack of understanding of sign language could hinder an officer's communication with a deaf person.⁷ He also discussed the importance of understanding that a person with autism may not respond to an officer's questions or commands, may be repetitive in his responses, and may not like to be touched, all responses that might normally arouse an officer's suspicion.⁸

II. Training Recommendation

Mr. Sullivan recommends that officers be provided with training on several disabilities and disability-related topics, including "the Americans with Disabilities Act... intellectual disabilities, autism spectrum disorder, traumatic brain injury, mobility impairments, seizure disorder, deaf, hard of hearing, psychiatric disabilities, vision impairments, learning disabilities, how to provide accommodation, cerebral palsy and multiple chemical sensitivity." He explains that "training regarding disability is more practical if it is designed within a framework based on how people with disabilities often come into contact with law enforcement officers."⁹ Thus, just as the SQF training includes different types of scenarios that officers may encounter, several of those scenarios should involve people with disabilities. Mr. Sullivan also recommends including the input of people with disabilities in the training process, both to make officers aware of and more familiar with issues affecting people with disabilities and to provide insight into the wide range of disabilities. There are a number of community-based organizations in New York City working on issues concerning police treatment of people with disabilities that could serve to help buttress trainings and help create relevant scenarios/role plays for training purposes.

Conclusion

Therefore, to avoid the misinterpretation of and learn how to respond to disability-related behavior in everyday encounters, including how to better communicate with people with disabilities who may be witnesses to, victims of, or even suspects in crimes, officers need to be trained on the different types of disabilities and how they might manifest themselves as part of their training around the legal requirements to stop individuals during investigative encounters.

⁷ See *supra* note 4 at 3, 6.

⁸ See *supra* note 4 at 6, 4.

⁹ See *supra* note 4 at 3.