The Chief
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Final Arguments in Case

City: No Proof a Quota Led to Stop-and-Frisks

By MARK TOOR

A lawyer defending the city in a class-action lawsuit charging that the NYPD's stop-and-frisk program is shot through with constitutional violations summed up May 20 by arguing that the plaintiffs had simply failed to prove their case.

"They can't prove that a single stop was the result of a quota," said Heidi Grossman, the city's lead attorney in the case. She was responding to allegations that the disproportionate number of blacks and Latinos stopped stemmed from racial profiling driven by superior officers' productivity demands, rather than by the U.S. Supreme Court dictate that there be reasonable suspicion that a crime is being committed or a subject is armed.

Emphasizes Inconsistencies

The plaintiffs produced "one officer out of 35,000," Pablo Serrano, who testified that officers were punished for not meeting quotas, she said, adding, "And there is no evidence that even if there was a quota requirement, anyone made unconstitutional stops."

She devoted half her closing argument to attacking the stories told by plaintiffs who said they were stopped because of racial profiling, pointing out inconsistencies told over a period of as many as seven years of dueling statements, depositions and testimony provided by the subjects of the stops and the police officers who stopped them. "Their stories are not reliable," she said of the plaintiffs.

U.S. District Judge Shira A. Scheindlin, who will decide the case, asked several questions aimed at clarifying Ms. Grossman's arguments, including one seeking to explain why only 12 percent of the stops resulted in an arrest or a summons. "That's a high error rate," she said.

SHIRA SCHEINDLIN: City alleges she's biased.

"The hit rate doesn't impact whether an officer has reasonable suspicion," Ms. Grossman replied, saying that in some cases police intervention may have headed off a crime before it could be committed.

Say NYPD Now Vigilant

Since the suit was filed, she said, the NYPD has developed its own methods of policing stop-and-frisk, obviating the need for the outside monitor requested by the plaintiffs. Such a monitor would be expensive and would burden officers with such heavy paperwork requirements that they would not be able to do their jobs, she said.

The plaintiff attorneys offered their closing statements later that afternoon.

The case, Floyd vs. New York, was brought on behalf of five city residents who said they were stopped by police because of their race. That dispute goes to the crux of the stop-and-frisk debate, with Mayor Bloomberg maintaining that every stop is justified and civil libertarians saying that police quotas forced officers to make stops on the basis of racial and ethnic profiling, which is illegal.

No Money Damages Sought

Testimony ended May 17 after nine weeks. The trial originally had been expected to take four to six weeks. Judge Scheindlin is ruling on the case without a jury because the plaintiffs are not seeking monetary damages. She is also ruling in two other suits challenging the way the city employs stop-and-frisk.

In January, ruling in a case that involved unlawful trespassing stops at privately-owned apartment buildings in The Bronx, Judge Scheindlin said that at the conclusion of the Floyd case she expected to order additional paperwork and supervisory oversight of the stops to make sure they were conducted legally.

Eli B. Silverman, a Professor Emeritus at John Jay College who has studied the NYPD and other police departments, said testimony by witnesses for the city showed that the NYPD de-emphasized safeguards against racial profiling and indications that it was occurring in favor of raising the number of stops.

"Crime-fighting took not only the front burners but all the burners," Mr. Silverman, who testified for the plaintiffs, said in an interview. "If anyone is objective about it they would conclude that [racial profiling] was an issue that was not of great concern to the Police Department."

Police supervisors described "multiple examples of benign neglect," he said in an interview. "While I still believe the neglect was benign, I also believe the consequences are malevolent."

Mr. Silverman cited a study of 2,000 retired city officers of all ranks that he and his research partner, John Eterno, a former NYPD Cap-

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tain who now teaches at Molloy College, released last year. Many of the more-recently-retired officers complained about stop-and-frisk, saying that "what started as an investigative tool has metastasized into a numbers game," he said.

The Daily News last week published a leaked memo from Mr. Bloomberg's office tarring Judge Scheindlin as anti-police. The memo said that since ascending to the bench in 1994 she had ruled against law-enforcement officials 60 percent of the time in 15 search-and-seizure cases involving evidence that the defense argued was illegally seized. That rate was higher than that of 15 other current and former Judges the study examined.

Didn't Count Oral Rulings

Judge Scheindlin said the study was wrong because it counted only written opinions, not those issued orally. In fact, she said, she rules for prosecutors in nearly all her oral opinions.

The Center for Constitutional Rights, which is representing the plaintiffs, called the leak of the memo an "inappropriate stunt." Defenders of stop-and-frisk, led by the city's tabloid editorial pages, have painted Judge Scheindlin as anti-police because of her insistence that stops be made following U.S. Supreme Court guidelines.

At the trial, Deputy Inspector Christopher McCormack, commander of the 40th Precinct, defended a statement he made that was surreptitiously recorded by a former member of his command, Police Officer Serrano, during a conversation about Mr. Serrano's performance. On the tape, Mr. Serrano asked, "So what am I supposed to do? Is it stop every black and Hispanic?"

"This is about stopping the right people, the right place, the right location," Mr. McCormack replied. "...Again, take Mott Haven, where we had the most problems. And the most problems we had, they were robberies and grand larcenies... The problem was, what, male blacks. And I told you at roll call, and I have no problem telling you this, male blacks [ages] 14 to 20, 21... The problem is that you don't know who to stop and how to stop."

Deny He Urged Profiling

The Police Department and city attorneys objected to news stories that said Mr. McCormack was encouraging racial profiling. The city said he was describing suspects in burglaries and robberies in a specific part of the precinct. "The message was for the officer to go to where the robberies and burglaries occurred, keep his eyes open and take appropriate action in response to suspicious or criminal behavior," police spokesman Paul J. Browne said after the tape was played during Mr. Serrano's appearance on the witness stand at the end of March.

Mr. McCormack testified that the simple description of a black male aged 14 to 21 would "absolutely not" be

ELI B. SILVERMAN: An NYPD 'numbers game.'

sufficient to justify a stop. "You just need a little more," he said. "You're just trying to give the officers enough tools to go out there and see if something develops into possibly leading them to reasonable suspicion to stop them."

Fear of Misunderstanding?

"And are you concerned that your officers, taking that description, would regard every male black 14 to 20, 21 as suspicious?" asked plaintiffs' attorney Jonathan Moore.

"Absolutely not, because the information I gave them at roll call would not do that," Mr. McCormack responded. He had testified earlier in the day that he gave officers rough locations at which people meeting the description had been involved in grand larcenies and robberies around the Mott Haven projects.