

RIGHTS AND WRONGS

A judge takes on stop-and-frisk.

BY JEFFREY TOOBIN

"I don't love trials," Judge Shira Scheindlin said recently. "They are not a good way to tell a story. They are not efficient. And they are often so tedious—you saw that today." Scheindlin was sitting at a conference table in her chambers in the Daniel Patrick Moynihan building, off Foley Square, in lower Manhattan, after a long day of presid-

It was after seven o'clock in the evening, and the courthouse was nearly empty. At sixty-six, Scheindlin is renowned for her work ethic and her demands on her staff. Her clerks work from 9 A.M. until 8 P.M. every weekday. They can get lunch at the courthouse cafeteria but must eat it in chambers. They are also expected to work six hours over the

cal Center.) On the bench, though, she is unflaggingly rigorous. She listens to testimony, reads the transcript on her computer in real time, e-mails her clerks, and sips endless cups of Diet Coke. Lawyers who appear before her often describe her as opinionated and brusque. ("I've heard enough." "Move along." "I've ruled, counsel.")

The primary outlet for Scheindlin's judicial creativity has been an enduring battle she has fought with the N.Y.P.D. A federal judge since 1994, she has been hearing lawsuits against the police for more than a decade. In decision after decision, she has found that cops have lied, discriminated against people of color, and violated the rights of citizens. Now, in the midst of a mayoral race, with the Demo-



Has New York City deprived citizens of their constitutional rights or created one of the great law-enforcement success stories?

ing in *Floyd v. City of New York*, which is the latest legal challenge to the stop-and-frisk practices of the New York Police Department. "What I really like to do is write opinions," the Judge said. "There you get to do what you think is right, what you believe in. You're pushing the margins of the envelope, being willing to be creative."

weekend. (They can choose which day.)

In her office, Scheindlin was relaxed and expansive, especially when she talked about her two children, a son who is a violist with the Metropolitan Opera orchestra and a daughter who is a political consultant and pollster in Israel. (Her husband, Dr. Stanley Friedman, is an associate dean at SUNY-Downstate Medi-

cratic candidates united in their opposition to the stop-and-frisk policies of the Bloomberg administration, the *Floyd* case represents Scheindlin's greatest chance yet to rewrite the rules of engagement between the city's police and its people. David Floyd, the lead plaintiff, is an African-American medical student who had been stopped and searched

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twice. The core allegation in the case is that the N.Y.P.D. is systematically violating the rights of its citizens with unlawful stop-and-frisks, particularly by targeting minorities. The questions before Scheindlin are profound. Crime has declined in New York in recent years, as it has in other cities around the country. But why? And at what cost to the civil liberties of its people? Has New York City conducted a long-term, racially motivated campaign to deprive thousands of its citizens of their constitutional rights? Or, as Mayor Bloomberg and others maintain, has the city created one of the great law-enforcement success stories in recent American history?

The concept behind stop-and-frisk, which is sometimes also called “stop, question, and frisk,” is a simple and venerable one. Police officers may arrest a suspect only if they have probable cause to believe that he committed a crime. What can they do if they suspect that someone is involved in criminal activity but lack sufficient grounds to make an arrest? The Supreme Court addressed the subject in *Terry v. Ohio*, in 1968. According to Chief Justice Earl Warren’s opinion, a stop is permissible only when “a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.” In other words, the level of certainty needed for an officer to make such a stop is less than probable cause; the standard is often described as “reasonable suspicion.” According to the *Terry* decision, the judgment by the officer must be made on the basis of “specific reasonable inferences” from the evidence, not “inarticulate hunches.” By and large, this remains the law today. Stop-and-frisk encounters are also known as “*Terry* stops.”

“Stop, question, and frisk has been around forever,” William Bratton, a former police commissioner in Boston, New York, and Los Angeles, told me. “It’s a basic tool. It’s the most fundamental practice in American policing. It is done every day, probably by every city force in America. If the police are not doing it, they are probably not doing their job.” Bratton served as Mayor Rudolph Giuliani’s first commissioner of the N.Y.P.D., from 1994 to 1996, and is widely credited with changing the orien-

tation of the police from responding to crime to preventing it.

Through much of the second half of the twentieth century, crime and disorder, in forms ranging from graffiti to murder to a crack epidemic, plagued New York. The police appeared powerless to address these scourges. “Around 1960, New York City basically stopped policing,” Bratton told me. “The police were no longer engaged in controlling behavior in the streets. We changed that. If people are drinking cans of beer on the corner, you stop that behavior. If somebody is urinating against a building, or if you suspect somebody is casing a building for a burglary, you stop them. Of course police should be doing that. You make the streets safe, and, besides, a lot of these people committing these minor crimes turn out to have warrants out against them for more serious things.” The approach is known as Broken Windows, after a 1982 article in the *Atlantic* by James Q. Wilson and George L. Kelling. Bratton’s interpretation of the Broken Windows approach called for vigorous police enforcement of minor crimes like fare-beating and intrusive panhandling as a tool to preserve public order and, at the same time, to catch criminals. In addition, the N.Y.P.D. under Bratton began to make extensive use of data to identify crime-prone areas and focus resources on them—an approach sometimes called “hot-spot policing.” Along the way, especially in high-crime neighborhoods, cops stopped people not just in the act of committing minor crimes but also for suspicious behavior.

Stop-and-frisk—indeed, aggressive policing generally—presents significant challenges for judges. Months, or even years, after a confrontation between a cop and a suspect, the judge must determine if the stop was legal and thus whether the evidence gathered can be used in court or should be suppressed. “Most judges are reluctant to grant suppression motions,” Erin Murphy, a professor at the New York University School of Law, said. “It’s hard for judges to look a police officer in the eye and say he didn’t follow the law. And of course it’s only defendants who look guilty who file suppression motions. It’s every judge’s worst nightmare that a released defendant will show up in the newspaper the next day for committing some horrible crime. If you suppress

evidence, you are making it hard or impossible to prosecute a guilty person. That's a really difficult emotional and political decision for a judge to make."

The matter of Antonio Fernandez presented such a dilemma for Judge Scheindlin. On May 12, 1995, police received a 911 call reporting a gang meeting in progress at a small park in the Bronx. The caller said that one member, a Hispanic man wearing a white-and-black jacket, had a gun. The officers who responded found about fifty or sixty men, all Hispanic, milling around. The police frisked one man, who had no contraband. Then they followed a group of three or four men who had been standing to the side of the main group. One of them was Fernandez, who was stopped, frisked, and found to have a small amount of marijuana. At the station house, he was frisked again, and police said that he had a fully loaded .38-calibre revolver hidden in his crotch.

Fernandez was charged with illegal possession of a handgun, and the case was assigned to Scheindlin, who was in her early days on the federal bench. Fernandez argued that the Terry stop was illegal, and that the gun should be suppressed as illegally obtained evidence. Scheindlin agreed, writing in an opinion that, "based on the facts presented here, the police did

not have reasonable suspicion to stop Defendant and his companions." In part, Scheindlin said, the stop-and-frisk was illegitimate, because the anonymous tip was too vague to lead to Fernandez, but her opinion reflected a disbelief in the officers' testimony. According to the officers, Fernandez's first frisk produced a small amount of marijuana, but the second yielded a large handgun. As Scheindlin wrote, "It is extremely difficult to believe that the same officer could have missed a bulky .38 caliber revolver hidden in Defendant's pants."

The case might have passed without notice, but Antonio Fernandez was not an ordinary defendant. He was better known as King Tone, the leader of the Latin Kings, one of the most notorious drug gangs in the United States, and he was being charged as part of a huge crackdown on the group by the United States Attorney's office for the Southern District of New York. "Scheindlin is one of the very few judges who would have had the guts to toss out a case like that one," a former prosecutor familiar with the case said. (Three years later, Fernandez was prosecuted for heroin and cocaine trafficking and sentenced, by a different judge, to twelve years.) Scheindlin's ruling in the Fernandez case set a template for her handling of criminal

cases. As one of her former law clerks put it, "What you have to remember about the Judge is that she thinks cops lie."

According to a study prepared by the Mayor's office, Scheindlin suppresses evidence on the basis of illegal police searches far more than any of her colleagues—twice as often as the second-place judge. This may mean that Scheindlin is uniquely courageous—or that she is uniquely biased against cops. (Scheindlin has said that the study is misleading, because it reflects only her written opinions, rather than bench rulings, in which she almost invariably rejects motions to suppress.) Still, she embraces her maverick status. Many judges in the Southern District previously worked as prosecutors in the U.S. Attorney's office there, but she was not among them. "Too many judges, especially because so many of our judges come out of that office, become government judges," Scheindlin told me. "I don't think I'm the favorite of the U.S. Attorney's office for the Southern District. Because I'm independent. I believe in the Constitution. I believe in the Bill of Rights. These issues come up, and I take them quite seriously. I'm not afraid to rule against the government."

Scheindlin grew up in Detroit. Her mother was a schoolteacher, and her father, who emigrated from the Soviet Union, ran a Jewish civic organization. "We were a political family," she told me. "My father was the official Jew for many committees in the state." For a time, the family lived in a house once owned by a brother of Walter Reuther, the United Auto Workers labor leader. "The house had a bullet hole, from where someone had taken a shot at him," she said. "It was a tough town."

At the University of Michigan, Scheindlin majored in Chinese history, then continued her studies for seven years at Columbia. She never received her doctorate. "The language defeated me," she said. "The prospect of reading original documents in Chinese was just too difficult." Scheindlin drifted into law school, graduating from Cornell in 1975. She spent her final year of law school at Columbia, where she took a class with Ruth Bader Ginsburg, who became a mentor. Ginsburg introduced her to the legal side of the women's-rights



"Hub? Oh, yeah—I do."

movement, and, while still a student, Scheindlin played a role in a case that brought equal pay to female academics at the City University of New York.

For the next two decades, Scheindlin did a little bit of everything in the law. She was in private practice, a federal prosecutor in Brooklyn, general counsel to the New York City Department of Investigation, and a magistrate (a lower-level federal judge), also in Brooklyn. In 1994, at the recommendation of Senator Daniel Patrick Moynihan, who had been encouraged by Ginsburg, President Clinton nominated Scheindlin to the federal bench in Manhattan. Her professional roots in Brooklyn, which is known as the Eastern District of New York, separated her from the start from the clubby world of the Southern District.

A defining event of Scheindlin's tenure as a federal judge took place on February 4, 1999. On that day, four plainclothes officers shot and killed Amadou Diallo, an unarmed African immigrant, who was in the vestibule of his apartment building, in the Soundview section of the Bronx. (The officers, who thought Diallo was reaching for a gun, were charged with manslaughter. They were acquitted by a jury in Albany, where the case had been moved because of pretrial publicity in the Bronx.) The Diallo case suggested a dark side of Giuliani-era policing. The same aggressiveness that led New York cops to arrest minor offenders could turn, in certain circumstances, into a predatory approach to non-offenders, especially racial minorities. Crime rates (for whatever reason) had fallen dramatically during the Giuliani administration, but the Diallo case raised concerns about the N.Y.P.D.'s new tactics. "The idea behind proactive policing was to get guns off the street, which was fine as far as it went, but what it meant on the street was the cops tossed every young black man that they saw," Jonathan Moore, a veteran civil-rights lawyer, said. "That's what led to Diallo."

In response to Diallo's death, Moore and the Center for Constitutional Rights, a legal-advocacy group, filed the first class-action lawsuit challenging the city's stop-and-frisk policies. The case, *Daniels v. City of New York* (Kelvin Daniels was the lead plaintiff), was randomly assigned to Judge Scheindlin, and years of legal skirmishing followed. The parties settled in 2004. The city agreed to

establish a written policy governing its stop-and-frisk practices and to improve the training of officers in conducting legal Terry stops.

In retrospect, though, the most important part of the Daniels settlement may have involved record-keeping. The city agreed to create a kind of checklist, which police officers would complete each time they conducted a stop-and-frisk. During the next decade, the police filled out more than four million of these forms, which served as indispensable evidence for the Center for Constitutional Rights and others in lawsuits against the city.

Scheindlin has a bright and airy courtroom, one floor below her chambers, and the Floyd trial, now in its third month, has settled into a routine. In jury trials, judges avoid signalling their views, so as not to influence the jurors; but in bench trials there's less reason for judges to be reticent. By this point, Judge Scheindlin's views seem etched on the faces of the lawyers before her. Moore and his colleagues bound in and greet the Judge with confident half-smiles; the team from the city's law department already look like disaster survivors, just trying to hang on. Moore and his team linger after court, chatting with spectators; the city's lawyers, led by Brenda Cooke, scurry for the door, avoiding eye contact. (Closing statements are expected this week; Scheindlin will probably render her decision within sixty days.)

The plaintiffs' key witness was Jeffrey Fagan, a criminologist and statistician, and a professor of law at Columbia, who has spent much of the past decade scrutinizing the city's vast database of stop-and-frisk reports. The stop-and-frisk form, known as the UF-250, contains boxes for police officers to check to explain why a suspect was stopped. Some of the boxes refer to specific behavior: a suspicious bulge in clothing, or a refusal to comply with an officer's directions. More than half of the four million UF-250 forms included checks in the box labelled "Furtive movements." In his report, Fagan concluded that the furtive-movement box, without more evidence, suggested an unconstitutional Terry stop—that is, one not supported by reasonable suspicion of a crime. According to an algorithm that Fagan devised,

eighty-two per cent of the stops were justifiable, twelve per cent were ambiguous, and six per cent appeared to be unjustified. Projecting that ratio over a decade, Fagan concluded that the N.Y.P.D. had made more than two hundred and sixty thousand illegal stop-and-frisks.

The plaintiffs have emphasized that only six per cent of stops led to arrests, just two per cent yielded seizures of contraband, and only a tenth of one per cent led to seizures of guns. According to Moore, "What this means is that the stops are unjustified more than ninety per cent of the time." Moreover, the plaintiffs used Fagan's findings to support a claim that the police engaged in racial discrimination. According to Fagan's analysis, N.Y.P.D. stop-and-frisks are significantly more frequent for black and Hispanic residents—constituting eighty-four per cent of the stops—than they are for white residents, even after adjusting for local crime rates, the racial composition of the local population, and other social and economic factors. "Statistics is a big part of how we are proving racial discrimination by the police," Darius Charney, who is a co-lead counsel, with Moore, in the Floyd case, said. "We don't need to find blatant racial animus. It doesn't have to be motivated by hatred of black or Hispanic people. We are looking at evidence of stereotypical thinking. We're looking for cops using race as a factor to make these decisions in a law-enforcement context. It's using race as a proxy for crime."

In public, police officials have a clear answer to these accusations. "We have had tremendous success," Raymond Kelly, the police commissioner since 2002, told me. "Crime is down, and stop-and-frisk is an important reason why." Civil libertarians say that other factors (such as changing inner-city demographics and the end of the crack epidemic) are involved, and dispute any clear correlation between more aggressive police behavior and the falloff in crime. What is indisputable is that since Bloomberg took office, in 2002, murders have dropped twenty-eight per cent, to four hundred and nineteen in 2012, the lowest number since the city

began keeping records, in 1963. Even compared with other cities where crime has also declined, New York has experienced dramatic changes. Since 2002, major crimes across the country have declined fourteen per cent; in New York, they have declined thirty-four per cent. The contrast is even more striking between New York and other big cities. If New York had Detroit's murder rate last year, there would have been forty-five hundred murders in the city—more than ten times the actual number.

Lawyers for the city tried to make the argument before Scheindlin about the effectiveness of stop-and-frisk, but she shut them down before they had the chance. In order to rebut Fagan's analysis of the UF-250 forms, they sought the testimony of Dennis Smith, a professor of public policy at New York University who is an expert on police management. In particular, the city lawyers wanted Smith to testify about his view that the stop-and-frisk policy was an important factor in what they termed "the historic crime decline achieved by New York City."

In a pretrial ruling, Scheindlin excluded much of Smith's proposed testimony. She said that "permitting the parties to delve into the question of whether the stop-and-frisk program actually reduces crime would risk turning the trial into a policy debate over the wisdom of the program rather than a judicial proceeding

that assesses plaintiffs' constitutional claims." Still, as the trial has unfolded, city lawyers have continued to argue that stop-and-frisk has been a success—to Scheindlin's mounting irritation. When Brenda Cooke, the city's lead attorney, who was cross-examining Fagan, tried to make

that point, Scheindlin cut her off. "I got to put a stop to this," the Judge said. "It is not a good use of my time. For one thing, I've said repeatedly that one issue that is not present here is the effectiveness of this policy, because that's not for this court. This court is only here to judge the constitutionality. . . . We could stop giving Miranda warnings. That would probably be exciting for reducing crimes. But we don't allow that. So there are a number of

things that might reduce crime, but they're unconstitutional. This court is only concerned with the Constitution, not with the effectiveness of the policy. I've tried and tried to explain that. This is my third or fourth try."

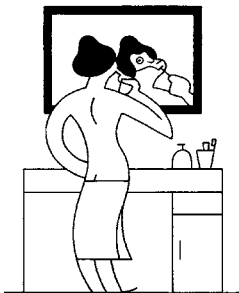
Even then, the city's witnesses persisted in defending stop-and-frisk as a sure means to reduce crime. In a way, the entire conflict in the case came down to a single exchange between Moore and Joseph J. Esposito, who had just stepped down, after thirteen years, as the chief of department in the N.Y.P.D., the highest-ranked uniformed officer in the force. Chief Esposito, as he is known, was a renowned figure in the N.Y.P.D., and his demeanor on the stand suggested that he was more accustomed to giving orders than to answering questions. Esposito poorly concealed his contempt as Moore, shambling but relentless, pursued him about the propriety of stop-and-frisk. Moore noted that the number of stop-and-frisks had increased from approximately ninety-seven thousand, in 2002, to almost six hundred and eighty-five thousand, in 2011.

"So that increase is all on your watch, correct?" Moore asked.

"Yes, it is," Esposito said, plainly seething. After a slight pause, he volunteered, eyes flashing, "As is the forty-per-cent decrease in crime during my time—as is the eighty-per-cent decrease in the last twenty years."

In the Southern District, plaintiffs in civil cases can designate new cases as related to old ones and thus guarantee that the same judge presides. Ever since the Daniels case, civil-rights and civil-liberties groups have continued to challenge the stop-and-frisk policies of the N.Y.P.D. Each time, the plaintiffs have made sure that the cases went before Judge Scheindlin, who currently has three such class actions on her docket. The Floyd case challenges the practice citywide; *Davis v. City of New York*, which will go to trial later this year, involves stops at city-owned housing projects; and *Ligon v. City of New York*, which is farthest along in the process, concerns searches at privately owned properties around the city.

The Ligon case was initiated by the Bronx Defenders, a nonprofit organization that represents indigent defendants



COLOSSEUM

I don't remember how I hurt myself,
The pain mine
Long enough for me
To lose the wound that invented it
As none of us knows the beauty
Of our own eyes
Until a man tells us they are
Why God made brown. Then
That same man says he lives to touch
The smoothest parts, suggesting our
Surface area can be understood
By degrees of satin. Him I will
Follow until I am as rough outside
as I am within. I cannot locate the origin
Of slaughter, but I know
How my own feels, that I live with it
And sometimes use it
To get the living done,
Because I am what gladiators call
A man in love—love
Being any reminder we survived.

—*Jericho Brown*

in the borough. The lawsuit was based on the experience of, among others, Charles Bradley, a fifty-year-old security guard from the South Bronx who went to visit his fiancée at her apartment building, in the Parkchester neighborhood, on May 3, 2011. When he went upstairs, she didn't answer her doorbell at first—she is deaf in one ear—so Bradley went downstairs to wait. “An officer got out of an unmarked van and came up to me,” Bradley recalled. “I just accommodated the officer to the best of my ability, and, in turn, what happened was, he went into my pockets. . . . There was nothing in my pockets except my house keys, my cell phone, my wallet. The thing about it that was so appalling was that I had spent my last dollar to see my loved one. And then he said, ‘Fuck that, you're going in.’” Bradley was arrested for trespassing, a misdemeanor, and strip-searched.

At the local precinct, Bradley was given a Desk Appearance Ticket, a common first step in the legal process for minor offenses in New York City. He was instructed to appear in criminal court on July 19th, but he faced a more immediate problem. “There was a domino

effect from being arrested,” Bradley said. The arrest would be reported to a New York State licensing agency for security guards, and that might mean the loss of Bradley's job. “I need a license to be a security guard, and I would have lost it if they pressed charges,” he said. “If I lose my license, I lose my income. I could have been put into homelessness for all this.”

Bradley took the ticket to the offices of the Defenders, who have pioneered what they call “holistic defense,” a method based on recognizing that, for criminal defendants like Bradley, deportation, eviction, or the loss of parental rights may be more ruinous than conviction or jail. Bradley met with two lawyers—an employment specialist and a criminal-defense attorney. “Charles was freaking out,” Molly Kovel, the employment lawyer, said. “We had seen it before. Many of our clients are security guards or cabdrivers, and both are licensed by the government. For a lot of minor crimes, the bigger threat to their lives is losing their jobs, rather than getting convicted.” Kovel kept the licensing authorities at bay while a colleague, Cara Suvall, dealt with the criminal case. “I

had the problem of how to prove his innocence,” Suvall said. “So we went and got a notarized letter from his fiancée saying that he really was visiting her. I took it to the district attorney, and they agreed to drop the charges.”

Still, the experience of Bradley and others prompted the Bronx Defenders to file a class-action suit against the city. The case focussed on the N.Y.P.D.'s Operation Clean Halls program, through which private landlords give the police advance permission to patrol their property. This led to *Ligon v. City of New York*, in which the Defenders were joined by the New York Civil Liberties Union, the public-interest group Latino Justice, and the law firm of Shearman & Sterling. (Jaenon Ligon, the lead plaintiff in that class action, had also claimed to be the victim of an unlawful stop-and-frisk.) They charged that the police were using Operation Clean Halls to conduct unconstitutional stop-and-frisk searches of innocent citizens like Bradley.

At a hearing in October, 2012, Scheindlin listened to testimony from both Bradley and Miguel Santiago, the officer who placed the cuffs on him. Santiago testified that Bradley was in a “drug-prone location” in a high-crime neighborhood and was “suspiciously walking back and forth” outside the building. Santiago said that he approached Bradley by saying, “Excuse me, sir, could you come over here?” and that Bradley could not tell him his girlfriend's name or produce any identification. But Judge Scheindlin noted that Santiago's paperwork contradicted his account in several ways—he had written, for example, that he approached Bradley inside the building.

In a hundred-and-fifty-seven-page opinion, handed down on January 8th this year, Scheindlin gave the Defenders a resounding victory. “Officer Santiago claimed that he was able to see Bradley's suspicious behavior even though he was inside a police van parked across the street, twenty or thirty feet from the door, separated from Bradley not only by the street but by the windows of the front door, a vestibule, the windows of an inner door, and the hallway,” Judge Scheindlin observed. “I find Bradley's account credible.” She was especially moved by Bradley's story. “If an

unjustified stop happens to lead to an unjustified arrest for trespassing, as it did in Charles Bradley's case, not every overburdened public defender will have the wherewithal to obtain a notarized letter from the defendant's host explaining that the defendant was invited, as Bronx Defender Cara Suvall did on behalf of Bradley," she wrote. "When considering the relative hardships faced by the parties, it is important to consider the potentially dire and long-lasting consequences that can follow from unconstitutional stops." Scheindlin concluded that a "very large number of constitutional violations took place" as a result of Operation Clean Halls.

Scheindlin had found the city liable in the Ligon case, but what was the remedy? Here the Judge sprang a surprise. She wrote that she was going to decide the city's punishment in the Ligon case (which the city had already lost) at the end of the Floyd trial (which had not even taken place). In other words, it looked as though Scheindlin were scheduling her remedies hearing as if she had already ruled against the city in Floyd. In a footnote, Scheindlin added, "I emphasize that this ruling should in no way be taken to indicate that I have already concluded that plaintiffs will prevail in Floyd." But the city lawyers in the Floyd case are skeptical that the Judge's mind is open. "It's like she has scheduled our sentencing before she's even found us guilty," one said.

Politically, the verdict on stop-and-frisk seems already clear. The Democratic mayoral candidates running to succeed Michael Bloomberg all criticize stop-and-frisk, differing only in the intensity of their complaints. Christine Quinn, the City Council speaker, said recently, at Barnard College, "I want to leave it as a tool in police officers' toolboxes," but she noted, "We need to put an infrastructure of reform around stop-and-frisk." Bill de Blasio, the public advocate, said at a mayoral forum, "We need to send a message to every young man of color that they are beloved, they are valuable, they are our future. You can't do that if you're constantly treating people as suspects." John Liu, the comptroller, has gone even further. "Stop-and-frisk doesn't have to be amended, it has to be ended," he said at the forum.

In response, Bloomberg took the unusual step last month of giving a speech to the leadership of the N.Y.P.D. in which he both celebrated his record in reducing crime and addressed the allegations in the Floyd case. "As the ongoing federal court case is now demonstrating for any objective observer to see," the Mayor said, "the N.Y.P.D. conducts stops based on seeing something suspicious, or witnesses' descriptions of suspects, not on any preconceived notions, or on demographic data that would have you stopping old women as often as you stop young men." Commissioner Kelly, for his part, is dismissive of the mayoral candidates' criticism. "This is just pandering. This is what goes on in New York politics," he told me. "They try and get as far left as they can for the primary, where it's just a tiny number of people who are voting. Then the challenge is to get to the center for the general election. That's all that's going on here."

In the courtroom, before Judge Scheindlin, the city is attempting to put on a defense. The lawyers are pushing back on the plaintiffs' most incendiary claim—that the stop-and-frisk policy has been applied in a racially discriminatory manner. "It's close to a perfect correlation between who is committing crime and who is being stopped," Celeste Koeleveld, the deputy Corporation Counsel who is supervising the defense, said. "That's true in minority neighborhoods, and also in predominantly white areas, like Staten Island." She noted that more than half of the N.Y.P.D. consists of racial minorities. Kelly goes further, asserting that stop-and-frisk protects, rather than oppresses, the African-American community. In a speech last month before Al Sharpton's National Action Network, Kelly said, "African-Americans, who represent twenty-three per cent of the city's population, made up sixty-four per cent of the murder victims and seventy-one per cent of the shooting victims in this city last year." He added, "African-American men between the ages of sixteen and thirty-seven, who are just four per cent of the city's population, comprise forty per cent of those murdered citywide; eighty-two per cent of these young men were killed with a firearm. As a city, as

a society, we cannot stand idly by in the face of these facts.” He said, “I believe that this tactic is lifesaving,” and, referring to *Terry v. Ohio*, he added, “It is also lawful and constitutional as upheld by the U.S. Supreme Court in 1968.”

Nevertheless, it appears that public criticism—and Scheindlin’s rulings—has already changed the behavior of the police. In March, just as the Floyd trial was beginning, the N.Y.P.D. revised its instructions to officers in filling out the stop-and-frisk reports, demanding that they provide narrative details on their reasons for the confrontations. More significant, perhaps, in the first quarter of this year the number of police stops dropped by fifty-one per cent.

In both the Floyd and the Ligon cases, the plaintiffs are asking for Scheindlin to appoint an independent monitor, to make sure that the police comply with the Constitution. They want the Judge to impose a sort of receivership on the police, creating a dual internal authority as a check on the existing leadership. As a model, the plaintiffs’ lawyers cite a case in Cincinnati a decade ago, in which the city agreed to fund an independent monitor who filed regular reports on the local cops’ compliance with the law. (Bloomberg called this notion a recipe for chaos.) The idea of the independent monitor, like the lawsuits themselves, is rooted in the hope that a single judge can diagnose a complex problem and reform a huge organization like the New York Police Department based on the imperfect medium of trial testimony. Scheindlin’s dedication to protecting citizens’ rights is beyond question; it is less clear that she has the wisdom, or even the ability, to impose her vision in the real world of New York.

Scheindlin’s confidence in her understanding of the Constitution remains unshaken. Back in her chambers, after a long day of testimony from a plaintiff’s expert on police procedures, Scheindlin talked about another celebrated case of hers. Shortly after the terrorist attacks of September 11, 2001, investigators found the name and phone number of Osama Awadallah on a scrap of paper in a car rented by one of the hijackers. On September 21, 2001, F.B.I. agents in Cali-

fornia arrested Awadallah. He was not charged with any crime but was held as a material witness. On October 10th, he testified before a grand jury in New York that he was acquainted with one of the hijackers but denied knowing another who lived in the San Diego area. He was indicted for perjury, but on April 20, 2002, before the trial had even begun, Scheindlin threw out the case against him.

In a pair of lengthy opinions, Scheindlin said that the government had violated the material-witness law, by holding Awadallah too long and under unduly harsh conditions. She quoted the famous Supreme Court case of *Ex Parte Milligan*, in 1866: “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.” The Court of Appeals reversed Scheindlin’s ruling and ordered her to bring Awadallah to trial. The trial ended in a hung jury; in a second trial, he was acquitted.

“That case was just an enormously satisfying experience,” Scheindlin told me. “What I did was gutsy, because it was so close to 9/11. For me to suppress that evidence stunned people, because there was no question that he did know the hijackers. You saw the world changing in how each jury saw the case. The first jury was eleven-to-one to convict. But by the time of the second trial the Bush policies were unpopular, and he was acquitted. That was a vindication.”

Each day, before Scheindlin goes to court, the last thing she sees in her chambers is a framed copy of an article she co-wrote with Brian Lehman, a former law clerk, in the *New York Law Journal*. Headlined “ONE DAY IN SEPTEMBER,” and published in September of 2006, it was, like many stories published around that time, a commemoration of an anniversary. “It was a day in September that changed America forever,” she wrote. But her story wasn’t about September 11, 2001. It was about September 25, 1789, the day that Congress passed the Bill of Rights. Thanks to that document, the authors wrote, “If a judge decides that a defendant’s rights have been violated and the case is dismissed, a remarkable thing happens: the government bows to the rule of law.” ♦