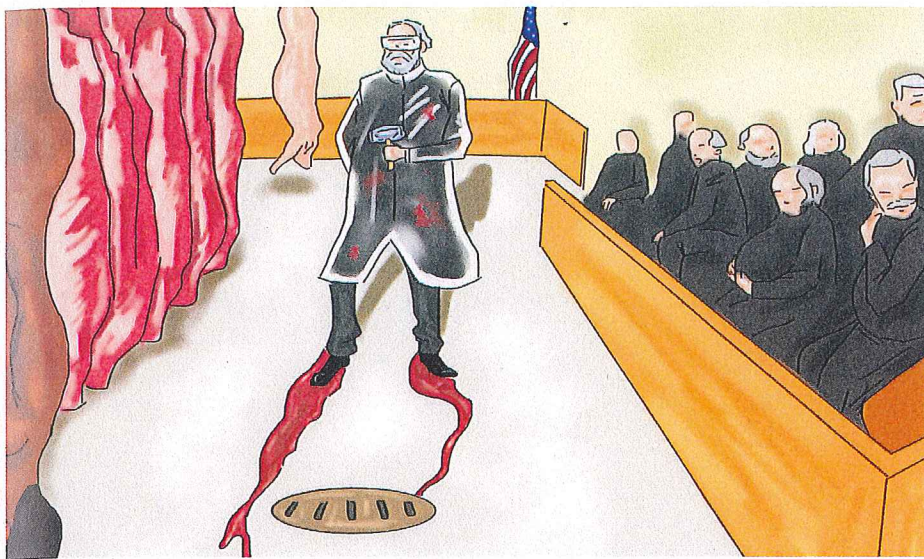




PLEAD THE FOURTH

Teaching New York City high schoolers about their Fourth Amendment rights.

BY KELI YOUNG

In the summer of 2013, *Floyd v. City of New York*, a class-action lawsuit, challenged New York City's stop-and-frisk policy and won. The judge determined that the New York Police Department's institutional practice of targeting people based on race was unconstitutional. That same summer, between my first and second years of law school, I taught high-school freshmen criminal law and procedure. Explaining to low-income students of color who live in heavily policed communities that they should be respectful to police officers who have never respected them was difficult. To teach students that what they have seen and experienced on the streets of their own neighborhoods contradicts the laws governing police conduct is to make a classroom full of students angry. The Fourth Amendment to the United States Constitution gives you the right to be secure from all unreasonable searches and seizures of your person and property. This applies to what police can do to you on the street. In New York City, there are four levels of encounters with police officers, each with its own legal requirement to match increasing degrees of suspicion. The

first level is called a "request for information." At this stage, the police, if they have an objective credible reason, even without any suspicion of criminal activity, can ask for information like your name, address, and reason for being in the area. This must happen without harassment and intimidation. The second level is called a "common-law inquiry." If police have a founded suspicion that criminal activity is happening, they can ask you more pointed, accusatory, and extended questions. The third and most infamous level is the "forcible stop and frisk." At this stage, the officer must have reasonable suspicion, based on your behavior or the surrounding circumstances, that criminal activity may be taking place. That suspicion allows the officer to forcibly stop you and, if he fears that you possess a weapon, perform a pat down of the outsides of your clothing. (This level narrowly limits frisks to searches for weapons that may pose a threat to the officer or the greater public; however, most searches uncover drugs or evidence of other crimes, which is not the purpose of the frisk, and often lead to arrest.) Arrest, the final level, requires that there be probable cause—

facts that warrant a reasonably cautious person to believe that a crime has been, or is being, committed, or that evidence of a crime will be found somewhere.

I could have ended the lesson there. However, having grown up in the Brownsville section of Brooklyn—where every male in my life has been stopped by the police, where from 2006 to 2010 there were more stops than there were residents—I could never just tell my students the law. Classroom discussions about students' right to be free from unreasonable searches and seizures revealed a tension in their attempts to reconcile the laws that successfully govern police conduct for other people with their own lived experiences. Attempts that mirror my own. There is no understanding of Fourth Amendment law that could take the place of what they had seen and felt all their lives. Instead, what I gave my students was practical advice for dealing with cops. I told them what they should and shouldn't say. I validated their outrage. But even I couldn't convince them that they were firmly positioned within the protection of the Constitution.

Since that summer, the number of reported stops throughout the city has declined. At the end of 2014, the N.Y.P.D. reported a nearly eighty percent drop. Rates of criminal activity have also continued to fall. Through the first half of 2015, N.Y.P.D. CompStat reports showed that crime fell by just above ten percent that year and by about nine and a half percent in the prior two years. These trends, however, are deceptive. They mask the fact that whole communities of color continue to be unfairly targeted by police intimidation, force, and violence under the theory of broken-window policing that has continued in the wake of stop-and-frisk practices. My students have existed, and continue to exist, in a space where the standards of constitutional policing do not apply to them. They have never experienced full citizenship, and they know that.