

# LEGAL

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## S.F. appeals federal injunction halting Zebra dragnet

Last April, following a series of unsolved homicides and attempted homicides in San Francisco, the Police Department embarked upon a program calling for officers in "Interracial areas of the city" to "stop" and make a "pat search" of black male persons who fit a general description and two composite sketches of the so-called "Zebra killers."

One week after "Operation Zebra" began, U.S. District Court Judge Alfonso Zirpoli issued a preliminary injunction prohibiting further forcible stops and frisks of individuals by the police in the absence of adequate "reasonable suspicion" that the particular individual stopped and frisked "has committed or is committing a crime."

*Joseph Williams and Leo Bazille, et al. v. Joseph Aioto et al.* was immediately appealed to the Ninth Circuit Court of Appeals by the city. Last month, the plaintiffs filed their reply to the appeal. They are represented by the Northern California Police Practices Project, the ACLU Foundation, the Mexican-American Legal Defense and Education Fund, the NAACP Legal Defense and Education Fund; ACLU-NC Board members Stanley Friedman, Jerome Falk and Anthony Amsterdam; as well as private attorneys Kenneth Philpot and Cecil Poole. The brief was prepared by Police Practices Project Director Amitai Schwartz and Stanford Law Professor Anthony Amsterdam.

Although the police admitted that the Zebra searches were ineffective and that they were going to voluntarily cease the program because it was a "waste of time," they have appealed the injunction which ordered them to do what they said they were going to

do in the first place. Chief of Inspectors Charles Barca had testified that they were only testing the procedure for about a week.

During that week, more than 600 Black men were stopped and frisked. Barca admitted that the stops generated a "hue and cry raised by the Black people of San Francisco" and that Black men were afraid to walk the city streets for fear of harassment by the police. Others, living in communities around San Francisco, feared to enter the city.

Following two days of hearings on the plaintiffs' motion for preliminary injunction, Judge Zirpoli ruled that the original Zebra procedures, as well as the later modifications issued by the police, violated the Fourth and Fourteenth Amendments "to the extent that they . . . authorize and direct the forcible stop of large numbers of Black male persons who fit the general description . . . without additional reliable evidence . . . known to the officer (which) creates a reasonable suspicion that such person has committed or is committing a crime and that such person is armed and dangerous."

In the appeal to the Ninth Circuit, the City presents two arguments. First, they urge that the Zebra stop-and-frisk operation was constitutional from the outset because "the operation . . . consisted of highly selective, brief investigative detentions" in which a mere 600 Black people were stopped, "all of whom may well have reasonably fit the profile."

Second, city attorneys argue that even if the procedure was constitutionally defective, they "voluntarily adopted procedures that remedied any such defect" with the consequence that Judge Zir-

poli's order was either an abuse of discretion or was issued in a moot controversy.

Amsterdam responds that no matter how the city interprets the Zebra dragnet, it is at a minimum clear that the Fourth Amendment has two fundamental elements: there must be an "individualized basis" for the stop; and that basis must consist of "facts judged against an objective standard." Stops and seizures cannot be made at the discretion of the police.

He notes that the critical question is whether an authorization given to police officers to stop all persons fitting a generalized "profile" — a profile so unspecific that 600 people were found to fit it in a week — can be judged to rely upon an "individualized basis" and whether it sufficiently confines "the discretion of the police." He urges, "With the utmost respect, we submit that the question answers itself. If it did not, history and legal authority both answer it in the negative."

Amsterdam adds that the city has proposed a factual argument to which we find response impossible and can only submit it for consideration by the Court in the terms the city presented it: "The fact that 600 individuals were detained is not, in and of itself, evidence that the operation amounted to a dragnet."

Turning to the question of the procedural propriety of Judge Zirpoli's order, Amsterdam quotes the U.S. Supreme Court when it noted that discontinuation of illegal conduct on the part of the police provides no grounds upon which to refuse an injunction, "since otherwise they would be free to return to their old ways."