

Vertical Patrols: The Illegal Expansion of Search and Seizures Targeted at Minority
Communities of New York City Housing Authority

By: Mariko J. Gaines

The New York Police Department (“**NYPD**”) implements vertical patrols and trespass arrests (“vertical patrols”) as tools to encourage public safety. A legal vertical patrol is when the police sweep a building from the rooftop to the floor level, noting any safety hazards, and securing the premises against any possible illegal acts when they have an articulable suspicion to do so. In *Davis v. City of New York*, plaintiffs filed a complaint against the City of New York and the New York City Housing Authority (“**NYCHA**”), alleging that the NYPD had enforced and conducted illegal vertical patrols that produced a pattern of illegal stops, seizures, and arrests. These vertical patrols violated plaintiffs’ constitutional rights under the 4th and 14th Amendments of the United States Constitution, the Civil Rights Acts of 1964 and 1968, the Fair Housing Act, the United Housing Act, and the laws of New York City and New York State law. Here, I focus on New York’s Constitution, Article I, Section 12, the right against illegal search and seizures. The NYPD has overstepped the legality of vertical patrols when they target individuals, often minorities, on NYCHA premises, and arrest them for criminal trespass. The NYPD makes arrests when the minority individuals cannot provide proof of being a NYCHA resident or proof of them visiting a NYCHA resident, such as providing the legal name or exact address of their friend. These vertical patrols violate the rights of NYCHA residents and interfere with their comfort and enjoyment of their homes.

An illegal vertical patrol is when members of the NYPD stop individuals in or around common areas of the NYCHA grounds without individualized suspicion. Illegal vertical patrol practices are not indiscriminate. Often, minorities living in NYCHA housing are targeted more than any other community in New York City. The New York City Council stated that “[t]he rate of trespass stops, arrests, and enforcement in predominately minority [NYCHA] residences is

[about]...three times higher than surrounding areas with similar rates of crime.”¹ In going beyond their legal boundaries, the NYPD racially profiles Black and Latinos in NYCHA’s premises labeling them as a “walking reasonable suspicion.”

In *Davis*, several NYCHA residents and their visitors alleged that the NYPD racially discriminated against them when they were stopped and questioned about their identity and reason for being on the NYCHA premises. According to the complaint, the stopped residents offered to produce their identification; however officers refused to let them obtain proof, and insisted on further questioning. Ultimately, the NYPD arrested the residents for trespass. Visitors of residents found themselves similarly situated. In the *Davis* complaint, there are a variety of visitor complaints about unjustifiable police stops and questioning. One visitor claimed that the NYPD stopped him and asked for identification. After providing the proper state issued identification the officer then asked where he was coming from. Though the visitor told the police officer that he was visiting a friend and provided the friend’s NYCHA apartment address, the officer pushed him up against the wall, searched him, and arrested him for trespass. The class action members of the suit contend that NYCHA works in conjunction with the NYPD to intentionally enforce race-based discrimination through illegal searches and arrests using vertical patrols.

The NYPD contends the use vertical patrols are a preventative measures to promote public safety. Despite public safety, the vertical patrols go beyond constitutional limits when Black and Latino citizens are disproportionately targeted for police tactics. The danger in vertical patrols is rooted in the perception of public housing communities. Public housing has a

¹ In 2006 there were over 156,000 patrols conducted in NYCHA buildings (*See* N.Y. City Council, Comm. on Pub. Safety & Subcomm. on Pub. Hous., Meeting Minutes 26 (Apr. 29, 2004)).

high concentration of poor minority groups.² Often, society links Blacks and disadvantaged minority groups to high crime, violence, and welfare.³ This perception creates a correlation between minority groups and police stops and interrogation. Particularly, in New York, during the 1990's the NYPD implemented "maintenance policing" to deter crime in public housing; maintenance policing entails heavy reactions to minor offenses in an attempt to prevent crimes. Like maintenance policing, the vertical patrols of today focus on stops and arrests for minor violations that disproportionately target minority communities.

The NYPD must take steps to ensure that vertical patrols fall within the legal framework of searches and seizures under the New York State Constitution. There are four levels that define legal stops; an increase in level requires more intrusive police inquiries.⁴ Before moving beyond Level 1, a police officer must suspect an individual's actions are suspicious. The levels of proper search and seizure were laid out in *People v. De Bour*:

- Level 1: At level one, the police may inquire into nonthreatening issues, including name, address and destination. To justify a level one inquiry, only an articulable reason is required.
- Level 2: A police officer engages in a level two inquiry when there is a founded suspicion that criminal activity is occurring. If there is a founded suspicion, the police officer may ask the suspect questions to gather information but the officer may not use forcible seizure.
- Level 3: At level three, a police officer can forcibly stop a suspect but reasonable suspicion is required.
- Level 4: At level four, a police officer may arrest and take into custody suspect when the office has probable cause to believe that the suspect engaged in a crime in his presence.

² Susan J. Popkin et al., *The Hidden War: Crime and the Tragedy of Public Housing in Chicago* 1 (2000).

³ Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows,"* 67 *Soc. Psychol. Q.* 319, 320 (2004).

⁴ *People v. De Bour* 40 N.Y.2d 210 (1976).

When police officers are charged with protecting the public safety, they must respect constitutional rights in the process. The NYPD disregards their duties, specifically to NYCHA residents, by crossing a constitutional line between reasonable searches and illegal intrusiveness. Under any law, being a minority does not create a founded suspicion, and when a suspect provides a rational reason for being on the NYCHA premises, a continued search does not pass legal muster. The NYPD must stop harassing Blacks and Latinos on NYCHA premises once they provide a clear and reasonable explanation of why they are on the premises. The Black and Latino residents of NYCHA should be able to walk around their homes and have friends over without fear of racial discrimination by the NYPD.

It is reasonable that police officers are afforded wide latitude in searches and seizures in high crime areas where criminal activity is often abound. However, NYCHA areas, as previously mentioned, have not shown higher rates of crime compared to other communities in New York City. Illegal vertical patrols permit less protection of public housing residents against police stops and seizures. With a legal precedence that allows police officers to determine reasonable suspicion and probable cause they must be mindful of the thin line between legal and illegal searches.