



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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## **FEDERAL APPEALS COURT REJECTS EFFORT TO ENJOIN MANDATORY BREATHALYZER TESTS FOR POLICE OFFICERS INVOLVED IN SHOOTINGS**

### ***COURT HOLDS THAT NYPD PRACTICE IS REASONABLE UNDER THE FOURTH AMENDMENT***

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New York, Dec. 11, 2009 – The federal U.S. Court of Appeals for the Second Circuit ruled today that the practice of performing breathalyzer tests on police officers who cause injury or death in the discharge their weapons is reasonable under the Fourth Amendment, and that a District Court ruling denying a motion by police unions to enjoin, or halt, that practice was properly denied.

The NYPD implemented the policy, Interim Order 52, following the November 2006 shooting death of Sean Bell, and based on recommendations made by a panel reviewing the Department's undercover investigations. The federal court challenge by the Patrolmen's Benevolent Association and others allege that the breathalyzer tests, conducted immediately at the scene of shootings, violate their Fourth Amendment rights to be free from unreasonable searches. Applying the "special needs" exception to traditional Fourth Amendment analysis, however, the Second Circuit Court of Appeals – a midlevel appellate court -- concluded that NYPD officers have a diminished expectation of privacy, and the NYPD's need to deter the use of deadly force by officers who are under the influence of alcohol, and promote public confidence in the force, are "manifest" and "the breathalyzer policy straightforwardly addresses those needs."

The "special needs" doctrine applies where the search is not primarily motivated by a "general interest in crime control." The Second Circuit Court of Appeals found that the NYPD's breathalyzer policy is primarily intended to address several issues unrelated to crime control, including personnel management, safety issues, and promoting public confidence in the NYPD.

Michael Cardozo, the City's Corporation Counsel said: "We are very satisfied with the Court's ruling and believe the public interest has been vindicated. We are pleased that the Court recognized the many important ways the policy advances the safety of the public, as well as the safety of our police force."

The City's legal team included Jane L. Gordon and Edward F.X. Hart of the New York City Law Department's Appeals Division, and Alan Schlesinger and Georgia Pestana of the Department's Labor and Employment Division.

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