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April 30, 2009

**OVERSIGHT: Analysis of the New York City Police Department
Stop and Frisk Encounters**

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I. INTRODUCTION

On April 30, 2009, the Committee on Civil Rights, chaired by Larry B. Seabrook, and the Committee on Public Safety, chaired by Peter F. Vallone Jr., will hold a joint oversight hearing entitled, “Analysis of the New York City Police Department Stop and Frisk Encounters.” This hearing follows a series of previous oversight hearings on the New York City Police Department (NYPD). In 2007, following the November, 2006 police shooting outside Club Kalua in Queens, in which one man, Sean Bell, was slain, and two others, Joseph Guzman and Trent Benefield, were seriously injured,¹ the Council held a series of oversight hearings that covered NYPD undercover and special operations training, internal and external monitoring of the NYPD, and NYPD community policing policies and practices. In January of 2009 the Council re-visited the topic of external monitoring of the NYPD and held an oversight hearing concerning the Civilian Complaint Review Board (CCRB).

In today’s hearing, the Committees will review and analyze the NYPD’s stop, question, and frisk practices. Those expected to testify include Greg Ridgeway, of the RAND Corporation, law professor Jeffrey Fagan, public policy professor Dennis Smith, representatives from the Center for Constitutional Rights, the New York Civil Liberties Union, the CCRB, and other interested parties.

II. BACKGROUND

A. Legal Analysis of Stop and Frisk

The practice of briefly stopping an individual for questioning, and possibly patting him or her down for weapons, commonly referred to as “frisking,” was officially recognized by the Supreme Court of the United States in 1968 as an exception to the requirement that police

¹ William K. Rashbaum. & Al Baker, “50 Bullets, One Dead, and Many Questions,” *New York Times*, December 11, 2006.

officers must have “probable cause” to seize and search a person or his or her effects.² In its seminal decision, *Terry v. Ohio*, the Court recognized that the Fourth Amendment’s “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study,”³ but also allowed that in the interest of “effective crime prevention and detection,” a police officer may “approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.”⁴ Following such a temporary stop, the Court held, the interest in the police officer remaining safe allows an officer to conduct a “reasonable search for weapons” provided the officer “has reason to believe that he is dealing with an armed and dangerous individual.”⁵ Thus, under *Terry v. Ohio*, a police officer who has a “reasonable” suspicion that criminal behavior is occurring may briefly stop an individual, which may in turn lead to a search. The Court stressed that “inarticulate hunches” are not enough to warrant a stop, but that instead an officer making a stop must be able to “point to specific and articulable facts” that led to the stop.⁶

In the ensuing years, many cases have expanded upon the legal standard established by the *Terry* decision. The leading case in New York that involves the same principals is *People v. De Bour*.⁷ The court in *De Bour* reaffirmed that the police must have a “founded suspicion that criminal activity is present” before they may stop a person “pursuant to the common-law right to inquire.”⁸ Information learned as a result of the stop may not retroactively justify the stop, nor

² *Terry v. Ohio*, 392 U.S. 1 (1968).

³ *Id.* at 8-9.

⁴ *Id.* at 22.

⁵ *Id.* at 27.

⁶ *Id.* at 21.

⁷ *People v. De Bour*, 40 N.Y.2d 210 (1976).

⁸ *Id.* at 215.

may the police intrude upon “the security and privacy” of a person with an “intent to harass or [] based upon mere whim, caprice or idle curiosity”⁹

The court in *De Bour* recognized that the evaluation of the constitutionality of a stop will be a nuanced one. The court stated that a police officer’s right to request information in furtherance of his law enforcement duties should be weighed against the “manner and intensity of the interference, the gravity of the crime involved and the circumstances attending the encounter.”¹⁰ According to this balancing test, the situation in *De Bour*, wherein two officers patrolling late at night, in an area known for drug sales, noticed a man cross the street in what appeared to be a deliberate attempt to avoid the officers and approached him to briefly question him, was held to be constitutional.

Under New York law, once such questioning of an individual becomes a “stop,” it is allowed only when an officer “reasonably suspects that such person is committing, has committed or is about to commit” a crime.¹¹ Once an officer has stopped a person, he may search the person “for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury,” if he believes “that he is in danger of physical injury.”¹²

The *De Bour* court differentiated between a police officer’s “public service functions” and his or her “criminal law enforcement functions.”¹³ As an example of an officer’s public service duties, the court stated that a police officer would have free reign to stop individuals on the street in order to find the parents of a lost child.¹⁴ Of all law enforcement duties, however, the court cautioned that police officers must be particularly careful when carrying out the duty of

⁹ *Id.* at 216 – 17.

¹⁰ *Id.* at 219.

¹¹ N.Y. Crim. Proc. Law § 140.50(1).

¹² N.Y. Crim. Proc. Law § 140.50(3).

¹³ 40 N.Y.2d at 219.

¹⁴ *Id.*

crime *prevention*, as this area is “highly susceptible to subconstitutional abuses,” and thus “will be subject to the greatest scrutiny.”¹⁵

B. The NYPD’s Stop, Question, and Frisk Training and Guidelines

As evidenced by the many balancing tests presented in cases such as *Terry* and *De Bour*, the question of whether a police officer’s actions constitute a stop, and the further question of whether that stop is lawful, are complicated ones. While in the police academy, NYPD recruits are trained on the basic legal framework of “stop and frisk” encounters in classes and workshops.¹⁶ Additionally, patrol officers receive regular training on issues associated with making stops.¹⁷ All officers carry a summary sheet of stop, question, and frisk principles in their memo books.¹⁸

The patrol guide for NYPD officers provides a reference guide for officers on when it is acceptable to stop or frisk an individual. The patrol guide defines the terms stop, frisk, and search in the following ways:

Stop: To temporarily detain a person for questioning.

Frisk: A running of the hands over the clothing, feeling for a weapon.

Search: To place hands inside pocket or other interior parts on clothing to determine if object felt is a weapon.¹⁹

The procedure section of the patrol guide contains the instruction that an officer who has a reasonable suspicion that a person has, is, or is about to commit a felony or misdemeanor ought to first stop the individual and request identification and an explanation of the suspicious conduct.²⁰ The patrol guide then instructs officers to frisk the individual if the officer

¹⁵ *Id.* at 220.

¹⁶ Greg Ridgeway, “Analysis of Racial Disparities in the New York Police Department’s Stop, Question, and Frisk Practices,” p.3, RAND Corporation (2007) (hereinafter, “RAND Report”).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ New York City Police Department Patrol Guide, Procedure No. 212-11 (2007).

²⁰ *Id.*

“reasonably suspect[s]” him or herself “or others are in danger of physical injury.” The patrol guide directs officers to elevate the encounter to a search if the frisk reveals something which may be a weapon, noting that only the areas where an object was felt during a frisk may be subject to a more intensive search.²¹ After an officer completes his or her investigation, a “Stop, Question and Frisk Worksheet” (also known as a UF-250 form), must be completed.²² In addition to other information, the worksheet requires that the officer indicate the circumstances leading to the stop, by checking off various boxes on the sheet, as well as whether the person was frisked, and if so, whether a weapon was found.

To assist police officers in determining whether reasonable suspicion exists to stop an individual, the Patrol Guide advises officers on a list of factors that may contribute to reasonable suspicion. Among the factors are: the demeanor of the suspect, the gait and manner of the suspect, any information received from third parties, and the person’s proximity to the scene of a crime.²³

III. STOP, QUESTION, AND FRISK STATISTICS FROM 2006-2008

The NYPD’s stop and frisk activity has been extensively analyzed and studied over the past ten years.²⁴ The practice has been intensely debated, in private and public settings, and as this debate has continued, the frequency with which the NYPD has stopped and frisked individuals has, for the most part, steadily increased. In fact, 2008 marked a record year for the NYPD with respect to the number of individuals that it stopped. Over half a million individuals

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See, e.g.* The New York City Police Department’s “Stop & Frisk” Practices: A Report to the People of the State of New York From the Office of the Attorney General, Eliot Spitzer, Attorney General of the State of New York, Civil Rights Bureau, p.61, December 1, 1999 (finding that blacks and Hispanics were stopped by the NYPD at a rate higher than whites, and issuing recommendations for the NYPD); “Police Practices and Civil Rights in New York City,” A Report of the United States Commission on Civil Rights, p.107 (August 2000).

– 531,159 to be exact – were stopped by the NYPD in 2008.²⁵ This number represents 4% more stops than in 2006 and 13% more than in 2007. In all three years, roughly five times the number of black individuals than white individuals were stopped. The following chart displays the number of individuals stopped from 2006-2008.

Stop, Question, and Frisk²⁶					
	Black	Black-Hispanic	White-Hispanic	White	Total²⁷
1Q 2006	69,669	7,620	33,729	14,894	136,851
2Q 2006	68,784	7,327	30,354	13,621	130,050
3Q 2006	66,316	7,396	29,054	12,727	124,224
4Q 2006	63,841	6,355	26,529	12,551	117,415
Total 2006	268,610	28,698	119,666	53,793	508,540
1Q 2007	67,953	7,605	33,761	15,232	134,029
2Q 2007	57,404	6,801	28,507	12,989	113,945
3Q 2007	59,075	6,713	25,244	12,516	111,103
4Q 2007	57,941	6,495	25,777	11,978	109,855
Total 2007	242,373	27,614	113,289	52,715	468,932
1Q 2008	73,660	8,382	37,462	15,293	145,098
2Q 2008	61,439	7,730	33,352	14,941	125,839
3Q 2008	61,287	7,905	29,940	13,322	120,071
4Q 2008	75,216	8,160	34,178	13,851	140,151
Total 2008	271,602	32,177	134,932	57,407	531,159

²⁵ See “Stop, Question, and Frisk” chart, below; *see also* Al Baker, “Police Stops on City Streets Rose Significantly Last Year,” *New York Times*, February 10, 2009 (stating that the 531,159 stops made in 2008 was more than in any other twelve month period in the years since the police began reporting stop data).

²⁶ Data received from the New York City Police Department, and on file with the New York City Council Committee on Public Safety.

²⁷ The total includes black, black-Hispanic, white-Hispanic, white, Asian/Pacific Islander, American Indian, and those instances in which the race of the individual stopped was not listed.

The number of individuals that were arrested after being stopped is relatively small, as demonstrated by the following chart.

Arrests as indicated on each Stop, Question and Frisk Report²⁸						
	Black	Black-Hispanic	White-Hispanic	White	Total	Approximate % of SQF Arrested
1Q 2006	2,714	316	1,264	659	5,254	4%
2Q 2006	2,760	338	1,365	726	5,546	4%
3Q 2006	2,872	365	1,315	660	5,530	4%
4Q 2006	2,537	273	1,263	592	4,939	4%
Total 2006	10,883	1,292	5,207	2,637	21,269	4%
1Q 2007	3,234	410	1,846	895	6,852	5%
2Q 2007	3,375	425	1,729	820	6,824	6%
3Q 2007	3,535	453	1,577	825	8,762	8%
4Q 2007	3,639	475	1,740	693	6,951	6%
Total 2007	13,783	1,763	6,892	3,233	29,389	6%
1Q 2008	4,512	571	2,293	856	8,711	6%
2Q 2008	4,195	516	1,992	840	8,046	6%
3Q 2008	3,873	554	1,846	774	7,468	6%
4Q 2008	3,894	468	1,900	685	7,440	5%
Total 2008	16,474	2,109	8,031	3,155	31,665	6%

²⁸ Data received from the New York City Police Department, and on file with the New York City Council Committee on Public Safety.

The number of individuals given a summons after being arrested is roughly equivalent to the number of individuals arrested.

Summonses as indicated on each Stop, Question and Frisk Report²⁹						
	Black	Black-Hispanic	White-Hispanic	White	Total	Approximate % of SQF Summonsed
1Q 2006	3,603	364	1,692	751	6,898	5%
2Q 2006	4,333	452	1,918	776	7,992	6%
3Q 2006	3,949	470	1,922	772	7,540	6%
4Q 2006	3,511	390	1,672	737	6,737	6%
Total 2006	15,396	1,676	7,204	3,036	29,167	6%
1Q 2007	4,212	479	2,088	991	8,368	6%
2Q 2007	4,543	557	2,293	994	8,996	8%
3Q 2007	4,921	515	2,040	880	8,887	8%
4Q 2007	4,294	470	1,819	750	7,839	7%
Total 2007	17,970	2,021	8,240	3,615	34,090	7%
1Q 2008	4,957	648	2,545	1,005	9,779	7%
2Q 2008	4,228	627	2,511	829	8,698	7%
3Q 2008	3,945	626	1,989	792	7,849	7%
4Q 2008	4,085	476	1,954	701	7,755	6%
Total 2008	17,215	2,377	8,999	3,327	34,081	6%

IV. COMMENTARY AND ANALYSIS ON THE NYPD'S STOP, QUESTION, AND FRISK STATISTICS

The Court in *Terry* characterized stop and frisk tactics as “a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is

²⁹ Data received from the New York City Police Department, and on file with the New York City Council Committee on Public Safety.

not to be undertaken lightly.”³⁰ Perhaps with this warning in mind, many people were shocked when they became aware, following the release of the 2006 stop and frisk data to the City Council, of the sheer number of individuals stopped in that year – 508,540. Concern was also expressed over the seemingly disproportionate number of blacks and Latinos that were stopped. Although the NYPD contended that “stops were consistent with concentrations of crime and of victim descriptions of suspects,” it nevertheless hired the RAND Corporation, an independent nonprofit research and policy organization, to review the data.”³¹

A. The RAND Report

The author of the RAND report (the “Report”) analyzed data culled from the NYPD’s UF-250s completed for stops in calendar year 2006. In examining the data, RAND researchers sought to answer whether the large number of blacks and Hispanics³² stopped was a product of racial bias on the part of police officers, and also whether officers were more intrusive in their stops and searches of non-white individuals.³³ To complete the study, RAND researchers used three types of methodologies in their analysis: external benchmarking, internal benchmarking and outcome analysis. Calculations made in the Report were based upon the daytime populations of the five boroughs.³⁴

External benchmarking was used to compare the racial distribution of NYPD stops to the racial distribution of other sources, believed to represent the population at risk of being stopped by police, assuming that there is no racial bias.³⁵ Internal benchmarking, on the other hand, was

³⁰ *Terry v. Ohio*, 392 U.S. 1, 17 (1968).

³¹ “Police Commissioner Raymond W. Kelly Announces that the Rand Corporation Will Conduct an Assessment of How the New York City Police Department Conducts Pedestrian Stops,” NYPD Press Release, March 14, 2007.

³² Although at other points in this briefing paper, the word “Latino” is used to describe persons of Latin-American origin, the author of the RAND report uses the word “Hispanic”, and thus that word is used in describing RAND’s work.

³³ RAND Report, *supra* note 16 at xi.

³⁴ *Id.* at 7, 9.

³⁵ *Id.* at 14.

used to look within the NYPD and compare officers' stop patterns with a standard "constructed from stops in similar circumstances made by other officers."³⁶ Finally, for its third measure, RAND researchers analyzed the outcome of each stop, and determined whether the result of stops varied across racial lines.³⁷

The Report expresses the opinion that the NYPD's reporting and monitoring of UF-250s has been effective, and that errors and miscommunications should be regarded as small-scale outliers within an otherwise efficient system.³⁸ The Report explains the layers of auditing the NYPD uses to verify that UF-250s contain complete and correct information, although it also acknowledges that there is no auditing process to verify that officers complete a UF -250 for all qualifying encounters.³⁹ A 2006 audit found that race was at times omitted from UF-250s, but not often enough, in the opinion of the Report's author, to skew RAND's analysis.

a. Methodology – Looking at the Raw Data

Based upon raw data, and focusing on the seven most common crimes for which stops are made – weapons, robbery, trespassing, drugs, burglary, auto theft and assault – the Report makes three findings.⁴⁰ First, the raw data shows that African-Americans were stopped most frequently in six of these seven categories of crime (with the narrow exception of burglary).⁴¹ Second, almost 6 out of every 100 people in New York are stopped in a given year – nearly double the amount projected by national statistics.⁴² Finally, when a Stop and Frisk is conducted on the basis of the suspicion of a weapons possession, the top reason for stops, whites are found to be

³⁶ *Id.* at xi.

³⁷ *Id.* at xii.

³⁸ *Id.* at 4.

³⁹ *Id.*

⁴⁰ *Id.* at 8.

⁴¹ *Id.*

⁴² *Id.* at 9.

twice as likely to have contraband on them at the time of the stop and frisk.⁴³ Of the 506,491 stops made, 49,328 resulted in an arrest or summons.⁴⁴ The Report proposes possible explanations for these conclusions later in the report, and cautions against relying on raw data to draw meaningful conclusions.

b. Methodology – Analysis

i. External Benchmarks

Although a discussion of external benchmarking constitutes a significant portion of the Report, the author of the report warns that all external benchmarks should be approached with caution. The report uses the external benchmarks of residential census, arrests made, and crime victim descriptions, to examine whether the stops made in 2006 reflect racial bias.⁴⁵

The first metric used is the residential census, which compares the percentage of stops of a given race to the overall percentage of the population that race represents. Using the residential census as an external benchmark shows blacks to be overrepresented in stops. 55% of police stops for 2006 were of black individuals, but blacks constitute only 24% of the city according to the census.⁴⁶ RAND concludes, however, that the complexity of factors combined with the discrepancy in overall police tactics from precinct to precinct make any census-based analysis an overly simplified and ultimately untrustworthy one.

The second external benchmarking tool used in the Report was total number of arrests made in 2005.⁴⁷ The racial distribution of those arrested for particular crimes in 2005 was compared to the racial distribution of those stopped for those crimes in 2006.⁴⁸ The outcome of

⁴³ *Id.* at 10.

⁴⁴ *Id.*

⁴⁵ *Id.* at 13-14.

⁴⁶ *Id.* at 14.

⁴⁷ *Id.* at 17.

⁴⁸ *Id.*

this analysis was that on the whole, black individuals were stopped at approximately the same rate as arrest data suggested while Hispanic individuals were stopped about 6% more than arrest data suggested.⁴⁹ On suspicion of weapons charges, however, blacks were stopped at an 8% greater rate and whites at an 11% lower rate than arrest rates suggested.⁵⁰ RAND criticizes arrest data as an external benchmark, however, stating that if officers are racially biased, this may be reflected in the way they arrest individuals, which in turn affects the validity of the external benchmark.⁵¹

Finally, RAND used the description of crime suspects to determine if the stop and frisks in question were appropriate. Thirty percent of all stops were initiated by the request of a member of the public for NYPD assistance in finding an individual, or a description of a suspect.⁵² A comparison of the races indicated in these descriptions to the races of those stopped showed that blacks are “substantially” under-stopped in comparison with their crime suspect rates, with or without the inclusion of violent crimes.⁵³

ii. Internal Benchmarks

The report explains that were racial discrimination an individual, rather than systemic problem, external benchmarks would prove an insufficient method both of measuring the problem and identifying the source. RAND researchers used internal benchmarking, however, to compare the racial distribution of individuals stopped by particular officers to the racial distribution of individuals stopped by larger groups of officers, in an attempt to identify potential “problem officers.”⁵⁴ As with external benchmarking, internal benchmarking is not without

⁴⁹ *Id.* at xii.

⁵⁰ *Id.* at 17.

⁵¹ *Id.* at 16-17.

⁵² *Id.* at 18.

⁵³ *Id.* at 19.

⁵⁴ *Id.* at 21.

flaws. If an entire precinct is equally biased, for example, one officer will not stand out as biased when compared to others. RAND also hypothesized that some officers who appear biased may have legitimate reasons for their stops, such as a Spanish-speaking officer who is given the lead on stopping Hispanic individuals.⁵⁵

The Report attempted to draw conclusions regarding officers who were patrolling the same areas, at the same times, and with the same assignment.”⁵⁶ RAND’s findings were that five officers stopped significantly more black suspects than other officers and nine officers stopped fewer blacks than the internal benchmarking would suggest.⁵⁷ Ten officers stopped more Hispanics than others, and four officers stopped fewer Hispanics.⁵⁸ Of the 15 “flagged” officers, six were stationed in Queens South.⁵⁹

iii. Post-Stop Outcomes

The Report’s analysis of post-stop outcomes focused on what actions were taken once a stop occurred. The analysis tracked behavioral patterns of officers to discover how often they used frisks, searches, force, or arrests following a stop. The goal of the analysis was to discover whether racial bias played a part in officers’ actions following a stop.⁶⁰ The Report indicates that the cause, time and location of a typical suspect’s stop vary greatly depending upon race.⁶¹ RAND states that any and all of these factors may play as large a role as race in the outcome of the stop.⁶² The Report finds the following:⁶³

⁵⁵ *Id.*

⁵⁶ *Id.* at xiii.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 31.

⁶¹ *Id.* at 32.

⁶² *Id.*

⁶³ *Id.* at 31.

- White suspects were frisked slightly less frequently than similarly situated non-whites – whites were frisked in 29% of stops and similarly situated non-whites were frisked in 33% of stops.⁶⁴
- Black suspects were slightly likelier, at 46%, to be frisked than similarly situated white suspects, who were frisked 42% of the time.
- With the exception of Staten Island, where non-white suspects were searched more than white suspects, searches were performed at almost the same rate – 6-7% – across racial groups.
- White suspects were slightly likelier to be issued a summons than similarly situated non-whites, but white suspects were slightly less likely to be arrested than similarly situated non-whites.⁶⁵
- Officers showed a 15% chance of using force for whites, which was slightly less than the 16% chance of using force against similarly situated non-whites.
- Contraband was recovered at a higher rate – 6.4% – for whites than the 5.7% recovery for similarly situated black suspects or the 5.4% recovery rate for similarly situated Hispanic suspects.⁶⁶

c. Conclusions

In concluding its report, RAND states that although racial disparities in stops have generated concern, the analysis of RAND researchers found the differences apparent in the raw

⁶⁴ The RAND researchers examined groups of factors that led to whites being stopped, and then selected a group of non-whites who were stopped for similar reasons to constitute their analysis of “similarly situated non-whites.” *Id.* at 34-35.

⁶⁵ Whites were summonsed at a rate of 5.7% following a stop compared to 5.2% for similarly situated non-whites; arrest rates were 4.8% for whites compared to 5.1% for non-whites. *Id.* at 31.

⁶⁶ In analyzing the percentage of time when contraband is found after a stop is made (the “hit rate”), RAND points out that certain crimes have an inherently higher hit rate than others, and because criminal accusations vary so greatly by race, it is almost certain that these numbers will be skewed. *Id.* at 41.

data to be less significant. Following various methods of analysis, RAND researchers found that racial distributions of stops were similar to the racial distribution of arrestees on the whole.⁶⁷ The Report attributes three-quarters of the racial gap in frisk rates to be due to situational factors, rather than racial bias.⁶⁸ In looking at individual officers within the NYPD, RAND found that only 15 officers appear to have been stopping non-whites more than whites.⁶⁹

Concluding that although there is “some evidence of unequal treatment across racial groups,” the evidence is not as great as the raw data suggests, the Report suggests that the racial bias problem within the NYPD is “not of a massive scale.” Rather, RAND states, the issue is “one that police management can address with effective supervision, monitoring of police activity, and effective interventions when problems are identified.”⁷⁰

d. Recommendations

RAND makes six recommendations for ways to alleviate any existing racial issues and to help make the necessary adjustments to avoid the appearance of racial bias in the future:⁷¹

- Explain to all pedestrians why they are being stopped.
 - To bolster trust in the community and help the NYPD address which kinds of stops are generating the most community-wide issues. RAND recommends that this should be conducted on a precinct-by-precinct basis in trial stages.
- Review the boroughs with the largest disparities in stop outcomes.
 - Certain boroughs, such as Staten Island and parts of Brooklyn, have statistical irregularities that need to be addressed by changes or by an improved explanation of what causes the irregularities.
- Revise UF-250s to more adequately reflect the reason for the use of force.

⁶⁷ *Id.* at 43.

⁶⁸ *Id.*

⁶⁹ *Id.* at 43-44.

⁷⁰ *Id.* at 44.

⁷¹ *Id.* at 44-46.

- If this criteria is not reflected, the margin for error can be unduly large.
- Provide more training at the Police Academy in the NYPD's stop and frisk policies.
- Address the fact that some stops might go undocumented by a UF-250.
 - Radio communications should be monitored so as to audit the UF-250s.
- Identify, flag, and investigate officers with out-of-the-ordinary stop patterns.

B. Responses to the Rand Report

Responses to the RAND report were varied. Several newspaper articles reporting on the study characterized it as “dispelling” or “clearing” allegations that the NYPD engages in racial profiling.⁷² Meanwhile civil liberties groups, many of which had previously expressed concern with the number of stops and frisks effected by the NYPD in general, and the high proportion of minorities that were stopped in particular, criticized the report. The New York Civil Liberties Union (NYCLU), in particular, stated that the NYPD's stop and frisk practices raise “serious concerns over racial profiling, illegal stops and privacy rights.”⁷³ Following the release of the RAND report, Donna Lieberman, executive director of NYCLU, called the report “hugely flawed” in its reliance on “inappropriate benchmarks.”⁷⁴ She furthermore characterized the report as “trying to explain away the racial disparities that arise over and over again.”⁷⁵

Citizens Union (CU), a good government group, has been similarly critical of the NYPD's stop and frisk efforts. Shortly after the RAND report was published, CU published an

⁷² See Alison Gendar, “Review says half-million NYPD stop-and-frisk cases not racial profiling,” *The Daily News*, November 21, 2007 (stating that the RAND report “dispelled allegations of citywide racial profiling by cops . . .”); Philip Messing, “‘Profiling’ Study Gives NY All-Clear,” *The New York Post*, November 21, 2007.

⁷³ New York Civil Liberties Union, “Stop and Frisk Campaign,” available at <http://www.nyclu.org/node/1232>.

⁷⁴ Al Baker, “City Police Stop Whites Equally but Frisk Them Less, a Study Finds,” *New York Times*, November 21, 2007.

⁷⁵ Alison Gendar, “Review says half-million NYPD stop-and-frisk cases not racial profiling,” *The Daily News*, November 21, 2007.

article in its online paper, the Gotham Gazette, examining the study and pointing out that the statistical technique of benchmarking has significant limitations.⁷⁶

The Center for Constitutional Rights (CCR) commented that the RAND report “fails to acknowledge and factor in that the majority of stops are based on subjective criteria and are not tied to alleged criminality.”⁷⁷ CCR’s criticism of the NYPD’s stop and frisk practices led it to file a lawsuit in January of 2008. The suit, *Floyd v. City of New York*, which is currently ongoing, alleges that the NYPD engages in racial profiling in its stop and frisk activity.⁷⁸ As a result of discovery requests in this case, CCR obtained all of the NYPD’s UF-250s for the years 1998 through the first six months of 2008. CCR released a report of its preliminary findings based upon the UF-250 data from 2005 through the first half of 2008.⁷⁹

C. The Center for Constitutional Rights’ Preliminary Study

The Center for Constitutional Rights (CCR) released a report entitled *Racial Disparity in NYPD Stops-and-Frisks* in January of 2009. The report is considered preliminary and based on data collected from the UF-250 reports obtained from the police department. The data used in the analysis is taken from UF-250 reports written during calendar year 2005 through the first half of 2008. The population data used by the report’s authors comes from the U.S. Census Bureau’s American Community Survey Demographic and Housing Estimates from 2005-2007. The report uses the estimated population of the city from 2005-2008 as a basis for its comparisons. During those years whites represented 44% of the population, Latinos represented 28%, and African

⁷⁶ Aubrey Fox, “Who’s Stopped, Who’s Frisked?” *The Gotham Gazette*, December, 2007.

⁷⁷ Sean Gardiner, “Frisk Management: How the NYPD’s blackly grim stop-and-frisk numbers got whitewashed,” *The Village Voice*, December 4, 2007.

⁷⁸ See Center for Constitutional Rights, Current Cases, available at <http://ccrjustice.org/ourcases/current-cases/floyd%2C-et-al.-v.-city-new-york%2C-et-al>.

⁷⁹ “Racial Disparity in NYPD Stops-and-Frisks: The Center for Constitutional Rights Preliminary Report on UF-250 Data from 2008 through June 2008,” The Center for Constitutional Rights, January 15, 2009 (hereinafter “CCR Report”).

Americans represented 25% of the population.⁸⁰ The report finds that overall the practice of stopping as well as frisking is on the rise and approximately 80% of total stops made between 2005 and 2008 were of blacks and Latinos while only 10% were of whites. Based on those numbers, the report concludes that the NYPD has stopped and frisked blacks and Latinos disproportionately more than white city residents.⁸¹

a. Findings on Stops

CCR found that nearly 81% of people stopped were either black or Latino, and although the percentage of white civilians stopped remained nearly constant from 2005 through the first half of 2008, the percentage of Latinos stopped has consistently risen to rates that are now three percent higher than they were in 2005 (from 29-32%). Throughout this time blacks accounted for nearly 50% of the stops made, despite the fact that they comprised only 25% of New York's population.⁸²

b. Findings on Frisks

The CCR report finds that the number of times that a frisk follows a stop has increased dramatically in the past few years. In 2007, although there were 34,000 fewer stops made than in 2006, 28,000 more frisks were conducted, resulting in 245,033 frisks.⁸³ In 2005 and 2006 civilians had a 42-43% chance of being frisked after being stopped by the NYPD and that likelihood has increased by 10% since 2007.⁸⁴ This increase held true across races, with whites actually being the only group above the collective 10% increase, seeing their likelihood of being frisked go from 28% to 41%.⁸⁵

⁸⁰ *Id.* at 8.

⁸¹ *Id.* at 4.

⁸² *Id.* at 7-8. Comparing the percentages of stops made to census data is a technique that the RAND report specifically discounts. See RAND Report, *supra* note 16 at 16.

⁸³ CCR Report at 9.

⁸⁴ *Id.*

⁸⁵ *Id.*

Although the likelihood of being frisked has increased by largely the same amount across racial boundaries, the actual number of stops by race is vastly disparate. From 2005-2008, 85% of all frisks were of blacks or Latinos, totaling 660,936 altogether; roughly 600,000 more blacks and Latinos were frisked during this time period than were whites.⁸⁶

c. Findings on Arrests and Summonses

Throughout this period the arrest rate for each of the three aforementioned races has maintained relatively equal and fairly consistent even as the number of stops and frisks were increasing.⁸⁷ Never reaching above 7% or below 4%, the three groupings also never varied more than a percentage point from each other within a given year.⁸⁸ The rates of summonses issued closely mirrors that of arrests.⁸⁹ The report concludes that this example demonstrates that the practice of stopping and frisking is not doing an effective job of fighting crime.⁹⁰

d. Findings on Weapons and Contraband

Despite the fact that Latinos and blacks account for over 80% of the total stops, the weapons yield remains constant across races. This mean weapons yield rate has oscillated from a high point of 1.6% in the first half of 2008 to a low of 0.4% in 2006.⁹¹

With regard to contraband, the percentages were consistent and low across racial groups, although whites maintained a slightly higher percentage of contraband possession compared to blacks and Latinos. For example, in 2007 there was a 2.4% chance of a white individual being found with contraband compared to a 1.9% chance that a black or Latino would be found with contraband.⁹² Almost 98% of all stops made resulted in no weapon or contraband being found.⁹³

⁸⁶ *Id.* at 9-10.

⁸⁷ *Id.* at 5.

⁸⁸ *Id.* at 10-11.

⁸⁹ *Id.* at 11.

⁹⁰ *Id.* at 5.

⁹¹ *Id.* at 11-12.

⁹² *Id.* at 12.

According to the CCR report, this low contraband recovery rate demonstrates that stop and frisk practices are ineffective.⁹⁴

e. Findings on Use of Force

CCR found that only 12% of the stops that involved a police officer using force subsequently resulted in an arrest. The raw data shows that 328,589 of the 373,233 incidents of force between 2005 and 2008 failed to yield an arrest. The report concludes that it is more likely that a black or Latino person will have force used against them during a stop. Only 17% of whites experienced the use of force during a stop from 2005 to 2008, while force was used against blacks and Latinos approximately 24 percent of the time.⁹⁵

f. CCR's Conclusions and Recommendations

CCR contends that the NYPD's support for its aggressive stop and frisk policy, one that has resulted in nearly 1,600,000 stop and frisks over a period of almost four years, is not an effective or legitimate crime-fighting practice.⁹⁶ CCR claims that often these searches are conducted indiscriminately on black and Latino civilians and that frisks are frequently conducted without the requisite level of suspicion.

To combat what the CCR concludes is systemic racial profiling, it recommends the following measures be taken:

- The NYPD should release additional data and policies/procedures about stop and frisk to the public;
- The requirement that the NYPD must report to the City Council on stop and frisks in each precinct by race and gender must be enforced;

⁹³ *Id.* at 13.

⁹⁴ *Id.* at 5, 19.

⁹⁵ *Id.* at 4.

⁹⁶ *Id.* at 19.

- The CCRB should be allowed to take disciplinary action against officers who have engaged in misconduct, and a broad range of penalties should be available.⁹⁷

D. Analysis of Law Professor Jeffrey A. Fagan

Following the release of the NYPD's stop and frisk statistics in 2007, the New York City Council hired Jeffrey A. Fagan, a professor of law and public health at Columbia Law School, to conduct an independent analysis of the data. Fagan previously worked on an analysis of NYPD stop and frisk data in conjunction with then-Attorney General Eliot Spitzer in 1999, in order to create a comprehensive report on NYPD stop and frisk practices.⁹⁸

Fagan is a co-author of the forthcoming article, "Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City."⁹⁹ This article finds that New York City neighborhoods with high African American populations experience higher rates of stops than other neighborhoods.¹⁰⁰ The authors of the article found this to be true even after controlling for crime rates and physical disorder of neighborhoods.¹⁰¹ The article finds that young African American males have a much higher probability of being stopped by an NYPD officer than other individuals in the city.¹⁰²

The authors of the article also analyzed the efficiency of stops, by reviewing how many have led to arrests. According to the article, the rate at which stops led to arrest was 15% in 1998-99, 7.8% in 2003, and less than 4.1 % in 2006.¹⁰³ The article concludes that the efficiency of stops has decreased over the years as fewer stops have led to arrests. Additionally, arrests per

⁹⁷ *Id.* at 16-17.

⁹⁸ *See supra* note 24, The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York From the Office of the Attorney General, Eliot Spitzer, Attorney General of the State of New York, Civil Rights Bureau, p.61, December 1, 1999.

⁹⁹ Jeffrey Fagan, Amanda Geller, Garth Davies, Valerie West, *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in RACE, ETHNICITY, AND POLICING: NEW AND ESSENTIAL READINGS (Stephen K. Rice and Michael D. White, eds., forthcoming).

¹⁰⁰ *Id.* at 18-20, 25-26.

¹⁰¹ *Id.* at 20-22.

¹⁰² *Id.* at 27-30.

¹⁰³ *Id.* at 3.

stop are lower in predominantly African American neighborhoods. The article questions why such a sharp rise in stops has been seen at the same time that the efficiency of the stops has decreased and the crime rate in the city has remained relatively steady.¹⁰⁴

V. ISSUES RAISED

Stop and frisk practices figure heavily into police crime-fighting technique. The practice can be used either in response to a crime – by stopping individuals matching a victim’s description, perhaps – or with the objective of preventing a crime – when an officer stops an individual who displays suspicious behavior that portends criminal activity, like “casing” a location prior to a burglary.

Given the low number of arrests made in proportion to the number of stops effected, the efficacy of the NYPD’s stop and frisk practice has been questioned. The NYCLU has commented that the NYPD is ineffectively using its resources, which are currently limited, by “stop[ping] and frisk[ing] hundreds of thousands of black and Latino New Yorkers who have done nothing wrong.”¹⁰⁵ The CCR report also proclaims the NYPD’s stop and frisk practices to be ineffective given the low rates of “stops-and-frisks that result in arrest, summons, weapons and/or contraband yield.”¹⁰⁶ Even the RAND report noted that only a small percentage of stops result in arrest, and that the “value of those arrests compared with the cost of the false positives is a topic worthy of discussion in the community.”¹⁰⁷

On the other hand, it is clear that the NYPD has been hugely successful in reducing crime over the last several years. Major felony crime in 2008 was 3% lower than in 2007, and 28%

¹⁰⁴ *Id.*

¹⁰⁵ Al Baker, “Police Stops on City Streets Rose Significantly Last Year,” *New York Times*, February 11, 2009.

¹⁰⁶ CCR Report, *supra* note 79 at 19.

¹⁰⁷ RAND Report, *supra* note 16 at 43.

lower than in 2001.¹⁰⁸ With respect to stop and frisk in particular, NYPD Commissioner Kelly has reportedly stated that the technique saves lives, as it makes criminals re-consider whether to carry guns.¹⁰⁹ Additionally, situations such as the one described by the author of the RAND report, in which a victim rode in a car with police officers, resulting in stops of six innocent individuals before finding the three who had assaulted the victim, do occur, and are unlikely to be characterized as an inefficient use of police resources.¹¹⁰

As evidenced by the various studies that have been discussed, stop and frisk practices frequently bring up the issues of both trust and oppression. On the topic of crime prevention, the court in *People v. De Bour*, cautioned that “whereas a policeman’s badge may well be a symbol of the community’s trust, it should never be considered a license to oppress.”¹¹¹ On the side of trust, some people draw a link between recently-experienced and historically-low levels of crime in New York City, and the NYPD’s stop and frisk practices. On the other side, however, many individuals feel that they are sacrificing crucial privacy rights – sometimes on a daily basis – and suffering oppression as a result of these same tactics. Deputy Mayor Dennis M. Walcott was recently quoted by the New York Times as saying that his predominantly Caribbean neighborhood “struggle[s] with the duality of wanting a safe neighborhood and police who are respectful of our children.”¹¹² Deputy Mayor Walcott referenced the fact that following a shooting in his neighborhood residents requested police presence, but found that after it

¹⁰⁸ “Oversight: Keeping New Yorkers Safe,” New York City Council Committee on Public Safety, New York City Police Department, Testimony by Assistant Commissioner, Programs and Policies, Philip McGuire, April 6, 2008, p.1 (on file with the committee on Public Safety).

¹⁰⁹ Michael Powell, “Police Polish Image, but Concerns Persist,” *New York Times*, January 4, 2009.

¹¹⁰ RAND Report, *supra* note 16 at 4.

¹¹¹ *People v. De Bour*, 40 N.Y.2d 210, 220 (1976).

¹¹² Michael Powell, “Police Polish Image, but Concerns Persist,” *New York Times*, January 4, 2009.

appeared, although street violence decreased, young men in the neighborhood found themselves being stopped frequently.¹¹³

The Civilian Complaint Review Board (CCRB), the agency charged with evaluating complaints of police misconduct, has seen the number of complaints filed increase by 84% since the year 2000.¹¹⁴ In its Annual Report for 2007, the CCRB suggested that, in addition to the ease with which 311 allows individuals to make complaints, the increase in documented stops by NYPD officers was a likely cause of the increase in complaints.¹¹⁵ Such a surge in complaints is perhaps unsurprising, when the feelings associated with being stopped, especially if frisked, are considered. As stated by the Supreme Court in *Terry v. Ohio*, such an action is a serious one and “it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’”¹¹⁶

Law professor William Stuntz has written that at least four harms arise for the individual who is a victim of an unreasonable stop and frisk. The victim will have his privacy compromised, he will suffer the feeling of being singled out and treated like a criminal, he may feel that he has been selected for such treatment because of this race, and he will likely experience the fear or the reality that force may be used against him.¹¹⁷ Many individuals in New York, especially black and Latino individuals, feel these harms keenly. One individual interviewed by the New York Times said that “being an African-American,” it is “hard to live and walk down the street without the police harassing us.”¹¹⁸

¹¹³ *Id.*

¹¹⁴ See New York City Civilian Complaint Review Board, “2007 Annual Report,” (July, 2008), p.1. The CCRB’s 2007 Annual Report reported 7,559 complaints against New York City police officers for the year 2007.

¹¹⁵ *Id.* at xi.

¹¹⁶ *Terry v. Ohio*, 392 U.S. 1, 17-18 (1968).

¹¹⁷ William J. Stuntz, *Terry and Legal Theory: Terry’s Impossibility*, 72 ST. JOHN’S L. REV. 1213, 1218 (1998).

¹¹⁸ Trymaine Lee, “As Officers Stop and Frisk, Residents Raise Their Guard,” *New York Times*, February 4, 2007.

VI. CONCLUSION

In today's hearing, the Committee on Civil Rights and the Committee on Public Safety hope to learn more about the NYPD's practice of stopping and frisking individuals in public places, from many different perspectives. The Committee will hear from advocacy groups, scholars, community groups, and other members of the public as they provide their opinion about stop and frisk procedures, and present recommendations for change.

The extensive study of NYPD stop and frisk procedures over the past several years has already resulted in several suggestions for change. As of February 2008, the NYPD stated that it was "examining ways to implement all of the [RAND] recommendations, including ways to flag anomalous stop patterns by individual officers."¹¹⁹

Just a few days ago, one of the RAND recommendations was partially implemented. RAND suggested that the NYPD clearly explain to pedestrians why they are stopped and "offer the contact information of a supervisor or appropriate complaint authority so that the person stopped can convey any positive or negative comments about the interaction."¹²⁰ On April 23, 2009, an interim order to the NYPD patrol guide was issued to reflect a requirement that all officers "provide [a stopped] suspect with an explanation for the stop, question and/or frisk encounter, absent exigent circumstances."¹²¹ Additionally, according to the interim order, officers in three select precincts are to be given the option of providing the stopped individual

¹¹⁹ Tina Moore, "NYPD to check cops for stop & frisk bias," *The Daily News*, February 29, 2008.

¹²⁰ See RAND Report, *supra* note 16 at 44. A similar suggestion was made by the CCRB in 2001. See "Street Stop Encounter Report: An Analysis of CCRB Complaints Resulting From the New York Police Department's 'Stop & Frisk' Practices," Civilian Complaint Review Board (June 2001), p.7-8, *available at* <http://www.nyc.gov/html/ccrb/pdf/stop.pdf> (recommending that the NYPD issue "stop receipts" with offer a reason for the stop to all stopped individual).

¹²¹ New York City Police Department Patrol Guide Interim Order, "Revision to Patrol Guide 212-11, 'Stop And Frisk,'" (April 23, 2009).

with an information card entitled “What is a Stop, Question and Frisk Encounter?”¹²² This card explains why police officers stop individuals, and provides the internet website of the NYPD.¹²³ Although these revisions to the patrol guide do not fully complete the changes recommended by the RAND Report, they will likely improve communication and lead to greater understanding between members of the NYPD and the community.

The Committees look forward to listening and learning about how these changes, and other issues surrounding stop and frisk procedures are viewed by members of the New York City community.

¹²² *Id.* (“Uniformed members of the service assigned to the 32nd, 44th and 75th Precincts, after providing an explanation for the stop, question and/or frisk encounter, may provide the stopped individual with a tear off information card from a new ACTIVITY LOG insert entitled “WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?”) (emphasis in the original).

¹²³ See Appendix A.

Appendix A: NYPD “What is a Stop, Question and Frisk Encounter?” Tear-off Card



What Is A Stop, Question And Frisk Encounter?

PD 344-111 (04-09)

When a police officer reasonably suspects that a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor, the officer is authorized by NYS Criminal Procedure law § 140.50 to **stop, question and possibly frisk that individual.**

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NEW YORK CITY'S CUSTOMER SERVICE CENTER: CALL 311

Common Reasons Police Stop Individuals

A number of factors, alone or taken together, may raise a police officer's suspicion to a level where he or she may lawfully stop, detain, question and even frisk that individual. Some common examples include:

- Sights or sounds suggestive of criminal activity (ringing alarm, running from crime scene)
- Actions that are consistent with concealing a weapon or item used in the commission of a crime
- Carrying what appears to be a weapon
- Report of suspicious or suspected criminal behavior

If you have been stopped and were not involved in any criminal activity the NYPD regrets any inconvenience.