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**Testimony of Annette Dickerson, Director, Education & Outreach, Center for Constitutional Rights.**

**Presented to the New York City Council Committee on Public Safety and Civil Rights re:  
NYPD's stop-and-frisk practices and recommendations for reform.**

Thursday, April 30, 2009

Good morning Councilmembers

My name is Annette Dickerson and I am the Director of Education & Outreach at the Center for Constitutional Rights. CCR is a non-profit legal and educational organization based in New York City. We have been active in efforts for police accountability both in New York City and nationally since our inception in 1966.

**Before I begin, I want to note that in light of CCR's current involvement in ongoing litigation in the United States District Court in Manhattan concerning the stop-and-frisk practices of the NYPD, the statistical analysis and recommendations I will discuss this morning do not necessarily reflect the conclusions, evidence, arguments, or claims for relief that will be presented by plaintiffs in that litigation.**

Now, because the members of this committee and the members of the public in attendance this morning are already well aware of the problems concerning the NYPD's stop-and-frisk practices, I would like to spend the majority of my time today discussing CCR's recommendations for addressing this problem.

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.But first, I would like to provide you with a brief background on CCR's work on stop-and-frisk issues in New York City because it helps to inform and provide context for our recommendations for how to move forward.

As many of you know, in 1999, CCR filed a federal class-action lawsuit, *Daniels v. the City of New York*, which charged the NYPD with engaging in racial profiling and unconstitutional, suspicion-less stops-and-frisks of Black and Latino New Yorkers. In 2003, plaintiffs reached a settlement with the City under which the NYPD was required to design and implement its own anti-racial profiling policy and to monitor its own officers' stop-and-frisk practices to make sure they complied with the anti-racial profiling policy and the Constitution. In other words, the settlement provided no external, independent mechanism for monitoring the NYPD's stop-and-frisk practices.

What the settlement did provide for was the dissemination of the NYPD's stop-and-frisk data. The NYPD was required to provide CCR, as plaintiffs' counsel, with quarterly stop-and-frisk data for 2003 through 2007. And what that data showed was that the tremendous racial disparity in stops-and-frisks persisted throughout the entire 4-year period.

As a result, in January 2008, CCR went back to federal court. We filed *Floyd v. City of New York*, the successor case to *Daniels*, which is still pending in federal court here in Manhattan. Last September, the federal court ordered the NYPD to, for the first time, publicly disclose a decade's worth of raw stop-and-frisk data, from 1998 through the first half of 2008.

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As many of you may recall, at the hearing before this committee in January on the Civilian Complaint Review Board, CCR provided testimony and presented copies of our preliminary analysis of the stop-and-frisk data from 2005 through the first half of 2008. Since that hearing, CCR has received the stop-and-frisk data for the 2<sup>nd</sup> half of 2008, and as we predicted in our January report, 2008 saw the most NYPD-initiated pedestrian stops of any year on record, 535,123, -- 82% of which involved Black and Latino New Yorkers, who only make up about 50% of the City's population. Thus, over the first seven years of the Bloomberg administration and Commissioner Kelly's tenure as Police Commissioner, the number of NYPD-initiated pedestrian stops has increased more than 500%, while the tremendous racial disparity in who gets stopped has persisted.

Our experiences challenging the NYPD's stop-and-frisk practices over the last 10 years have therefore taught us that the NYPD cannot police itself. Instead, if we are serious about addressing misconduct and illegal practices by the NYPD at all levels, and making New York a safer place by guaranteeing the rights and dignity of all of its residents, *we must enact reforms that increase the accountability and transparency of the NYPD.*

To increase accountability, we must establish independent, external monitoring and investigative bodies that focus on: (1) the accountability of law enforcement agencies to the broader community for the policies they enact and services they are supposed to provide, and (2) the accountability of individual officers for their mistreatment of individual civilians, particularly with respect to the use of force and violations of civil rights. These bodies must be external from

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the Police Department and the Mayor's Office, since it is the Mayor who appoints the Police Commissioner. Instead they should be under the supervision of you, the City Council, as empowered representatives of the residents of New York City.

To ensure meaningful accountability, transparency is vital. For decades, the NYPD has refused to publicly release policing data concerning things such as "stop and frisks," use of force, reported crimes, arrests, and internal investigations of officer conduct. Access to this data by the public and the independent review of policing data is integral to confronting and correcting police misconduct as well as fostering stronger relationships between the police and the communities.

So with these guiding principles in mind, here are three recommendations for addressing the NYPD's problematic stop and frisk practices:

## 1. **INDEPENDENT POLICE AUDITOR**

The first recommendation we propose is the creation of an independent police auditor. The establishment of this office will go to considerable lengths to obtain real independent monitoring of the NYPD, transparency of information and data, and recommendations for necessary department-wide reforms. This is essential as we are not facing an issue of simply a few "bad apples" in the police department committing illegal stops-and-frisks. Rather, there are departmental norms that permit and encourage both racial profiling and unlawful stops of New York residents. In taking on the department-wide problems, the independent monitor will build

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the trust of the communities of New York and help repair the severely damaged relationships between the NYPD and New York communities, particularly communities of color.

An auditor reviews agency-wide practices, policies and statistics, and issues recommendations for departmental change. For example, the auditor can adequately assess the NYPD's failure or success in implementing their anti-racial profiling policy or assess the racial disparities and legitimacy of such things as issuance of Desk Appearance Tickets. The duality of this position being a governmental official and a permanent position will allow the auditor to fully investigate the policies and practices and to follow up on issues and recommendations to ensure compliance. This is crucial to maintaining sustainable and long-term reform.

Currently, there are thirteen police auditors in large jurisdictions throughout the country, including Los Angeles County, Philadelphia, Seattle, and San Jose, California. The voters of New Orleans recently voted in a citywide referendum to amend the city charter to create a permanent office of independent police auditor. We would like to see such an auditor become part of the New York City Charter to enshrine its independence and ability to make and pursue recommendations for systemic reform in the NYPD.

## 2. CIVILIAN COMPLAINT REVIEW BOARD (CCRB) REFORM:

A second way to promote accountability is through reform of the Civilian Complaint Review Board (CCRB). Although the existence of the CCRB is a positive first step toward securing accountability of the NYPD, the CCRB in its current form is inadequate to provide a truly

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independent review of incidents of misconduct and recommendations for departmental policy and individual remedies. This greatly impacts efforts to reform the NYPD's stop-and-frisk practices because the vast majority complaints received by the CCRB each year involve stop-and-frisk incidents.

One major problem with the CCRB is that its effectiveness is compromised by the appointment process for the board members. Currently, the Mayor and Police Commissioner together appoint 7 of the 12 members, while the City Council only appoints 5. In order to give the various communities in the City real confidence that the agency is independent of the Police Department, the police commissioner should not appoint any members to the Board, and the City Council should appoint a majority of the Board for CCRB. The diversity of the City Council is a better reflection of the population of the City of New York and would democratize the process, making it more likely that the Board meets the needs of the Civilians it answers to. We believe a better balance towards achieving those ends would be for the City Council to appoint ten members, while the Mayor can appoint three.

The CCRB also needs to have the authority, independent of the NYPD itself, to impose disciplinary penalties on police officers who the CCRB has concluded have committed misconduct. We heard detailed testimony in January regarding the failure of the NYPD to implement discipline in the CCRB-substantiated cases of police officer misconduct. We have also heard from a former CCRB employee that it is the NYPD Advocate Office's longstanding practice to NOT pursue disciplinary charges against any officer with a substantiated CCRB complaint for

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an illegal stop-and-frisk. Consequently, since the NYPD will not hold its own officers accountable for breaking the law, the CCRB should be empowered to do so.

### 3. NYPD DATA COLLECTION AND REPORTING

Finally, we believe it is necessary for the NYPD to end its love affair with secrecy. Transparency is key in our quest for accountability and democracy. The NYPD should be required to increase its reporting and collection of data. We are encouraged by the Council's January 7<sup>th</sup> vote to improve the NYPD's firearm discharge reporting. We are also pleased by the City Council's renewed demand for regular reporting of the UF-250 "Stop-and-Frisk" reports. We can't stop there, however. Increased transparency around incidents involving use of force, searches, and rape and sexual assault, which are often times a result of a stop-and-frisk, is essential. This information should be included in the COMPSTAT NYPD Management Reporting System. In conclusion, we believe that the NYPD's stop-and-frisk practice is an ineffective crime fighting strategy, relies upon racial profiling and other unconstitutional bases for stopping people, and only serves to further damage the relationships between the NYPD and New York communities, especially communities of color. Considering that stop-and-frisk is the primary form of interaction between an officer and a civilian and the number of stops is only increasing, this hearing and the calls for reform that I have outlined are extremely urgent. The racialized style of stop-and-frisk, the apparent unlawfulness of the majority of stops, and frequency of use of force employed have caused many to think of the practice not as a crime-fighting strategy, but instead, a strategy of occupation. It is high time that this ends.

or is committing, has committed or is about to commit a violent crime or one commonly linked to the possession of weapons, such as a burglary, robbery or drug offense. Here a CCRB investigation will focus on whether the officer had an independent and reasonable suspicion to believe that the civilian was armed with a weapon. If the frisk, a pat of the outer clothing, reveals an object that feels like a weapon, the officer may reach inside the clothing and seize it.

The fourth is an arrest. Here an officer must have "probable cause" to believe that the civilian is guilty of the offense with which he or she is charged, and the CCRB investigation will focus on whether the officer had such "probable cause."

### **Statistical Data and Analysis**

I would like to draw your attention to some statistics the CCRB has collected in the area of stop and frisk complaints. I will focus on complaints received, case dispositions, charges information, demographic information about officers and complainants, and Police Department dispositions of CCRB substantiated cases. I will take as a benchmark the statistics for 2002 and draw comparisons with the figures in 2008.

### **Complaints Received**

The total number of complaints received by the CCRB rose from 4,612 in 2002 to 7,398 in 2008, an increase of 60%. The number of stop and frisk complaints rose from 882 in 2002 to 2,411 in 2008, an increase of 173%. As a result, not only did the number of stop and frisk complaints rise, but also their share of the total number of complaints. In 2002, 19% of complaints received were stop and frisk complaints. In 2008 the figure was 33%.



## **CCRB Substantiations**

Because each complaint may contain more than one allegation, and so may yield more than one disposition, our analysis of Board dispositions focuses on allegations not complaints. I will deal first with all allegations decided by the Board in 2002 and 2008 and then with substantiated allegations for those years. All references are to fully investigated cases.

### ***All Dispositions***

The increase in the number of stop and frisk allegations decided by the Board during the period from 2002 to 2008 was greater than the increase in the overall number of allegations so decided. 7,793 allegations of all kinds were decided by the Board in 2002 and 9,574 in 2008, an increase of 23%. 814 stop and frisk allegations were decided in 2002 and 1,807 in 2008, an increase of 121%. A small part of these increases is the result of changes in pleading practice at the CCRB. 814 of the 7,793 allegations decided in 2002 were stop and frisk allegations (10%). 1,807 of the 9,574 allegations decided in 2008 were stop and frisk allegations (19%).

### ***Substantiations***

The number of allegations of all kinds which were substantiated by the Board was lower in 2002 than in 2008 but the number of stop and frisk allegations substantiated was higher. 543 allegations of all kinds were substantiated by the Board in 2002 and 345 in 2008, a decrease of 36%. 85 stop and frisk allegations were substantiated in 2002 and 118 in 2008, an increase of 39%.

As a result, stop and frisk substantiations make up an increasing proportion of all substantiations. 85 of the 543 allegations substantiated in 2002 were stop and frisk allegations (16%). 118 of the 345 allegations substantiated in 2008 were stop and frisk allegations (34%).

### **Arrests Made and Summonses Issued**

An officer may stop and frisk a complainant for a variety of reasons, which can be difficult to categorize. The result of the encounter, on the other hand, will either be the making of an arrest, the issuance of a summons, or neither.

CCRB complainants are less likely to be arrested or to receive a summons in a stop and frisk encounter than in other situations giving rise to a CCRB complaint. For instance in 2008, an arrest was made or summons issued in 3,884 (or 53%) of all encounters which resulted in complaints, but in 1,111 (or 46%) of the encounters which resulted in a stop and frisk complaint. Breaking down the 1,111 stop and frisk encounters, 704 led to an arrest (29%) and 407 to a summons (17%).

### **Demographic Information about the Officers**

The department currently has an active roster of more than 35,500 officers, 4,951 of whom have received a stop and frisk complaint at some time during their career (14%). The statistics below refer to the period from 2002 to 2008.

#### ***Gender***

92% of the officers who received a stop and frisk complaint were men.  
83% of the department's active roster are men.

### ***Ethnicity***

57% of officers receiving a stop and frisk complaint were white, 25% Latino, and 15% African-American. 60% of the officers with substantiated stop and frisk complaints were white, 24% Latino, and 14% African American. Both sets of statistics are comparable to the demographics of the department.

### ***Repeat Complaints***

The question arises as to whether some officers receive a large number of stop and frisk complaints. Of the 6,006 officers who received Board dispositions of stop and frisk complaints from 2002 to 2008, 4,494 received one such complaint (75%); 955, two (16%), 315 three (5%); 129 four (2%); 62 five (1%); and 49 more than five such complaints (1%).

The same question arises in relation to the substantiation of stop and frisk complaints. Of the 740 officers who had substantiated stop and frisk complaints during that period, 678 received one such complaint (92%); 50, two such complaints (7%); 6 three; 5, four; and 1, six such complaints.

### ***Tenure***

The tenure of an officer may be a factor in stop and frisk encounters. Officers who have been on the force for four years or less constitute 23% of all officers but 33% of all subject officers. The CCRB does not have enough information, such as assignment details, to be able to explain the relationship, if any, between the tenure of an officer and the number of stop and frisk complaints received.

## **Demographic Information about the Civilians**

Of the 20,872 complainants whose cases were closed from 2002 to 2008, 80% of stop and frisk complainants were men (70% of all complainants were men). 63% identified themselves as African-American; 24%, Latino; and 10%, white. The ethnic breakdown of complainants in substantiated cases was similar, which means that the likelihood of a case being substantiated is not affected by the ethnicity of the complainant.

## **Police Department Dispositions in Stop and Frisk Cases**

In this section I will provide figures for the six-year period from 2003 to 2008, as we do not have a breakdown of the department's figures for 2002.

1,064 of the 4,216 allegations disposed of by the department from 2003 to 2008 were stop and frisk allegations (25%). The department pursued discipline in relation to 809 officers (76%). Instructions were imposed in relation to 288 of those 809 officers and Command Disciplines in relation to 242. There was a guilty plea in 52 instances and a guilty finding in 42; a dismissal in 62 instances and a not-guilty finding in 121. The overall NYPD disciplinary rate for officers with substantiated stop and frisk allegations from 2003 to 2008 is 60%. The comparable rate for officers with all types of substantiated allegations is 64%.

## **Concluding Remarks**

I am grateful for the opportunity to testify before the subcommittees today on this important topic. Ms. Joshi and I will be glad to answer any questions you may have.

# TESTIMONY

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## Summary of the RAND Report on NYPD's Stop, Question, and Frisk

GREG RIDGEWAY

CT-329

April 2009

Testimony presented before the New York City Council Committee on Public  
Safety and Committee on Civil Rights on April 30, 2009

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Published 2009 by the RAND Corporation  
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**Greg Ridgeway, Ph.D.<sup>1</sup>**  
**The RAND Corporation**

***Summary of the RAND Report on NYPD's Stop, Question, and Frisk<sup>2</sup>***

**Before the Committee on Public Safety  
Committee on Civil Rights  
New York City Council**

**April 30, 2009**

Chairman Vallone and Chairman Seabrook and distinguished Members of the committees, thank you for inviting me here today. I am honored to appear before you to discuss my analysis of the New York City Police Department's Stop, Question, and Frisk data.

To clarify my perspective, I am a Senior Statistician at the RAND Corporation and the director of RAND's Safety and Justice research program. RAND is an independent, non-profit, non-partisan policy research organization. I have a Ph.D. in statistics and was recognized by the American Statistical Association in 2007 for my methodological research on racial bias in policing.

In 2007 with a grant from the New York City Police Foundation and the cooperation of the NYPD, I conducted an analysis of data on the 500,000 pedestrian stops that NYPD officers made in 2006, the so-called UF250 data.

Before summarizing the report's finding, I want to spell out what the report is *not* about. It does not attempt to assess whether the NYPD's stop and frisk strategy is an effective crime reduction strategy. Also it does not attempt to assess the public's opinion of the stop and frisk practice. And even though in some comparisons we find no evidence of racial bias, this does not imply that all encounters are bias free.

**Is 500,000 Stops Surprising?**

First I want to address the magnitude of the number of stops NYPD makes: 500,000. From Bureau of Justice Statistics public survey data I projected that among 100 US residents, 3 to 4 of them would be stopped in a given year. In a city the size of New York, this translates into 250,000

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<sup>2</sup> This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT329/>.

to 330,000 stops. However, New York is not a typical US city. It has 50% more officers per capita and 42% more violent crime per capita than the national average. With this backdrop, 500,000 stops do not necessarily seem surprising.

Raw statistics for these encounters suggest large racial disparities—89 percent of the stops involved nonwhites. Forty-five percent of black and Hispanic suspects were frisked, compared with 29 percent of white suspects. These figures raise critical questions: first, whether they point to racial bias in police officers' decisions to stop particular pedestrians, and, further, whether they indicate that officers are particularly intrusive when stopping nonwhites.

### **Is There Race Bias in the Decision to Stop?**

As to the key question of racial bias in the stops, we first assessed whether non-white pedestrians were disproportionately stopped. In 2006 55% of the stopped pedestrians were black. That is twice their representation in the 2000 residential census. Hispanic pedestrians comprised 31% of the stops, nearly equal to the census, and 11% were white about three times less than the census numbers. Does this definitively confirm the application of racial profiling? A definitive conclusion cannot be reached based solely on census benchmarking since census data do not accurately characterize the population at risk of being stopped by police. To more accurately address the question of racial bias, I instead examined several relevant issues and benchmarks.

First, we need to account for two key factors: differences in exposure to the police and differences in criminal participation. Many of the precincts with a large allocation of patrol officers also have large nonwhite populations. This unequal allocation could be of great concern for the community, but this is not racial profiling and requires a different policy response than racial profiling would require.

Comparisons to the census, while they are the most widely used, are not suitable for assessing racial bias. There is a long list of proposed alternatives, one of which is crime-suspect descriptions. These contain the public's description of criminal involvement. The benefit of using crime-suspect descriptions as a benchmark is that it is independent of the police and, unlike the census, is linked to suspicious activity. However, it is not perfect since there may be bias about who the public reports to the police and might not capture many suspicious activities that the police target, such as trespassing.

We found that black pedestrians were stopped at a rate that is 20 to 30 percent lower than their representation in crime-suspect descriptions. Hispanic pedestrians were stopped



disproportionately more, by 5 to 10 percent, than their representation among crime-suspect descriptions would predict.

Evaluating racial disparities in pedestrian stops using external benchmarks is highly sensitive to the choice of benchmark. Therefore, analyses based on any of the external benchmarks developed to date are questionable. With the exception of the residential census benchmark, our analysis does not indicate that black pedestrians were overstopped. Hispanic pedestrians appear to have been stopped more frequently than their representation among arrestees and crime-suspect descriptions would predict.

### **Are There Problematic Officers?**

While assessing the NYPD's stop patterns as a whole are challenging, I was able to focus analysis on individual officers' stop patterns to see if they are stopping more nonwhite pedestrians than we expect.

For each officer I calculated the percentage of black pedestrians among their stops. For example, for one officer I found that, among the 151 stops he made, 86% involved black pedestrians. Next, I identified stops made by other officers at the same times, places, and context and calculated the percentage of those stops involving black pedestrians. Only 55% of those stops involved a black pedestrian. The difference between 86% and 55% cannot be due to time, place, or context. This signals a potential problem. I repeated this analysis for the nearly 3,000 officers most involved in pedestrian stops.

Five officers appear to have stopped substantially more black suspects than other officers did when patrolling the same areas, at the same times, and with the same assignment. Ten officers appear to have stopped substantially more Hispanic suspects than other officers did when patrolling the same areas, at the same times, and with the same assignment.

I transferred my analysis tools to NYPD so that they could repeat this analysis and evaluate it for inclusion in their officer monitoring systems. I have deployed a similar system at the Cincinnati Police Department, which they run as part of their quarterly evaluation process.

### **Is There Racial Bias in Frisks, Searches, and Use-of-Force?**

As previously noted 45% of black and Hispanic suspects were frisked, compared with 29% of white suspects. Simply comparing these two numbers is prone to an error known as Simpson's

Paradox. The best known example of this error was a gender bias case against UC Berkeley in 1973. Men were much more likely to be admitted to the university. However, further analysis showed that men were applying to the easy-to-enter departments and that women were applying to those with the lowest admission rates. Without a deeper look into the data bad policy choices to equalize admission rates could have been made, such as discouraging women from applying for the difficult-to-enter departments.

Similarly for the analysis of racial bias we need to assess whether the stops of white and nonwhite pedestrians differ in relevant ways. For example, in Manhattan South 5% of white suspects and 3% of nonwhite suspects were stopped on suspicion of a drug crime. Two-thirds of white suspects had physical ID, but nonwhite pedestrians had physical ID in a little more than half of the stops. Such differences in the stops' contexts can impact how officers handle the stop, whether they pursue a search or issue a summons rather than an arrest.

To remove these possible explanations for the observed differences, I compared stops involving black pedestrians to similarly situated stops involving white pedestrians. "Similarly situated" means that the collection of stops of white pedestrians that I used in this comparison occurred at the same times, places, and contexts as the stops of black pedestrians. 42% of these white pedestrians were frisked. As a result we find little difference in the frisk rates of black pedestrians and similarly situated white pedestrians.

Similar analysis found only small differences in search rates, arrest rates, and rates of use-of-force.

There were some exceptions to this finding. On Staten Island I found large differences in the frisk rates, search rates, and rates of use-of-force. For example, white pedestrians were frisked 20% of the time and similarly situated black pedestrians were frisked 29% of the time.

## **Conclusions**

I started out noting that NYPD's stop and frisk practices do disproportionately burden nonwhite pedestrians. These practices can certainly strain police-community relations. At the same time they also result in arrests and recovered guns. Balancing these issues is worthy of public discussion such as today's hearing. My analysis of the 2006 stop data indicates that, with some exceptions, racial profiling is unlikely a major factor in the stop patterns. If racial profiling played a major role in the stops we would not see black pedestrians and similarly situated white pedestrians having the same frisk rates and use-of-force rates.

My recommendations to the NYPD included a plan to mitigate the discomfort of stop and frisk interactions. I recommended that officers should explain the reason for the stop clearly, discuss specifically the suspect's manner that generated the suspicion, and offer the contact information of a supervisor or appropriate complaint authority. I also recommended a closer look at the unexplainable racial disparities on Staten Island and a regular examination of those officers with stop patterns that differed markedly from their colleagues.

As with all of RAND's reports, this analysis went through a quality assurance process which includes peer review. The end goal is to provide policymakers, such as your committees and NYPD management, an objective, technically sound assessment of the role of race in NYPD's stop and frisk practices.



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## Do NYPD's Pedestrian Stop Data Indicate Racial Bias?

In 2006, the New York City Police Department (NYPD) stopped a half-million pedestrians because of suspected criminal involvement, recording these stops on stop, question, and frisk (SQF) reports on the department's UF250 forms. Raw statistics for these encounters suggest large racial disparities—89 percent of the stops involved nonwhites, and of that 89 percent, 53 percent were black, 29 percent were Hispanic, and 3 percent were Asian, while the remaining 4 percent were not race-identified. In addition, once stopped, 45 percent of black and Hispanic suspects were frisked compared with 29 percent of white suspects; yet, when frisked, white suspects were 70 percent likelier than black suspects to have had a weapon on them. While the data document racial disparities, do they also indicate racial bias?

Answering that question requires going beyond the raw statistics and carefully analyzing the data, which the NYPD asked the RAND Corporation's Center on Quality Policing to do. RAND's analyses addressed three questions, summarized below.

### Does the Racial Distribution of the Stops Suggest Racial Bias?

Answering this question with the data requires the use of external benchmarks. But constructing valid external benchmarks is difficult, because it involves assessing the racial composition of those

### Abstract

RAND analyzed raw data from 2006 NYPD pedestrian stops to assess whether there is racial bias in police officers' decisions to stop pedestrians, analyzing the data first in terms of *external benchmarks*, then in terms of *internal benchmarks*, and finally in terms of whether white and nonwhite suspect have different *stop outcomes*. The study found racial differences, but they are much smaller than the raw data indicate; the study makes a series of recommendations for improving police-pedestrian interactions.

participating in criminal activity and the racial composition of those exposed to the patrolling officers. RAND completed analyses using three benchmarks developed to date; as shown in the table, the three benchmarks yield very different results with the same data. And, as the last column shows, all the benchmarks have reliability issues, arguing that any analyses based on them are questionable.

### Do Certain Officers Disproportionately Stop Nonwhites?

Given the limitations of *external* benchmarking, RAND conducted an *internal* benchmarking analysis that compared each individual officer's

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External Benchmark	Results	Assessment of Benchmark
Residential census data	Blacks stopped at rate 50% greater than representation in census; Hispanics at rate equal to representation	Most widely used but least reliable—does not account for different rates of crime participation by race, for differential exposure to the police, or for the possibility of visitors from other communities
Racial distribution of arrestees	Blacks stopped at nearly same rate as representation among arrestees; Hispanics at rate 6% higher	Prominently used—but may not accurately reflect types of suspicious activity officers might observe; arrests can occur far from where the crime occurred; and the benchmark is not independent of any officer biases since police make both the arrests and stops
Racial distribution of individuals identified in crime-suspect descriptions	Blacks stopped at rate 20–30% lower than representation in crime-suspect descriptions; Hispanics at rate 5–10% higher	More promising since it is independent of the police, but it requires that suspects, regardless of race, are equally exposed to officers

stopping patterns with a benchmark constructed from stops in similar circumstances made by other officers.

That analysis found that 15 officers appear to have stopped substantially *more* black suspects (5 officers) and Hispanic suspects (10 officers) than other officers when patrolling the same areas, at the same times, and with the same assignments. Conversely, 14 officers appear to have stopped substantially *fewer* black suspects (9 officers) and Hispanic suspects (5 officers) than expected. Of the 15 officers who overstopped blacks and Hispanics, 6 are from the Queens South borough.

The analysis flagged 0.5 percent of the 2,756 NYPD officers most active in pedestrian-stop activity, who accounted for 54 percent of the stops. The remaining stops were made by another 15,855 officers who conducted too few stops to enable accurate internal benchmarks to be constructed. While the data suggest that only a small fraction of the officers most active in pedestrian stops have problematic patterns, those patterns should be detected and investigated routinely and more thoroughly. Also, the stops made by the 15,855 officers we could not analyze may still be of concern.

### Are There Racial Differences After the Stops?

If there is race bias in the behavior of those 15,000-plus officers, we may be able to find it by looking at what happens after stops—frisks, searches, uses of force, and arrests. As noted in the opening paragraph, the citywide aggregate raw data showed large differences between racial groups in such after-stop outcomes.

But relying on the raw data is problematic, because the data do not reflect nonracial differences that may account for some of the racial differences. RAND started with the raw data and then adjusted them so they reflect *similarly situated* circumstances post-stop. This meant matching white and nonwhite pedestrians on more than 25 stop features, including crime suspected, time of day, and location.

After matching on the circumstances of the stops, researchers still found some racial differences in frisk, search, use-of-force, and arrest rates, but the magnitude of the disparities was considerably less than the raw statistics indicate. For example, according to the raw statistics, white pedestrians were frisked in 29 percent of stops, but those white pedestrians stopped in circumstances similar to black suspects were frisked 42 percent of the time, slightly less than the rate for black suspects (45 percent). While most racial differences in post-stop outcomes were of this size, the gaps for some boroughs warrant

a closer review. For example, Staten Island stands out with several large racial gaps in frisk, search, and use-of-force rates.

The raw numbers on recovery rates for contraband indicated that frisked or searched white suspects were much likelier to have contraband than black suspects. But after matching the stops for several important factors, the disparity is sharply reduced: The recovery rate for frisked or searched white suspects stopped in circumstances similar to those of black suspects was only slightly greater than it was for black suspects (6.4 percent versus 5.7 percent). When considering only recovery rates of weapons, researchers found no differences by race.

### Conclusions and Recommendations

The raw statistics, while easy to compute, can distort the magnitude of racially biased policing. Moreover, some attempts at analysis can do the same. The most common forms of analysis rely on external benchmarks, which, as shown, are not reliable, yielding different results based on the same raw data.

Using more precise benchmarks does not eliminate the observed racial disparities but does indicate that the disparities are much smaller than the raw statistics would suggest. For example, some nonracial factors—such as police policies and practices that can legitimately differ by time, place, and reason for the stop—explain much of the difference between the frisk rate of black suspects (45 percent) and the frisk rate of white suspects (29 percent) that appears in the raw data.

Of course, any racial disparities in the data are cause for concern. However, accurately measuring the magnitude of the problem can help police management, elected officials, and community members decide between the need for incremental changes in policy, reporting, and oversight and sweeping organizational changes. The results do not absolve the NYPD of the need to monitor the issue, but they imply that a large-scale restructuring of NYPD SQF policies and procedures is unwarranted.

Based on these conclusions, the study makes six recommendations to improve interactions between police and pedestrians during stops and to improve the accuracy of data collected during pedestrian stops: (1) the NYPD should review the boroughs with the largest racial disparities in stop outcomes; (2) the NYPD should identify, flag, and investigate officers with unusual stop patterns; (3) all officers should explain to pedestrians why they are being stopped; (4) new officers should be fully conversant with SQF documentation; (5) the UF250 should be revised to capture data on use of force; and (6) the NYPD should consider modifying the audits of the UF250. ■

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This research brief describes work done for RAND Infrastructure, Safety, and Environment and documented in *Analysis of Racial Disparities in the New York City Police Department's Stop, Question, and Frisk Practices*, by Greg Ridgeway, TR-534-NYCPF [available at [http://www.rand.org/pubs/technical\\_reports/TR534/](http://www.rand.org/pubs/technical_reports/TR534/)], 2007, 80 pp. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark.

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RB-9325-NYCPF (2008)



**THE POLICE COMMISSIONER  
CITY OF NEW YORK**

April 29, 2009

Honorable Christine C. Quinn  
Speaker  
New York City Council  
City Hall  
New York, New York 10007

Dear Speaker Quinn:

I am writing to advise you that the New York City Police Department will not be attending tomorrow's oversight hearing regarding "Analysis of NYPD Stop and Frisk Encounters." As discussed in my previous letter to you, attached for your convenience, the subject of the hearing is also the subject of a federal class action lawsuit against the City, and while we acknowledge the Council's exercise of its oversight role in this matter and its long-standing interest in the issue, we respectfully decline to participate in the hearing.

We are highly aware of the public's interest in the Police Department's exercise of its power under Criminal Procedure Law Section 140.50 to detain and frisk individuals reasonably suspected of committing a crime, of having committed a crime, or of being about to commit a crime. As you know, the New York City Police Department has since 2002 provided to the Council on a quarterly basis Stop, Question and Frisk information, pursuant to Section 14-150 of the New York City Administrative Code. Over time, this information has become more generally accessible through the development of a computerized database and the availability of the underlying data sets, first through their posting on the website of the National Archive of Criminal Justice Data in 2007 and then through their posting on the Police Department's own website in 2008.

While we believe that stop, question and frisk activity has played a major role in the reduction of crime in New York City, and that it is directly targeted to public safety needs, the level of public concern regarding how this necessary tool is exercised, especially in the wake of the tragic shooting of Sean Bell in 2006, led us to request a thorough and independent analysis of our stop, question and frisk data by the RAND Corporation.

It has been argued that the Police Department engages in racial profiling based on racial disparities between the general population of New York City, and the population of those who are stopped. There is no perfect benchmark for measuring exactly what population our stop and frisk activity should be compared to, however RAND's report, "*Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*" summarized the issue by stating:

*"We completed analyses using several candidate benchmarks, each of which has strengths and weaknesses for providing plausible external benchmarks. For example, residential census data—that is, the racial distribution of the general population in New York—possibly provide an estimate of the racial distribution of those exposed to police but do not reflect rates of criminal participation. As a result, external benchmarks based on the census have been widely discredited."*

The British Home Office also examined this issue and, in a report entitled "*Profiling Populations Available for Stops and Searches*" Police Research Series report #131 (2000), concluded:

*"The research presented here shows, quite clearly, that measures of resident population give a poor indication of the populations actually available to be stopped or searched."*

One of the possible benchmarks, the race/ethnicity of the criminal suspect population, while not perfect, appears to be a more reasonable benchmark. In fact when the race/ethnicity of stop rates are simply compared to suspect race/ethnicity there is little or no disparity. RAND researchers analyzed data on all street encounters between New York City Police Department officers and pedestrians that occurred during 2006, and determined that no pattern of racial profiling existed.

It has also been argued that the volume of stops conducted by the Police Department is unnecessary given New York City's current levels of crime. Further, the number of stops is often mistakenly associated with the interpretation of stop outcomes, as if a stop is a success if it generates an arrest or summons, and a failure, or misconduct, if it does not, i.e., a "hit rate."

This assertion conveniently ignores the more credible argument that the reason crime levels have dropped is that the Department has paid proper attention to its crime control responsibilities. The appropriate use of legal stop, question and frisk powers attends to those responsibilities. In a recent study by Smith and Purtell, "*Does Stop and Frisk Stop Crime*," the authors find that increases in stops were statistically associated with citywide reductions in Robbery, Murder, Burglary and Grand Larceny Motor Vehicle complaints. The authors also question the lack of research interest in examining this relationship:

*"We have made the case that the debate about police stop-and-frisk practices should include the question of whether it is effective in reducing crime and increasing public safety. Police can be faulted for using or expanding the practice without evidence of its efficacy but critics could . . . also be questioned about their failure to even raise the issue of effectiveness as if being an innocent victim of crime is not a violation of citizens [rights] equal or [greater] than an innocent person being questioned by police."*

The association of stops with a hit rate or score ignores the legally recognized difference between stops and actual enforcement actions, summonses and arrests. Officers must have "reasonable suspicion" when making a stop but must have "probable cause" to make an arrest. The act of stopping someone can also interrupt criminal activity at an early enough stage that

probable cause can never be met. The fact that probable cause can never be met and an arrest or summons made does not detract from the preventive value of that police action, which in almost one half the instances involves only questioning a subject, rather than conducting a frisk or taking other physical action.

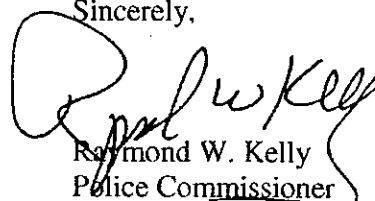
Advocates of these arguments typically discount the continuing reductions in crime in New York, particularly referring to the City's recent experience as a "leveling off" or "stabilizing." The opposite is true. During recent testimony before the Council's Public Safety Committee, Assistant Commissioner, Programs and Policies Philip McGuire was able to report that the City closed 2008 with a more than 3% reduction in the seven major felony crime categories compared to 2007, representing a cumulative 28% decline since 2001. During the first quarter of 2009 the trend has continued with a reduction of nearly 14% in major felony crimes compared to same period in 2008.

Because of the direct correlation between crime and stop and frisk activity, we have previously provided to the Council our own "*Crime and Enforcement Activity in New York City*," a detailed analysis of crime in New York City for the six-month period January – June, 2008. We have since updated that study to cover calendar year 2008, and have attached it for your information. We have shared it with every Council Member, in the hope and expectation that it will provide a proper context for your discussion of stop, question and frisk activity.

I am also attaching a new Police Department form, "What Is A Stop, Question And Frisk Encounter?" to be included in officers' memo books. The form was developed in response to a recommendation made by the RAND Corporation, which suggested that officers should explain to individuals who were stopped the reason, or reasons, why it occurred. As a result, the Department has changed its written procedure so that officers are now clearly instructed to do so. In addition, we have begun a pilot program in the 32<sup>nd</sup>, 44<sup>th</sup> and 75<sup>th</sup> Precincts, in which officers conducting a stop will now provide to the person stopped the new form, which is a palmcard that informs the individual as to the legal authority for the stop and the common reasons persons are stopped by police.

Again, we regret that pending litigation prevents the Police Department from participating in the hearing of the Public Safety and Civil Rights Committees regarding "Analysis of NYPD Stop and Frisk Encounters," and hope that the information we have provided through this letter proves helpful.

Sincerely,



Raymond W. Kelly  
Police Commissioner





**THE POLICE COMMISSIONER  
CITY OF NEW YORK**

April 22, 2009

Honorable Christine C. Quinn  
Speaker  
New York City Council  
City Hall  
New York, New York 10007

Dear Speaker Quinn:

The City Council Public Safety Committee has scheduled an oversight hearing for Thursday, April 30, 2009 regarding "Analysis of NYPD Stop and Frisk Encounters." The subject matter of the hearing is also the subject of a federal class action lawsuit brought against the City of New York and the New York City Police Department by the Center for Constitutional Rights, which charges that the Police Department engages in racial profiling and suspicion-less stop and frisk activity (Floyd, et al., v. The City of New York, et al., 08 Civ. 01034 (SAS)). The parties are currently in the discovery phase of the lawsuit, which entails extensive document collection and analysis as well as depositions of Police Department executives and managers.

I am writing to request that in light of the complexity of the class action lawsuit to which the City is a party, and the importance of its subject matter, the Public Safety Committee oversight hearing on this subject be deferred until the litigation is resolved. Holding an oversight hearing of this nature at this time would create a parallel set of witness statements and evidence presented, not unlike deposition testimony and document disclosure, which would impair the City's orderly participation in the discovery process in a lawsuit of high consequence. We acknowledge and support the Council's role in conducting appropriate oversight of Police Department activity. However, we respectfully suggest that in the course of the lawsuit, all of the relevant issues will be fully litigated and the evidence developed in great detail, with the participation of many of the same individuals who would be testifying at the Council hearing.

Accordingly, we request that the Public Safety Committee hearing scheduled for April 30, 2009 be deferred until such time as the lawsuit is resolved. Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

Raymond W. Kelly  
Police Commissioner



## INTERIM ORDER

SUBJECT: <b>REVISION TO PATROL GUIDE 212-11, "STOP AND FRISK"</b>		
DATE ISSUED:	REFERENCE:	NUMBER:
<b>04-23-09</b>	<b>P.G. 212-11</b>	<b>20</b>

1. In order to ensure that individuals who are subject to a stop, question and/or possible frisk encounter by a uniformed member of the service receive an explanation for the stop, Patrol Guide 212-11, "Stop and Frisk" is being revised.

2. Therefore, effective immediately, Patrol Guide 212-11, "Stop and Frisk" is amended as follows:

- a. REVISE step "5", opposite "UNIFORMED MEMBER OF THE SERVICE", on page "1" to read:

**"UNIFORMED  
MEMBER OF  
THE SERVICE"**

5. Release suspect immediately after completing the investigation if probable cause to arrest does not exist and provide suspect with an explanation for the stop, question and/or frisk encounter, absent exigent circumstances."

3. In addition, uniformed members of the service assigned to the 32<sup>nd</sup>, 44<sup>th</sup> and 75<sup>th</sup> 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?**" (PD344-111). This insert consists of perforated cards and informs the individual of the legal authority for the stop and common reasons individuals are stopped by the police. The insert will be made available to the public online in six (6) languages at [www.nyc.gov/nypd](http://www.nyc.gov/nypd).

4. Under no circumstances will the issuance of the **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER?** tear off card exempt members from completing a **STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)**, as required in *P.G. 212-11, "Stop and Frisk."*

5. The Patrol Services Bureau will ensure that the inserts are distributed to the 32<sup>nd</sup>, 44<sup>th</sup> and 75<sup>th</sup> Precincts. Commanding officers of these commands will ensure that **WHAT IS A STOP, QUESTION AND FRISK ENCOUNTER? ACTIVITY LOG** inserts are made available to uniformed members of the service under their supervision for distribution to the public.

6. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

**BY DIRECTION OF THE POLICE COMMISSIONER**

**DISTRIBUTION**  
All Commands



# **Crime and Enforcement Activity in New York City**

(Jan, 1 - Dec 31, 2008)

**Raymond W. Kelly**  
**Police Commissioner**

## **Introduction**

This report presents statistics on race/ethnicity compiled from the New York City Police Department's records management system. Crime Complaint Reports contain information on the crime victims' race and ethnicity as recorded by the officers or precinct clerical staff interviewing the victim or complainant. The victim's description of any non-arrested suspects will also be recorded on the crime complaint report. Arrests made by the responding officers will be recorded on an arrest report associated with the crime complaint report and used to initiate the booking system. Once the information has been entered and "signed" off by a supervisor it is stored in the Department's Enterprise Data Warehouse. The data for this report were drawn from the Data Warehouse. Additional information was drawn from a separate Homicide and Shooting Database that collects additional statistical information for Murder and Shooting incidents.

The crime complaint and arrest data contained in this report represent crimes occurring from January 1, 2008 thru December 31, 2008 for the general crime complaint and arrest data (compiled as of April 7, 2009 thru April 22, 2009). The Murder and Shooting tables and charts are also based on incidents that occurred through December 31, 2008 as are the statistics presented for Firearm arrests (compiled as of April 7, 2009 thru April 22, 2009).

Stop Question and Frisk data and Violent Crime Suspect information are taken from the New York City Police department's Stop Question and Frisk database.

## **Statistical Considerations**

Commercial victimizations are generally noted on crime complaint reports and are excluded from these statistics. However it is likely that a small number of commercial victimizations may be inadvertently included in the victim data when a report is not properly classified as a commercial victimization. Those cases would generally present the race/ethnicity of employees as the crime victims.

Both crime complaint reports and arrest reports are classified according to the most serious crime recorded or charge lodged. Arrest statistics represent arrests made by all Police agencies operating within the confines of New York City and arresting and charging individuals with crime under New York State laws. The arrest statistics presented here do not include arrests made by Federal Agencies.

Crime complaint statistics used in these tables and charts are from crimes occurring in year 2008 and Arrest statistics presented represent arrests made during the year 2008. Crime complaint reports that were recorded in 2008 but report an incident occurring in prior years are excluded from these statistics. Arrest reports included in these statistics do include arrests made in 2008 for incidents that may have occurred in prior years.

Black Hispanic and White Hispanic categories have been combined into a single Hispanic category for the statistical tables and charts presented in this report. The categories of Black and White used in tables and charts through out this report therefore represent Black Non-Hispanic and White Non-Hispanic. The labels Black and White are used for the sake of brevity and simplicity of presentation in the various tables and charts.

The New York City Police Department's Crime Reporting System uses a two tiered crime classification system. The broadest level of categorization is used to present the statistics in this report. Specific broad Crime categories however may contain only some subcategories for which suspect descriptions are typically available (e.g. a Larceny from the person will normally provide some suspect descriptive information while a larceny from a business office without a witness will not). For certain broad crime categories the number of crime complaints that contain suspect descriptions with race/ethnicity information will therefore only be a portion of the total complaints recorded.

The tables included in the report contain overall statistics that explain the available victim and suspect information for each broad crime category. The total crime complaint count for the period for the example table below, Misdemeanor Criminal Mischief is 49,306. Of these complaints 32,296 had information on the race/ethnicity of a non-commercial victim. Within this crime complaint population suspect information was available for 12,377 suspects and the race/ethnicity of 5,725 of those suspects was available. During the year of 2008 7,427 misdemeanor criminal mischief arrests were made and 7,375 of these records contained race/ethnicity information.

**Misdemeanor Criminal Mischief**  
**Victim, Suspect, Arrestee Race/Ethnicity**

	<b>Victim</b>	<b>Suspect</b>	<b>Arrestee</b>
<b>AMER IND</b>	0.8%	0.3%	0.1%
<b>ASIAN/PAC.ISL</b>	7.7%	2.8%	2.7%
<b>BLACK</b>	33.9%	50.3%	35.1%
<b>WHITE</b>	34.3%	17.6%	21.3%
<b>HISPANIC</b>	23.3%	29.0%	40.9%
<b>Total Victims/Suspects/Arrests</b>	49306	12377	7427
<b>Known Race/Ethnicity</b>	32296	5725	7375
<b>% of Incidents With Race/Eth. Known</b>	65.5%	46.3%	99.3%

Appendix A includes a description of the significant classification subcategories contained in the broad crime categories used in the tables and charts contained in this report.

An initial crime complaint report may record a crime with several suspects some of whom may be arrested at the time the crime is reported and recorded. The non-arrested suspects are included in the "suspect" statistics in the tables and charts included in this report and arrested individuals are included in the "arrestee" statistics. At the time these statistics were compiled additional follow up arrests may have been made

increasing the number of arrested suspects. In so far as that situation has occurred within the 2008 data presented the suspect and arrests data will overlap and count the same individual as both suspect and arrestee if a follow up arrest has been made during the period.

Arrest statistics are drawn from the initial booking data collected by the arresting officer prior to arraignment. The small number of arrest records without race/ethnicity may result from arrestees that have no identification and whose race/ethnicity cannot initially be determined before arraignment or due to administrative omissions in report preparation.

The race/ethnicity of victims are recorded by the officer or precinct clerical staff who are taking the report and rely on that interaction with the victim/complainant/reporter to determine the victims race/ethnicity. The suspect's description is also recorded at this time but relies on the victim's assessment of race and ethnicity given their interaction with the suspect. The arrestee race/ethnicity is recorded as a result of the officers assessment of the individual's identification documents the individual's physical characteristics and in many cases their prior criminal record. Arrestee race/ethnicity and victim designation of suspect race/ethnicity may therefore vary due to the different methods of determination.

Classification as a Shooting incident is based upon a bullet striking the victim. A Shooting incident therefore contains complaints for violent crimes such as Rape, Robbery and Felonious Assault as well as Murders committed with a firearm. This category therefore is not mutually exclusive with the broad crime classifications used in the other tables and charts within this report but is meant to isolate those specific instances where firearms are used to cause harm regardless of the other crimes committed.

Some crime categories are principally proactive enforcement events and will have no specific victim e.g. drug possession, sale and manufacture. Only the race/ethnicity of arrested individuals is reported for these categories.

The Arrest statistics dealing with firearm arrests are a special compilation focusing on arrests that remove one or more firearms from the street. The arrests so identified are arrests that include selected Felony Dangerous Weapons charges, indicate by specific report entries the presence of a firearm and finally that a firearm was vouchered as a result of the arrest. A firearm arrest will be counted if these conditions are met by an arrest containing other charges, some of which may be for serious violent felonies. The Firearm Arrest statistics therefore include arrests for other violent crimes that are also included in other tables within this report.

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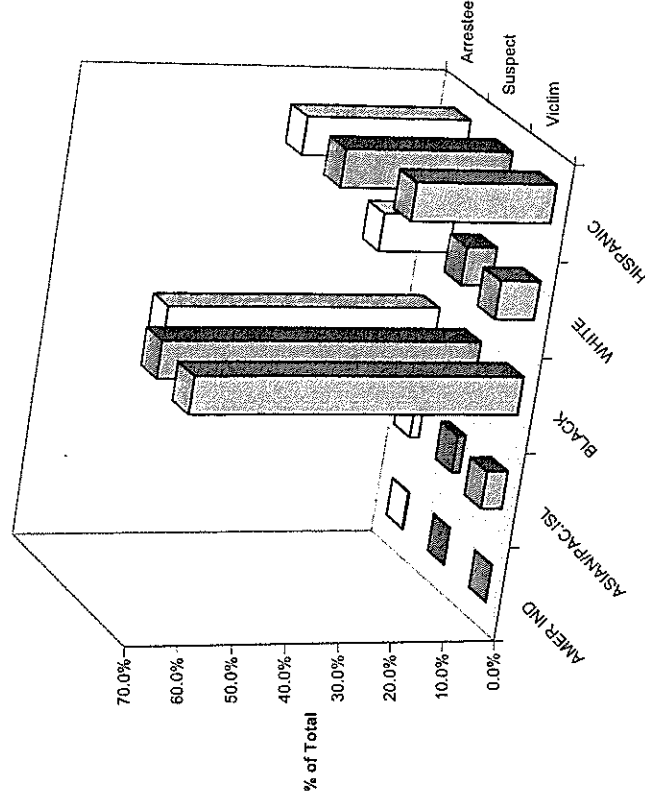
## Murder and Non-Negligent Manslaughter

Murder and Non-Negligent Manslaughter victims are most frequently Black (62.1%) or Hispanic (26.5%). White victims account for 7.5% of all Murder and Non-Negligent Manslaughter victims while Asian /Pacific Islanders account for 4.0% of all Murder and Non-Negligent Manslaughter victims.

The race/ethnicity of known Murder and Non-Negligent Manslaughter suspects mirrors the victim population with Black (60.8%) and Hispanic (32.0%) suspects accounting for the majority of suspects. White suspects account for 5.8% of all Murder and Non-Negligent Manslaughter suspects while Asian/Pacific Islanders accounted for 1.5% of the known Murder and Non-Negligent Manslaughter suspects.

The Murder and Non-Negligent Manslaughter arrest population is similarly distributed. Black arrestees (52.3%) and Hispanic arrestees (31.6%) account for the majority of Murder and Non-Negligent Manslaughter arrestees while White arrestees (13.8%) and Asian/Pacific Islander (1.7%) arrestees account for the remaining portions of the Murder and Non-Negligent Manslaughter arrest population.

Murder & Non-Negligent Manslaughter Victim, Suspect and Arrestee Race/Ethnicity



Murder and Non-Negligent Manslaughter Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.0%	0.0%	0.2%
ASIAN/PAC.ISL	4.0%	1.5%	1.7%
BLACK	62.1%	60.8%	52.3%
WHITE	7.5%	5.8%	13.8%
HISPANIC	26.5%	32.0%	31.6%
Total Victims/Suspects/Arrests	509	419	472
Known Race/Ethnicity	506	413	470
% of Incidents With Race/Eth. Known	99.4%	98.6%	99.6%



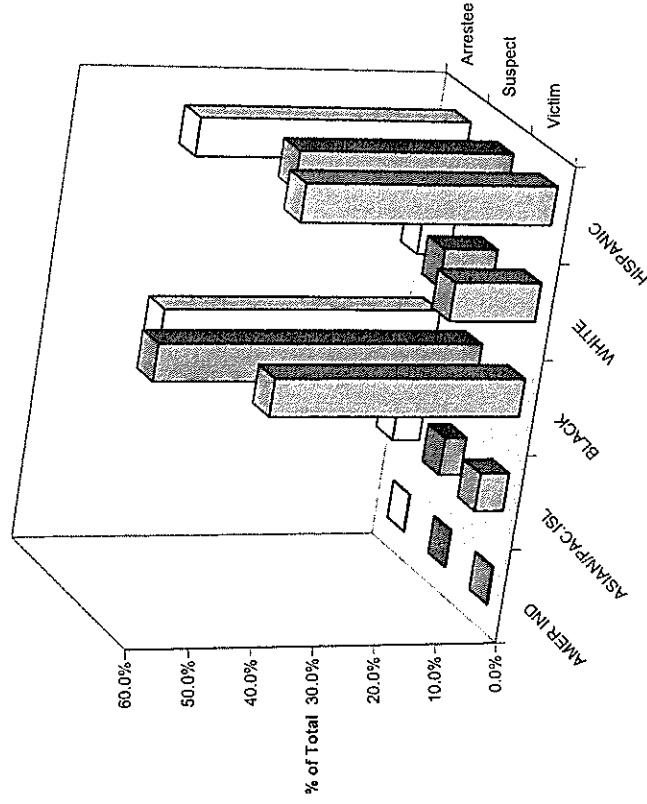
## Rape

Rape victims are most frequently Black (40.6%) or Hispanic (40.4%). White victims account for 14.0% of all Rape victims while Asian/Pacific Islanders account for 4.7% of all Rape Victims.

Rape suspects are most frequently Black (52.8%) or Hispanic (34.8%). White suspects account for 8.7% of all Rape suspects while Asian/Pacific Islanders accounted for 3.6% of the known Rape suspects.

Rape arrestees are most frequently Black (45.6%) and Hispanic (44.4%). White arrestees (5.4%) and Asian/Pacific Islander arrestees (4.5%) account for the remaining portions of the Rape arrestee population.

Rape Victim, Suspect and Arrestee Race/Ethnicity



Rape Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.2%	0.1%	0.1%
ASIAN/PAC.ISL	4.7%	3.6%	4.5%
BLACK	40.6%	52.8%	45.6%
WHITE	14.0%	8.7%	5.4%
HISPANIC	40.4%	34.8%	44.4%
Total Victims/Suspects/Arrests	1087	882	972
Known Race/Ethnicity	1032	781	959
% of Incidents With Race/Eth. Known	94.9%	88.5%	98.7%

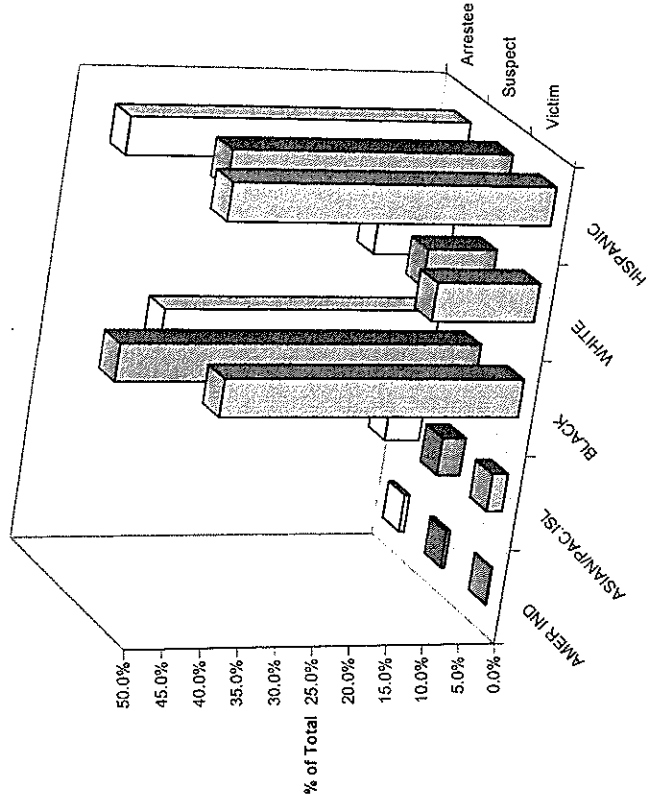
## Other Felony Sex Crimes

Other Felony Sex Crime victims are most frequently Hispanic (43.3%) or Black (40.4%). White victims account for 14.0% of all Other Felony Sex Crime victims while Asian/Pacific Islanders account for 2.1% of the Other Felony Sex Crime Victims.

Known Other Felony Sex Crime suspects are most frequently Black (48.9%) or Hispanic (38.0%). White suspects account for 9.5% of all Other Felony Sex Crime suspects while Asian/Pacific Islanders accounted for 3.2% of known Other Felony Sex Crime suspects.

Hispanic arrestees are the largest portion of the the Other Felony Sex Crime arrest population (46.2%) followed by Black arrestees who account for (37.8%) of the arrest population. White arrestees (10.6%) and Asian /Pacific Islander (4.8%) arrestees account for the remaining significant portions of the Other Felony Sex Crime arrest population.

Other Felony Sex Crimes Victim, Suspect and Arrestee Race/Ethnicity



Other Felony Sex Crimes  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.1%	0.5%	0.6%
ASIAN/PAC.ISL	2.1%	3.2%	4.8%
BLACK	40.4%	48.9%	37.8%
WHITE	14.0%	9.5%	10.6%
HISPANIC	43.3%	38.0%	46.2%
Total Victims/Suspects/Arrests	749	568	803
Known Race/Ethnicity	699	442	792
% of Incidents With Race/Eth. Known	93.3%	77.8%	98.6%

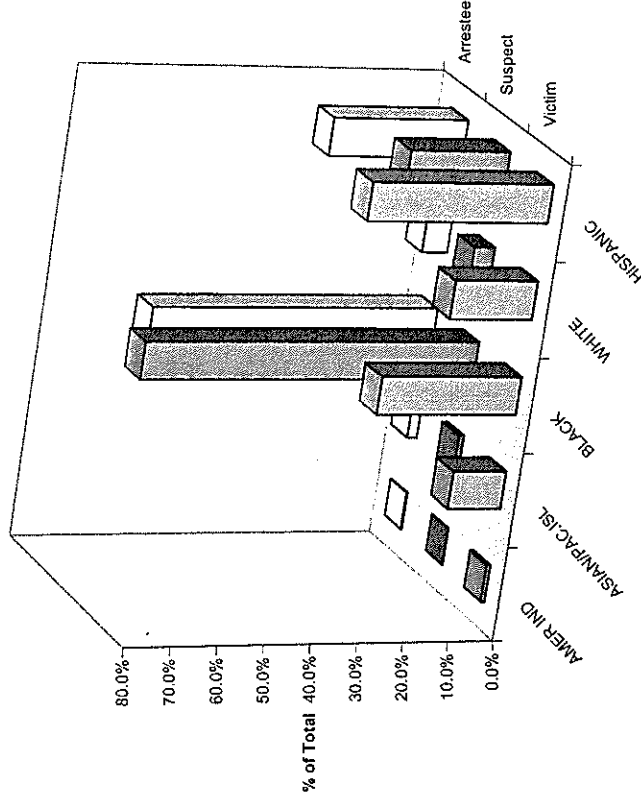
## Robbery

Robbery victims are most frequently Hispanic (39.1%) or Black (30.5%). White victims account for 18.0% of all Robbery victims while Asian/Pacific Islanders account for 11.6% of all Robbery Victims.

The race/ethnicity of known Robbery suspects is primarily Black (72.5%). Hispanic suspects account for an additional 21.8% of the suspect population. White suspects account for 4.5% of all Robbery suspects while Asian /Pacific Islanders accounted for 1.1% of known Robbery suspects.

The Robbery arrestees are most frequently Black (62.7%) or Hispanic (29.5%). White arrestees (5.6%) and Asian/Pacific Islander (2.1%) arrestees account for the remaining portions of the Robbery arrest population.

Robbery Victim, Suspect and Arrestee Race/Ethnicity



Robbery  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.8%	0.1%	0.2%
ASIAN/PAC.ISL	11.6%	1.1%	2.1%
BLACK	30.5%	72.5%	62.7%
WHITE	18.0%	4.5%	5.6%
HISPANIC	39.1%	21.8%	29.5%
Total Victims/Suspects/Arrests	24807	28020	12956
Known Race/Ethnicity	21499	22396	12905
% of Incidents With Race/Eth. Known	86.7%	79.9%	99.6%

## Felonious Assault

Felonious Assault victims are most frequently Black (47.9%) or Hispanic (34.7%). White victims account for 11.8% of all Felonious Assault victims while Asian/Pacific Islanders account for 5.2% of all Felonious Assault Victims.

The race/ethnicity of known Felonious Assault suspects is most frequently Black (55.5%) or Hispanic (32.0%). White suspects account for 8.1% of all Felonious Assault suspects while Asian/Pacific Islanders accounted for 3.8% of the known Felonious Assault suspects.

Felonious Assault arrestees are most frequently Black (52.7%) or Hispanic (34.9%). White arrestees (8.2%) and Asian/Pacific Islanders (4.1%) account for the remaining significant portions of the Felonious Assault arrestee population.

Felonious Assault Victim, Suspect and Arrestee Race/Ethnicity



Felonious Assault  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.4%	0.5%	0.1%
ASIAN/PAC.ISL	5.2%	3.8%	4.1%
BLACK	47.9%	55.5%	52.7%
WHITE	11.8%	8.1%	8.2%
HISPANIC	34.7%	32.0%	34.9%
Total Victims/Suspects/Arrests	16602	9800	13666
Known Race/Ethnicity	14284	6696	13567
% of Incidents With Race/Eth. Known	86.0%	68.3%	99.3%

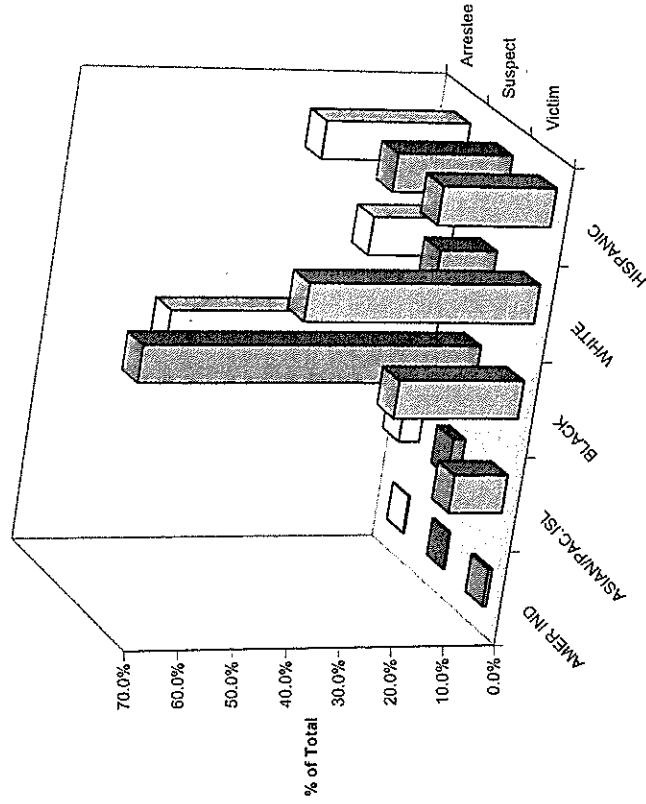
## Grand Larceny

Grand Larceny victims are most frequently White (43.7%) or Black (23.9%). Hispanic victims account for an additional 21.5% of all Grand Larceny victims while Asian/Pacific Islanders account for 10.3% of all Grand Larceny Victims.

The race/ethnicity of known Grand Larceny suspects are most frequently Black (64.3%) or Hispanic (22.1%). White suspects account for 10.9% of all Grand Larceny suspects while Asian/Pacific Islanders accounted for 2.4% of the known Grand Larceny suspects.

Grand Larceny arrestees are most frequently Black (51.8%) or Hispanic (27.9%). White arrestees (16.0%) and Asian/Pacific Islanders (4.0%) account for the remaining significant portions of the Grand Larceny arrest population.

Grand Larceny Victim, Suspect and Arrestee Race/Ethnicity



Grand Larceny  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.7%	0.3%	0.2%
ASIAN/PAC.ISL	10.3%	2.4%	4.0%
BLACK	23.9%	64.3%	51.8%
WHITE	43.7%	10.9%	16.0%
HISPANIC	21.5%	22.1%	27.9%
Total Victims/Suspects/Arrests	43654	15396	7716
Known Race/Ethnicity	34741	8663	7648
% of Incidents With Race/Eth. Known	79.6%	56.3%	99.1%

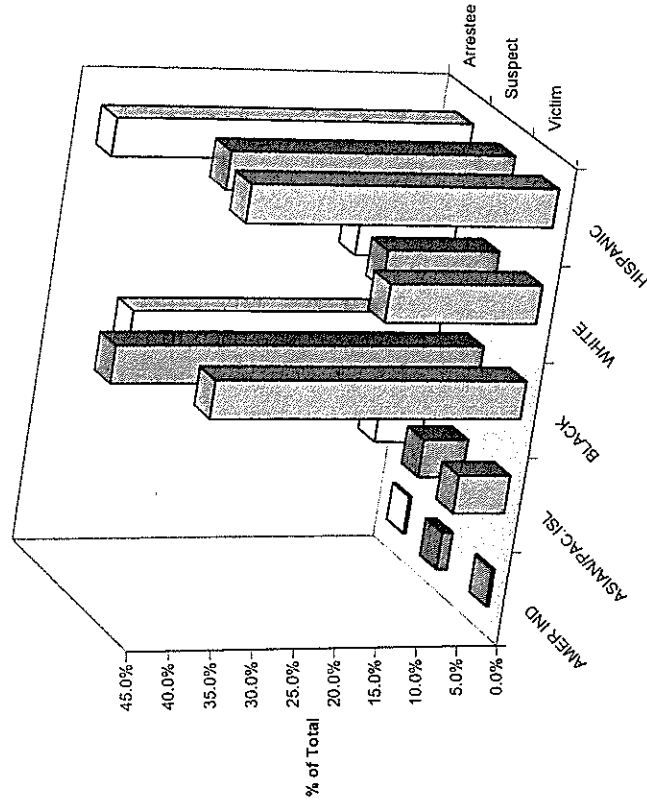
## Misdemeanor Sex Crime

Misdemeanor Sex Crime victims are most frequently Black (37.7%) or Hispanic (37.0%). White victims account for an additional 18.5% of all Misdemeanor Sex Crime victims while Asian/Pacific Islanders account for 6.4% of all Misdemeanor Sex Crime Victims.

Misdemeanor Sex Crime suspects are most frequently Black (44.9%) and Hispanic (34.6%). White suspects account for 13.7% of all Misdemeanor Sex Crime suspects while Asian/Pacific Islanders accounted for 5.5% of the known Misdemeanor Sex Crime suspects.

Misdemeanor Sex Crime arrestees are most frequently Hispanic (43.6%) or Black (38.2%). White arrestees (12.0%) and Asian/Pacific Islander (5.8%) arrestees account for the remaining portions of the Misdemeanor Sex Crime arrest population.

Misdemeanor Sex Crimes Victim, Suspect and Arrestee Race/Ethnicity



Misdemeanor Sex Crimes  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.3%	1.3%	0.3%
ASIAN/PAC.ISL	6.4%	5.5%	5.8%
BLACK	37.7%	44.9%	38.2%
WHITE	18.5%	13.7%	12.0%
HISPANIC	37.0%	34.6%	43.6%
Total Victims/Suspects/Arrests	4367	2156	2004
Known Race/Ethnicity	3937	1814	1979
% of Incidents With Race/Eth. Known	90.2%	84.1%	98.8%

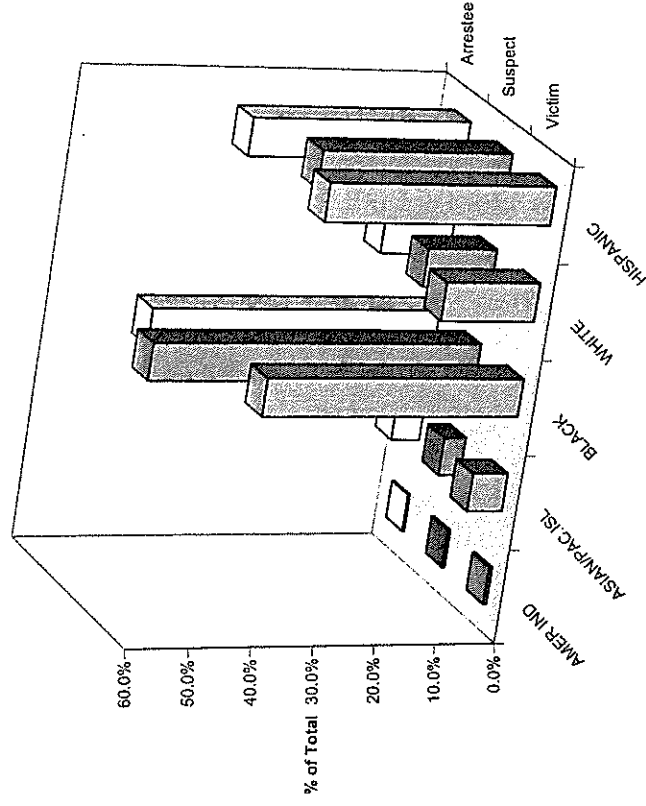
## Misdemeanor Assault

Misdemeanor Assault victims, are most frequently Black (41.8%) or Hispanic (36.6%). White victims account for an additional 15.3% of all Misdemeanor Assault victims while Asian/Pacific Islanders account for 5.8% of the Misdemeanor Assault Victims.

Misdemeanor Assault suspects are most frequently Black (53.6%) or Hispanic (31.1%). White suspects account for an additional 11.4% of all Misdemeanor Assault suspects while Asian/Pacific Islanders accounted for 3.6% of the known Misdemeanor Assault suspects.

The Misdemeanor Assault arrest population is similarly distributed. Black arrestees (47.5%) and Hispanic arrestees (35.9%) account for the majority of Misdemeanor Assault arrestees while White arrestees (11.6%) and Asian/Pacific Islander (4.7%) arrestees account for the remaining significant portions of the Misdemeanor Assault arrestee population.

Misdemeanor Assault Victim, Suspect and Arrestee Race/Ethnicity



Misdemeanor Assault  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.5%	0.4%	0.3%
ASIAN/PAC.ISL	5.8%	3.6%	4.7%
BLACK	41.8%	53.6%	47.5%
WHITE	15.3%	11.4%	11.6%
HISPANIC	36.6%	31.1%	35.9%
Total Victims/Suspects/Arrests	51253	32105	33785
Known Race/Ethnicity	47559	25770	33491
% of Incidents With Race/Eth. Known	92.8%	80.3%	99.1%

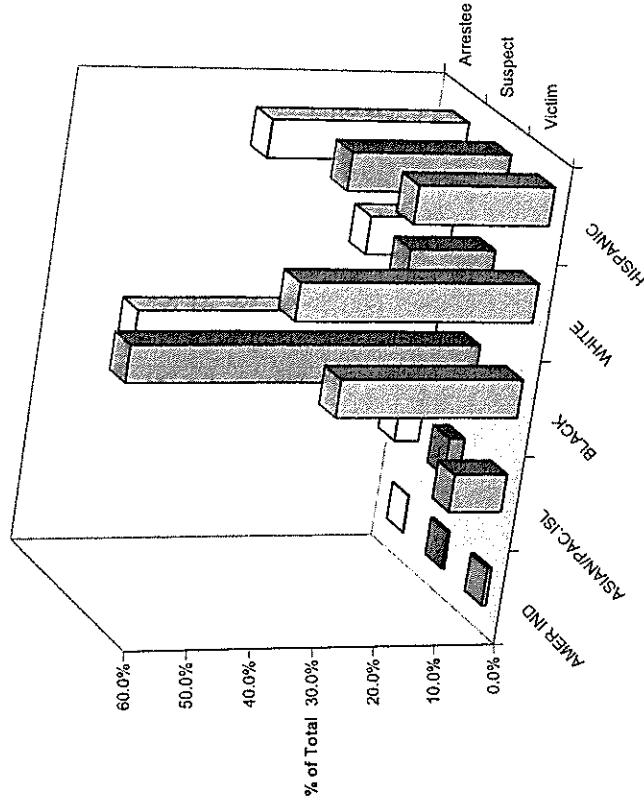
## Petit Larceny

Petit Larceny victims are most frequently White (38.7%) or Black (29.8%). Hispanic victims account for 22.1% of all Petit Larceny victims while Asian/Pacific Islanders account for 8.7% of all Petit Larceny Victims.

The race/ethnicity of known Petit Larceny suspects are most frequently Black (56.9%) or Hispanic (26.1%). White suspects account for an additional 14.1% of all Petit Larceny suspects while Asian/Pacific Islanders account for 2.6% of the known Petit Larceny suspects.

The Petit Larceny arrest population is most frequently Black (49.5%) or Hispanic (32.5%). White arrestees (13.9%) and Asian/Pacific Islander (4%) arrestees account for the remaining significant portions of the Petit Larceny arrestee population.

Petit Larceny Victim, Suspect and Arrestee Race/Ethnicity



Petit Larceny  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.7%	0.4%	0.1%
ASIAN/PAC.ISL	8.7%	2.6%	4.0%
BLACK	29.8%	56.9%	49.5%
WHITE	38.7%	14.1%	13.9%
HISPANIC	22.1%	26.1%	32.5%
Total Victims/Suspects/Arrests	83418	16877	6734
Known Race/Ethnicity	49671	7819	6670
% of Incidents With Race/Eth. Known	59.5%	46.3%	99.0%



### Misdemeanor Criminal Mischief

The Misdemeanor Criminal Mischief victims are most frequently White (34.3%) or Black (33.9%). Hispanic victims account for an additional 23.3% and Asian/Pacific Islanders (7.7%) account for the remaining significant portion of the Misdemeanor Criminal Mischief Victim population.

Misdemeanor Criminal Mischief suspects are most frequently Black (50.3%) or Hispanic (29.0%). White suspects account for an additional 17.6% of all Misdemeanor Criminal Mischief suspects while Asian/Pacific Islanders account for 2.8% of known Misdemeanor Criminal Mischief suspects.

Misdemeanor Criminal Mischief arrestees are most frequently Hispanic (40.9%) or Black (35.1%). White arrestees (21.3%) and Asian/Pacific Islander (2.7%) arrestees account for the remaining significant portions of the Misdemeanor Criminal Mischief arrest population.

Misdemeanor Criminal Mischief Victim, Suspect and Arrestee Race/Ethnicity



Misdemeanor Criminal Mischief  
Victim, Suspect, Arrestee Race/Ethnicity

	Victim	Suspect	Arrestee
AMER IND	0.8%	0.3%	0.1%
ASIAN/PAC.ISL	7.7%	2.8%	2.7%
BLACK	33.9%	50.3%	35.1%
WHITE	34.3%	17.6%	21.3%
HISPANIC	23.3%	29.0%	40.9%
Total Victims/Suspects/Arrests	49306	12377	7427
Known Race/Ethnicity	32296	5725	7375
% of Incidents With Race/Eth. Known	65.5%	46.3%	99.3%

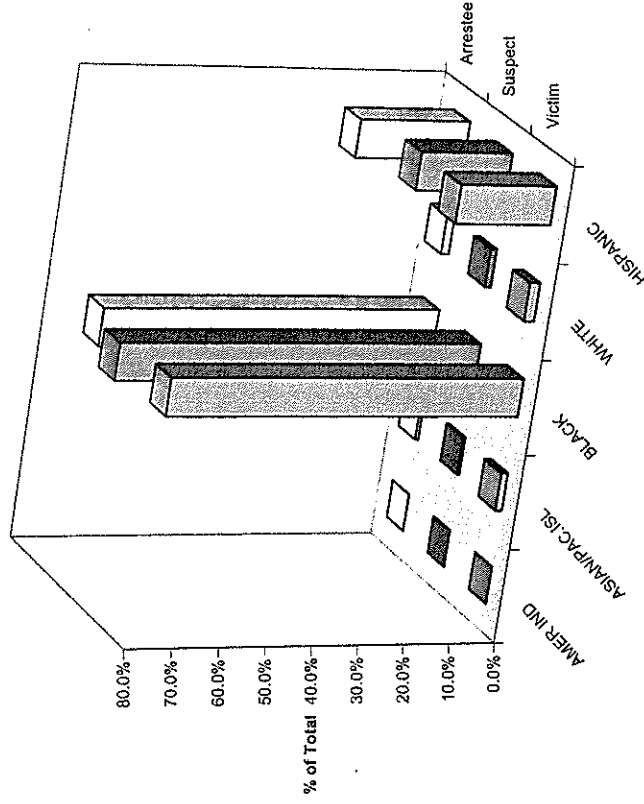
## Shootings

Shooting victims are most frequently Black (75.8%) or Hispanic (20.6%). White victims account for an additional 2.2% of all Shooting victims while Asian/Pacific Islanders victims account for less than 1.4% of all Shooting Victims.

The race/ethnicity of known Shooting suspects is most frequently Black (78.3%). Hispanic suspects accounted for an additional 19.9% of all suspects. White suspects (1.3%) accounted for the remaining significant portion of suspects while Asian/Pacific Islander suspects accounted for less than 0.5% of the known Shooting suspects.

The Shooting arrest population is similarly distributed. Black arrestees (73.5%) and Hispanic arrestees (24.1%) account for the majority of Shooting arrest population. White arrestees account for the remaining 1.7% of the Shooting arrest population.

Shooting Incident Victim, Suspect and Arrestee Race/Ethnicity



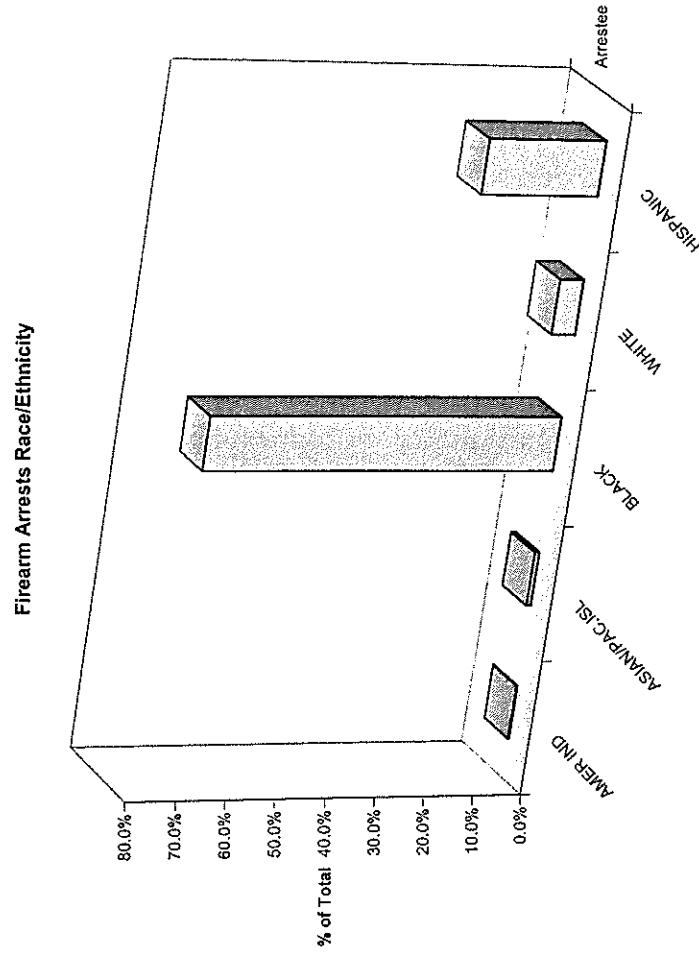
Shootings (any crime where victim struck with bullet)

	Victim	Suspect	Arrestee
AMER IND	0.0%	0.0%	0.0%
ASIAN/PAC.ISL	1.4%	0.5%	0.7%
BLACK	75.8%	78.3%	73.5%
WHITE	2.2%	1.3%	1.7%
HISPANIC	20.6%	19.9%	24.1%
Total Victims/Suspects/Arrests	1806	1655	851
Known Race/Ethnicity	1804	1336	837
% of Incidents With Race/Eth. Known	99.9%	80.7%	98.4%

### Firearm Arrests (satisfying specific selection criteria)

The Firearm Arrest population is most frequently Black (70.6%) or Hispanic (23.6%). White arrestees account for (4.8%) and Asian /Pacific Islanders account for less than 0.9% of the total Firearm arrest population.

The Firearm arrest group consists of arrests in which at least one firearm is recovered and the arrestee is charged with a Dangerous Weapons Felony charge. The Dangerous Weapon charge may also be one of many arrest charges lodged, some of which may be for more serious violent felonies. This arrest population therefore overlaps with arrests for other violent crimes that appear in other charts.



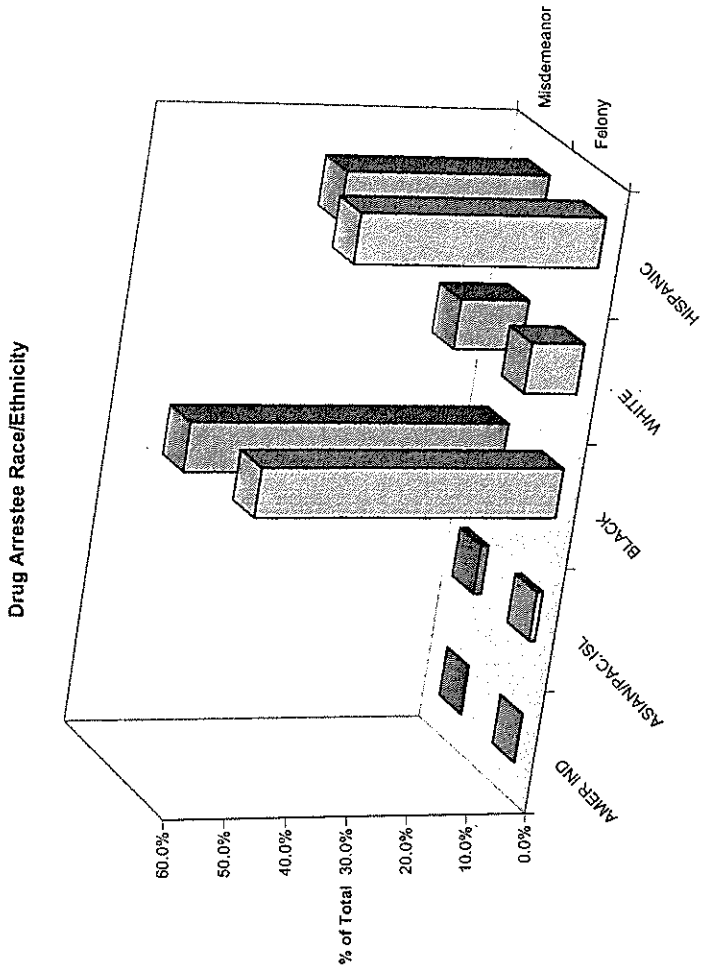
**Firearm Arrests (satisfying specific selection criteria)  
Compstat Logic**

	% of Known
AMER IND	0.2%
ASIAN/PAC.ISL	0.9%
BLACK	70.6%
WHITE	4.8%
HISPANIC	23.6%
Total Arrests	3212
Known Race/Ethnicity	3207
% of Incidents With Race/Eth. Known	99.8%

### Proactive Offenses (Drugs)

The Drug Felony Arrest population is most frequently Black (49.9%) or Hispanic (40.3%). White arrestees account for (8.8%) and Asian/Pacific Islanders account for 1.0% of the total Drug Felony arrest population.

The Drug Misdemeanor Arrest population is most frequently Black (53.1%) or Hispanic (33.9%). White arrestees account for (11.5%) and Asian/Pacific Islanders account for 1.3% of the total Drug Misdemeanor arrest population.



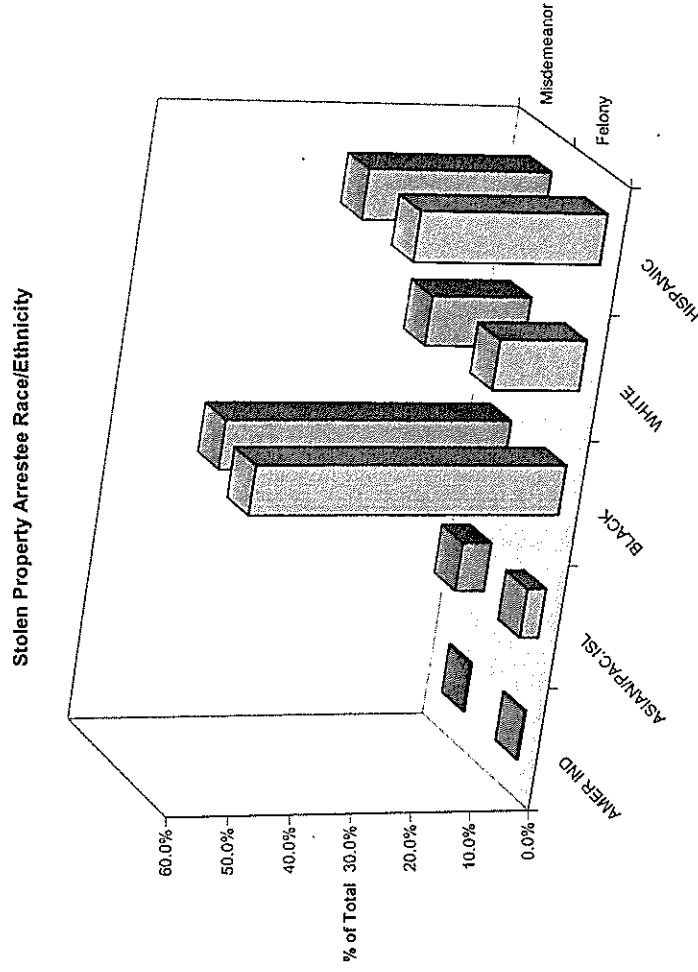
### Proactive Offenses (Drugs)

	Dang. Drugs Felony	Dang. Drugs Misdemeanor
AMER IND	0.1%	0.1%
ASIAN/PAC.ISL	1.0%	1.3%
BLACK	49.9%	53.1%
WHITE	8.8%	11.5%
HISPANIC	40.3%	33.9%
Total Arrests	28822	77724
Known Race/Ethnicity	28698	77148
% of Incidents With Race/Eth. Known	99.6%	99.3%

## Proactive Property Crimes

The Felony Stolen Property Arrest population is most frequently Black (51.3%) or Hispanic (30.9%). White arrestees account for 14.5% and Asian/Pacific Islanders account for 3.1% of the total Felony Stolen Property arrest population.

The Misdemeanor Stolen Property Arrest population is most frequently Black (47.7%) or Hispanic (30.5%). White arrestees account for 16.7% and Asian/Pacific Islanders account for 4.9% of the total Misdemeanor Stolen Property arrest population.



## Proactive Offenses (Property)

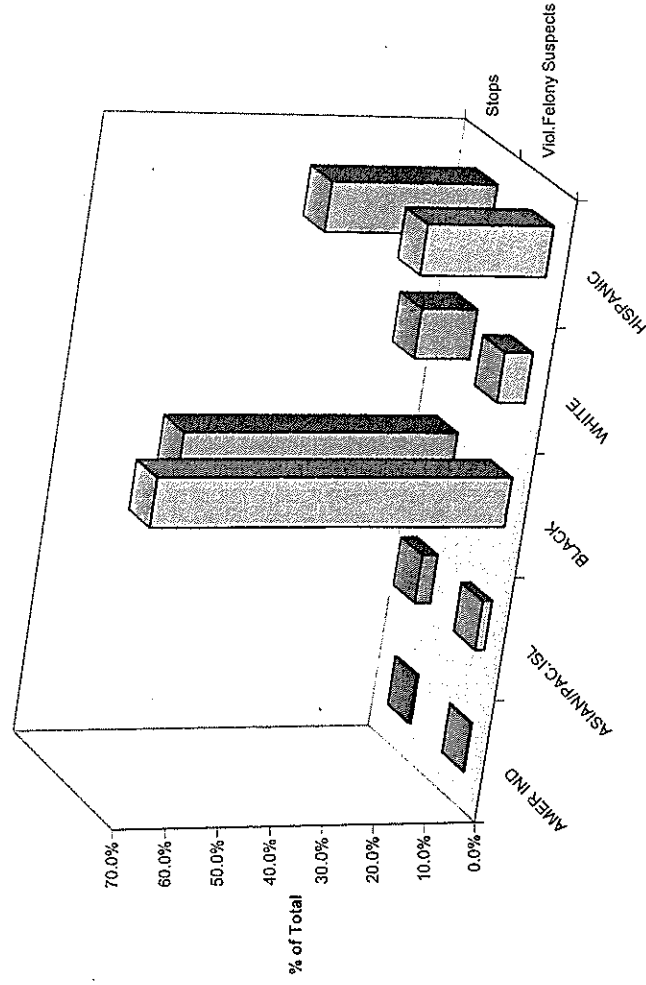
	Poss. Stolen Property (Fel.)	Poss. Stolen Property (Misd.)
AMER IND	0.2%	0.3%
ASIAN/PAC.ISL	3.1%	4.9%
BLACK	51.3%	47.7%
WHITE	14.5%	16.7%
HISPANIC	30.9%	30.5%
Total Arrests	1372	17906
Known Race/Ethnicity	1358	17726
% of Incidents With Race/Eth. Known	99.0%	99.0%

## Violent Crime and Stop Question and Frisk Activity

The most frequently occurring race/ethnic group within the Violent Felony suspects is Black, accounting for 68.2%. Hispanic suspects account for an additional 24.4% while White and Asian/Pacific Islanders account for 5.5% and 1.8% respectively.

The most frequent race/ethnic group within the Stop Question and Frisk subject population is Black, accounting for 53.2%. Hispanic subjects account for an additional 32.3% while White and Asian/Pacific Islanders account for 11.0% and 3.1% of total Stops respectively.

Violent Felony Suspects & NYPD Stops Race/Ethnicity



Stop Question & Frisk Subjects and Violent Crime Suspects Race/Ethnicity (Year 2008)

	Violent Crime Suspects	Stops
AMER IND	0.2%	0.4%
ASIAN/PAC.ISL	1.8%	3.1%
BLACK	68.2%	53.2%
WHITE	5.5%	11.0%
HISPANIC	24.4%	32.3%

# **Appendix A**

## **Contents of Broad Crime Categories**

### **Felony Crimes**

**Murder and Non-Negligent Manslaughter:** Murder first and second degree and Non Negligent Manslaughter.

**Rape:** Includes Rape first second and third degree

**Other Felony Sex Crimes:** Includes Sodomy first, second and third degree, Sexual Abuse first degree, Incest and Sexual Conduct Against a Child

**Robbery:** First, second and third degree

**Felonious Assault:** First and second degree

**Grand Larceny:** Grand Larceny first, second, third and fourth degree

**Felony Criminal Mischief:** First, second and third degree

### **Misdemeanor Crimes**

**Misdemeanor Sex Crimes:** Sex Abuse first and second degree, Sexual misconduct, Forcible touching

**Misdemeanor Assault:** Assault third degree

**Petite Larceny:** All larcenies of \$1,000.00 or less

**Misdemeanor Criminal Mischief:** Criminal Mischief fourth degree, Cemetery Desecration second degree, Reckless endangerment of property, False alarm of fire second degree.

### **Special Populations**

See detailed discussion in the Introduction section of the Report

## Appendix B

### New York City population

#### New York City Population by Race/Hispanic Origin

(Census Bureau 2006 American Community Survey ACS)

Race/Hispanic Origin Groups	ACS Estimate	% of Total
White Non-Hispanic	2,854,519	34.8%
Black Non-Hispanic	1,947,328	23.7%
American Indian & Alaskan Native Non-Hispanic	13,506	0.2%
Asian Pacific Islander Non-Hispanic	958,222	11.7%
Other Non-Hispanic	173,024	2.1%
Hispanic origin	2,267,827	27.6%

Total Population

8,214,426



## Appendix C

### New York City Police Department Census

**New York City Police Department Uniformed Officers by Race & Hispanic Origin (6/30/08)**

Rank	White	Black	Hisp	Asian	Other	Total
Tot. PO	11052	4142	6527	1191	26	22938
Tot. Det.	2981	810	1206	94	9	5100
Sergeants	2963	670	825	152	10	4620
All Other Ranks	2074	154	275	54	1	2558
<b>Total Uniformed</b>	<b>19070</b>	<b>5776</b>	<b>8833</b>	<b>1491</b>	<b>46</b>	<b>35216</b>

**Percentage by Race & Hispanic Origin by Rank**

Rank	White	Black	Hisp	Asian	Other	Total
Police officers	48.2%	18.1%	28.5%	5.2%	0.1%	100.0%
Detectives	58.5%	15.9%	23.6%	1.8%	0.2%	100.0%
Sergeants	64.1%	14.5%	17.9%	3.3%	0.2%	100.0%
All Other Ranks	81.1%	6.0%	10.8%	2.1%	0.0%	100.0%
<b>Total Uniformed</b>	<b>54.2%</b>	<b>16.4%</b>	<b>25.1%</b>	<b>4.2%</b>	<b>0.1%</b>	<b>100.0%</b>

# FOR THE RECORD

## Stop and Frisk Hearing – April 30, 2009 – Testimony of Make the Road New York

Thank you to the committee and Chair for the opportunity to testify before you on this very important issue.

My name is Elizabeth Wagoner. I am an attorney at Make the Road New York. We are a community-based not-for-profit organization which works to build power in low-income, Latino immigrant communities through community organizing, adult education, and legal services.

I want to speak to you today about the impact of stop-and-frisk on immigrant communities. Last Friday, April 24, I met with a group of 10 immigrant workers at our office at 92<sup>nd</sup> St and Roosevelt in Elmhurst, Queens, to discuss serious health and safety violations at their place of employment. When our meeting ended at 9:30 p.m., the workers left in a group to walk to the train. They were a group of Latino men, between the ages of about 25 – 50, who were all monolingual Spanish-speakers. When I walked out of the office about 10 minutes later, I encountered the group I'd just met with, standing against the wall on the sidewalk, being interrogated by three NYPD police officers. The officers spoke only English; the workers only Spanish. Make the Road organizer Irene Tung, who had also run across the encounter on the street, was attempting to translate the officers' demands to the workers since the situation was clearly both incomprehensible and terrifying to them.

When I approached the officers to find out what was going on, I was informed that my clients had been stopped because "there's a lot of gang activity in this area." The officer went on to tell me that they had frisked everyone in the group and determined that no illegal activity was taking place. But, he said, now that they had stopped these individuals, he was required to take down their names, addresses, phone numbers, and birthdays, "for their own protection". When I protested that he had absolutely no need for that information, he became agitated and told me that it was department policy – he was *required* to make a record of the entire event, by writing down identifying details of everyone present at the stop. His logic was circular – "I need identifying details from you because I stopped you. I stopped you because I wanted identifying details from you." I asked him if these individuals were being detained, or if they were free to go. The officers stated that they were free to go, and we left the scene without providing the information. It seemed clear that, but for the intervention of a lawyer, the officers would not have advised the men they could leave without providing their personal information – even had they been able to communicate in a language the men could understand.

Make the Road Organizer Irene Tung, who stayed behind to collect the officers' names and badge numbers, later told me that the officers had made an offensive comment about immigrants needing to learn English, and boasted that they had managed to collect identifying information for two of the ten people present before we intervened.

Since this incident, I also understand from my co-workers and members of our organization that NYPD officers are frequently present outside of our Elmhurst office

when organizing meetings end and people leave the office 9:00 p.m. Some members have been stopped and frisked upon leaving our office. I cannot think of any legitimate reason that would bring the police to Make the Road New York's organizing meetings. Neither staff nor any of our hundreds of Queens-based members have reported or witnessed "gang" activity near our office. Undoubtedly, this large – and unwarranted – police presence has frightened a number of people from coming to our office at all.

For an immigrant in New York, it is very frightening to speak to the police. Many people in this city are undocumented. Everyone in the community knows that one minor encounter with the authorities could lead to deportation and permanent, lifetime separation from family and children. Frequently, there are language barriers between the police and the communities they patrol. Many immigrants assume that the NYPD and Immigration and Customs Enforcement are one in the same. Many also assume that being frisked by the police and asked to provide identifying information means that you are being arrested or that immigration can now find you. This last assumption may in fact be true; it is not clear *who* has access to NYPD's database of law-abiding Latino and Black individuals who have been stopped, frisked, interrogated, and criminalized. Furthermore, an individual who does not speak English will be unable to assert his basic constitutional right to say "no" to a police officer's request for information, or to ask if he is free to leave.

Unwarranted stops of immigrant New Yorkers based on vague allegations of "gang" activity harm the immigrant community and the City at large. Immigrant New Yorkers are dissuaded from approaching community-based organizations like ours to engage in community organizing efforts or to obtain much-needed services. Furthermore, immigrants are intimidated from approaching the police at all when they themselves are the victims of crimes.

The workers last Friday hadn't committed a crime. They had done nothing wrong. The officers themselves admitted this. It is unfathomable to me that this group of workers, who are paid on average \$3.00 per hour and have suffered chemical burns due to health and safety violations at work, now also have to fear walking down the street to their lawyer's office in Elmhurst to seek help.

Thank you again to the members of the committee for holding this important hearing.



Robert F. Wagner Graduate School of Public Service

**Testimony before the City Council of New York  
Committee on Public Safety  
April 30, 2009**

**Does Stop and Frisk Stop Crime? \***

**Dennis C. Smith  
Associate Professor  
Robert F. Wagner Graduate School of Public Service  
New York University**

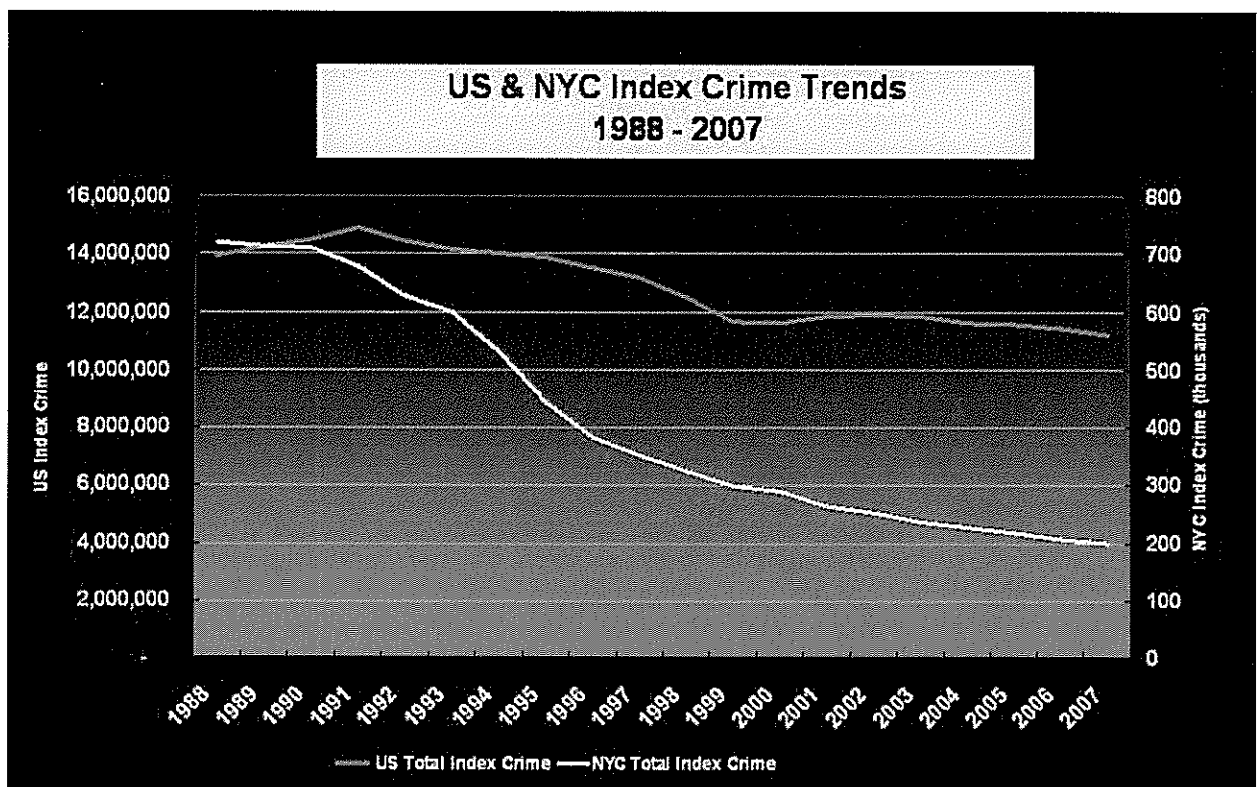
\* This testimony draws on a paper, Does Stop and Frisk Stop Crime? by Dennis C. Smith and Robert Purtell, presented at the Annual Research Conference of the Association of Public Policy and Management, Los Angeles, Ca. , November, 2008.

Thank you Mr. Chairman and Members of the Council for inviting my testimony:

My testimony today reports the preliminary findings of an ongoing research of police practices and performance in New York City that I have engaged in for the past several decades, often with former students;. The specific study I will discuss today was co-authored by Professor Robert Purtell, an NYU Wagner Ph.D now on the faculty of Rockefeller College of the University at Albany. Our paper has been made available to the Committee.

I begin by noting that most recent discussions of stop-and-frisk behavior by police have focused not on its effectiveness but on its fairness. Studies by Attorney General Eliot Spitzer, US Commission on Civil Rights and by the Rand Corporation have searched the data on stop and frisk for evidence of racial or ethnic bias. The major differences in these analyses emerge from the way they frame the analysis. If the distribution of stops is compared to general population characteristics that research finds African-Americans disproportionately stopped by police. If the alleged ethnicity of perpetrators reported by crime victims is used as the denominator, African-Americans are not stopped in proportions out of line with crime reports. What is striking in all of these studies, however, is that none of them asked the question, "Does stop and frisk stop crime"? The policy choices here involve weighing the trade-offs between intrusive police behavior and safety in the City's neighborhood. *Equally clearly, that trade-off has no meaning unless such stop-and-frisk behavior is in fact efficacious in the fight against crime.*

This exploration of the efficacy of stop and frisk as a crime reduction intervention is of course embedded in a larger controversy over whether the dramatic reduction in crime in New York City, including a 33% drop in this last decade so far is a result, to a significant degree or not, of the work of NYPD. In our earlier studies we have concluded that a revolution in the management of the police in New York City was a significant factor in bringing violent crime from historic highs in the late 80s and early 1990s to historic lows as we approach the end of the first decade of 21st-century. In our analysis at least, it was not improvement in the economy, a spontaneous decline in drug use or increased incarceration that explains a 75% drop or more in all categories of major crime, including homicide, in New York City since 1990.



We have hypothesized, and found evidence to support the proposition that a shift away from a focus on inputs and activities in policing to a focus on reducing crime as an outcome, starting with community policing in the Dinkins Administration, and accelerated by the introduction of a profound management reform also directed at crime reduction called CompStat, is a major reason that public safety has significantly improved. While drug use of certain kinds may have declined, and in the early days of the reform incarceration increased, these were not independent of police action. Both problem-solving community policing and police strategies under CompStat focused attention on drug-related crime and on effective arrest and prosecution of offenders. Our most recent study of Operation Impact, Commissioner Kelly's strategy of hotspot policing in New York, found statistically-significant evidence that the deployment of targeted, concentrated enforcement in areas that, despite the overall decline, were still, relatively speaking, plateaus of violent criminal activity, accelerated existing patterns of crime decline.

Much has been made in the published criticisms of stop-and-frisk behavior in New York in recent years of the fact that the demography of person stopped does not mirror the population served. More African-Americans and Hispanics are reportedly stopped than their proportion of the general population. (the gender and age of persons stopped do not mirror the population proportions either, of course).

The success of CompStat and more recently Operation Impact have been precisely that NYPD has developed a system that enables it to know in a timely way and in considerable detail which kinds of crime are happening where , and deploying police where and when the crime is happening. This has led to disproportionate deployment of police in lower income, predominately minority neighborhoods. In contrast to the literature critical of police administration in the 1950s and 60s that faulted the police for failing to address or respond to crime problems in the ghettos, the current criticism is that they are paying too much attention to it.<sup>1</sup> If we focus on outcomes, what is striking is the evidence that, in New York at least, *crime reduction since 1990 has been universally achieved across all neighborhoods.*

New York City vs. Nation Index Crime Percentage Change 2007 vs. 1988		
	NYC % +/-	Nation % +/-
Murder and Non-Negligent Manslaughter	-73.8	-19.8
Forcible Rape	-74.4	-4.3
Robbery	-74.8	-18.6
Aggravated Assault	-61.6	-6.5
Burglary	-83.6	-32.7
Larceny Theft	-62.6	-15.3
Motor Vehicle Theft	-88.9	-24.2
<b>Total Crime Index</b>	<b>-72.2</b>	<b>-19.7</b>

<sup>1</sup> Operating under the old system of deployment based on the volume of 911 calls for police service also led to disproportionate deployment of police in minority neighborhood as well. The difference is that random patrol and radio dispatched rapid response to calls were ineffective in reducing crime.



Given the fact that crime is still much higher in poorer, minority neighborhoods, even where 75 to 80% reductions in crime have been achieved, there remain significant patterns of victimization. These locales have been typically the focal point of recent strategies like Operation Impact, the “hot spot” policing strategy.

The “theory” (assumptions about cause and effect) underlying the use of stop and frisk as a crime-fighting intervention is that police officers deployed in response to crime patterns engage in a vigilant search for suspicious behavior, that they respond based on reasonable suspicion by stopping, questioning, and if warranted frisking those stopped, and arresting where evidence of crime is detected. This intervention is expected to reduce crime in subsequent periods by removing those apprehended from the street, and deterring through the prospect of detection criminal activities in areas where the likelihood of being stopped, questioned, and frisked is high. This study, using monthly precinct crime data as the dependent variable, monthly stop-and-frisk data as the primary independent variable, and controlling for the impact of hot-spot policing and the interaction of stop-and-frisk incidents with the existence of impact zones, seeks to explore and answer the previously neglected question, Is Stop and Frisk an effective tool in the quest for lower crime and increased public safety?

### **An Empirical Assessment of Stop-and-Frisk Activities in New York City**

This study reports findings from an empirical analysis of the impact of stop-and-frisk incidents across 73 of New York City’s 76 police precincts using cross-sectional, monthly crime and stop-and-frisk panel data from February 1997 to

December 2006 in an interrupted time-series evaluation using mixed-effects maximum likelihood estimation techniques.

Specifically, we asked two related questions. First, we asked what impact stop-and-frisk activities had on crime above and beyond what could be explained by the city-wide and impact-zone crime trends? Second, is stop-and-frisk the only explanation for those observed changes? To answer those questions, our analysis builds on our 2007 study of the effectiveness of impact policing. First, we estimated the trend in crime for the city as a whole and then layered on that the effect that hot-spots policing had on crime trends in those precincts selected for impact zones. Second, we estimated the impact of stop-and-frisk incidents on each of those two trends.

We converted crime counts and incidents of stop-and-frisk activities to rates per thousand people to avoid having higher crime or stop rates bias the analysis. Monthly population estimates for each precinct were based on compound annual population growth rates derived from population data reported by the United States Bureau of the Census for the survey years 1990 and 2000.

We conducted our analysis using stop-and-frisk data lagged by one month<sup>2</sup> because stop-and-frisk activities were, at least in part, likely to be responses to concurrent crime. Police officials interviewed stated an expectation that the crime-management impact of stops was likely to be felt in periods following the stops,

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<sup>2</sup> We also tested alternative lag structures ranging from two to six months. None of those alternatives time lags resulted in statistically significant results.

We performed separate analyses for each of the seven major crimes. We hypothesized that stop-and-frisk would have differential results by crime. Aggregating crimes might have masked crime-specific impacts of the stop-and-frisk strategy.

Overall, this preliminary analysis shows that the stop-and-frisk strategy works. The strategy was effective city-wide for robbery, murder, burglary and motor vehicle theft. In addition, stops showed statistically-significant differential impacts on robbery, assault, and grand larceny in precincts with active impact zones. Not surprisingly, returns to scale for some categories of crime tended to be negative both for the city as a whole and for active-zone precincts, but the pattern for the violent crimes of robbery and assault, and for motor vehicle theft in the active-zone precincts showed positive results for increased levels of stops.

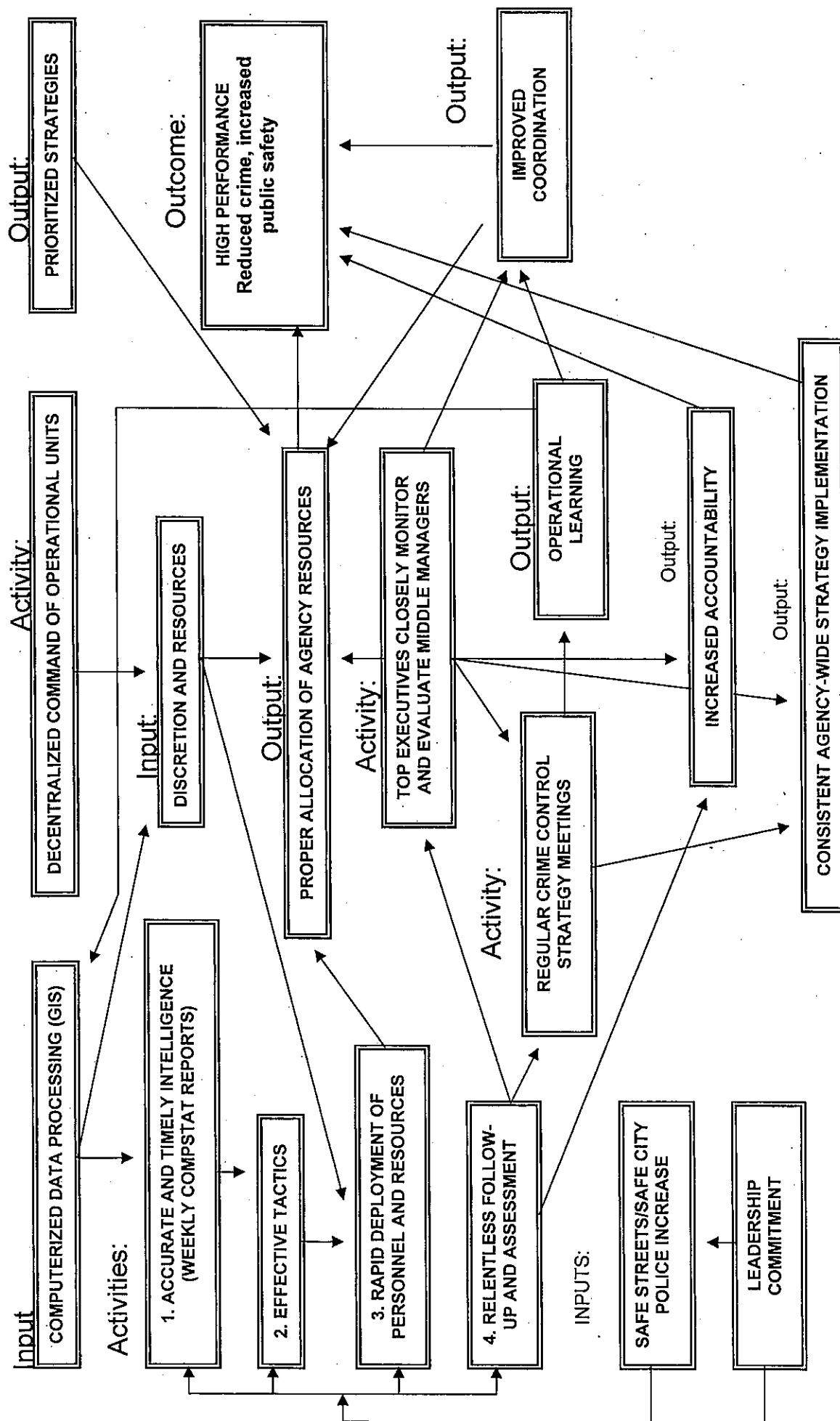
One of our recurring findings is that the intervention had variable patterns of results in response to scale. We want to examine this phenomenon more closely but what this means is that an intervention that works at one level of intensity, or for a period of time, often does not mean that increasing its intensity or extending its use over time will have the same result. One important implication is that effective crime fighting requires continuous, timely innovation. Another is that police interventions are blunt instruments that need to be used with care and constant monitoring.

The details of methodology and findings of our study are of course in the longer paper.

I will be happy to answer any questions, if time permits.

# THE NYPD COMPSTAT MODEL OF PERFORMANCE MANAGEMENT

## ENVIRONMENT





Michael R. Bloomberg  
Mayor

# Police Department City of New York



Raymond W. Kelly  
Police Commissioner

Volume 16 Number 17

## CompStat

6th Precinct

Report Covering the Week 4/20/2009 Through 4/26/2009

### Crime Complaints

	Week to Date			28 Day			Year to Date*			2 Year	8Year	16Year
	2009	2008	% Chg	2009	2008	% Chg	2009	2008	% Chg	% Chg	% Chg (2001)	% Chg (1993)
Murder	0	0	***	0	0	***	0	0	***	-100.0	-100.0	***
Rape	0	0	***	1	0	***	3	3	0.0	200.0	200.0	-40.0
Robbery	7	5	40.0	9	10	-10.0	39	46	-15.2	-32.8	-57.6	-85.6
Fel. Assault	4	2	100.0	9	8	12.5	34	25	36.0	6.2	-2.9	-52.1
Burglary	3	4	-25.0	14	23	-39.1	55	71	-22.5	12.2	-39.6	-77.0
Gr. Larceny	20	10	100.0	82	78	5.1	311	340	-8.5	-6.6	-19.4	-55.3
G.L.A.	2	0	***	4	1	300.0	11	9	22.2	-8.3	-78.0	-95.5
<b>TOTAL</b>	<b>36</b>	<b>21</b>	<b>71.43</b>	<b>119</b>	<b>120</b>	<b>-0.83</b>	<b>453</b>	<b>494</b>	<b>-8.30</b>	<b>-7.17</b>	<b>-30.95</b>	<b>-70.35</b>

### Historical Perspective

(Historical perspective is a complete calendar year of data.)

	1990	1995	1998	2001	2008	%Chg '08 vs '01	%Chg '08 vs '98	%Chg '08 vs '95	%Chg '08 vs '90	
Murder	7	4	4	1		***	***	***	***	Murder
Rape	10	8	6	8	5	-37.5	-16.7	-37.5	-50.0	Rape
Robbery	1,433	593	446	290	187	-35.5	-58.1	-68.5	-87.0	Robbery
Fel. Assault	279	232	221	140	93	-33.6	-57.9	-59.9	-66.7	Fel. Assault
Burglary	1,182	813	380	294	282	-4.1	-25.8	-65.3	-76.1	Burglary
Gr. Larceny	3,835	1,736	1,622	1,222	1,128	-7.7	-30.5	-35.0	-70.6	Gr. Larceny
G.L.A.	1,092	487	267	165	41	-75.2	-84.6	-91.6	-96.2	G.L.A.
<b>TOTAL</b>	<b>7,838</b>	<b>3,873</b>	<b>2,946</b>	<b>2,120</b>	<b>1,736</b>	<b>-18.11</b>	<b>-41.07</b>	<b>-55.18</b>	<b>-77.85</b>	<b>TOTAL</b>

The above CompStat figures are posted on Monday, one week after the closing date.

CompStat figures are preliminary and subject to further analysis and revision. Crime statistics reflect New York State Penal Law definitions and differ from the crime categories to the F.B.I. Uniform Crime Reporting System. All degrees of rape are included in the rape category.

Prepared by  
NYPD CompStat Unit

CompStat



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Mayor

# Police Department City of New York



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Police Commissioner

Volume 16 Number 17

## CompStat

24th Precinct

Report Covering the Week 4/20/2009 Through 4/26/2009

### Crime Complaints

	Week to Date			28 Day			Year to Date*			2 Year	8Year	16Year
	2009	2008	% Chg	2009	2008	% Chg	2009	2008	% Chg	% Chg	% Chg (2001)	% Chg (1993)
Murder	0	0	***	0	0	***	2	1	100.0	***	100.0	-75.0
Rape	1	0	***	1	0	***	4	1	300.0	33.3	-20.0	-60.0
Robbery	5	3	66.7	9	21	-57.1	53	82	-35.4	-25.4	-55.5	-79.1
Fel. Assault	4	3	33.3	10	8	25.0	37	40	-7.5	54.2	-32.7	-69.9
Burglary	0	0	***	6	6	0.0	36	28	28.6	-32.1	-64.4	-89.8
Gr. Larceny	6	7	-14.3	28	42	-33.3	119	182	-34.6	-24.2	-26.1	-62.1
G.L.A.	2	2	0.0	4	4	0.0	22	18	22.2	-4.3	-35.3	-92.9
<b>TOTAL</b>	<b>18</b>	<b>15</b>	<b>20.00</b>	<b>58</b>	<b>81</b>	<b>-28.40</b>	<b>273</b>	<b>352</b>	<b>-22.44</b>	<b>-17.52</b>	<b>-42.65</b>	<b>-80.07</b>

### Historical Perspective

(Historical perspective is a complete calendar year of data.)

	1990	1995	1998	2001	2008	%Chg '08 vs '01	%Chg '08 vs '98	%Chg '08 vs '95	%Chg '08 vs '90	
Murder	18	4	2	3	4	33.3	100.0	0.0	-77.8	Murder
Rape	34	31	17	12	12	0.0	-29.4	-61.3	-64.7	Rape
Robbery	1,193	644	430	341	276	-19.1	-35.8	-57.1	-76.9	Robbery
Fel. Assault	259	413	271	181	116	-35.9	-57.2	-71.9	-55.2	Fel. Assault
Burglary	1,360	694	419	251	119	-52.6	-71.6	-82.9	-91.2	Burglary
Gr. Larceny	1,267	733	523	522	549	5.2	5.0	-25.1	-56.7	Gr. Larceny
G.L.A.	1,510	551	356	193	69	-64.2	-80.6	-87.5	-95.4	G.L.A.
<b>TOTAL</b>	<b>5,641</b>	<b>3,070</b>	<b>2,018</b>	<b>1,503</b>	<b>1,145</b>	<b>-23.82</b>	<b>-43.26</b>	<b>-62.70</b>	<b>-79.70</b>	<b>TOTAL</b>

The above CompStat figures are posted on Monday, one week after the closing date.

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Prepared by  
NYPD CompStat Unit

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Raymond W. Kelly  
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Volume 16 Number 17

## CompStat

25th Precinct

Report Covering the Week 4/20/2009 Through 4/26/2009

### Crime Complaints

	Week to Date			28 Day			Year to Date*			2 Year	8Year	16Year
	2009	2008	% Chg	2009	2008	% Chg	2009	2008	% Chg	% Chg	% Chg (2001)	% Chg (1993)
Murder	0	0	***.*	0	0	***.*	0	1	-100.0	-100.0	-100.0	-100.0
Rape	0	0	***.*	0	1	-100.0	2	6	-66.7	-77.8	-71.4	-75.0
Robbery	3	6	-50.0	13	21	-38.1	64	92	-30.4	-9.9	-19.0	-73.6
Fel. Assault	2	3	-33.3	15	18	-16.7	56	67	-16.4	-6.7	-35.6	-68.7
Burglary	2	3	-33.3	8	13	-38.5	16	50	-68.0	-55.6	-69.2	-89.8
Gr. Larceny	3	5	-40.0	14	18	-22.2	67	73	-8.2	-31.6	59.5	-23.9
G.L.A.	2	0	***.*	3	4	-25.0	13	18	-27.8	-31.6	-50.0	-86.3
<b>TOTAL</b>	<b>12</b>	<b>17</b>	<b>-29.41</b>	<b>53</b>	<b>75</b>	<b>-29.33</b>	<b>218</b>	<b>307</b>	<b>-28.99</b>	<b>-26.60</b>	<b>-26.10</b>	<b>-71.94</b>

### Historical Perspective

(Historical perspective is a complete calendar year of data.)

	1990	1995	1998	2001	2008	%Chg '08 vs '01	%Chg '08 vs '98	%Chg '08 vs '95	%Chg '08 vs '90	
Murder	35	23	6	7	4	-42.9	-33.3	-82.6	-88.6	Murder
Rape	75	44	41	27	17	-37.0	-58.5	-61.4	-77.3	Rape
Robbery	1,046	668	399	275	321	16.7	-19.5	-51.9	-69.3	Robbery
Fel. Assault	439	500	342	296	209	-29.4	-38.9	-58.2	-52.4	Fel. Assault
Burglary	800	464	286	172	123	-28.5	-57.0	-73.5	-84.6	Burglary
Gr. Larceny	455	356	277	165	333	101.8	20.2	-6.5	-26.8	Gr. Larceny
G.L.A.	390	193	111	110	55	-50.0	-50.5	-71.5	-85.9	G.L.A.
<b>TOTAL</b>	<b>3,240</b>	<b>2,248</b>	<b>1,462</b>	<b>1,052</b>	<b>1,062</b>	<b>0.95</b>	<b>-27.36</b>	<b>-52.76</b>	<b>-67.22</b>	<b>TOTAL</b>

The above CompStat figures are posted on Monday, one week after the closing date.

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NYPD CompStat Unit

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# Police Department City of New York



Raymond W. Kelly  
Police Commissioner

Volume 16 Number 17

## CompStat

26th Precinct

Report Covering the Week 4/20/2009 Through 4/26/2009

### Crime Complaints

	Week to Date			28 Day			Year to Date*			2 Year	8Year	16Year
	2009	2008	% Chg	2009	2008	% Chg	2009	2008	% Chg	% Chg	% Chg	% Chg
										(2001)	(1993)	
Murder	0	0	***	0	2	-100.0	0	3	-100.0	***	***	-100.0
Rape	1	1	0.0	1	3	-66.7	4	7	-42.9	300.0	0.0	-50.0
Robbery	3	4	-25.0	14	15	-6.7	56	63	-11.1	9.8	3.7	-76.3
Fel. Assault	1	0	***	3	3	0.0	24	25	-4.0	-22.6	-20.0	-70.7
Burglary	0	3	-100.0	2	10	-80.0	16	20	-20.0	-40.7	-60.0	-92.2
Gr. Larceny	11	3	266.7	23	14	64.3	89	81	9.9	-12.7	-11.0	-59.5
G.L.A.	1	2	-50.0	1	5	-80.0	14	14	0.0	-17.6	-44.0	-89.8
<b>TOTAL</b>	<b>17</b>	<b>13</b>	<b>30.77</b>	<b>44</b>	<b>52</b>	<b>-15.38</b>	<b>203</b>	<b>213</b>	<b>-4.69</b>	<b>-11.35</b>	<b>-19.76</b>	<b>-77.27</b>

### Historical Perspective

(Historical perspective is a complete calendar year of data.)

	1990	1995	1998	2001	2008	%Chg '08 vs '01	%Chg '08 vs '98	%Chg '08 vs '95	%Chg '08 vs '90	
Murder	15	4	3	1	4	300.0	33.3	0.0	-73.3	Murder
Rape	23	25	16	9	16	77.8	0.0	-36.0	-30.4	Rape
Robbery	786	523	339	220	200	-9.1	-41.0	-61.8	-74.6	Robbery
Fel. Assault	315	268	198	132	79	-40.2	-60.1	-70.5	-74.9	Fel. Assault
Burglary	807	448	271	124	78	-37.1	-71.2	-82.6	-90.3	Burglary
Gr. Larceny	798	496	386	326	330	1.2	-14.5	-33.5	-58.6	Gr. Larceny
G.L.A.	636	188	114	133	48	-63.9	-57.9	-74.5	-92.5	G.L.A.
<b>TOTAL</b>	<b>3,380</b>	<b>1,952</b>	<b>1,327</b>	<b>945</b>	<b>755</b>	<b>-20.11</b>	<b>-43.10</b>	<b>-61.32</b>	<b>-77.66</b>	<b>TOTAL</b>

The above CompStat figures are posted on Monday, one week after the closing date.

CompStat figures are preliminary and subject to further analysis and revision. Crime statistics reflect New York State Penal Law definitions and differ from the crime categories to the F.B.I. Uniform Crime Reporting System. All degrees of rape are included in the rape category.

Prepared by  
NYPD CompStat Unit

CompStat



Michael R. Bloomberg  
Mayor

# Police Department City of New York



Raymond W. Kelly  
Police Commissioner

Volume 16 Number 17

## CompStat

75th Precinct

Report Covering the Week 4/20/2009 Through 4/26/2009

### Crime Complaints

	Week to Date			28 Day			Year to Date*			2 Year	8Year	16Year
	2009	2008	% Chg	2009	2008	% Chg	2009	2008	% Chg	% Chg	% Chg (2001)	% Chg (1993)
Murder	1	0	***.*	1	0	***.*	5	5	0.0	-54.5	-28.6	-87.5
Rape	1	1	0.0	5	2	150.0	17	18	-5.6	21.4	-54.1	-45.2
Robbery	9	8	12.5	46	59	-22.0	167	222	-24.8	-31.0	-43.2	-81.2
Fel. Assault	10	12	-16.7	59	50	18.0	194	192	1.0	1.0	-37.2	-55.5
Burglary	7	5	40.0	31	29	6.9	120	120	0.0	-8.4	-33.3	-78.6
Gr. Larceny	13	15	-13.3	50	52	-3.8	202	227	-11.0	-9.0	1.0	-20.5
G.L.A.	7	7	0.0	28	24	16.7	96	102	-5.9	-27.3	-55.1	-89.8
<b>TOTAL</b>	<b>48</b>	<b>48</b>	<b>0.00</b>	<b>220</b>	<b>216</b>	<b>1.85</b>	<b>801</b>	<b>886</b>	<b>-9.59</b>	<b>-15.15</b>	<b>-35.46</b>	<b>-74.62</b>

### Historical Perspective

(Historical perspective is a complete calendar year of data.)

	1990	1995	1998	2001	2008	%Chg '08 vs '01	%Chg '08 vs '98	%Chg '08 vs '95	%Chg '08 vs '90	
Murder	109	44	41	35	17	-51.4	-58.5	-61.4	-84.4	Murder
Rape	133	144	112	89	57	-36.0	-49.1	-60.4	-57.1	Rape
Robbery	3,452	2,397	1,628	1,146	822	-28.3	-49.5	-65.7	-76.2	Robbery
Fel. Assault	1,789	1,280	1,068	1,053	657	-37.6	-38.5	-48.7	-63.3	Fel. Assault
Burglary	2,433	1,531	1,170	568	443	-22.0	-62.1	-71.1	-81.8	Burglary
Gr. Larceny	1,286	918	651	737	837	13.6	28.6	-8.8	-34.9	Gr. Larceny
G.L.A.	3,071	1,717	1,020	845	405	-52.1	-60.3	-76.4	-86.8	G.L.A.
<b>TOTAL</b>	<b>12,273</b>	<b>8,031</b>	<b>5,690</b>	<b>4,473</b>	<b>3,238</b>	<b>-27.61</b>	<b>-43.09</b>	<b>-59.68</b>	<b>-73.62</b>	<b>TOTAL</b>

*The above CompStat figures are posted on Monday, one week after the closing date.*

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Prepared by  
NYPD CompStat Unit

**CompStat**

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Regarding Stop and Frisks

My name is Cynthia Conti-Cook and I am a civil rights attorney in Brooklyn. I'm going to briefly talk about how the NYPD's excessive use of stop and frisks creates liability for the City of New York. The following case generally conforms with many of our cases: it begins with a young man standing in the hallway of his building where he is stop and frisked by officers and ends with the officers using excessive force, initiating false charges, wasting the resources of the criminal justice system and costing the City thousands of dollars to fight and settle his lawsuit.

Mr. Rivera is a young Latino man living with his mother in a public housing building in Coney Island. At 10:00 one night Mr. Rivera is waiting for an elevator when two officers come through the stairwell. The officers request information from Mr. Rivera to confirm that he isn't trespassing and he tells them he lives in an apartment down the hall. The officers have no reason to suspect Mr. Rivera of any crime and they testify to this fact at depositions.

However, they still tell him to put his hands on the wall and move their hands down his arms, torso, legs, and in and out of the pockets of his sweatshirt and jeans, finding nothing but a paystub and his last paycheck. Mr. Rivera complies with the frisk because he knows from experience that it is the fastest way to get the invasive exercise over with. During the frisk, a neighbor comes into the hallway and confirms that Mr. Rivera lives down the hall. Mr. Rivera tells the neighbor, "Knock on my door, tell my mom to get out here." By the time his mother runs into the hallway in her socks, the officers are in the elevator with Mr. Rivera in handcuffs and she barely squeezes herself through the closing doors.

Inside the elevator, the officers shove Mr. Rivera into the corner, giving him bruises behind his ear and at his temple. At the precinct he is stripped to his boxers and a t-shirt and locked in a holding cell for about 45 minutes until he is finally released with two summonses for "disorderly conduct" and "spitting", which were both dismissed after four court appearances over six months.

In this case, like many others like it, the "stop and frisk" escalated into a use of force, an arrest, detention, and prosecution, all without probable cause to believe Mr. Rivera had ever committed any crime.



Testimony of M. Dru Levasseur before the Committee on Public Safety and the Committee on Civil Rights of the New York State Assembly

Chair, Richard Gottfried

April 30, 2009

Good Morning, Chairman Gottfried and members of the Assembly's Committee on Public Safety and Committee on Civil Rights. My name is M. Dru Levasseur. I am a Staff Attorney at Transgender Legal Defense & Education Fund, also known as TLDEF. TLDEF is a nonprofit law office located on the Bowery in Manhattan. TLDEF's mission is to confront prejudice against transgender people and to fight for their civil rights. It is committed to ending discrimination based on gender identity and expression and achieving equality for transgender people through public education, test-case litigation, direct legal services, community organizing, and public policy efforts.

The term "transgender" is used to describe persons whose gender identity or gender expression differs from traditional gender norms. This may include people who are living full or part-time in a gender other than the gender they were assigned at birth. In the course of our work, we hear from many members of the transgender community in New York City who have interacted with law enforcement. Our experience tells us that stop and frisk procedures present special problems for transgender people. First, transgender people are subject to more frequent stop and frisk procedures than people who are not transgender. Many transgender people report that officers construe their gender identity or gender expression as reasonable suspicion or prima

facie evidence that they are engaged in criminal activity when they are not. According to a study by Amnesty International, transgender women and LGBT youth report that they experience harassment, violence, or arrest by NYPD officers for quality of life offenses, often based on nothing more than mere presence in public spaces.<sup>1</sup> Transgender women particularly report frequent police profiling and false arrests for loitering with intent to prostitute.<sup>2</sup> These findings have been corroborated by the National Coalition of Anti-Violence Programs.<sup>3</sup>

Every person has the right to use public streets and public places as long as he or she does not engage in criminal activity. Factors such as a person's race, sex, sexual orientation, gender, gender identity, gender expression, age, dress, unusual or disheveled or impoverished appearance do not alone justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants or others unrelated to actual criminal activity.

Many transgender people use a name or present in a gender that is different from that on their identification or in government records. Through our Name Change Project, we have helped more than 200 transgender community members with the legal name change process, but we are acutely aware of our own limited resources, and the fact that there remain many community members who have not legally changed their names or taken steps to conform the gender markers on their identification to match their gender presentation. Using one's preferred name and dressing in one's preferred gender does not constitute any crime. Transgender people

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<sup>1</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, 36, Amnesty International, AMR 51/122/2005 (2005).

<sup>2</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, Amnesty International, AMR 51/122/2005 (2005).

<sup>3</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, 36, Amnesty International, AMR 51/122/2005 (2005).

who present a gender or name that differs from the gender or name on their ID or in official databases typically are expressing their gender identity, which is protected under the New York City's Human Rights Law.<sup>4</sup>

Nevertheless, many transgender people report that when stopped, often merely for appearing transgender in public, officers have required "proof" of their gender and have challenged their gender identity. Additionally, many transgender people throughout report verbal and sexual harassment by NYPD officers, including the use of slurs such as "he/she," "freak," and "faggot."<sup>5</sup>

Transgender people also report being subject to more invasive procedures than people who are not transgender. Officers have asked questions about intimate details of a person's anatomy with no legitimate reason for doing so. Additionally, we have heard reports that transgender individuals' breasts or genitals are inappropriately touched during pat downs and other searches, at times accompanied by obscene sexual and/or derogatory comments about the person's body, gender or sexual orientation.<sup>6</sup>

These searches are ostensibly conducted to "determine the gender" of an arrestee, but people report that they are often done merely to satisfy an officer's curiosity, or to demean and humiliate a transgender person, rather than being performed because of a reasonable suspicion that a transgender person is concealing a weapon, contraband, or evidence.<sup>7</sup> Often, transgender

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<sup>4</sup>See Guidelines Regarding "Gender Identity" Discrimination, A Form of Gender Discrimination Prohibited by the New York City Human Rights Law (Title 8 of the Administrative Code of the City of New York).

<sup>5</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 49, Amnesty International, AMR 51/122/2005 (2005).

<sup>6</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 54, 56-57, Amnesty International, AMR 51/122/2005 (2005).

<sup>7</sup>Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 54, 56-57, Amnesty International, AMR 51/122/2005 (2005).

people have been frisked for the sole purpose of the officer determining that person's gender or to view or touch their genitals.

Transgender people must be protected from what amounts to harassment and abuse in the guise of stop and frisk. Policy changes and comprehensive training must be implemented. Being transgender is not illegal and should not be cause for more frequent or more invasive stop and frisk procedures. When a frisk is constitutionally warranted, transgender people deserve to be protected from over-intrusive searches that violate their privacy and constitutional rights.

Other jurisdictions have added clear protections for transgender individuals with regard to stop and frisk procedures, including Seattle, the District of Columbia, San Francisco, and Toronto.<sup>8</sup> For example, the District of Columbia added specific procedural guidelines for stop and frisk situations involving transgender individuals.<sup>9</sup> These guidelines require officers to respect the gender identification expressed or presented by individuals and prohibit search or frisk for the sole purpose of determining an individual's anatomical gender.<sup>10</sup> Similarly, the San Francisco policy prohibits officers from asking questions about intimate details of a person's anatomy to determine an individual's gender without legitimate and articulable reasons for doing so.<sup>11</sup> The policy also requires officers to address transgender individuals by their chosen,

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<sup>8</sup>See King County Department of Adult and Juvenile Detention, Adult Divisions, General Policy Manual, 6.003.07; D.C. General Order 501-02. Handling Interactions with Transgender Individuals; Model Protocols for the Treatment of Transgender Persons in County Jails, National Lawyers' Guild & City & County of San Francisco Human Rights Commission, August 7, 2002; Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003); Toronto Police Service Procedure Information Sheet – Search of Persons. Appendix “C” – Procedure 01-02 – Transgender/Transsexual Persons; D.C. Metro. Police, GO-PCA-501.02(V)(C)(1)(b)(2) (Oct. 16, 2007).

<sup>9</sup>D.C. General Order 501-02. Handling Interactions with Transgender Individuals.

<sup>10</sup>D.C. General Order 501-02. Handling Interactions with Transgender Individuals.

<sup>11</sup> Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003).

preferred, and/or gender appropriate names, and to use pronouns appropriate to the gender asserted and/or expressed.<sup>12</sup>

New York City should follow the lead of these jurisdictions and ensure that transgender people are treated with the same respect and dignity as all other New Yorkers.

We appreciate the opportunity to testify before you about this issue. Thank you.

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<sup>12</sup> Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003).



**Written Comments of The Bronx Defenders  
New York City Council  
Committee on Public Safety  
April 30, 2009**

My name is Nicole Smith and I am a Criminal Defense Attorney at The Bronx Defenders. I submit these comments with Kate Rubin, our Policy Director, on behalf of The Bronx Defenders, and thank the Public Safety Committee and the City Council for the opportunity to testify.

The Bronx Defenders is a community-based public defender service that provides fully integrated criminal defense, family defense, civil legal services, and social services to indigent people charged with crimes in the Bronx. We serve 14,000 + Bronx residents each year all of whom are poor and all of whom are Black and Latino. The Bronx Defenders views clients not as "cases," but as whole people: caring parents, hard workers, recent immigrants, native New Yorkers, and students with hope for the future. Whether defending a client's liberty; helping a mother access drug treatment, connecting a young man to mental health services; preventing an elderly woman's eviction; working to keep a family together; or preparing a neighborhood teenager to join the next generation of leaders, The Bronx Defenders ultimately strives to improve the lives and futures of all Bronx residents.

Every single day members of the New York City Police Department unlawfully stop and search residents of the Bronx who are just going about their day-to-day activities. The simple act of going to visit a friend or running to the corner store can get a person stopped, frisked, and possibly thrown in jail. Our office is situated in the client community - across from the Andrew Jackson Houses and a block away from the Morrisania Apartments. Day in and day out, our lawyers and advocates personally witness these random searches. You would be hard pressed to find a person in the office who could not describe in great detail an occasion where the police randomly put a neighborhood resident up against the wall, did a search, found nothing, and then told the neighbor to "just move on."

As public defenders, we are charged with the duty to represent our clients and ensure that their rights are protected. We sit and listen to our clients' experiences and hear the ways that they are being unfairly targeted. We see it played out with our very own eyes. Yet sadly, there is so little that we as advocates can say or do for a client who has endured a random, intrusive, and unlawful stop and search.

We know the grim reality but we are without the words to justify it. How do you explain that to be young, to be Black or Latino, to be poor, to be dressed a certain way, and to be walking on the streets of this city automatically makes you suspicious? How do you explain that just by virtue of how you look and where you live you are unworthy of trust,

that your rights, your privacy, and your humanity mean a little bit less than everyone else's? How do you explain that there is no fast or fair recourse for this unjust treatment?

By doing nothing, we are telling our fellow New Yorkers that they deserve to be treated differently than everyone else. Unlawful stops and searches not only strip people of their dignity and create a host of long standing personal consequences, but they also undermine the very integrity of the criminal justice system. There is an ever-growing gap between the NYPD and the communities they are sworn to protect and serve. We cannot continue to stand by and allow a two-tiered system of justice to persist.

### **Illegal Stops Lead to False Arrests**

The numbers reported by the NYCLU are astonishing. In 2008, the NYPD completed stop-and-frisk forms on 531,159 individuals. Of that number, 465,413 or 88% were totally innocent – found to have engaged in no unlawful activity and not arrested. 83% of the total people stopped were Black or Hispanic.

We echo many of the groups here today in pointing out the enormous cost of these constant stops and searches to the community we serve – the Bronx in general, and the South Bronx and Hunts Point specifically. The high rate of stops that do not lead to arrest underscores how excessive this practice is.

But it is important to highlight that these stops also lead to the arrests of many innocent people – people who become our clients in Bronx Criminal Court arraignments, usually after they have already spent 36, 48, or even 72 hours in jail waiting to see a judge. We struggle to understand why these illegitimate arrests are made: is it to justify questionable stops, to garner overtime pay for police officers, to retaliate against people who attempted to exercise their rights during illegal searches, or simply because of bad policing? While stop and frisk encounters engender a culture of criminalization and disrespect, the arrests they lead to contribute to the swelling numbers of people incarcerated for petty offenses or for no offenses at all.

Two weeks ago, we met a gentleman in arraignments who was baselessly stopped and searched. On his person, the police officer found a pillbox with compartments for each day of the week, Monday through Sunday. Despite the fact that this box held our client's AIDS medication and nothing else was found, he was arrested. After a day and a half – during which time he had no access to his seized medication – he was arraigned on misdemeanor drug charges, which were dismissed that night for facial insufficiency.

Most people in similar situations are stuck with open cases for much longer. A different client, who was stopped and frisked, was also arrested for criminal possession of a controlled substance on the grounds that he was carrying methadone, despite the fact that he produced a valid identification card for his methadone program. While he was released from jail at arraignments, he now has to return to court to produce the *same* methadone program card in order to convince prosecutors to dismiss his case.

In cases too numerous to count, people are stopped, questioned, searched, and arrested for trespass (which can be a violation or a misdemeanor). They are arrested on public sidewalks near private buildings; while making legitimate visits to family or friends; and even sometimes in their very own buildings, if they are not able to produce identification. Many of our clients who are arrested for trespass offenses describe being told by police officers that they fit the profile of a drug addict; they are then searched for drugs. When officers find nothing, they resort to making an arrest for trespass.

### **If You're Innocent, Why Not Just Fight the Charges?**

Many of us who do not live this experience might find it hard to understand why our clients don't push harder to litigate these issues through probable cause hearings and trials. If you are not guilty, then why plead guilty?

Sometimes pleading not guilty and fighting the case is just not a realistic option. Our clients are people who have many personal obligations and often very few resources. It can take several months to a year before a client can get a hearing and trial on a case. They cannot frequently miss days from work or find suitable childcare in order to make the many court appearances they will have. They cannot spend months in jail waiting for a hearing and trial simply because they are unable to afford the bail. The choice is made easy—if pleading guilty to a violation or misdemeanor means being able to go home, to take a shower and brush your teeth after being held in a pen for two or three days, if it means just being able to put this whole experience behind you (at least until the next time it happens) then there really isn't much of a choice at all.

These unlawful stops and false arrests contribute to an overburdened criminal justice system. The system literally would not be able to handle all of the cases it had if everyone – or even a majority of people fought their cases. So there is every incentive to take a plea, regardless of your circumstance, guilt, or innocence. The fewer resources a person has, the harder it is to resist those incentives.

If fighting your own case is difficult, winning real accountability for an officer who has abused his power – even severely – is nearly impossible. Many of our clients fear retaliation for making a complaint with the NYPD or the Civilian Complaint Review Board. The fear is rational: several of our clients have experienced exactly this kind of retaliation in the form of false arrests, harassment, and sometimes, severe brutality. And for those who go through the CCRB process and have their claims substantiated, there is little satisfaction when the subject officers are, if anything, slapped on the wrist. In extreme cases, those with the ability to hire a private lawyer can sue the city. Even when damages are paid, they come out of the city's coffers. And again, the officer in question suffers few consequences, if any.

### **Pleas can lead to harsh and unforeseen consequences**

A plea to a violation – or at worst a misdemeanor – doesn't sound like a big deal, especially if no jail time is involved. Unfortunately for many of our clients, the consequences associated with pleas can be severe and extensive.

For one thing, a prior record is always taken into account when bail is set in criminal cases. So if there is a future questionable arrest, it is even more likely that our client will be held in jail on bail, and thus feel pressure to plead guilty, even if she is not guilty, just so she can go home. In addition, the fines associated with convictions alone create a burden: the mandatory violation surcharge alone in New York is \$120, and the surcharge for misdemeanors is \$200. These charges cannot be waived, and few of our clients can pay them. Civil judgments are entered in nearly all cases.

Non-criminal consequences can be much further reaching. For a green card holder who has lived in the United States since he was a small child, certain violations pleas can lead to deportation. A plea to a misdemeanor is enough to terminate an entire household's tenancy in public housing and render a client's family homeless. For someone applying to live in public housing or to join a family member, even a violation plea can mean two years of ineligibility.

While nearly all violation convictions are sealed for civil purposes, the majority of misdemeanors can never be sealed. A plea to a misdemeanor-level trespass, for example, will appear on a client's record for the rest of her life – every time she applies for a job or fills out an application to rent an apartment.

## **Conclusion**

People in the Bronx and all around this city want to live in safe communities, but the New York City Police Department cannot keep us safe unless we trust them to treat all New Yorkers with the same level of respect. When people don't trust the police because of these random street searches, they will be less inclined to trust the police when they witness a crime or really need help. This creates a society where everyone is less safe and it undermines the integrity of a system that's very purpose is to protect and serve its citizens. Now that attention has been drawn to this issue, our continued inaction will only serve to condone it. We strongly urge the City Council to take action in order to enhance New Yorkers' access to justice and hold police officers accountable for these random, intrusive, and unlawful stops and searches.



*National Action Network*

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Reverend Dr. W. Franklyn Richardson, Chairman*

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**Testimony of Michael A. Hardy, Esq.  
General Counsel to the National Action Network and the Rev. Al Sharpton  
April 30, 2009**

Good Morning Mr. Chairmen, members of this Council; distinguished guest and our great citizens. On behalf of the National Action Network and our president, Rev. Al Sharpton, we appreciate the opportunity to be heard with regard to the serious issues surrounding the New York City Police Department's practices with regard to Stop, Questions and Frisk Encounters. Joining me this morning is Cynthia Davis, the director of the National Action Network's Crisis Division.

As we have listened to the testimony this morning and particularly the raw numerical facts that have emerged as a result of the reviews of the NYPD's stop and frisk practices, it is evident that there are two realities that exist in this city. One if you are white or Asian; and another if you are Black or Latino. According to these results, over 80% of the police initiated stops target Blacks and Latinos; Blacks and Latinos are more likely to be frisked during a NYPD initiated stop and Blacks and Latinos are more likely to have physical force used against them during a NYPD initiated stop; The data from all sources, including the reports prepared by the RAND Corporation at the request of the New York City Police Department indicate that there is a severe racial impact from the

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policies and practices of the NYPD as it relates to their Stop and Frisk activities. This is an unacceptable reality that must be stopped. There cannot be two New York's.

I had the honor of moderating this past weekend Nicole Paultre Bell's 1st Annual Sean Bell Summit to discuss Minority men and the Police. Sean Bell is the young Black man who was killed in a hail of 50 Bullets on his wedding day in November 2006. An incident that occurred in large part as a result of the current NYPD Stop, Question and Frisk practices. One of the recurring themes from most of the young men and women who made statements is the total lack of respect that is displayed by the Police who service their communities for the residents and also what they perceive as a department policy that says if two or more Black or Latino men are together, the Police can use a pretext of potential gang activity to initiate a stop and frisk situation. This is wrong, dangerous and a reminder of the slave codes that once existed in this city.

Ms. Davis as the Crisis director for the National Action Network deals every day with the human impact that the NYPD's stop and frisk practices have on the families that become subject to these practices. In the situations where the person stopped had physical force use against them, there are occasionally deaths that occur or serious physical injury that has resulted. When this happens families are traumatized because they are dealing with the loss of love ones; the cost of medical and legal care and the anxiety that comes with the uncertainty of how the situations will end up. When persons are arrested after these encounters and put through the system, many end up losing pay from a work day that was missed or in the worst case situations lose their jobs and gain a

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criminal record. A single stop and frisk that ends in physical force use and an arrest can have a longer term destabilizing impact on the families that are affected. This is compounded when the person stopped was innocent of any wrongdoing. It also impacts the taxpayers that become responsible for footing the inevitable litigation bills. These dangers are bourn out in that portion of the Stop and Frisk data that reveal only a very small percent of the more than one million encounters over the last two and a half years yield a weapon or contraband. Whites were more likely to be in possession of weapons or contraband when stopped.

One conclusion that can be drawn from the Stop and Frisk data is that it may not be an effective crime fighting tool, but it certainly destroys the quality of life for many in the Black and Latinos communities of this city, and denies them on a routine basis the equal protection of our laws. The data helps to realize the fact that it is no secret that Black and Latino citizens are subject to a different rule of law than most others in this city and that must stop.

John Roberts, the Chief Justice of the United States Supreme Court, wrote in *Parents Involved v. Seattle School District*, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." It is a beautifully simple statement that is true in every way, but ignores the reality of the country and cities we live in and the historic addiction to racial biases. We would strongly urge this Council to inform the NYPD that the way to stop racial profiling in policing is to stop racial profiling in policing. However, we are very aware that unfortunately it is not that simple and

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therefore we urge this Council to continue to adopt policies such as the recent requirement mandating reporting of race and other key factors in police shootings and to adopt many of the recommendations that came forth today, including strengthening the New York City Civilian Complaint Review Board; establishing other independent auditors and monitors of police policy and of requiring all new recruits into the NYPD to maintain residence within the city's five boroughs during the first ten (10) years on the force.

Thank you again for the opportunity to participate and provide this testimony. We do so with the sole desire to help bring about "A Better New York" for all of its citizens.





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## **Testimony of The Legal Aid Society**

**at a public hearing  
on**

# **OVERSIGHT: ANALYSIS OF NYPD STOP-AND-FRISK ENCOUNTERS**

**Presented before:**

**The New York City Council  
Committee on  
Public Safety and Civil Rights**

**Presented by:**

**Steven Wasserman • Thomas O'Brien  
Special Litigation Unit  
Criminal Defense Practice**

**April 30, 2009**

The Legal Aid Society welcomes the opportunity to testify before the City Council's Committee on Public Safety and Civil Rights and to share the views of its experienced staff of criminal defense practitioners.

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil, and juvenile offices in all five boroughs, our staff handles more than 295,000 cases for low-income families and individuals. The legal services we provide reflect the entire gamut of the needs of our clients, from immigration representation for the newest arrivals, to health care benefits for the oldest New Yorkers.

By contract with New York City, The Legal Aid Society serves as the primary trial-level defender of persons accused of crimes and other offenses. It also serves as the largest appellate defender for persons in need of post-conviction services. This year the Society projects that it will represent clients in some 236,000 trial level, post-conviction, and parole revocation proceedings.

## **THE SCOPE OF THE PROBLEM**

The Center for Constitutional Rights (CCR) has performed valuable work in its analysis of "Stop-and-Frisk" reports prepared by the Police Department, entitled Racial Disparity in NYPD Stops-and-Frisks. We are disturbed by the continuing racial disparity in stops and frisks revealed by their 2009 study, which covers 2005

to mid-2008. Not only are Blacks and Latinos stopped much more frequently by the police than whites, they are also much more likely to be subjected to a frisk than whites who are stopped.

Our concern as a criminal defense organization is with the rampant violation of the Fourth Amendment that the unchecked stop-and-frisk policy of the Police Department inflicts on so many of those affected. The CCR study, consistent with prior studies, shows that only 4 to 6 percent of NYPD stops result in arrests. Similarly, since 2005, only 2.6 percent resulted in discovery of a weapon or contraband.

That 19 out of 20 stops, roughly speaking, result in no evidence of criminal activity on the part of the person seized by the police says a great deal about the constitutional legitimacy, or illegitimacy, of many of those intrusions on the individual's right to be free of an unreasonable search and seizure, which is the essence of the Fourth Amendment.

The Fourth Amendment is very much an individual right. A police agency that operates in fidelity to our Bill of Rights is not permitted to cast its net widely by seizing a large number of individuals in order to uncover unlawful activity by a relative few. Under the well-known rule of Terry v. Ohio, 392 U.S. 1 (1968), a police officer may lawfully detain a person only on the basis of a reasonable suspicion that the person is engaged in criminal activity. And the right to frisk that

person is not automatic. A frisk is permissible only for weapons. As Section 140.50(3) of the Criminal Procedure Law requires, the officer must "reasonably suspect []" that the person stopped is carrying a weapon before performing a frisk.

When the number of stops and frisks so greatly outnumbers the incidents in which any criminal activity is actually uncovered, it means that the limitations of constitutional and statutory law are being disregarded by the police on a massive scale. In 2007, for example, of the 472,096 stops that were made, just 27,632 arrests (6%) resulted. Plainly, the NYPD stop-and-frisk policy is not restricting its officers to stopping people only upon a reasonable suspicion of criminality.

Whatever predicate for seizing individuals NYPD officers are acting upon, it cannot be "reasonable" if it proves to be wrong 94% of the time.

## **THE LIMITATIONS OF THE CRIMINAL JUSTICE SYSTEM**

As criminal defense lawyers, we at The Legal Aid Society seek to defend the constitutional rights of those for whom we are appointed to represent. But our experience with the criminal justice system leaves us with the unfortunate knowledge that there is very little meaningful opportunity for legal redress in our current system for the vast majority of those subjected to unlawful searches and seizures by the NYPD's stop-and-frisk policy.

The first reason is inherent in the nature of an intrusive practice that does not end in arrest for some 19 out of 20 people. Where there is no arrest, there is no

criminal case, no appointment of counsel, and no judicial forum in which to challenge the legitimacy of the police conduct. Nevertheless, "No Harm, No Foul" would be a very mistaken view of what has happened to those thousands of individuals who were stopped and often frisked, but not arrested. The physical violation and humiliation that such an encounter may inflict on an innocent person is not made tolerable simply because the further ordeal of the criminal process is not also inflicted. Yet the fact remains that there is no appointment of counsel to aid a person to redress such a grievance in the absence of a criminal prosecution.

Our experience at Legal Aid with the NYPD policy is drawn from the approximately 5-6% of the stop-and-frisk population who are arrested and subjected to criminal prosecution. As noted, it is very likely that the stop and frisk that led to the arrest of the individual and the seizure of evidence was not legal: if so few are arrested, then many stops in the stop-and-frisk program cannot be based on the required reasonable suspicion that the person stopped has committed a crime. The criminal process that follows that arrest, however, will likely not provide a meaningful chance for redress or vindication.

The suppression hearing -- the legal forum in which to adjudicate the legality of a search or seizure -- is an increasingly infrequent event, especially in Criminal Court, where most "quality of life" arrests end up. One reason is that the hearing is not for the asking, but may be granted or denied, depending upon a

motion to suppress that must satisfy technical pleading requirements and may require factual admissions that put an accused person in a difficult position. Consequently, the request for a hearing is often denied. Judicial review of the stop and frisk then does not take place.

As one authority has commented: "One would think that the publicized recognition about the disproportionate impact of present policing policies on people of color, and the increasing acknowledgement that many are wrongly convicted, would compel the courts to examine the basis for search and seizure in every case. Yet, in actuality, the trend seems to be toward narrow and overly strict interpretations of case law as a means to deny defendants suppression hearings." Steven Zeidman, "Policing the Police: The Role of the Courts and the Prosecution," 32 Fordham Urb. L.J. 315, 333 (2005).

The greatest barrier to redress is the onerous nature of the criminal process itself. However improper and unfair the police conduct that put the person into that system, the overwhelming desire of persons caught up inside it is to find a way out of it. Judicial review of police behavior comes at a high price, one that few persons facing a criminal sanction are in a position to pay.

In the Criminal Court, for example, some 358,000 cases were initiated by an arraignment in 2007. Out of that enormous number, approximately 400 cases (excluding the Bronx) went to a trial, a small fraction of one percent. In

misdemeanor cases, any suppression hearing is generally held in conjunction with the trial. So only in a minuscule number of cases is the legitimacy of the stop and frisk ever evaluated by a judge, and the guilt or innocence of the accused determined by a jury.

One reason for the absence of trials is the obstacle course the system places in the way of a proceeding on the merits. An accused who wants his or her "day in court" must endure repeated court appearances, a process often prolonged over a year by delays and postponements, very often caused by a prosecutor declaring "Not Ready" on the date set for trial.

Even when a case is ultimately terminated on so-called "speedy-trial" grounds, the result must be seen as a Pyrrhic victory for someone who had been unlawfully stopped, searched, arrested, forced to show up for numerous court appearances at which nothing happened, and then denied an opportunity to have a judge or jury pass on the legitimacy of the police conduct that set the process in motion.

In addition to dismissals, cases often end in guilty pleas. But rather than acknowledging the lawfulness of the police conduct, the guilty plea usually represents the most rational choice for an accused who has been put in the position of having to decide between a number of bad options. For some who are confined in jail during a pre-trial period that may cover several months, a guilty plea with a

"time served" sentence is often an offer that can't be refused. No matter how unwarranted the stop and frisk that started the case, it takes an exceptionally determined and fearless individual to weather further imprisonment in order to receive the due process of law guaranteed by the Constitution.

Those released during the criminal case are in a similar, though less stark, predicament when faced with the opportunity to terminate the case by a guilty plea. A plea to a violation, instead of a misdemeanor, for example, might avert some of the serious collateral consequences that follow a conviction, such as deportation, eviction from public housing, license suspension, and ineligibility for student loans. Again, it is often too much to expect a person, however victimized by improper police conduct, to continue the Criminal Court ordeal and risk its many sanctions, in order to vindicate the rights guaranteed by the Constitution's Fourth Amendment.

The result of all these difficult choices, unfortunately, is that the widespread police activity in unlawfully stopping and searching hundreds of thousands of individuals every year is unchecked and unmonitored by the criminal justice process.

## **THE NEED FOR CONTINUAL MONITORING**

This reality underscores the indispensability of the Committee's oversight process. Our Court of Appeals has emphatically stated that "[t]he privacy interest



of our citizens is far too cherished a right to be entrusted to the discretion of the officer in the field." People v. Howard, 50 NY2d 583, 588 (1980). Nevertheless, for the reasons outlined above, the court system is limited in its ability to protect the constitutional rights of those unfairly targeted for intrusive stops and frisks.

Because of this practical limitation, the responsibility to closely monitor the NYPD's stop-and-frisk program falls upon this body. We urge the Council to insist on full transparency in the effectuation of that policy. Moreover, the Department must promulgate and enforce specific guidelines to ensure that its officers undertake a stop and frisk only in the presence of facts that would support a reasonable suspicion that the person subjected to that personal invasion is connected to criminal behavior.

Thank you again for this opportunity to testify. We welcome any questions that you may have.

STATEMENT OF THE NEW YORK CITY BAR  
ASSOCIATION CONCERNING THE  
NYPD'S STOP-AND-FRISK PRACTICES

April 30, 2009

Founded in 1870, the New York City Bar Association is a professional organization of more than 22,000 attorneys. Through its many standing committees, such as its Civil Rights Committee, the Association educates the Bar and the public about legal issues relating to civil rights, including the right to equal protection under the law and the right to remain free from unreasonable searches and seizures. The Association also seeks to promote transparency and accountability in New York City government, and is especially concerned with the public's right to access governmental information affecting civil liberties. The Association has been active in the debate over the policies and practices of the New York City Police Department ("NYPD"), and in particular the NYPD's stop-and-frisk practices.

For instance, in December 2007, the Association sent a letter to NYPD Commissioner Raymond Kelly expressing serious concerns over a recently-issued report by the RAND Corporation entitled "Analysis of Racial Disparities in the NYPD's Stop, Question, and Frisk Practices". Among other things, the Association's letter called for the public release of data that the NYPD provided to RAND but refused to release publicly. As the letter described, the RAND report raised more questions than it answered, and public disclosure of the data was necessary to test some of the Report's key findings and address public concerns about possible racial bias in police practices.

Later that same month, the Association supported the New York Civil Liberties Union in a lawsuit to compel the NYPD to release the RAND data in response to a FOIL request. The Association's amicus brief highlighted a number of the facial problems with the RAND Report and reiterated the need for public access to the data.

The Association submits this statement to express its view that, because the NYPD's stop-and-frisk practices directly impact the civil rights of New York City residents, complete transparency with respect to those practices is vital to uphold the trust and cooperation of the communities served by the Department.

### The RAND Report

It is important first to address the report issued by the RAND Corporation. In 2007, under a confidentiality agreement, the NYPD provided RAND with a database containing information documenting the more 500,000 street encounters recorded by the NYPD in 2006. As disclosed in the Report ultimately issued by RAND, the data contained a number of troubling statistics. For instance:

- The number of recorded stops jumped from 97,296 in 2002 to a staggering 508,540 in 2006, even though the crime rate fell consistently over that period.
- Only approximately 10% of these stops led to an actual arrest or summons.
- As stated in the Report, African-Americans were stopped in 53% of the incidents; Hispanics in 29% and whites in only 11%.
- Nonwhites generally experienced more intrusive stops, in terms of having more frequent frisks and searches, and police were more likely to use force during these encounters.
- In stop-and-frisk encounters, white suspects were more likely to be issued a summons, rather than being arrested, in comparison to nonwhite suspects.

Especially in light of these disturbing trends, the RAND Report's analysis was entirely unconvincing and unsatisfying.

*First*, the RAND Corporation solicited virtually no public input in conducting its study. If the Report was meant to serve as the final word on the NYPD's stop-and-frisk practices, RAND at least should have solicited input from the community

in structuring and conducting its analyses. Broader ex ante public participation would have been the only way for the report to have real legitimacy.

*Second*, the RAND Report did not attempt to answer—or even address—significant questions that were raised by the data. Perhaps as a result of limited public participation, the RAND Report noted but failed to confront several large issues that plainly must be addressed as part of any effective dialogue about the NYPD’s stop-and-frisk practices. For example, as noted above, the data revealed a dramatic overall increase in the number of police stops during a period in which the crime rate had fallen consistently. Attempting to explain this paradox, the Report simply speculated that there had been a larger police presence during this period. In addition, the Report failed to explain why, as indicated by the data, only one stop out of every ten resulted in an arrest or summons—a ratio that on its face raises doubts about whether the Fourth Amendment’s protections against unreasonable searches and seizures are being consistently complied with.

*Third*, the Report seemed to go to great lengths to offer innocent explanations for the racial disparities that emerged from the data. In attempting to explain racial disparities in the use of force during stops, the Report posited, without support, that African-Americans may be likelier to flee or resist arrest. On the other hand, the Report discounted the possibility that racial bias could explain the fact that stopped whites were more likely than nonwhites to receive a summons instead of being arrested.

*Fourth*, the RAND Report failed to include several key data points in its analysis. For instance, the review excluded a group of 15,855 officers who were

responsible for 46 percent of all stops in 2006. To be sure, the fact that the remaining 54 percent of all stops were performed by only 2,756 officers is significant on its own. However, it is troubling that the Report excluded almost half of all the stops for which data was collected. Also, RAND's analysis of post-stop outcomes excluded or discounted thousands of stops of nonwhites because, in the researchers' judgment, they were not sufficiently similar to stops of whites.

*Fifth*, the Report failed to acknowledge in any meaningful way the differences that emerged in the treatment of whites versus minorities by the NYPD. Even where the authors of the Report found disparities, they minimized the significance of their findings and made tepid recommendations to address them. For example, even after controlling for numerous factors related to the time, place and manner of stops, the Report still found statistically significant racial differences in post-stop outcomes, including frisks, use of force, and issuance of a summons. But this conclusion was undercut by exculpatory conjecture—such as the suggestion, noted above, that African-Americans might be more likely to flee or resist arrest. Moreover, as a remedy, the Report suggested merely a “closer review” of certain outcomes in certain boroughs, rather than a more systematic, City-wide approach.

#### The Importance of Transparency and Public Access to Stop-and-Frisk Data

The deficiencies in the RAND Report are especially troubling in light of the important constitutional rights at stake. Under the United States and New York Constitutions, police may not distinguish on the basis of race or ethnicity in deciding

whether to stop, frisk or ultimately arrest a criminal suspect.<sup>1</sup> Further, the Equal Protection Clauses of both Constitutions prohibit any police practice from being applied in a way that results in disparities on the basis of race.<sup>2</sup> Courts often emphasize the indispensable role that statistical evidence plays in examining claims of racial bias in law enforcement.<sup>3</sup> Indeed, without statistical evidence, it is often impossible to make any meaningful determination about whether law enforcement is in fact discriminating among suspects on the basis of race.<sup>4</sup>

In light of the core constitutional protections at stake and the recognized importance of statistical review, transparency when it comes to stop-and-frisk practices is imperative. Private studies like the one undertaken by RAND cannot be considered the definitive explanation of the racial disparities in the proportions of New Yorkers stopped by the NYPD. Rather, this issue can only be resolved by subjecting the NYPD's

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<sup>1</sup> See U.S. Const. amend. IV; *Ramirez v. Webb*, 599 F. Supp. 1278, 1284 (W.D. Mich. 1984) (“[H]ispanic appearance . . . is not a valid reason to stop anyone.”); see also N.Y. Const., art. I, § 12; *Brown v. State*, 89 N.Y. 2d 172, 188-92 (1996) (holding that nonwhites who were stopped and examined by state police had cause of action against state for alleged violations of equal protection and search and seizure clauses of N.Y. Constitution).

<sup>2</sup> See U.S. Const. amend. XIV; *United States v. Armstrong*, 517 U.S. 456, 464-65 (1996) (“A defendant may demonstrate that the administration of a law is directed so exclusively against a particular class of persons with a mind so unequal and oppressive that the system of prosecution amounts to a practical denial of equal protection of the law.” (alterations and internal quotation marks omitted); see also N.Y. Const. art. I, § 11; *Brown*, 89 N.Y. 2d at 188-92.

<sup>3</sup> *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20 (1977) (“Statistics showing racial or ethnic imbalance are probative . . . because such imbalance is often a telltale sign of purposeful discrimination.” (citations omitted)).

<sup>4</sup> *Nat’l Congress for Puerto Rican Rights v. City of New York*, 75 F. Supp. 2d 154, 167-68 (S.D.N.Y. 1999) (requiring plaintiffs challenging constitutionality of stops and frisks conducted by NYPD to offer statistical evidence showing differential treatment of similarly-situated persons).

electronic data to a broad, rigorous review by a wide variety of parties interested in doing so.

More recently, as a result of successful recourse to the courts—including the NYCLU’s lawsuit in which the Association participated as amicus—much of the data studied by RAND now has finally been released to the public. Even a preliminary review of the data reveals several disturbing trends in police practices that were downplayed in the RAND Report. For instance, as the Center for Constitutional Rights detailed in a recent report, the NYPD’s use of stop-and-frisk is on the rise, the NYPD continues to disproportionately stop and frisk Black and Latino individuals, Blacks and Latinos are more likely to be frisked after a NYPD-initiated stop than Whites and the proportion of stops-and-frisks by race does not correspond with rates of arrest or summons.<sup>5</sup>

Ongoing, public release of electronic data relating to stop-and-frisk practices is essential not only to address key constitutional concerns, but also to safeguard the relationship between the NYPD and the communities it is asked to serve and protect. Of course, in New York City, the issue of racially-motivated police stops became a flashpoint of controversy after the 1999 fatal shooting of Amadou Diallo, an unarmed black man. The issue again came to the fore after the fatal shooting in November 2006 of Sean Bell. And, controversy continues over the possible racial motivations of certain police tactics. Releasing the stop-and-frisk data would do much to dispel the distrust and suspicion that cloud the current debate.

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<sup>5</sup> See Center for Constitutional Rights, *Racial Disparity in NYPD Stops-and-Frisks: Preliminary Report on UF-250 Data From 2005 Through June 2008*, at 4-5, available at [http://ccrjustice.org/files/Report\\_CCR\\_NYPD\\_Stop\\_and\\_Frisk\\_1.pdf?phpMyAdmin=563c49a5adf3t4ddbfb89b](http://ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_1.pdf?phpMyAdmin=563c49a5adf3t4ddbfb89b).



Although the NYPD has said publicly that it is committed to addressing concerns about possible racial bias in police practices, its record on public access to the relevant data has been unsatisfactory. As noted above, RAND was provided the electronic stop-and-frisk data for 2006 under a confidentiality order, and the NYPD refused to release the data publicly. It was only after a court ordered it to do so that the NYPD finally began to release relevant and complete data sets to the public.

It is time now for the Department to make good on its commitment to address racial bias in stop-and-frisk practices and, as a necessary first step in that process, to allow broad public access to any and all relevant electronic data. Publicly available information should include not only data concerning individual stop-and-frisks but NYPD activities but also policies, strategies and materials used in training officers concerning stop-and-frisk methods, including any auditing or quality control policies.

### Conclusion

The Association believes that the City Council is uniquely situated to remedy the foregoing concerns. After all, it was the City Council that, in the wake of public outcry over the Diallo shooting, required the NYPD to provide quarterly reports detailing the racial breakdown of stop-and-frisk reports. We encourage the City Council to place increased and continued pressure on the NYPD to provide access to *all* relevant information concerning its stop-and-frisk practices, so that grave constitutional concerns can be addressed and public trust can be restored.

**THE COUNCIL  
THE CITY OF NEW YORK**

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