

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.¹ 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.² Courts often emphasize the indispensable role that statistical evidence plays in examining claims of racial bias in law enforcement.³ 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.⁴

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

¹ 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).

² 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.

³ *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)).

⁴ *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.⁵

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.

⁵ 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=563c49a5adf3t4ddb89b.

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.