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Raymond W. Kelly, Commissioner  
New York City Police Department  
One Police Plaza  
New York, New York 10038

Re: Rand Report Concerning Stop-and-Frisk

Dear Commissioner Kelly:

I am writing to express the serious concerns of the New York City Bar Association concerning the recently-released Rand Corporation report entitled "Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices" (the "Report"). We certainly appreciate the NYPD's willingness to secure an external review of its policing practices. However, the Rand Report raises more issues than it resolves and should serve as the beginning, not the end, of the process of reviewing the NYPD's practices relating to stop-and-frisk

*Most importantly, the data accumulated by the NYPD should be made publicly available.* The NYPD is to be commended for seeking to illuminate the trends that underlie its stop-and-frisk practices. However, the data analyzed in the Report belong in the public sphere. The communities policed by the NYPD are deeply affected by police practices, and information about those practices should be accessible to the public. This would also have the added benefit of allowing multiple parties to review and analyze the data and, in turn, generate more comprehensive analyses of that data. Finally, public access to the data would lend legitimacy to the NYPD's stated intention of addressing concerns about possible racial bias in police practices.

In addition to our firm belief in the need for broader access to the data analyzed by Rand, we have a number of concerns about the Report itself:

- **Limited public participation.** Rand should have solicited a number of community perspectives in structuring and conducting this critical research project. Broader participation would have been helpful in building greater consensus around what questions should be asked and what methods should be used. The lack of public participation is particularly unfortunate given that the NYPD has refused to provide the stop-and-frisk database to anyone other than Rand.

- ***Failure to address key issues.*** Perhaps as a result of this limited public participation, the Report notes but fails 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, why is the number of stops so high, and why has it increased so substantially without an appreciable change in crime rates? Why does only one stop out of every ten result in an arrest or summons, a ratio that on its face raises doubts about whether the Fourth Amendment's requirements are being consistently followed? Rand asks these questions, but merely speculates on potential answers.
- ***Lack of transparency on methodology.*** By omitting key information about the details of its analysis, the Report's authors made it difficult to understand how they reached their conclusions. Without this critical substantiating information, outside experts cannot evaluate the quality of Rand's analysis and thus the reliability of its results. Again, this lack of transparency is particularly troubling given the NYPD's refusal to provide the relevant data to anyone other than Rand.
- ***Focus on potentially innocent explanations rather than fair exploration of a panoply of explanations, including ones that may be troubling or problematic.*** In speculating about reasons for the unexpectedly large number of stops, the Report suggests that this may simply reflect relatively greater exposure of New Yorkers to the police (page 9). Later, in attempting to explain racial disparities in weapons-related stops and in the use of force during stops, the Report posits, without support, that African-Americans may be likelier both to have additional criminal involvement beyond possession of an illegal firearm (page 18) and to flee or resist arrest (page 40). On the other hand, the Report discounts the possibility that bias could explain the fact that stopped whites were likelier to receive a summons than nonwhites (page 35).
- ***Concerns about the completeness of the data reviewed.*** The authors of the Report acknowledge that "there is no auditing process to ensure that officers complete a UF250 for every police-initiated contact" (page 4). As such, there is the distinct possibility that reportable stops occur more often than is reflected by completed UF250 forms and that, in turn, the data upon which Rand based its findings are incomplete.
- ***Large numbers of officers and/or stops were excluded from several key parts of the analysis.*** Even if Rand had a complete dataset at its disposal, it failed to include many of these data points in its analysis. The internal-benchmark portion of the study excluded 15,855 officers who were responsible for 46 percent of all stops in 2006. While the 2,756 officers who made 54 percent of the stops are worthy of particular focus, the exclusion of the vast majority of officers and close to half the stops from this part of the analysis is

troubling. Similarly, Rand's analysis of post-stop outcomes excluded or discounted thousands of stops of nonwhites because they were not considered sufficiently similar to stops of whites.

- ***Failure to separately consider stops of non-English-speaking pedestrians.*** While the Report rightly recommends better communication between officers and pedestrians, it fails to analyze stops of pedestrians whose primary language is not English. This is particularly troubling in light of some of the disparities observed in the data – for example, the fact that 45 percent of the Latinos who were stopped were frisked, compared to only 29 percent of the whites who were stopped. The NYPD should specifically address and publicize how officers conducting stops and frisks must treat non-English-speaking pedestrians.
- ***Failure to effectively address disparities.*** Even where the authors of the Report find disparities, they minimize their findings and make tepid recommendations to address them. For example, after controlling for numerous factors related to the time, place, and manner of stops, the Report still finds statistically significant racial differences in post-stop outcomes, including frisks, use of force, and issuance of a summons. But this conclusion is both understated and undermined by unsupported conjecture – such as the suggestion, noted above, that African-Americans might be more likely to flee or resist arrest. And as a remedy the Report suggests merely a “closer review” of certain outcomes in certain boroughs (page 45), rather than a more systematic approach.

You no doubt have heard, and will continue to hear, independently from many stakeholders about their concerns with the Report. On behalf of the New York City Bar Association, I wish to emphasize that the NYPD now has a great opportunity to foster a new and fruitful public dialogue on stop-and-frisk practices. The crucial first step in that process should be releasing the data that various stakeholders are rightfully attempting to access. Releasing those data would do much to dispel the distrust and suspicion that cloud the current debate, and would enable additional analyses that could shed further light on, and contribute to improvements in, the relationship between the NYPD and the communities it serves.

Sincerely,



Barry Kamins