

THE TARGET OF NEW YORK CITY POLICE DEPARTMENT’S STOP AND FRISK PROGRAM: CRIME OR RACE?
By Raj Lapsiwala, NYLS 2011

The New York City Police Department (NYPD) engages in a tactic known as Stop, Question, and Frisk. The NYPD uses this tactic allowing a police officer to stop an individual based on “reasonable suspicion” of criminal activity. The NYPD uses the tactic throughout the city alleging that it helps prevent crimes, make arrests, and solve future crimes. The NYPD has dramatically increased enforcement of the program in recent years. The number of stop and frisks grew from 97,000 in 2002 to 601,055 in 2010. While enforcement of the tactic has dramatically increased, the percentage of an arrest or summons resulting from a stop has consistently hovered around ten percent.

A new study found that the stop and risk tactic unfairly targets minorities, specifically Blacks and Latinos. From 2004 through 2010, about 3.4 million New Yorkers were stopped. Almost three million of those stopped were innocent, the majority of which are Black or Latino.¹ An analysis by the New York Civil Liberties Union (NYCLU) of the NYPD’s data reveals that Blacks and Latinos are consistently stopped more than any other race. NYCLU has analyzed the data of innocent citizens subjected to a police stop which is summarized below.²

In 2004, 315, 483 New Yorkers were stopped by the NYPD. Almost 90 percent were innocent, 50 percent of which were Black, 29 percent of which were Latino, and nine percent of which were White. In 2005, 399,043 New Yorkers were stopped by the NYPD. 88 percent were innocent, 49 percent of which were Black, 29 percent of which were Latino, and ten percent of which were White. In 2006, 508,540 New Yorkers were stopped by the NYPD. 90 percent were innocent, 53 percent of which were Black, 29 percent of which were Latino, and 11 percent of

¹ Stop and Frisk Practices, <http://www.nyclu.org/issues/racial-justice/stop-and-frisk-practices> (last visited March 24, 2011).

² *Id.*

which were White. The percentage of innocent Blacks, Latinos, and Whites were similar for years 2007 through 2009. In 2010, 601,055 New Yorkers were stopped by the NYPD. Eighty-six percent were innocent, 53 percent of which were Black, 32 percent of which were Latino, and nine percent of which were White. Thus, even though the NYPD increasingly relies on the stop and frisk tactic, the data consistently shows that only ten percent of these stops have led to an arrest or summons. The underlying question is whether the aforementioned goals or racial profiling is the true motive for the using stop and frisk tactic in the criminal justice system.

Without a legal justification for a stop and frisk, the NYPD is engaging in a practice that impedes the country's fight against racism. Concentrating the stop and frisk efforts on racial profiling impedes efforts to cure racism and bigotry. Curing racism and bigotry is a hard task, one that is an uphill battle. Programs like stop and frisk which mask racial profiling not only impede the effort to end racial discrimination but also work to promote racism and bigotry, something that should not be tolerated.

The Center for Constitutional Rights alleges that the NYPD stops and frisks individuals based on race – that the NYPD engages in racial profiling.³ A study conducted by Professor Jeffrey Fagan of Columbia Law School on behalf of the Center for Constitutional Rights has found that NYPD officers, under the guise of the stop and frisk program, engage in a pattern of unconstitutional stops that disproportionately affects Black and Latinos. An unjustified frisk is in violation of the Fourth Amendment that guards against unreasonable searches and seizures. The Fourth Amendment provides that it is “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and

³ Racial Disparity in NYPD Stops-and-Frisk, http://www.ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_1.pdf (last visited April 21, 2011).

particularly describing the place to be searched, and the persons or things to be seized”.⁴

Professor Fagan’s study was produced as an expert report for *Floyd, et al. v. City of New York, et al.*, a federal lawsuit filed against the NYPD and the City of New York alleging that the NYPD practices racial profiling and unconstitutional stop and frisks. Specifically, the complaint alleges that the NYPD and the City of New York violated (1) 42 U.S.C. § 1983 of the Civil Rights Act of 1873; (2) the Fourth and Fourteenth Amendments to the United States Constitution; and (3) 42 U.S.C. § 2000 of the Civil Rights Act of 1964. Professor Fagan’s study analyzes the NYPD’s own data, reaching the conclusion that the stop and frisk program focuses on racial profiling rather than lowering crime statistics.

Police officers cannot stop citizens at random. In *Terry v. Ohio*⁵, the United States Supreme Court held that in order for police officers to stop someone, they must be able to articulate a *reasonable suspicion* of a crime. To frisk them, they must have a *reasonable belief* that the person is armed and dangerous.⁶ Professor Fagan’s study found, however, that many NYPD stops, as many as 30 percent, lack the suspicion necessary to make a stop constitutional, or did not include enough detail on police forms to determine whether the stops were justified. Additionally, in more than half of all stops, officers cite “high-crime area” as an “additional circumstance”, even in precincts with lower than average crime rates.⁷ In contrast to this justification, the Supreme Court found in *Terry v. Ohio* that it is unconstitutional to stop and frisk a person simply because they are in a so-called “high-crime” area.⁸

The NYPD’s own statistics show that officers stop and frisk Black and Latinos disproportionately. Since 2002, Blacks and Latinos are consistently stopped at a much higher

⁴ *Amendment IV. Search and Seizure*, U.S.C.A. Const. amend. IV.

⁵ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁶ *Id.*

⁷ Expert report of Jeffrey Fagan, http://ccrjustice.org/files/Expert_Report_JeffreyFagan.pdf (last visited March 23, 2011).

⁸ *Terry v. Ohio*, 392 U.S. 1 (1968).

rate than Whites. Blacks and Latinos make up about 53 percent of New York City's population. "Stops of Whites, who number about 3.6 million according to recent census estimates⁹, amounted to only 2.6 percent of the White population. By contrast, stops of Blacks, who number about 2.2 million people, represented 21.1 percent of the entire Black population."¹⁰ In addition, Blacks and Latinos account for 84 percent of those stopped and frisked.¹¹ This suggests a pattern of unnecessary stopping based on racial profiling that targets Blacks and Latinos merely because of their particular race.

It is not surprising that the highest concentration of stop and frisks occur in areas predominately populated by Blacks. One example is Brownsville, Brooklyn; in 2008, the population of Brownsville was about 116,000. 77 percent were Black, 19 percent were Hispanic or Latino, five percent were Whites, and the remaining ten percent of the population were Asian and other.¹² In Brownsville, residents were stopped almost 13 times more than the City average. According to a New York Times article, police officers made almost 52,000 stops in an eight block area of Brownsville over a four year period.¹³ This statistic is the highest in New York City.

The issue is not only the number of stops of these residents but also the reasons for the stops. Many stops were to enforce minor violations such as spitting on a sidewalk or because the individual "fit the description of a suspect." One has to wonder whether these reasons would lead

⁹ Total Population by Mutually Exclusive Race and Hispanic Origin
New York City and Boroughs, 1990 to 2010,

http://www.nyc.gov/html/dcp/pdf/census/census2010/t_pl_p2a_nyc.pdf (last visited April 21, 2011).

¹⁰ Stop-and-Frisk Campaign: Stop And Frisk Fact Sheet, <http://www.nyclu.org/node/1598> (last visited April 11, 2011).

¹¹ NYPD Stop-and-Frisk Statistics 2009 and 2010, http://ccrjustice.org/files/CCR_Stop_and_Frisk_Fact_Sheet.pdf (last visited March 21, 2011).

¹² Brooklyn Community District 16, http://www.nyc.gov/html/dcp/pdf/census/puma_demo_06to08_acs.pdf#bk16 (last visited March 17, 2011).

¹³ Ray Rivera, Al Baker, and Janet Roberts, A Few Blocks, 4 Years, 52,000 Police Stops, July 11, 2010, http://www.nytimes.com/2010/07/12/nyregion/12frisk.html?_r=2&ref=nyregion (last visited March 22, 2011).

to a stop and frisk of a White individual or of an individual in a different part of the City. Surely, Blacks and Latinos are not the only races to commit minor violations, however they are repeatedly singled out by the NYPD as part of the stop and frisk tactic.

In addition to stopping Blacks and Latinos at alarming rates, the NYPD is more likely to use force on Blacks and Latinos than on Whites. When comparing an arrest of a Black individual to a White individual, Professor Fagan's study found that Blacks are more often subject to force. Thus, even if a crime has occurred and a stop and frisk is warranted, Black suspects are treated harsher than their White counterparts. Force is used 14 percent more with Blacks and nine percent more with Latinos than with White suspects. The study makes the NYPD's stated goal of the stop and frisk program – to help lower and prevent crime – questionable. One thing is, however, clear: the stop and frisk program unfairly targets Blacks and Latinos.