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Executive Summary

Over the past fifty years, the struggle for racial justice -- a struggle that, at times, has defined our Nation's character -- has changed. Through the 1950's and 1960's, a color line was embedded in law itself, corrupting the statute books and denying the vitality of fundamental ideals of equality and fairness. Today, the line is of a different sort, one of perception and approach, attitudes and experience.

At the intersection of policing and race, the line is drawn most starkly. On one side are the many Americans who view the passing decade in policing as a series of unalloyed triumphs and who celebrate the steep decline in crime as a marvel of modern police practice. On the other are those who believe our safety has been purchased with tactics that are tainted by bias.

This Report strives to move the issue of police-community relations to a place where reality drives perceptions rather than the reverse. The process begins with a rigorous analysis of the facts. If there is one fixed precept that defines this work, it is that effective policing and respect for individual rights are complementary. Civil Rights without personal safety is a mirage; policing without respect for the rule of law is not policing at all.

* * *

On March 18, 1999, the Office of the Attorney General ("OAG") commenced an investigation into the New York City Police Department's use of the investigative technique commonly known as "stop & frisk" -- that is, the lawful practice of temporarily detaining, questioning, and, at times, searching civilians on the street.

The OAG undertook this investigation in response to deep public concerns about the impact of "stop & frisk" tactics upon minority communities and individuals in New York City.

The first phase of the OAG's investigation sought to document and describe, both quantitatively and qualitatively, "stop & frisk" practices citywide. That phase is now complete, and this Report documents the OAG's findings.[1]

The cornerstone of the OAG's work is a quantitative analysis of approximately 175,000 "UF-250" forms -- forms that police officers are required to complete after a wide variety of "stop" encounters. The forms cover stops that occurred in 1998 and the first three months of 1999. The OAG's analysis -- believed to be the first of its kind -- sets forth the frequency of "stops" in various police precincts and compares the rates at which members of different racial groups were "stopped" during the covered period. It also assesses the sufficiency of efforts by police officers to document their reasons for "stopping" civilians.

Background -- Perspectives on "Stop & Frisk"

The Report canvasses three different "perspectives" on "stop & frisk" activity in New York City. At the outset, the Report sets forth the legal definition of, and constitutional parameters for, "stop & frisk" encounters. Federal and state case law define what constitutes a "stop" -- as opposed to the range of more common and less intrusive police-civilian encounters -- and establish various bright-line rules under

[1] A detailed discussion of the origins of this inquiry's goals and parameters is contained in Chapter One of this Report.

which an officer may "stop" and/or frisk a civilian. (See Chapter Two).

The Report next considers "stop & frisk" from the perspective of both the New York City Police Department ("NYPD") and minority communities that believe they have been most affected by the use of the technique. From the NYPD's point of view, "stop & frisk" serves as an important tool for furthering NYPD crime-fighting strategies -- strategies that many believe have led to a significant reduction in crime over the past decade. (See Chapter Three, Part I). "Stop & frisk" is also examined as part of the NYPD's training regimen and from the point of view of some officers who have used the technique as part of their everyday work. (See Chapter Three, Parts II-III).

The Report also seeks to provide an assessment of the "stop & frisk" tactic from the perspective of persons who have been "stopped," and commentary from persons who have observed the tactic's secondary effects. (See Chapter Four). What emerges is a view of "stop & frisk" that demonstrates the consequences of "stop & frisk" for the people and communities most directly affected, yet acknowledges its value in the fight against crime.

Statistical Analysis of "Stop & Frisk" UF-250 Forms

The Report sets forth the OAG's analysis of the data derived from approximately 175,000 "stop & frisk" UF-250 forms. (See Chapter Five). The analysis has two parts. First, the data was reviewed to determine and compare the extent to which minorities and whites[2] were the subject of "stop & frisk" activity during the

[2] In Chapter Five of the Report, and in this Executive Summary, the terms "blacks" "Hispanics" and "whites" are used because these are the terms used in the relevant census data. In addition, when used herein, the term "minorities" refers to

covered period of January 1, 1998 through March 31, 1999. (See Chapter Five, Part I). Second, the data was analyzed to determine the extent to which officers, in listing the facts that caused them to effect the "stop" in question, described a legally sufficient basis for effecting the "stop" under governing case law. (See Chapter Five, Part II). The results of these inquiries are described in detail in the Report and are briefly summarized below.

A. Comparison of "Stop" Rates For Minorities and Whites.

During the covered period, minorities -- and blacks in particular -- were "stopped" at a higher rate than whites, relative to their respective percentages within the population of New York City. Specifically:

- Blacks comprise 25.6% of the City's population, yet 50.6% of all persons "stopped" during the period were black. Hispanics comprise 23.7% of the City's population yet, 33.0% of all "stops" were of Hispanics. By contrast, whites are 43.4% of the City's population, but accounted for only 12.9% of all "stops." (See p. 94-95 and Table I.A.1.).

- Blacks comprise 62.7% of all persons "stopped" by the NYPD's Street Crime Unit ("SCU").[3] (See p. 109 and Table I.A.4.).

This disparity in "stop" rates is particularly pronounced in precincts where the majority

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blacks and Hispanics, because these are two racially identified groups about whom data was available. There is no intent to suggest that these two groups comprise all minorities within New York City.

[3] As the Street Crime Unit accounts for over 10% of all "stops" analyzed in this Report -- more than any other single, non-precinct-based command -- particular focus on that unit was warranted.

of the population is white:

- In precincts in which blacks and Hispanics each represent less than 10% of the total population, individuals identified as belonging to these racial groups nevertheless accounted for more than half of the total "stops" during the covered period. Blacks accounted for 30% of all persons "stopped" in these precincts; Hispanics accounted for 23.4% of all persons "stopped." (See p. 106 and Table I.A.2.).

Finally, precincts where minorities constitute the majority of the overall population tended to see more "stop & frisk" activity than precincts where whites constitute a majority of the population:

- Of the ten precincts showing the highest rate of "stop & frisk" activity (measured by "stops" per 1,000 residents), in only one (the 10th Precinct) was the majority of the population white. In seven other precincts, blacks and Hispanics constituted the majority of the population. The remaining two precincts were business districts in Manhattan and Brooklyn in which the daytime racial breakdown of persons within the precinct is unknown. (See p. 100-101 and Table I.A.1.).

- In roughly half of the police precincts in New York City, the majority of the population living in the precinct is white. However, of these 36 majority-white precincts, only 13 were in the top half of precincts showing the most "stops" during the period. (See p. 101 and Table I.A.1.).

The rate at which "stops" led to arrests during the covered period also differed by race. Overall, only one out of nine "stops" resulted in an arrest -- an

unsurprising outcome, given the purpose of a "stop" and the lower level of suspicion required to justify a "stop" as opposed to an arrest. This "stop/arrest rate" differed, however, based on the race of the person "stopped." During the covered period:

- The NYPD "stopped" 9.5 blacks for every one "stop" which resulted in the arrest of a black, 8.8 Hispanics for every one "stop" that resulted in the arrest of an Hispanic, and 7.9 whites for every one "stop" that resulted in the arrest of one white. (See p. 111 and Table I.B.1.).

- The SCU "stopped" 16.3 blacks, 14.5 Hispanics and 9.6 whites for every one "stop" that resulted in a corresponding arrest. (See p. 117 and Table I.B.1).

Given that precincts with elevated crime rates have predominately minority populations, some disparity is to be expected. Indeed, it has been hypothesized that higher crime rates in minority communities fully explain the higher rate at which minorities are "stopped" in New York City. To test this hypothesis, the OAG sought to determine the extent to which differences in crime rates -- as computed by applying race-specific population counts by precinct to race-specific arrest counts by precinct -- explain the different rates at which minorities and whites were "stopped" during the covered period. As discussed below, the various regression analyses conducted by the OAG -- with the aid of Columbia University's Center for Violence Research and Prevention -- demonstrate that differing crime rates alone cannot fully explain the increased rate of "stops" of minorities.

As a preliminary matter, the OAG ascertained, from the UF-250 data, the percentages of persons "stopped" who were black, Hispanic and white and, from data

supplied by the Division of Criminal Justice Services, the percentages of persons arrested in 1997 citywide who were black, Hispanic and white. This review showed that, *within* race categories, "stop" and arrest percentages were consistent -- i.e., that, citywide, blacks constituted 50% of total "stops" and 51% of total arrests for the covered period, Hispanics were 33% of all "stops" and 30% of all arrests, and whites were 13% of all "stops" and 16% of all arrests.

This simple review does not, however, answer the question whether, *between* different race categories, the police treat people similarly.[4] To perform that analysis, the OAG compared, "stop"/arrest ratios for blacks to "stop"/arrest ratios for whites, and the same ratios for Hispanics and whites. Across all precincts and crime categories, significant disparities emerged.

- After accounting for the effect of differing crime rates, during the covered period, blacks were "stopped" 23% more often than whites, across all crime categories. In addition, after accounting for the effect of differing crime rates, Hispanics were "stopped" 39% more often than whites across crime categories.

When, for certain categories of suspected criminal conduct, the OAG performed regression analyses that controlled for race-specific and crime-specific arrests rates by precinct demographics, they showed:

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[4] For example, if the police only "stopped" whites and only arrested whites, then there would be perfect congruity between these two numbers -- although such congruity would not prove that the police treat people of different races similarly. Indeed, in that situation, congruity might tend to suggest that one racial group -- here, whites -- is being policed differently than others. Hence the need for *cross*-racial analysis that holds constant crime rates and precinct demographics.

- Blacks were "stopped" 2.1 times more often than whites on suspicion of committing a violent crime and 2.4 times more often than whites on suspicion of carrying a weapon. These two categories of stops comprised more than half of all "stops" (53.2%). (See p. 126-128 and Table I.C.1.).

- Hispanics were "stopped" 1.7 times more often than whites on suspicion of committing a violent crime and 2.0 times more often than whites on suspicion of carrying a weapon. (See p. 126 and Table I.C.1.).

- Blacks were significantly less likely to be "stopped" on suspicion of property crimes as whites and Hispanics. (See p. 127 and Table I.C.1).

- After accounting for the effect of differing crime rates, during the period the SCU "stopped" blacks at higher rates than the NYPD overall. In precincts in which blacks comprise less than 10% of the population, they were 1.6 times more likely to be "stopped by the SCU on suspicion of violent crime than whites, and 2.9 times more likely to be "stopped" by the SCU on suspicion of carrying a weapon than were whites. (See p. 128 and Table I.C.2.)

These regression analyses demonstrated -- for specific crime categories -- statistically significant disparities in the "stop" rates of blacks versus those of whites, as well as the "stop" rates of Hispanics versus those of whites. (See p. 130).

In addition, crime rates also do not fully explain the fact that, in most of the precincts with the highest overall rates of "stop & frisk" activity, minorities comprised the majority of the population of the precinct:

- When crime rate is used to project a "stop"

rate for each precinct, precincts (mostly "minority precincts") with the highest "stop" rates had "stop" rates in excess of what would be predicted simply based upon their crime rates. By contrast, precincts with the lowest "stop" rates (mostly "white precincts") had "stop" rates far below what would be predicted based upon their crime rates. (See p. 131 and Table I.C.3.).

B. Factual Basis Provided By Officers For Carrying Out Individual "Stops."

The second part of the OAG's analysis of data derived from UF-250 forms examined the factual basis provided by officers for effecting "stops." The United States Supreme Court has held that, before a police officer may detain a civilian, the officer must be able to articulate a "reasonable suspicion" that criminal activity is "afoot." Terry v. Ohio, 392 U.S. 1 (1968).[5] This is not to say that the absence of "reasonable suspicion" precludes all police action. Indeed, even without "reasonable suspicion," the police may lawfully approach civilians, converse with them and observe their movements in public. To "stop" someone, however, as that term is used in legal parlance and in this Report to mean detaining someone against his/her will, the police must first satisfy the "reasonable suspicion" threshold.

The NYPD's UF-250 form requires every officer to list the facts that led the officer to have the requisite "reasonable suspicion." The form is designed so that supervisory officers may review the stated factual basis of the "stop" for legal

[5] Chapter Two of this Report contains a lengthy discussion of the legal rules governing "stops," including an analysis of Terry, its progeny and parallel New York State cases.

sufficiency. In addition, police training materials stress the importance of fully listing these facts, and note that the officer's description of the facts in the UF-250 may be used to "inform[ ] the court what circumstances led the officer to believe that a stop was necessary...." (See p. 136).

In conjunction with Columbia University's Center for Violence Research and Prevention, the OAG designed a survey methodology to review the UF-250 forms to see whether the factual basis provided by officers met the legal standard for "reasonable suspicion." Using this methodology, more than 15,000 UF-250 forms were analyzed and grouped into three categories:

1. Forms that listed facts meeting the legal standard of "reasonable suspicion," for example where the person "stopped" fit the description of a known criminal suspect.

2. Forms that listed facts *not* meeting the legal standard for "reasonable suspicion," i.e., where the facts articulated would *not* lead a reasonable person to conclude that criminality was "afoot."

3. Forms that did not provide sufficient facts from which it could be determined whether the requisite "reasonable suspicion" existed, for example where the statement by the officer lacks a description of facts and is merely conclusory in nature.

The methodology created by the OAG was designed to ensure that every ambiguity of factual or legal interpretation be resolved in favor of a determination that "reasonable suspicion" existed. Necessary assumptions were always made in favor of a finding that the facts, as stated, were either sufficient to meet the test or incomplete

for analytic purposes; no ambiguous statements were categorized as insufficient under the relevant legal standard. The Report contains a full discussion of the survey methodology, along with several dozen examples of fact patterns deemed not to constitute "reasonable suspicion." (See Chapter Five, Part II.A. at 136 -160).

This survey project yielded a number of findings:

- Citywide, 61.1% of all sampled UF-250 forms contained factual bases provided by officers that, as stated, were sufficient to justify a "stop" based on "reasonable suspicion." (See p. 160 and Table II.B.1)

- Citywide, 15.4% of all sampled UF-250 forms contained factual bases provided by officers that, as stated, were not sufficient to justify a "stop." This means that for slightly more than one out of every seven "stops," when the police officer filled out the UF-250 form documenting the "stop," the facts that the officer provided as a basis for "stopping" the individual did not meet the legal test of "reasonable suspicion." (See p. 160 and Table II.B.1.).

- Citywide, roughly one-quarter of all sampled UF-250 forms (23.5%) did not state a sufficient factual basis to allow a reader (including a police supervisor checking an officer's work) to determine whether the "stop" was supported by "reasonable suspicion." (See p. 162 and Table II.B.1.)

- Citywide, 23.2% of forms completed by members of the SCU did not provide a factual basis for the "stops" sufficient to constitute "reasonable suspicion." (See p.171 and Table II.B.6.).

Notably, based on the sample, racial minorities were no more likely than

whites to be subject to "stops" where the factual basis stated did not meet the legal standard of "reasonable suspicion."

- Citywide, "stops" of blacks, Hispanics and whites without sufficient facts stating the "reasonable suspicion" for the "stop" were roughly consistent : 15.7% of all "stops" of blacks lacked such stated reasons; 14.3% of all "stops" of Hispanics were without such stated reasons; 16.6% of all "stops" of whites lacked such stated reasons. (See p. 166 and Table II.B.3.).

When only "stops" that involved physical force, a frisk, an arrest, or the subject's refusal to provide identification (i.e., "stops" that *require* the filing of a UF-250 form, so-called "mandated reports") were considered, some racial disparities emerged. Specifically:

- When only "mandated reports" were analyzed, the rate at which minorities, and blacks in particular, were "stopped" without a factual basis stating "reasonable suspicion" was higher than the rate at which whites were "stopped": 15.4% of forms reflecting "stops" of blacks do not state such a basis, 12.6% of forms reflecting "stops" of Hispanics do not state such a basis, and 11.3% of forms reflecting "stops" of whites do not state such a basis. (See p. 168 and Table II.B.4.).

Next Steps

The OAG's investigation into the NYPD's "stop & frisk" practices continues; this Report, which presents data reflecting activity during 1998 and the first three months of 1999, is the first stage of the process.

Further investigative contacts and discussions between the OAG and the

New York City Police Department are already scheduled. In addition, as part of the OAG's ongoing work in this area, the Attorney General seeks to open a dialogue with the Department, as well as with scholars, community leaders, members of the organized bar, and others about the meaning of the UF-250 data and analysis, and whether and what sort of changes might be appropriate in light of this Report. This dialogue will permit the OAG's work to be scrutinized by others, provide an outlet for different interpretations of the data, and, hopefully, create a forum for the development of possible reforms. Among other matters, the OAG expects its continuing work to consider issues such as: (i) the training of NYPD supervisors and officers; (ii) the supervision of officers on the street; and (iii) the degree to which crime complaint data may shed further light on the issues identified in this Report.

Chapter One
Introduction

On March 18, 1999, Attorney General Eliot Spitzer, the chief legal officer for the State of New York, opened an investigation into the New York City Police Department's practice of temporarily detaining, questioning, and, at times, searching civilians on the street -- a lawful investigative technique commonly known as "stop & frisk."[1] The primary focus of the investigation is the impact of "stop & frisk" activities upon minority individuals and communities in New York City. The investigation is a singular effort: it is the first ever investigation by a New York State Attorney General into allegations of systemic police misconduct; it is among the most extensive civil rights investigations in the history of the Office of the Attorney General; and it is one of the only investigations of its kind in U.S. history[2].

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[1] As used throughout this Report, the term "stop & frisk" (sometimes, "S/F") refers generically to the law enforcement technique of effecting a "stop" -- where a person is temporarily detained on the street against his or her will for purposes of questioning. Such a detention is a "seizure" within the meaning of the Fourth Amendment. As used below, the term "stop & frisk" is not intended to indicate, in every circumstance, that a frisk of the person was part of that detention.

[2] Only two other investigations in recent memory are analogous to the OAG's "stop & frisk" inquiry. In 1990, the Massachusetts Attorney General's Office conducted an investigation into allegations that, in violation of constitutional mandates, the Boston Police Department rounded up African American men in the wake of the murder of Carol Stuart, a white woman. Report of the Attorney General's Civil Rights Division on Boston Police Department Practices, James M. Shannon, Attorney General, December 18, 1990. In addition, in April 1999, following years of allegations of racial profiling by the New Jersey State Police, the New Jersey Attorney General conducted a review of the patterns of traffic stops on the New Jersey Turnpike. Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling, Peter Verniero, Attorney General, April 20, 1999.

This Report to the People of the State of New York from the Office of the Attorney General ("OAG") sets forth the background, rationale, methods, analysis, and findings of that investigation. This Report is divided into three parts:

The first part (Chapter 1) provides an overview of the OAG's investigation, its context, genesis, purpose, scope and goals.

The second part (Chapters 2-4) sets forth a qualitative description of the "stop & frisk" experience from a variety of perspectives. Chapter Two provides an overview of the legal basis and rules governing "stop & frisk" under both the United States Constitution and the New York State Constitution. Chapter Three describes the New York City Police Department's ("NYPD" or the "Department") approach to "stop & frisk," in terms of both broad Departmental philosophies and policies, and impressions of the technique from current and former New York City police officers. And Chapter Four considers "stop & frisk" from the point of view of New Yorkers residing in minority neighborhoods. In order to give voice to this civilian perspective, it documents actual cases of "stops" by the NYPD, and examines the effect that such encounters can have on the broader community.

The third part (Chapter 5) constitutes the core of the Report. In Chapter Five, the Report examines census, crime and NYPD-generated data reflecting approximately 175,000 documented "stop & frisk" encounters occurring in 75 precincts of the Department. Using a statistical approach, Chapter Five seeks to answer two fundamental questions:

> first, whether officers of the NYPD apply "stop & frisk" tactics more frequently to racial and ethnic minorities than to white New Yorkers and, if so, whether there are non-discriminatory factors which could explain any such disparity;[3] and
>
> second, whether the stated bases for "stop & frisk" encounters, as reported by officers involved, are valid under prevailing constitutional norms.

Finally, inasmuch as this Report comprises only the findings of the OAG's investigation to date, Chapter Six discusses the OAG's next steps -- including the development of possible reforms -- in its continuing review of the NYPD's "stop & frisk" practices.[4]

* * * * *

The nature and scope of the OAG's investigative effort warrant an examination of its genesis and overarching purposes. These issues are not merely matters of historical interest; they serve to elucidate the methods and ultimate goals of the OAG's "stop & frisk" investigation.

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[3] African Americans and Latinos comprise the two largest racial minority groups in New York City. Inasmuch as many of the concerns about the New York City Police Department emanated from the African American and Latino communities, the term "minority" as used throughout this Report shall refer to those groups.

[4] In addition, this Report sets forth the OAG's investigative methodology. It details how the investigation was conducted, by whom, what sorts of information were sought and obtained, and from what sources. ("Methodology -- Appendix").

Part I
Events Leading to the Attorney General's Decision to Commence An Investigation into the NYPD's "Stop & Frisk" Practices

Attorney General Eliot Spitzer took office on January 1, 1999. During the first weeks of his tenure, the Attorney General met with New Yorkers of every racial, ethnic and cultural background, from every part of New York State.

From the residents of New York City's minority communities, the message to the new Attorney General was clear: relations between the City's minority population and its police force had deteriorated and were getting worse. To be sure, in recent years, the Department had made real progress in the fight against crime in communities of color and elsewhere. Despite these successes, however, and despite a broad sense that the streets of the City are safer, the climate in many of New York's minority neighborhoods -- as the Attorney General found it in January 1999 -- was one of resentment and distrust of the NYPD.

What was most striking about the complaints the Attorney General heard in January was not their numerosity -- although that was significant -- but their nature. Many of the complaints, if not most, revolved around lower-level police involvement in the everyday lives of minority residents, rather than celebrated cases of extreme abuse. Roadblocks, car stops, "stop & frisk" street encounters, and "order maintenance" law enforcement techniques all were consistently cited as major sources of tension between the NYPD and minority New Yorkers[5].

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[5] Concerns about police treatment of civilians are hardly new to New York's minority communities. Indeed, they have become a "fact of life" in many minority households. See, e.g., F. Lee, "Young and In Fear of the Police; Parents Teach

Events would soon bring these concerns into sharper focus.

On February 4, 1999, at approximately 12:35 a.m., members of the NYPD's Street Crime Unit approached Amadou Diallo, a 22-year-old West African immigrant, outside of his Bronx apartment building. Published reports indicate that the incident began as a "stop."[6] According to reports, the four white officers, all of whom were in plainclothes, sought to detain Mr. Diallo because they believed he resembled the composite sketch of a suspected rapist.[7] Within seconds, the officers had fired forty-one shots, nineteen of which struck and killed the unarmed Mr. Diallo.[8]

The death of Amadou Diallo was a defining moment for police-community relations in New York City. The incident became the prism through which issues of police accountability and alleged police misconduct, crime-fighting tactics and community relations, would thereafter be viewed. In the wake of the incident, public attitudes toward and about the police were polarized.[9]

Children How to Deal With Officer's Bias," N.Y. Times, October 23, 1997, at B1 ("Lee, 'Young and In Fear'") (detailing how black and Latino parents instruct their children to behave in street encounters with police, recalling a "sadly commonplace history of police harassment and misconduct").

[6] M. Cooper, "Safir May Use Data on Frisks to Back Unit," N.Y. Times, April 19, 1999, at B1.

[7] R. D. McFadden, "Four Officers Indicted For Murder in Killing of Diallo, Lawyer Says," N.Y. Times, March 26, 1999, at A1.

[8] M. Cooper, "Safir May Use Data on Frisks to Back Unit," N.Y. Times, April 19, 1999, at B1.

[9] D. Barry and M. Connelly, "Poll in New York Finds Many Think Police Are Biased," N.Y. Times, March 16, 1999, at A1 ("Barry & Connelly").

On the one hand, there were those who viewed the death of Mr. Diallo as a tragic accident, the result of neither malice nor incompetence, but simply an unfortunate chain of rapidly-unfolding events which led the officers to mistakenly fear for their lives -- and fire.[10] For some people who held this view, Mr. Diallo's death reflected no broader problem.[11]

To other New Yorkers, the Diallo shooting seemed to confirm a deep suspicion: that police officers of the NYPD are too willing to see in the minority community's bedrock of law-abiding residents a suspected violent criminal -- and, in this case, were too willing to pull the trigger.[12] To this way of thinking, the shooting was neither an aberration nor an accident; it was viewed as symptomatic of a callous

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[10] Barry & Connelly, at A1 (reporting 27% of whites polled believe that actions of officers in the Diallo incident were "understandable"; only 6% of blacks polled agreed).

[11] Barry & Connelly, at A1 (68% of whites polled believe police brutality against minorities is "limited to a few isolated incidents" compared to 63% of Blacks polled who believe such brutality is "widespread");see B. Herbert, "In America; Beyond the Diallo Case," N.Y. Times, April 4,1999, at 11 ("The killing of Amadou Diallo was cold-blooded, but it probably wasn't murder. It appears that one or more of the officers genuinely believed Mr. Diallo had a gun and that all four officers, imagining danger when in fact there was none, panicked and began firing . . . . The 41 shots from the frightened cops turned a terrible mistake into a hideous one.").

[12] J. Yardley, "The Diallo Shooting: The Community; In 2 Minority Neighborhoods, Residents See a Pattern of Hostile Street Searches," March 29, 1999, N.Y. Times, at B3 ("Yardley, 'The Diallo Shooting'") (discussing minority residents' perception that they are targeted and harassed by police; "[l]aw-abiding citizens, many residents say, are often treated like criminals.")see also Lee, "Young and In Fear" at B1 ("[B]lack and Hispanic parents say they talk to their children about dealing with the police. It is just a matter of time, they tell them, before they encounter a police officer who sees dark skin as synonymous with crime.").

and systematic disregard of the rights of minority New Yorkers.[13] Indeed, for some, the incident was cause for personal fear. Said one African American resident of Brooklyn's Bedford-Stuyvesant neighborhood: "Everybody out here is Amadou Diallo."[14]

Part II
The Attorney General's Consultations In the Wake of the Diallo Incident

In the wake of the Diallo incident, the Attorney General called upon leading law enforcement professionals, civil rights advocates, community and religious leaders, legal scholars and others for a diversity of perspectives on the issues raised by the shooting and the ensuing public debate.[15] To be sure, this diversity of viewpoints yielded a diversity of opinions. On several critical points, however, a consensus emerged.[16]

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[13] Barry & Connelly, at A1 (reporting that 68% of blacks polled believe police brutality against minorities is "widespread," and that one third of black respondents to the poll had been in situations where they feared the police; 11% of whites polled report such fear);see also J. Leo, "Those NYPD Blues,"U.S. News & World Report, April 5,1999, at 16 ("Almost no one thinks this was an intentional or racial killing. But many think it shows that blacks are much more likely than whites to suffer at the hands of police.").

[14] Yardley, "The Diallo Shooting," at B3 (quoting a 34-year-old resident of Bedford-Stuyvesant).

[15] Since February, the issues raised by the Diallo shooting and other instances of alleged police misconduct have been the subject of many discussions between the Attorney General and representatives of the minority community, law enforcement, and other interested constituencies.

[16] In the interest of encouraging robust discussion, the confidentiality of specific views expressed privately to the Attorney General is being respected; no specific statements made or positions taken during private meetings are attributed to specific persons without their consent. The fact that any person is identified herein as having consulted with the Attorney General or any OAG staff is not intended to suggest that person's endorsement of any of the statements, descriptions or opinions set forth

First, it was generally agreed that, among minority New Yorkers, the Diallo shooting deeply eroded public confidence in the NYPD. Leaders in minority communities could scarcely recall a time of more profound concern about the relationship between the NYPD and minority communities.

Second, it was widely believed that, while the Diallo incident provided the *occasion* for this crisis of confidence, lower-level police-civilian encounters -- including crowd control measures, “quality of life” enforcement, traffic enforcement, and “stop & frisk” -- played an important role in actually*causing* it. Among minority New Yorkers, these everyday interactions created and defined perceptions about police work in general, and the NYPD in particular. At this level, most agreed, such concerns had been simmering in minority communities for years.

Third, the use of “stop & frisk” tactics in minority neighborhoods was identified as a particular flash point in the matrix of police-community relations. Each year, tens of thousands of New Yorkers -- of every age, occupation and class -- are subject to “stop & frisks” encounters. Accordingly, “stop & frisk” represents one of the most common forms of police-civilian interaction in which officers assert their authority to detain civilians. From the Department’s point of view, "stop & frisk" is an essential component of the NYPD's approach to crime-fighting, and its strategy of removing guns from City streets. In communities of color, “stop & frisk” is cited by some as an example of a tactic that has been misused and overused.

Fourth, and critically, it was agreed that, among minority New Yorkers, a

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in this Report.

perception exists that the NYPD applies “stop & frisk” tactics more aggressively and more broadly to African Americans and Latinos than to whites, and in predominantly African American and Latino communities rather than in predominantly white communities. It was further agreed that, although this perception is widely held, virtually no quantitative research had been conducted to determine whether, in fact, the perception reflects reality. Thus, to a very great extent, the public discourse on this important aspect of police-community relations was occurring in the absence of hard information.

Finally, it was universally agreed that, notwithstanding the fact that the overwhelming majority of New York City police officers are conscientious, committed and honest, the perception of bias in “stop & frisk” and other police practices undercuts the credibility of law enforcement personnel and ultimately undermines the law enforcement mission itself. It is axiomatic that people who harbor deep suspicion about the police also refuse to cooperate with police investigations, refuse to convict criminal defendants on the basis of police testimony alone, and can find themselves alienated from the justice system as a whole.

This consensus -- on both the core nature of the crisis of confidence and its causes -- strongly influenced the Attorney General’s decision to formally inquire into the NYPD’s “stop & frisk” practices.

Part III
The Attorney General's Institutional Perspective On Matters Relating to Police Conduct

An additional factor was the OAG's unique institutional perspective on matters of police conduct and accountability. Under the New York State Constitution and laws, the Attorney General is the chief legal officer for the State of New York.[17] The Attorney General's institutional responsibilities are defined by the OAG's five major Divisions, which include the Public Advocacy Division, the Criminal Division, and the State Counsel Division. Each of these divisions carries out a different aspect of the Attorney General's institutional mission, and each provides the Attorney General with a different perspective on issues of police conduct.

Acting through Public Advocacy's Civil Rights Bureau, the Attorney General functions as the statewide officer primarily responsible for the enforcement of the civil rights laws of the United States and the State of New York.[18] In this role, the Attorney General investigates and litigates cases of alleged discrimination on the basis of race, national origin, gender, age, and disability.[19]

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[17] N.Y. Exec. Law § 63. The Office of the Attorney General is an independent agency employing more than 500 lawyers across the State.

[18] N.Y. Exec. Law §§ 63(1), (9), (10) and (12); see N.Y. Exec. Law §§ 296-296-a; N.Y. Civ. Rts. Law § 40.

[19] Because the Attorney General's civil rights strategy focuses upon wrongdoing that is both persistent and widespread, the Civil Rights Bureau often utilizes statistical mapping and modeling techniques to determine the impact of broad policies on large classes of people. See, e.g., People of the State of New York by Attorney General Eliot Spitzer v. Delta Funding, Inc. et al., 99 CV 4951 (CPS) (E.D.N.Y. 1999) (using statistical mapping to track predatory lending practices in minority neighborhoods).

The Criminal Division of the OAG functions as a law enforcement and prosecutorial office with duties not unlike those of local prosecutors and police agencies. Through the work of the Criminal Division, the OAG experiences and appreciates the day-to-day challenges faced by law enforcement.

Finally, the Attorney General's State Counsel Division is responsible for defending the State Police and other state law enforcement agencies when they are sued. In that role, the OAG is called upon to analyze police conduct after the fact, to review systems of police management and operations for purposes of defending litigation, and, in light of the foregoing, to mount as vigorous a legal and/or factual defense to allegations of police misconduct as the rules of legal ethics allow.

These diverse institutional responsibilities provide the Attorney General with a unique, tripartite perspective on police issues. With this tripartite perspective, the Office of the Attorney General is well positioned to analyze systematically the civil rights and law enforcement aspects of the NYPD's "stop & frisk" practices.

Part IV
Scope, Goals and Guidelines of the OAG's "Stop & Frisk" Investigation

Against this historical and institutional backdrop, in March 1999, the Attorney General announced the commencement of the OAG's "stop & frisk" investigation. The investigation's overarching purpose is to understand the "stop & frisk" experience in New York City, to analyze the practices of NYPD officers on a system-wide basis, to determine whether any changes in Department policy in respect of these practices are warranted, and, ultimately, to help restore public confidence in

law enforcement generally.

As set forth in this Report, the Office of Attorney General has examined "stop & frisk" occurrences on both a quantitative and a qualitative basis. Quantitatively, the Report applies statistical methods to census and crime data to describe "stop & frisk" practices on a citywide, command-level and precinct-level basis, and to ascertain whether "stop & frisk" encounters disproportionately may involve minority residents and neighborhoods. In addition, the Report examines the "stop & frisk" experience from a variety of qualitative points of view -- legal, Departmental, and civilian -- and seeks to determine, to the degree possible on a systemic basis, whether the Department provides a legal basis sufficient to justify "stops" under prevailing constitutional norms.

The OAG's investigation examined "stop & frisk" practices within all commands and precincts of the New York City Police Department. The practices of specialized units and beat cops, uniformed and plainclothes officers all were reviewed. To ensure that the review would yield statistically reliable conclusions, the OAG utilized primary source data from the United States Census Bureau, the New York State Division of Criminal Justice Services, and the NYPD itself, among other sources, and engaged the Columbia University School of Public Health's Center for Violence Research and Prevention to assist in the research.

Finally, in order to focus the investigation and thereby create a standard against which outcomes could be measured, the Attorney General and his staff developed specific, substantive goals and procedural guidelines for their work. Substantive goals describe the questions which the investigation sought to answer;

procedural guidelines describe how the investigation was conducted to ensure fairness and balance.

The six substantive goals of the OAG's "stop & frisk" inquiry are as follows:

(1) To describe the experience of "stop & frisk" from a variety of qualitative perspectives, including the *legal* perspective (i.e., the development of "stop & frisk" doctrine, its rationale and its application), the *law enforcement* perspective (what the tactic entails, how and why it is used, and for what purposes, and how officers are trained with respect to it), and a *community* perspective (providing narratives of the effects of "stop & frisk" upon those who are "stopped");

(2) To describe the scope of "stop & frisk" systemically and quantitatively -- how often it occurs, where, and to whom;

(3) To identify, on a system-wide basis, what types of police units are using "stop & frisk" and to what degree;

(4) To determine whether members of certain racial minority groups are being subjected to "stop & frisk" encounters at a rate disproportionate to their representation in the population;

(5) To determine whether distributions of "stop & frisk" encounters occurring in precincts with specific characteristics and among specific racial groups can be explained by crime patterns, arrest statistics or other non-discriminatory factors; and

(6) To determine, to the degree possible on a systemic basis, whether NYPD officers

> articulate a sufficient factual basis under the Fourth Amendment to justify “stop & frisk” encounters.

As for procedural guidelines, from the outset, the OAG’s aim was to ensure balance in outcome by being inclusive in approach. Accordingly, the OAG sought input from as diverse a group of respondents as possible, offering multiple opportunities for participation at multiple levels. In addition to seeking information from the New York Police Department itself, the OAG sought out a variety of groups and individuals -- including both strong advocates of the NYPD’s record and strong critics, major organizations (such as the New York Civil Liberties Union and the Patrolmen's Benevolent Association) and individual persons -- for information and experiential knowledge.

Finally, the Attorney General directed that the investigation’s substantive questions be answered -- and publicly reported -- as quickly as feasible. In a climate where distrust has affected the relationship between the police and large segments of the public, no one is served by delay.

Chapter Two
Legal Analysis of "Stop & Frisk"

"[I]t is simply fantastic to urge that a ['stop & frisk'] procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly."

- Terry v. Ohio, 392 U.S. 1,16-17 (1968)

"The frisk . . . was essential to the proper performance of the officer's investigatory duties, for without it, 'the answer to the police officer may be a bullet.'"

- Terry v. Ohio, 392 U.S. 1, 8 (1968)

Over thirty years have passed since the United States Supreme Court's landmark decision in Terry v. Ohio, 392 U.S. 1 (1968). In Terry, the Supreme Court upheld as constitutionally permissible the police practice of temporarily detaining civilians for investigatory "stops" and, under limited circumstances, subjecting them to protective, "patdown" frisks.[1] This Chapter explores the Terry doctrine from its origins in the Fourth Amendment of the United States Constitution to its progeny under New York State law, setting out the basic legal framework for "stop & frisk" practices in New

[1] Terry v. Ohio, 392 U.S. 1, 29-30 (1968).

York.[2]

To the extent it is applied to members of constitutionally-protected racial and ethnic classes, "stop & frisk" raises issues under the Equal Protection Clause of the Fourteenth Amendment as well. In several recent cases, courts have explored the degree to which, consistent with the Equal Protection Clause, law enforcement officials may use racial characteristics in determining whom to "stop" or frisk.

Part I
Fourth Amendment Standards

A. *Terry v. Ohio*: Development of A Fourth Amendment Standard

The Fourth Amendment to the United States Constitution forbids police from conducting "searches and seizures" without "probable cause."[3] For example, the police may not effect a full-scale "seizure of the person" -- that is, an arrest -- absent "probable cause" to believe that the individual has committed a specific crime to be

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[2] Because Terry v. Ohio has spawned literally thousands of decisions in the 31 years since it was decided, no discussion of Terry and its progeny can be exhaustive. Inasmuch as the purpose of this Chapter is to provide a basic level of understanding, its review will focus on the basic rules, fact patterns, and "bright-line" tests that apply in this area of law enforcement. "Close cases" may be noted for illustrative purposes only.

[3] The full text of the Fourth Amendment reads as follows:

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

U.S. Const. amend. IV.

charged.[4] This "probable cause" standard is an essential bulwark against arbitrary arrest under our constitutional scheme.[5]

In 1968, the United States Supreme Court carved out an exception to the "probable cause" requirement. In the landmark case Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court ruled that a police officer may detain a person briefly on the street for limited interrogation in the absence of "probable cause," so long as a lesser standard of "reasonable suspicion" has been satisfied.[6] To justify a patdown frisk, a police officer must have a reasonable fear that he or she "is dealing with an armed and dangerous individual."[7]

Not every police-civilian interaction implicates the Fourth Amendment "probable cause" or "reasonable suspicion" standards. For example, a non-coercive conversation between an officer and a civilian does not require *any* articulable basis under the Fourth Amendment. For Fourth Amendment analysis to apply, a "seizure of the person" must occur.[8] The least intrusive form of constitutional "seizure" -- but one which still requires "reasonable suspicion" -- is a Terry "stop."[9]

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[4] Id.; Terry, 392 U.S. at 16.

[5] Terry, 392 U.S. at 8-9. See also Mapp v. Ohio, 367 U.S. 643 (1961) (applying the Exclusionary Rule to the states via the Fourteenth Amendment).

[6] Terry, 392 U.S. at 21.

[7] Id. at 27.

[8] Id. at 16.

[9] Id. at 21.

Under Terry, a "stop" occurs when, "by means of physical force or by show of authority,"[10] a police officer briefly detains a civilian such that "a reasonable person would have believed that he was not free to leave."[11] Factors that distinguish a Fourth Amendment "seizure" from something short of that include:

> The threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.[12]

For a police officer properly to effect a Terry "stop," the officer must be able to articulate "reasonable suspicion." "Reasonable suspicion" is a reasonable belief on the part of the officer -- based on experience, observations, and/or information from others -- that criminal activity is "afoot" sufficient to warrant police intervention.[13] Because the inquiry is necessarily fact-intensive, a review of the facts underlying Terry itself is instructive.

On October 31, 1963, at approximately 2:30 p.m., veteran Police Officer Martin McFadden was patrolling downtown Cleveland, a beat he had covered for 30 of his 39 years on the Cleveland police force.[14] McFadden stopped to observe two men who were unknown to him. Initially, he saw the men standing together, conversing.

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[10] Terry, 392 U.S. at 19 n.16.

[11] United States v. Mendenhall, 446 U.S. 544, 554 (1980).

[12] Id. at 554.

[13] Terry, 392 U.S. at 30.

[14] Id. at 5.

Each then walked singly up the block, peered into a particular store window, walked back, and returned to confer with the other. The two made this circular trip -- each alone -- approximately a dozen times over the course of 10-12 minutes. At one point, a third man came to confer with the first two, then disappeared.[15]

"[A]fter observing the elaborately casual and oft-repeated reconnaissance of the store window," seeing the third man rejoin the other two, and fearing that the three were preparing to rob the store and might be armed, McFadden detained the men for questioning.[16] Patting their outer garments, the officer felt, then recovered, two revolvers.

The Court ruled that McFadden's "suspicion" of the men was "reasonable" under the Fourth Amendment, and thus sufficient to justify the "stop" and the frisk that yielded the revolvers.[17] The Court cited several factors to support this conclusion. The officer's more than three decades of police experience, his careful observations of the three men over time, and their acting in a manner that he "took to be preface to a 'stick-up,'" all suggested -- correctly, as it turned out -- that criminal activity was "afoot." [18]

For the two defendants in Terry, the practical implication of this ruling was significant: the guns that McFadden had seized were deemed admissible in the

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[15] Terry, 392 U.S. at 5-6.

[16] Id. at 7.

[17] Id. at 27-30.

[18] Id. at 28.

criminal cases against them.[19] Had the "stop & frisk" been ruled unconstitutional, the guns would not have been permitted into evidence -- that is, the so-called Exclusionary Rule would have been applied to suppress the weapons.[20]

In providing law enforcement officers with the powerful tool of "stop & frisk," the Terry Court recognized the need of law enforcement for an "intermediate" response, short of arrest, to suspicious circumstances.[21] At the same time, however, it recognized that even brief detentions -- i.e., "stops" -- are Fourth Amendment "seizures," and that outer-clothing patdown frisks are Fourth Amendment "searches."[22] As the Court in Terry pointedly observed, a "stop & frisk" encounter is far more than a "'petty indignity,'" "[i]t is a serious intrusion upon the sanctity of the person, which . . . is not to be undertaken lightly." [23]

The decision in Terry represents a struggle played out in law between the legitimate need for some level of police intervention short of arrest, and the Constitution's mandate that civilians be free from unreasonable "searches and seizures."[24] What is most striking about Terry, however, is not how the Court resolved this doctrinal quandary, but rather the degree to which the Terry Court understood the

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19 Terry, 392 U.S. at 27-30.

20 Id. at 12.

21 Id. at 16.

22 Id.

23 Id. at 16-17.

24 U.S Const. amend. IV.

inherent contradictions in, and the potential for friction arising from, "stop & frisk" practices.

From this perspective, the Terry decision was born of and perpetuated deep conflicts in values. On the one hand, the Terry Court clearly recognized the importance of "stop & frisk" to the tasks of crime detection and prevention and the goal of officer safety.[25] From the point of view of law enforcement, a "stop & frisk" encounter that yields a lawful arrest or useful information, or deters a would-be violent criminal from going forward is a success.

On the other hand, the Terry Court also acknowledged the significant social costs associated with "stop & frisk." Allowing police to detain and handle civilians who, by definition, are engaged in neither visibly illegal activity nor conduct sufficient to warrant an arrest is bound to result in tension. Such encounters, the Court wrote with studied understatement, "may inflict great indignity and arouse strong resentment" among affected civilians.[26] In a footnote that prefigures the OAG's investigation, the Court noted the specific impact that "stop & frisk" has on minority residents: "'[I]n many communities, field interrogations are a major source of friction between the police and minority groups.'"[27]

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[25] Terry, 392 U.S. at 27.

[26] Id. at 17.

[27] Id. at 14 n.11 (quoting President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967))(the "Task Force Report"). The Court quoted the Task Force Report, noting that police-community relations had worsened "particularly . . . in situations where the 'stop and frisk' of

In sum, these contradictions -- between the needs of law enforcement and the sensitivities of a civilian population endowed with constitutional rights -- are not new; they inhere in Terry itself. Indeed, it is *because* of these contradictions that Terry has become a lightening rod.

Some have criticized aspects of the Terry standard as "overly demanding and insensitive to the range of situations in which law enforcement officers may find themselves reasonably fearful of their safety."[28] For them, Terry leans too far in the direction of the "suspect" -- putting officers' safety at risk.[29] Others have argued that Terry affords too much discretion to officers on the street and is insensitive to the unique (and, they argue, uniquely harmful) impact that "stop & frisk" has on minority communities.[30] These debates will likely continue -- in the courtrooms and in the legal periodicals -- so long as Terry remains a constitutional mandate. Of far greater interest

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youths or minority group members is 'motivated by the officers' perceived need to maintain the power image of the beat officer.'" Id. at 15 n.11.

[28] See, e.g., Stephen A. Saltzburg, Terry v. Ohio: A Practically Perfect Doctrine, 73 St. John's Law Review 911, 974 (1998) (criticizing Terry with respect to the standard for a frisk).

[29] Id.

[30] "After Terry," one critic has written, "police intrusions would be controlled by a malleable 'reasonableness' standard that gave enormous discretion to the police. When this reasonableness norm was applied to street encounters between the police and urban residents, the result was predictable -- expanded police powers and diminished individual freedom. One of the flaws of Terry was that this shift in constitutional doctrine was implemented without a full examination of the consequences for blacks and other disfavored persons most affected by police investigatory methods." Tracey Maclin, Terry v. Ohio's Fourth Amendment Legacy: Black Men and Police Discretion, 73 St. John's Law Review 1271, 1278 (1998).

to this investigation, however, is how Terry and its progeny play out in everyday criminal cases in New York.

B. *Terry* in New York: *De Bour* and Its Progeny

The Terry-based federal standard distinguishes between two different levels of police intrusion: the initial "stop" and the subsequent frisk. Under Terry, a police officer may briefly detain, or *stop*, an individual so long as the officer has "reasonable suspicion" that criminal activity has occurred or is about to occur.[31] The officer may *frisk* the individual only where the officer reasonably believes that the suspect is armed and dangerous.[32] A frisk is limited to a patdown of the suspect's outer clothing; it may be conducted only to discover whether the suspect is armed, not to search for evidence.[33]

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[31] Terry, 392 U.S. at 21-22.

[32] Id. at 30.

[33] Id. When conducting a "stop" encounter, officers must employ "the least intrusive means available to verify or dispel the officer's suspicion in a short period of time." Posr v. Doherty, 944 F.2d 91, 98 (2d Cir. 1991) citing Florida v. Royer, 460 U.S. 491, 500 (1983). An initial "stop" that is deemed lawful under federal law can ripen into an "arrest" -- requiring justification based on "probable cause" -- depending upon such factors as "the numbers of agents involved, whether the target of the stop was suspected of being armed, the duration of the stop, and the physical treatment of the suspect, including whether or not handcuffs were used." U.S. v. Perea, 986 F.2d 633, 645 (2d Cir. 1993) (multiple citations omitted). See also Posr, 944 F.2d at 98 (when "the totality of circumstances indicates that an encounter has become too intrusive to be classified as an investigative detention, the encounter is a full-scale arrest, and the government must establish that the arrest is supportable by probable cause"). No particular formality is required for an arrest: "it may occur even if the formal words of arrest have not been spoken provided that the subject is restrained and [her] freedom of movement is restricted." Id. at 98 (citation omitted). See, e.g., Bordeaux v. Lynch, 958 F. Supp. 77 (N.D.N.Y. 1997) (legal Terry stop ripened into an arrest when plaintiff's

The law of Terry provides a baseline federal constitutional test for "stop & frisk" -- the "reasonable suspicion" standard -- in the absence of which no seizures of the person are permitted. However, the federal standard sets the floor, not the ceiling of constitutional protection. State courts and legislatures may, consistent with the Fourth Amendment, heighten the standard which officers must satisfy -- making it more demanding of officers and more protective of civilians -- pursuant to principles of their own state constitutions or as matters of their own state policy. New York has done precisely that.

In People v. De Bour,[34] the New York Court of Appeals, using principles of state law, [35] established a more nuanced (and arguably more stringent) multi-tiered standard for evaluating the propriety of police-civilian street encounters. Each progressive level allows "a separate degree of police interference with the liberty of the person approached[,] and consequently requires escalating suspicion on the part of the investigating officer."[36]

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bus departed, requiring probable cause). See also People v. Patterson, 165 A.D.2d 673, 564 N.Y.S.2d 9, 10 (1st Dep't 1990) (deeming defendant arrested when police approached him with guns drawn).

[34] 40 N.Y.2d 210, 386 N.Y.S.2d 375 (1976).

[35] Art. I, Section 12 of the New York Constitution states "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but on probable cause." N.Y. Const. art.I, § 12.

[36] People v. Hollman, 79 N.Y.2d 181, 185, 581 N.Y.S.2d 619, 621 (1992) (reaffirming People v. De Bour). Whether the four-tier De Bour test is constitutionally-based or based on New York public policy is an interesting question, although not directly relevant here. While the De Bour standard has long been understood to be

The New York test identifies four levels of police intrusion on an escalating scale. At the first, least intrusive level, an officer may request information from a civilian about his or her identity, reason for being at a particular location, or travel plans, where the request is "supported by an objective, credible reason, not necessarily indicative of criminality."[37] For example, in De Bour, the officers approached De Bour after midnight, in an area with a high incidence of narcotics trafficking, after De Bour had crossed the street apparently to avoid walking past the uniformed officers; the officers asked DeBour his identity and reason for being in the neighborhood.[38] The Court of Appeals held that the circumstances under which the initial inquiry took place "were sufficient to arouse the officers' interest" such that the minimal intrusion of nonthreatening questioning was permissible.[39] In reaching this result, the Court of Appeals emphasized that the encounter was brief, of a limited

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based on an expansive view of the New York State Constitution, in Hollman, the Court of Appeals rejected that interpretation:

> [De Bour] was not compelled by the specific language of either the State or the Federal Constitution. Rather, it reflected our judgment that encounters that fall short of Fourth Amendment seizures still implicate the privacy interests of all citizens and that the spirit underlying those words required the adoption of a *State common-law* method to protect the individual from arbitrary or intimidating police conduct . . . De Bour is largely based upon considerations of reasonableness and sound State policy.

Hollman, 79 N.Y.2d at 195, 581 N.Y.S.2d at 627 (emphasis added).

[37] DeBour, 40 N.Y.2D at 223, 386 N.Y.S.2d at 384.

[38] Id., 40 N.Y.2d at 213, 386 N.Y.S.2d at 378.

[39] De Bour, 40 N.Y.2d at 220, 386 N.Y.S.2d at 383.

nature (circumscribed questioning), and was neither degrading nor humiliating to the person approached.[40]

The second De Bour level is referred to as the "common law right of inquiry." Under the "common law right," an officer may approach and closely question a civilian to the extent necessary to gain explanatory information beyond identity and travel plans. Still, however, the officer may not detain the civilian; the individual always remains free to leave.[41] This second level of intrusion -- which falls short of a Fourth Amendment "seizure" (a "stop") sufficient to implicate Terry -- requires a founded suspicion that "criminal activity is afoot."[42] The difference between the De Bour tiers is "itself subtle" and rests upon the content and number of questions, and the "degree to which the language and nature of the questions transform the encounter from a merely unsettling one" under De Bour's first level, "to an intimidating one" under its second.[43]

People v. Hollman is illustrative of this distinction. In Hollman, a police officer observed two men carrying bags over the course of twenty minutes. The two stood in front of the men's room in a bus terminal about ten feet apart with one of the bags between them.[44] When they entered a bus, one of the men placed one bag several seats in front of his own seat and then pushed his companion's bag closer to

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40 Id.

41 Id., 40 N.Y.2d at 223, 386 N.Y.S.2d at 385.

42 Id.; see also Terry, 392 U.S. at 24.

43 Hollman, 79 N.Y.2d at 192, 581 N.Y.S.2d at 625.

44 Hollman, 79 N.Y.2d at 185, 581 N.Y.S.2d at 621.

his.[45] These actions "gave rise to an objective credible reason . . . for approaching the two men."[46] The officer first questioned the men about travel plans, destination, and where they had placed their luggage. After both men denied that they had luggage, the officer questioned the two men about the ownership of the two bags.[47] The Court of Appeals held that the first questions (as to travel plans, etc.) were part of a supportable request for information (first level) and that the "questions regarding the ownership of the bags were . . . a proper exercise of the officer's common-law right to inquire" (second level). [48]

At the third De Bour level of intrusion, an officer is authorized to detain a civilian against his or her will; in the parlance of Terry, it is here that a "stop" occurs.[49]

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[45] Id., 79 N.Y.2d at 186, 581 N.Y.S.2d at 625.

[46] Id., 79 N.Y.2d at 193, 581 N.Y.S.2d at 621.

[47] Id., 79 N.Y.2d at 186, 581 N.Y.S.2d at 621.

[48] Id., 79 N.Y.2d at 193, 581 N.Y.S.2d at 626.

[49] Under New York law, a seizure occurs if the police action results in a "significant interruption [of the] individual's liberty of movement." See DeBour, 40 N.Y.2d at 216, 386 N.Y.S.2d at 380. The test is whether a reasonable person would have believed, under the circumstances, that the officer's conduct was a significant limitation on his or her freedom. See People v. Hicks, 68 N.Y.2d 234, 240, 508 N.Y.S.2d 163, 166 (1986). Typically, the inquiry involves a consideration

> of all the facts and a weighing of their individual significance: was the officer's gun drawn, was the individual prevented from moving, how many verbal commands were given, what was the content and tone of the commands, how many officers were involved and where the encounter took place.

People v. Bora, 83 N.Y.2d 531, 535-36, 611 N.Y.S.2d 796, 798 (1994).

In New York, a "stop" is authorized only where a police officer entertains a reasonable suspicion that a *particular person* has committed, is committing *or is about to commit* a *felony* or *misdemeanor*.[50] The officer may frisk the suspect only if the officer reasonably suspects that he/she is in danger of physical injury by virtue of the detainee being armed.[51] Notably, the standard for effecting a "stop" under De Bour and its progeny is somewhat more exacting than the standard under Terry. By requiring the particularity of a specific person suspected of committing a specific crime, New York places a greater burden upon police before they can deprive someone of their liberty, even temporarily.[52]

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[50] N.Y. Crim. Proc. Law § 140.50 (1).

[51] As under both federal and state law, frisks may only be effected where the officer reasonably fears for his or her safety; they may not be used to search for evidence of a crime. People v. Sanchez, 38 N.Y.2d 72, 74, 38 N.Y.S.2d 346 (1975); People v. Chinchillo, 120 A.D.2d 266, 509 N.Y.S.2d 153 (3d Dep't 1986). Notably, however, New York and the federal common law have diverged on the question of what an officer is to do when, in the course of a frisk, the officer encounters, by feel, contraband that is not a weapon. In People v. Diaz, the New York Court of Appeals refused to recognize the "plain touch" doctrine: "There can be *no question* that the reaching into defendant's pocket and seizing the drugs were not within the scope of the *Terry* pat-down." 81 N.Y.2d 106, 109, 595 N.Y.S.2d 940, 942 (1993) (emphasis added). Two months later, the U.S. Supreme Court decided that the "plain touch" was constitutionally permissible under the Fourth Amendment. See Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993) (reasoning that there is no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons: "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity [as contraband] immediately apparent . . . its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.").

[52] See N.Y. Crim. Proc. Law § 140.50 (1).

Finally, the fourth De Bour level is arrest. An officer may arrest and take into custody a person when the officer has "probable cause" to believe that person has committed a crime (a felony or misdemeanor), or an "offense" (a violation) in his presence.[53]

C. The "Stop" In New York

The OAG's investigation focuses upon the "stop" -- a use of police authority that temporarily deprives civilians of their right to go about their business. In the language of De Bour, this is a "level-three" intrusion.[54] While the factual scenarios and circumstances that lead to a "stop" are infinitely varied, the law's guideposts are clear enough. Under both federal and New York constitutional law, more than a "vague or unparticularized hunch" is required to give rise to a reasonable suspicion.[55] Officers cannot rely on their "sixth sense" -- they must be able to articulate the basis for the "stop." For example, where an individual fit the description of a given perpetrator, was observed within minutes of the crime scene, quickened his pace when he saw the officer, and was located in a "high crime" area, a "stop" always will be upheld. [56] In

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[53] Hollman, 79 N.Y.2d at 185, 581 N.Y.S.2d at 620.

[54] Although they may contribute to certain perceptions of the NYPD, the lesser intrusions of nonthreatening questions (level one) or the "common-law" inquiry (level two) are less the focus of this Report than are "level-three" stops.

[55] See Terry, 392 U.S. at 22; see also People v. Cantor, 36 N.Y.2d 106, 112-13, 365 N.Y.S.2d 509, 516 (1975).

[56] See, e.g., People v. Shakur, 233 A.D.2d 793, 650 N.Y.S.2d 388 (3d Dep't 1996).

contrast, where police received only a minimal description of a gunman from an informant, did not corroborate the description, and no additional factor enhanced the degree of suspicion which the officers possessed, the police will be deemed to lack the "reasonable suspicion" necessary to justify the "stop." [57]

With these principles in mind, a review of some of the more common scenarios, and the "bright-line" rules applied under both federal and state law, is appropriate. The categories that follow demonstrate that, at least with respect to clear instances where "reasonable suspicion" is absent, federal and state law are in synch.[58] When considering these specific examples set forth below, it is important to remember that the absence of "reasonable suspicion" does not preclude all police action. In instances where an officer cannot effect a "stop," the officer retains the right to approach a person, make inquiries and observe a person's actions -- only forcible detentions (including verbal commands that amount to a seizure) are precluded.

1. Refusal to Answer Questions, or to Give Identity

The United States Supreme Court has held that "[a citizen] may not be detained even momentarily without reasonable, objective grounds for doing so; and his

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[57] See, e.g., Matter of Allan P., 220 A.D.2d 354, 633 N.Y.S.2d 124 (1st Dep't 1995).

[58] Where federal and state law differ, the discrepancies are noted.

refusal to listen or answer does not, without more, furnish those grounds."[59] Similarly, the refusal to identify oneself will not alone give rise to "reasonable suspicion."[60]

New York courts, likewise, have held that, while police officers may pose nonthreatening questions seeking basic information -- e.g., regarding identity, address or destination -- when they have an objective, credible reason to do so, civilians are not required to answer or to provide proof of identity.[61] Although some verbal responses to questions at this level can provide a basis for greater intrusion, such as obviously false answers, officers may not effect a more intimidating level-two "common law" inquiry, nor a level-three "stop," based solely upon a civilian's refusal to answer or failure to provide identification.[62]

2. Avoidance of Police/ Nervous Reaction Upon Questioning

The United States Supreme Court has likewise held that a citizen who does not wish to answer police questions may disregard the officer's questions and walk away.[63] Refusal to answer an officer's questions, standing alone, does not satisfy

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[59] Florida v. Royer, 460 U.S. 491, 498 (1983) (citing United States v. Mendenhall, 446 U.S. 544, 556 (1980)).

[60] See Brown v. Texas, 443 U.S. 47, 53 (1979).

[61] See De Bour, 40 N.Y.2d at 219, 386 N.Y.S.2d at 382 n.1; see also People v. Powell, 246 A.D.2d 366, 667 N.Y.S.2d 725 (1st Dep't 1998).

[62] Powell, 246 A.D.2d at 369, 667 N.Y.S.2d at 728.

[63] See Brown v. Texas, 443 U.S. 43, 49 (1979) (no reasonable suspicion justified a seizure where the police stopped the defendant in an alley associated with drug trafficking and the defendant "refused to identify himself and angrily asserted that the officers had no right to stop him"). Note that the United States Supreme Court has

the constitutional "reasonable suspicion" test. [64]

Under governing New York law, an individual has a constitutional right to refuse to respond to questions posed by a police officer, may remain silent, and may even walk away without fearing an arrest or detention by the officer.[65] "Flight alone . . . or in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit because an individual has a right 'to be let alone' and refuse to respond to police inquiry."[66]

Finally, "[i]n light of the recognized 'unsettling' aspect of a police-initiated inquiry of citizens," some New York courts have held that nervous reaction to nonthreatening questioning is not sufficient to authorize a greater intrusion.[67]

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recently agreed to review the question whether police may stop a suspect solely on the basis of flight. See Illinois v. Wardlow, 183 Ill.2d 306, 701 N.E.2d 484 (1998), cert. granted, 119 S. Ct. 1573 (1999).

[64] INS v. Delgado, 466 U.S. 210, 216-17 (1984).

[65] People v. Howard, 50 N.Y.2d 583, 430 N.Y.S.2d 578 (1980).

[66] People v. Holmes, 81 N.Y.2d 1056, 1058, 601 N.Y.S.2d 459, 461 (1993) (internal citations omitted). In contrast, if the officer has evidence or a reasonable belief that crime is afoot, then the individual's flight, *taken in conjunction with the surrounding circumstances*, may be sufficient to establish the requisite reasonable suspicion needed to pursue the individual. See People v. Sierra, 190 A.D.2d 202, 599 N.Y.S.2d 6, 8 (1st Dep't 1993). Without coupling the flight from the officer with other factors such as time, location, or suspicious actions of the individual, fleeing from the police will not satisfy the reasonable suspicion element necessary to detain that individual. See People v. Martinez, 80 N.Y.2d 444, 448, 591 N.Y.S.2d 823, 825 (1992).

[67] See Hollman, 79 N.Y.2d at 192, 581 N.Y.S.2d at 625; People v. Powell, 246 A.D.2d 366, 369, 667 N.Y.S.2d 725, 728 (1st Dep't 1998) (rejecting suggestion that defendant's allegedly nervous reaction to police questions authorized a greater intrusion).

3. Location and "Location-Plus-Evasion"

In Brown v. Texas, the United States Supreme Court ruled that location alone is not a sufficient basis for concluding that a suspect is involved in criminal conduct.[68] Brown rejected as insufficient a "stop" based on the suspect's presence in a "drug-prone" location, reasoning that the defendant's activity was no different from the activity of other pedestrians in that neighborhood.[69]

New York courts apply the same principle. "[T]he nature and location of the area where a suspect is detained may be one of the factors considered in determining whether, in a given case, the police acted reasonably,"[70] but location "alone cannot serve as the justification for untoward or excessive police behavior against those of our citizens who happen to live, work or travel in what are characterized as 'high crime areas.'"[71]

Whether "location" (i.e., presence in a "high crime area") plus an effort to

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[68] Brown, 443 U.S. 47 (1979).

[69] Id. at 49, 52. See also Ybarra v. Illinois, 444 U.S. 85, 92-93 (1979) (no reasonable suspicion to stop suspect based only on a general suspicion that drug sales took place at the bar where suspect was located); United States v. Alexander, 907 F.2d 269, 272 (2d Cir. 1990).

[70] People v. Bronston, 68 N.Y.2d 880, 881, 508 N.Y.S.2d 930, 931(1986); People v. Howard, 147 A.D.2d 177, 182, 542 N.Y.S.2d 536, 540 (1st Dep't 1989); United States v. Ceballos, 719 F.Supp. 119, 124 (E.D.N.Y. 1989) (holding that an individual's presence in an area known for its high incidence of crime is not sufficient to create reasonable suspicion worthy of a stop by the police).

[71] Howard, 147 A.D.2d at 182, 542 N.Y.S.2d at 540. See also People v. Powell, 246 A.D.2d 366, 667 N.Y.S.2d 725, 727 (1st Dep't 1998) (high-crime area alone cannot supply the requisite reasonable suspicion for the stop/frisk).

avoid the police ("evasion") is sufficient to warrant a "stop" is a close question. One recent article[72] examining the application of Terry has noted that, while "presence in a high crime area" or "evasion" each alone would be insufficient to support a "stop," federal courts often hold that the two factors together suffice.[73]

In New York, courts have been unwilling to find "reasonable suspicion" based on the combination of these two factors alone.[74]

4. Non-Specific Descriptions

When analyzing suspicion that arises from a description, courts are careful to look qualitatively at the description provided, its source, and the degree to which the person "stopped" matched the description as given. A "bare description, without more," (such as suspicious conduct indicating the possession of a weapon, or attempted flight) "[will] not justify the highly intrusive conduct of the police." In one New York case, the court invalidated a "stop & frisk" of two defendants, where the

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[72] See David Harris, Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked, 69 Ind. L. J. 659, 671 (1994).

[73] See, e.g., United States v. Alexander, 907 F.2d 269, 272 (2d Cir. 1990). Under federal law principles, the "location plus evasion" matrix may result in high numbers of "stops" in minority neighborhoods, where crime is often concentrated, when individuals of color, who may, for historic reasons, reasonably fear police and take measures to avoid them. See Harris, supra note 72, at 674.

[74] See People v. Powell, 246 A.D.2d 366, 667 N.Y.S.2d 725 (1st Dep't 1998) (insufficient reasonable suspicion where stop based on defendant's alleged evasive answers to police questioning together with observation of defendant walking fast "with stiff arm movement" in a "high crime area"); In re James R., 76 N.Y.2d 825, 560 N.Y.S.2d 114 (1990) (stop of defendant was not justified by heavy travel bag carried by defendant in a high crime area known for drug and weapon activity where defendant's companions fled upon seeing police).

defendants matched only a very general description ("four male Hispanics, one of them is wearing a red, white and blue shirt and jeans").[75] Similarly, a court found the proffered "suspicion" inadequate to justify a "stop" where the "radio-run" description -- two black, male suspects wearing blue jeans and sneakers -- was "as sparse, nonspecific and subject to mistake and abuse as is imaginable."[76] The court observed: "There was no height, weight, physical disability, unusual clothing, facial characteristics, nor anything else which would distinguish the perpetrators from any two other black males within 20 blocks." [77]

5. Companions Under Suspicion

Under both federal and New York law, a person may not be "stopped," or "stopped" and frisked, solely because he or she is in the company of an individual

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[75] People v. Bezares, 103 A.D.2d 717, 718, 478 N.Y.S.2d 16, 18 (1st Dep't 1984). See also United States v. Fernandez, 943 F. Supp. 295 (S.D.N.Y. 1996) (holding legally insufficient "stop" based on anonymous tip describing armed Hispanic man in a white and black jacket). Note that the United States Supreme Court has recently granted certiorari to review whether a stop and frisk may be conducted incident to an anonymous tip where that tip has not been proven to be reliable. See J.L. v. State of Florida, 727 So.2d 204 (1998) (anonymous tip of man in plaid shirt with gun insufficient to support a stop), cert. granted, __ S. Ct. __ (1999), 1999 U.S. Lexis 7378.

[76] People v. Perry, 128 Misc. 2d 430, 488 N.Y.S.2d 977 (Sup. Ct. N.Y. Co. 1985).

[77] Id.; cf. People v. Castro, 115 A.D.2d 433, 497 N.Y.S.2d 1 (1st Dep't 1995), aff'd, 68 N.Y.2d 850 ("stop" of suspect with gun upheld where informant described a trio of men, one of whom was described as Hispanic and holding a gun, the other two described as African American and group fit the description).

whom the police reasonably suspect.[78]

6. Pocket Bulge/Waistband Bulge

A visible bulge in a civilian's pocket, without more, is insufficient to sustain a "stop." The New York Court of Appeals has held that a *pocket* bulge, unlike a *waistband* bulge, "could be caused by any number of innocuous objects." [79] While undefinable pocket bulges are not considered to be sufficient to predicate a frisk or search for a revolver, defined bulges in the outline or configuration of a gun do warrant a frisk.[80]

Following De Bour, New York courts continue to distinguish between

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[78] See Sibron v. New York, 392 U.S. 40, 62 (1968) (suspect's association with a group of known drug addicts not sufficient to establish "reasonable suspicion"); People v. Russ, 61 N.Y.2d 693, 472 N.Y.S.2d 601 (1984) (frisk improper where companion was described to have weapon, not suspect who was frisked); People v. Terrell, 185 A.D.2d 906, 587 N.Y.S.2d 8 (2d Dep't 1992) (same); People v. Jiminez, 187 A.D.2d 332, 590 N.Y.S.2d 704 (1st Dep't 1992) (being in the presence of a known drug dealer in a high drug-prone area does not indicate criminal activity and therefore there is no reasonable suspicion supporting a stop). See also People v. Martinez, 191 A.D.2d 457, 594 N.Y.S.2d 292 (2d Dep't 1993) ("reasonable suspicion" cannot be based on individual's conversation with two alleged drug sellers); People v. Kinsella, 139 A.D.2d 909, 909, 527 N.Y.S.2d 899, 901 (4th Dep't 1988) ("The mere fact that defendant was observed . . . walking down the street with the individual who [was suspected] did not give rise to reasonable suspicion . . .").

[79] People v. De Bour, 40 N.Y.2d 221, 221, 386 N.Y.S.2d 375, 383; People v. Holmes, 81 N.Y.2d 1056, 601 N.Y.S.2d 459 (1993) aff'd 89 N.Y.2d 838, 652 N.Y.S.2d 725 (1996). See also People v. Tavaras, 155 A.D.2d 131, 137, 553 N.Y.S.2d 305, 308 (1st Dep't 1990) (waistband bulges are suggestive of a weapon, but undefined bulge in the crotch area may be defined by a number of innocuous objects); see also United States v. Henry, 1990 WL 179739 at *4 (E.D.N.Y. Nov. 6, 1990) (stop based, in part, on bulge in waistband upheld).

[80] People v. Tavaras, 155 A.D.2d 131, 137, 553 N.Y.S.2d 305, 308 (1st Dep't 1990).

bulges observed in a pocket, that are generally not sufficient to warrant a "stop," and bulges in the waistband area, which are.[81] Indeed, New York courts have held that a civilian's touching of the waistband during a lower-level De Bour encounter -- "nonthreatening request for information" or "common law right of inquiry" -- elevates the officer's basis to a level sufficient to effect a stop.[82]

D. The Frisk In New York

A valid "stop" does not automatically authorize a frisk; each intrusion must be evaluated on its own merits. For a frisk to be upheld, the officer must possess an [articulable] basis to fear for his/her safety or to fear that the person to be frisked is armed; the fear must be "reasonable under the circumstances."[83]

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[81] Compare People v. Smith, 161 Misc. 2d 832, 838, 615 N.Y.S.2d 243, 247 (Sup. Ct. N.Y. Co. 1994) (holding that "the bulge in the defendant's jacket was equivocal in nature and could have been caused by any number of innocuous objects") with People v. Thomas, 258 A.D.2d 413, 413, 685 N.Y.S.2d 716, 716 slip op. (1st Dep't 1999), appeal denied, 93 N.Y.2d 980, 695 N.Y.S.2d 66 (1999) (waistband bulge in combination with late hour in area known for illicit drugs sufficient to support stop). See also People v. Wiley, 110 A.D.2d 590, 488 N.Y.S.2d 380 (1st Dep't 1985) (bulge in pocket insufficient as basis for stop/frisk); People v. Cornelius, 113 A.D.2d 666, 668, 497 N.Y.S.2d 16, 18 (1st Dep't 1986) (same); People v. Williams, 79 A.D.2d 147, 436 N.Y.S.2d 15 (1st Dep't 1981) (same).

[82] People v. Giles, 223 A.D.2d 39, 647 N.Y.S.2d 4 (1st Dep't 1996) (moving hand near waistband elevates inquiry or request for information into stop as it provides police with "reasonable suspicion" sufficient to effect "stop & frisk"); People v. Montague, 175 A.D.2d 54, 572 N.Y.S.2d 310 (1st Dep't 1991) (same). See also U.S. v. Hassan El, 5 F.3d 726, 731 (4th Cir. 1993) (upholding frisk where suspect moved hand near waistband and where officer feared suspect might be armed).

[83] People v. Howard, 147 A.D.2d 177, 181, 542 N.Y.S.2d 536, 539 (1st Dep't 1989). The same standard applies under federal law. See United States v. Smart, 98 F.3d 1379, 1384 (D.C. Cir. 1997). As a matter of both federal and state law, the person stopped need not *actually* be dangerous to validate such a limited-purpose frisk, so

Officers' fears that a suspect might be armed are generally deemed "reasonable" -- and frisks are frequently upheld -- in two categories of cases: first, where the crime for which a detainee is suspected is generally associated with the use of a weapon; and second, where a bulge is visible in the waistband area of the person "stopped," or the person touches his/her waistband area during an encounter with the police.[84]

In the first category, federal courts have created what amounts to a per se rule that the violent nature of the narcotics trade generally warrants a frisk where the person stopped is believed to be trafficking in drugs.[85] Even where the quantity of drugs is small and the offense is possession, frisks following a lawful "stop" have been deemed per se supportable in the federal realm.[86]

New York state courts have not followed such a per se rule.[87] Rather,

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long as the officer *had a reasonable belief* that the person stopped posed a danger and may have had a weapon within his reach. See McCardle v. Haddad, 131 F.3d 43, 48 (2d Cir. 1997); De Bour, 40 N.Y.2d at 215, 386 N.Y.S.2d at 379 (1976); see also N.Y. Crim. Proc. Law § 140.50 (3) (McKinney 1999).

[84] See supra notes 79 through 82 and accompanying text.

[85] See United States v. Nersesian, 824 F.2d 1294, 1317 (2d Cir. 1987) (holding frisk justified because it was reasonable to assume those involved in sale of narcotics carry weapons).

[86] See United States. v. Alexander, 907 F.2d 269, 273 (2d Cir. 1990) (holding police may automatically frisk individuals suspected of purchasing narcotics because of the "dangerous nature of the drug trade and the genuine need of law enforcement agents to protect themselves from the deadly threat it may pose").

[87] Compare People v. Soler, 92 A.D.2d 280, 460 N.Y.S.2d 537 (1st Dep't 1983) (where given presence of drugs, police could pat down for protection), with People v. Brown, 204 A.D.2d 994, 613 N.Y.S.2d 70 (4th Dep't 1994) (holding frisk not

New York courts have held that when the police stop someone on suspicion of involvement in a *violent* crime, a frisk is almost always permissible.[88] In the second category, courts in New York have routinely credited officer testimony about observing conduct or appearances that suggest the presence of a weapon. Thus, indications that an officer's fear for his or her safety is reasonable include observing the outline of a gun in a pocket, and furtive hand movements in the area of the person's waistband.[89] Mere observation of an undefinable bulge in a person's pocket, however, is insufficient as a basis for a frisk or search for a revolver.[90]

While courts continue to analyze the frisk intrusion separately from the "stop," it is the rare case wherein a "stop" is held to be valid but the ensuing frisk is not.[91] On a practical level, this makes sense: because some proportion of "stops" are motivated by suspicion of violent crimes, or suspicion that includes (but is not limited

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justified where radio run described suspect as selling drugs but did not specify that suspect was armed and dangerous and police officer did not testify that he was in fear).

[88] See, e.g., People v. Crockett, __ A.D.2d __, 694 N.Y.S.2d 350 (1st Dep't 1999) (where report of "shots fired", and persons "stopped" fit description and refused to remove hands from pockets, frisk was lawful); People v. Hethington, 258 A.D.2d 919, 687 N.Y.S.2d 836, slip op. (1st Dep't 1999) (where suspect matched detailed description of person with knife, frisk allowed). The Supreme Court in Terry established as much: as long as the suspected crime is a violent one, a frisk accompanies the stop as a matter of course. Terry, 392 U.S. at 27.

[89] See supra notes 79 through 82 and accompanying text.

[90] See People v. Howard, 147 A.D.2d 177, 542 N.Y.S.2d 536 (1st Dep't 1989); People v. Wiley, 110 A.D.2d 590, 488 N.Y.S.2d 380 (1st Dep't 1985).

[91] But see Brown, 204 A.D.2d at 994; 613 N.Y.S.2d at 70; People v. Russ, 61 N.Y.2d 693, 472 N.Y.S.2d 601 (1984).

to) a visible weapon or a touching of the waistband, frisks following "stops" are generally held permissible.

It is thus fair to conclude that the critical discretionary act by a police officer in this arena is the decision to effect the "stop," not the decision to frisk in the wake of a "stop."[92] And, indeed, to the extent that private parties have sought to challenge police conduct in the arena of "seizures" short of arrest, they have focussed their attention for the most part, on the decision to "stop." See Part II, infra.

Part II
The 14th Amendment Prohibition on Unequal or Discriminatory "Stops"

Like the Fourth Amendment and Terry, the Fourteenth Amendment, through its Equal Protection Clause, places restrictions on the ability of police to "stop" civilians. Unlike the Fourth Amendment standard of "reasonable suspicion" -- which applies to all circumstances and all persons regardless of race -- the Fourteenth Amendment protects groups of people -- usually racially cognizable groups -- from being targeted for such "stops" because of their race. Unlike the Fourth Amendment, which considers whether a given "stop," standing alone, is reasonable, the Fourteenth Amendment considers whether like groups are treated equally -- be it through legal or illegal "stops."

Phrased broadly, the Fourteenth Amendment's Equal Protection Clause

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[92] See infra Table I.B.3., Chapter 5 (approximately 70% of all "stops" analyzed in this Report resulted in a frisk).

prohibits government discrimination against racial groups an overriding justification.[93] The type and extent of the required justification varies depending upon the legal and factual circumstances at issue.[94]

In the criminal context, the Fourteenth Amendment requires that the government not target citizens for law enforcement purposes -- be it a "stop," an arrest or prosecution for a crime -- solely *because* of that person's race. Because the law does not require law enforcement to be blind to race, as the Second Circuit Court of Appeals recently held, the police have considerable latitude to consider race when identifying suspects, as long as there is a basis for tying a suspect's race to a description provided of a person suspected of committing a crime.[95]

From developments at common law, certain bright-line ground rules emerge.

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[93] See City of Cleburn v. Cleburn Living Center, Inc., 473 U.S. 432, 439 (1985) (the "equal protection" guarantees of the Fourteenth Amendment mean that "all persons similarly situated should be treated alike"); see also Washington v. Davis, 426 U.S. 229, 239 (1976) ("the central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race").

[94] Most justifications fall into two categories. Where the government intentionally discriminates against a racial minority group or uses an explicit racial classification, "heightened scrutiny" is applied and the government must provide a "compelling justification" for the discrimination. Washington v. Davis, 426 U.S. 229, 248 (1976). Where a government policy falls disproportionately on a particular group but there is no clear intent to discriminate, a lower level of scrutiny is applied and the government need only produce a "rational basis" for its actions. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 264-65 (1977); Washington v. Davis, 426 U.S. at 240.

[95] See Brown v. City of Oneonta, 1999 WL 973532 (2d Cir. Oct. 26, 1999).

1. The police may not "stop" minorities solely because of their race: The first rule is the most obvious. The police may not stop an African American or Latino simply because he/she is African American or Latino.[96] In practice, this means that the treatment of minorities may not diverge from non-minorities -- either as to an individual or in the aggregate -- absent some extra-racial justification.[97] The standard is, ultimately, comparative: mistreatment of minorities violates the Fourteenth Amendment only where such treatment differs from that accorded similarly situated non-minorities.[98]

2. Where race is part of a description of a particular suspect, the police may use race as the basis for "stopping" civilians for questioning: As the Second Circuit Court of Appeals recently explained in Brown v. Oneonta, where the police obtain the description of a suspect, and that description contains the race of the person suspected, the police may consider race, as one among many factors, as a basis to "stop" and question civilians as part of the relevant investigation.[99]

The facts and holding in Brown demonstrate the extent of the latitude afforded the police in this area. In Brown, local and state police conducted a "sweep"

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[96] See generally United States v. Armstrong, 517 U.S. 456 (1996); National Congress for Puerto Rican Rights v. City of New York, 1999 WL 959414 (S.D.N.Y. Oct. 20, 1999); Chavez v. Illinois State Police, 27 F. Supp.2d 1053 (N.D. Ill. 1998).

[97] See Armstrong, 517 U.S. at 465.

[98] Armstrong, 517 U.S. at 465.

[99] See also People v. Hicks, 68 N.Y.2d 234, 238, 508 N.Y.S.2d 163, 165 (1986). See Brown, 1999 WL 973532 at * 1.

of young African American men in a small, predominantly white city in upstate New York in the wake of a robbery. The robbery victim (who had not seen her attacker's face) told police that, based on the color of the attacker's hands and the agility with which the attacker moved, she believed the attacker to be a young black man.[100] She also told police that the attacker had suffered an injury to his hand during the robbery.[101] On the basis of that limited physical description, state and local police interviewed or "stopped" dozens of young African American men in Oneonta, and inspected their hands seeking evidence of involvement in the crime.[102]

On these facts, the Court of Appeals held that the police had not violated the Fourteenth Amendment.[103] The court observed that the "stops" initiated of young black men in Oneonta were *not* based *solely* upon race, but rested instead upon the "altogether legitimate basis of a physical description given by the victim of a crime . . . which included race, . . . gender and age, [and] the possibility of a cut on the hand."[104] Such a description, the court held, "is not a suspect classification, but rather a legitimate classification of suspects."[105]

3. Generally, the police may not consider race in determining whether

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100 Brown, 1999 WL 973532 at * 1.

101 See id. at * 1.

102 See id. at * 2.

103 See id. at * 6.

104 See id. at * 5.

105 See Brown, 1999 WL 973532 at * 5.

a particular individual or situation is "reasonably suspicious" sufficient to justify a "stop & frisk" encounter: Generally, absent the description of a suspect, police may *not* consider the race of the individual in determining whether a given person's actions are "reasonably suspicious" sufficient to justify a "stop."

Plainly, race may not be the sole factor that causes an officer to conclude that there is likely criminal activity. In certain specific and limited circumstances -- most notably "stops" at the border -- the courts have allowed the police to consider race as one of several factors determining "reasonable suspicion." [106] This narrow exception, however, is not applicable to street encounters. A search of relevant case law revealed no case holding that, in the context of a street encounter, the civilian's race could make an otherwise unsuspicious situation worthy of a "stop."

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[106] See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873, 886 (1975).

Chapter Three
The NYPD Approach to "Stop & Frisk"

Above all, "stop & frisk" is a technique for fighting crime. Although, of necessity, it must operate within constitutional parameters[1], and although, in practice, it profoundly impacts community attitudes toward the police[2], the technique of lawfully detaining civilians for investigatory field interrogations and, where appropriate, conducting patdown frisks must be understood primarily as methods used by the police to prevent, investigate, detect, and solve crime. Accordingly, to be *fully* understood, "stop & frisk" must be understood as part of an overall crime-fighting philosophy, and as a specific technique used on the street.

This Chapter provides an overview of the Department's approach to "stop & frisk." At the macro-level, it explores the role of the "stop & frisk" technique in the context of "modern" policing theories and practices adopted by the NYPD, and specific Departmental strategies implemented over the last 10 years. At the micro-level, it documents attitudes and observations of some officers -- although by no means a representative sample -- about the "stop & frisk" experience as it actually occurs. As a bridge between these two perspectives, and as part of the OAG's continuing work in this area, this Chapter also provides a basic outline of the NYPD's training regimen,

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[1] See Chapter Two: "Legal Analysis of 'Stop & Frisk'," supra.

[2] See Chapter One: "Introduction," supra, and Chapter Four: "Community Perspective," infra.

paperwork requirements and supervisory measures as they relate to "stop & frisk."[3]

Part I
Crime-Fighting Philosophies, Strategies and Management Techniques in New York City in the 1990s

In New York City and across the country, the decade-long decline in crime has been remarkable.[4] While different explanations have been offered for this national phenomenon,[5] what is clear to many commentators is that, in New York City at least, the implementation of modern policing philosophies (such as "community

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[3] The OAG's review of the Department's supervisory and training methodologies is ongoing. As this Report is published, the Department continues to process OAG requests, many of which go back several months, for documentary evidence concerning these matters.

[4] The decline in crime in New York City over the last decade is well documented. From 1990 to 1996, murders declined 56% (from 2,245 to 983), violent crimes declined by 43% (from 175,000 per year to 99,000), auto thefts dropped from 147,000 to 60,000, and robberies fell from 100,000 to 59,000. See 1997 Crime and Justice Annual Report, New York State Division of Criminal Justice Services ("DCJS"), at 5-34. To put the matter in human terms, over a period of six years, 200,000 fewer New Yorkers were victimized by crime than had been in the comparable preceding period. See William J. Bratton, "Cutting Crime and Restoring Order: What America Can Learn from New York's Finest", transcript of lecture delivered to the Heritage Foundation on October 15, 1996 ("Bratton Heritage Foundation Lecture") at 2. While declining crime rates in the 1990s were seen across the United States, in some categories, New York City's decline exceeded the national average. For example, from 1990 to 1997, homicides in New York City declined 66%, compared to an overall 50% decline nationwide. See Respectful and Effective Policing: Two Examples in the South Bronx, Vera Institute of Justice ("Vera Report") (March 1999) at 2-3; see also DCJS, at 8.

[5] Criminologists have attributed the trend to factors such as more effective policing strategies, a rising imprisonment rate, a healthy economy, a stabilized crack cocaine trade and changing demographics, but are unable to conclude that any "single factor, cause, policy, or strategy has produced the drop in crime rates." J. A. Greene, Zero Tolerance: A Case Study of Police Policies and Practices in New York City, Crime and Delinquency, Vol. 45 No. 2 (April 1999) at 178-79.

policing," and "order maintenance"/"broken windows" theory), innovative police management techniques (such as strict commander accountability and COMPSTAT), and aggressive and coordinated crime-fighting strategies (such as the assault on "quality of life" violations and the push to seize illegal weapons) all have contributed in important ways to the declining crime rates in the five boroughs[6]. Part I reviews those policies in an effort to place the "stop & frisk" technique within a broader context.

A. Policing Theory in New York City: From "Community Policing" To COMPSTAT

Any discussion of broad NYPD policy and practice in the 1990s must begin with one phrase: "community policing." "Community policing" holds that effective crime-fighting is based upon a "partnership" between police and the residents of the immediate community they serve.[7] The goal of the partnership is to ensure that police "meet the demands" of law-abiding people within their jurisdiction[8]. In order to achieve this goal, police and neighborhood residents cooperate to set crime-fighting priorities

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6 See D. Anderson, "Crime Stoppers," New York Times (Feb. 9, 1997) at section 6, p. 47, col. 4 (changing demographics, the decline of crack cocaine and changes in drug marketing are insufficient to account for New York's "plunge" in crime -- "probably attributable to the new police management"); R. Castaneda, "As D.C. Police Struggle On, Change Pays Off in New York," Washington Post (Mar. 30, 1996) at A1 (the sharp drop in homicides and shootings in New York "suggests that police work is having a significant effect," while crime continues to climb in D.C.)

7 R.C. Trojanowicz & D. Carter, The Philosophy and Role of Community Policing, The National Center for Community Policing, Michigan State University ("Trojanowicz & Carter") (1988) at 4.

8 Trojanowicz & Carter, at 4 (In the parlance of "community policing" theory, community residents are "consumers" of police services.).

and to prevent, deter and solve crimes in the neighborhood.[9]

In the broadest sense, "community policing" requires a police force that is "of the community, not apart from it."[10] Bonds of mutual trust and respect between the public and the police are essential. An "Us v. Them" mentality -- on the part of the police or the civilian population, or both -- is antithetical to the model.[11]

In the early years of "community policing" programs, "one of the major surprises . . . was that the police and the community leadership often did not have a good idea of what the real community priorities were."[12] Whereas precinct commanders and community leaders focused on major crime categories such as murder and armed robbery, "rank-and-file community residents" expressed greater concern about "the constant barrage of so-called petty crime and disorder problems."[13] The practical impact of this recognition was to focus "community policing" efforts on *both* serious crime and lower-level disorder.[14] The tactical impact was to increase police presence in the everyday life of the community. The cop on foot patrol -- walking

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[9] Bratton Heritage Foundation Lecture, at 7.

[10] Bratton Heritage Foundation Lecture, at 7.

[11] Commissioner Bratton would later attribute much of the success of his Department to the concept and implementation of the "community policing" model. Bratton Heritage Foundation Lecture, at 14. "Community policing," he emphasized, depends upon a quality of interaction between police and the community.

[12] Trojanowicz & Carter, at 4.

[13] Trojanowicz & Carter, at 4.

[14] Trojanowicz & Carter, at 4.

the neighborhood, interacting with its residents, learning the complex social dynamics of the area, and responding to low-level disorder complaints -- is emblematic of the "community policing" model.[15]

In New York, Police Commissioner Lee Brown (1990-92) sought to implement a strategic plan designed to integrate NYPD officers into New York's diverse communities.[16] While Commissioner Brown applied "community policing" precepts to New York's streets, in the City's subway system, William Bratton, Commissioner of the Transit Police Department (1990-92), sought to operationalize a second approach known as "order maintenance" theory (or simply, "broken windows").[17] Order maintenance theory rests upon two fundamental premises: the first concerns the

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[15] Notably, at its core, "community policing" recognizes the complexity and subtlety of police work:

> Police work, unlike factory work, is not simple and routine, but complex; it is usually conducted by one or two officers in the field, without direct oversight, who must use considerable discretion in handling problems. When officers confront complex life and death decisions, success depends not on direct supervision or rote application of specific rules, but on the application of general knowledge and skill, obtained through prolonged education and mentoring, to specific situations.

G.L. Kelling & C.M. Coles, Fixing Broken Windows: Restoring Order and Reducing Crime In Our Communities ("Fixing Broken Windows") (1996) at 159; see footnote 22, infra.

[16] "Community policing" began to take shape with the hiring of 5,000 new police officers financed by the "Safe Streets, Safe Cities" Act. See Fixing Broken Windows, at 138; Bratton Heritage Foundation Lecture, at 8.

[17] The thesis was first articulated in the March 1982 article printed in the Atlantic Monthly, entitled "Broken Windows: The Police and Neighborhood Safety", by James Q. Wilson and George L. Kelling ("Broken Windows").

environment in which criminality flourishes, and the character of criminality itself, and the second speaks to the methods by which police and community residents combat crime.

The first premise holds that low-level disorder in the streets -- graffiti, aggressive panhandling, public drunkenness and the like -- makes people fearful and weakens neighborhood social controls. In this atmosphere, law-abiding civilians become more fearful and withdraw from the daily life of the community, effectively ceding the street to the forces of greater disorder and more serious crime.[18] As Kelling and Wilson put it: "[I]f [one broken window] is left unrepaired, all the rest of the windows will soon be broken."[19]

Only by actively combating low-level disorder, can police and the neighborhood residents signal to the criminal element their resolve that "law breaking of any kind will not be tolerated"[20] -- and thus begin to restore standards of behavior which make serious crime untenable.[21]

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[18] Fixing Broken Windows, at 20.

[19] Broken Windows, at 4.

[20] Vera Report, at 1.

[21] Broken Windows, at 8 (in describing the process whereby one broken window becomes many, Kelling and Wilson assert: "Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place."); see also Police Strategy No. 5: Reclaiming the Public Spaces of New York ("Police Strategy No. 5") (1994) at 6 (citing Broken Windows and stating that "unaddressed

Second, as a tactical matter, order maintenance theory "advocate[s] close collaboration between police and citizens . . . in the development of neighborhood standards" of conduct.[22] Such standards are "to be enforced for the most part through non-arrest approaches -- education, persuasion, counseling, and ordering -- so that arrest would only be resorted to when other approaches failed."[23] In this sense, order maintenance theory and "community policing" connect and overlap to a substantial degree.

The results of strategies implemented by the Transit Police Department ("TPD") in the early 1990s seemed to confirm the order maintenance hypothesis.

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disorder is a sign that no one cares and invites both further disorder and more serious crime.").

[22] Fixing Broken Windows, at 23. In part, the basis for the "broken windows" theory was Kelling's initial research, conducted in the 1970s, in the Newark Foot Patrol Experiment where he observed the work of foot patrol officers in Newark, New Jersey:

> Immersing themselves in the lives of their neighborhoods, officers were well-known, often by name, to area regulars -- residents, merchants, and street people alike -- and knew many of these individuals by name as well. Foot patrol officers kept abreast of local problems, assumed special responsibility for particular locations or persons, developed regular sources of information . . ., became regulars at local restaurants, checked "hazards" such as bars and in one case an inner-city drug store that conspicuously displayed and sold a wide assortment of knives and straight-edge razors, and in other ways came to know and be known on their beats. Finally, in collaboration with and on behalf of citizens, officers established "rules of the street" that were commonly known and widely accepted by "respectable people," as well as "street people."

Id. at 17.

[23] Fixing Broken Windows, at 23.

Efforts to rid the subways of graffiti and litter had begun to break down the image of New York's subway system as a crime-ridden underground.[24] At the level of enforcement, the TPD discovered that persons arrested for turnstile-jumping frequently were found to be "carrying weapons or [to] have outstanding warrants."[25] As the progenitor of "broken windows" theory would later describe the key lesson of the TPD's experience: "Restoring order reduces crime . . . at least in part because restoring order puts police in contact with persons who carry weapons and who commit serious crime."[26]

Although "community policing" was initially implemented under NYPD Commissioners Brown and, later, Raymond Kelly, and although crime had begun to decline appreciably, by the time William Bratton became Commissioner of the NYPD in 1994, people were still fearful: the community's perception of crime lagged behind actual crime statistics.[27] As the new Commissioner under newly elected Mayor Rudolph W. Giuliani, Bratton made order maintenance policing the NYPD's primary strategy for reducing fear and fighting serious crime.

In 1994, the Department publicly issued two "Police Strategies" that

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[24] See H.E. Semler, "Crime Reports Scare Subway Riders," New York Times (June 15, 1989) at B3, col. 4; "Under the Apple," Time (Apr. 8, 1985) at 38.

[25] Fixing Broken Windows, at 134; Bratton Heritage Foundation Lecture, at 11.

[26] Fixing Broken Windows, at 137.

[27] A December 1993 Newsday poll found that most New Yorkers harbored fear of violent crime. C. F. Richards, "Fears About Crime Jump," Newsday (Dec. 16, 1993) at 5 (cited in Police Strategy No. 1, at 5).

reflect the degree to which order maintenance became the watchword of the NYPD's approach to crime-fighting. Police Strategy No. 5, entitled "Reclaiming the Public Spaces of New York," presents the Department's plan to combat low-level street disorder.[28] Police Strategy No. 1, entitled "Getting Guns Off the Streets of New York," sets forth the Department's plan to eradicate gun violence by stepping up efforts to find and seize illegal firearms. These strategies remain in effect through the present.[29]

The link between the campaign against low-level disorder and the effort to reduce gun violence was explicit Departmental policy: "By working systematically and assertively to reduce the level of disorder in the city, the NYPD will act to undercut the ground on which more serious crimes seem possible and even permissible.[30] The practical impact was intended and equally clear: "Stopping people on minor infractions made it riskier for criminals to carry guns in public.[31] If criminals, fearful of arrest for minor violations, stopped carrying guns (the argument went), fewer violent crimes, and fewer violent deaths, would occur. In this sense, the Department's "quality of life" and "getting guns off the streets" strategies were and remain closely interrelated.[32]

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[28] This aggressive approach to low-level disorder was, as Police Strategy No. 5 put it, "the linchpin of efforts now being undertaken by the New York City Police Department to reduce crime and fear in the city." Id. at 7.

[29] Police Strategy No. 5; Police Strategy No. 1, Getting Guns Off the Streets of New York ("Police Strategy No. 1") (1994).

[30] Police Strategy No. 5, at 7.

[31] Vera Report, at 1.

[32] The proliferation of guns and their connection to violent crime has been a primary focus of the Department's Street Crime Unit, an elite unit of plainclothes

Finally, the implementation of "community policing" since 1994 has placed "less emphasis on the cop on the beat and much more emphasis on the precinct commanders [--] the same precinct commanders who met with community councils and with neighborhood groups."[33] This approach decentralized authority and responsibility, and empowered local precinct commanders -- who were presumed to be intimately involved in and responsive to their communities -- to set the crime-fighting priorities for that precinct, and to develop overall plans of action.[34] Precinct commanders determined tactics -- the number of plainclothes and uniformed officers assigned to a particular task or geographic location, for example. And precinct commanders were to be held accountable for their successes and their failures.[35]

Commander accountability was to be accomplished through what has become an NYPD institution: COMPSTAT. COMPSTAT (short for "computer statistics" or "comparison statistics") refers to a system of electronic computer mapping

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officers tasked to "hot spots" of concentrated criminal activity. The SCU's "mission" is to "effect the arrests of violent street criminals, with a particular emphasis on recovering illegal firearms." Statement of Police Commissioner Howard Safir Before the New York City Council Public Safety Committee ("Safir Statement") (April 19, 1999) at 1. In April, before the New York City Council, Commissioner Safir was asked about the degree to which the SCU conducted "stop & frisks" on the basis of "quality of life" violations. The Commissioner observed that violation-level offenses cannot lawfully support a forcible "stop," then stated that the NYPD has "neither emphasized nor de-emphasized the [quality of life enforcement] strategy as one of the tools used by the Street Crime Unit to address low-level offenses and disorder on the streets." Id. at 10.

[33] Bratton Heritage Foundation Lecture, at 11.

[34] Bratton Heritage Foundation Lecture, at 11-12.

[35] Bratton Heritage Foundation Lecture, at 11-12.

of weekly crime statistics within precincts and larger police commands. The COMPSTAT accountability process is comprised of four elements: (i) timely, accurate intelligence that is clearly communicated to all; (ii) rapid response (identifying and responding to crime trends); (iii) effective tactics; and (iv) relentless follow-up (signified by the twice weekly COMPSTAT meetings).[36] Twice weekly, Department officials analyze the specific crime issues of one of eight patrol boroughs, each of which contains eight to 10 precincts. The meetings are attended by the Police Commissioner and other high ranking Department personnel, precinct commanders and detective squad commanders, representatives of the District Attorney's office, probation and parole, crime strategists, and others.[37]

During three-hour COMPSTAT sessions, precinct commanders are held to account for crime statistics in their jurisdictions.[38] The commander explains his or her strategy to attack crime trends, and seeks to justify the tactics and results reflected in the latest crime numbers. This method of accountability, it is asserted, gives precinct commanders a strong incentive to devise and timely implement effective and localized crime-fighting tactics to reduce crime. At the same time, higher ranking officials use

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[36] J. Maple, with C. Mitchell, The Crime Fighter: Putting the Bad Guys Out of Business (1999) at 32; Bratton Heritage Foundation Lecture, at 12-13.

[37] Bratton Heritage Foundation Lecture, at 12.

[38] Bratton Heritage Foundation Lecture, at 12. In addition to crime data, statistics reflecting complaints filed with the Civilian Complaint Review Board are reviewed at COMPSTAT meetings as well. "Courtesy, Professionalism, Respect," New York City Police Department (undated) at 9.

COMPSTAT to propose solutions and offer assistance to local commanders.[39]

Order maintenance policy and the COMPSTAT process continue to be used today under Police Commissioner Howard Safir. In most categories, crime rates continue to decline.

B. Order Maintenance and "Stop & Frisk"

Although rarely referenced in publicly-disseminated Departmental strategy documents, the role of "stop & frisk" in furthering the Department's goals of order maintenance, deterrence, crime prevention, and a direct attack on gun violence is clear. Given the Department's focus on apprehending violent criminals and preventing more serious crimes by aggressively enforcing laws aimed at low-level criminality, "stop

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[39] Bratton Heritage Foundation Lecture, at 12. COMPSTAT -- the 1996 recipient of the "Innovations in American Government Program" -- is seen as instrumental in transforming the Department into a more responsive organization. By focusing precinct commanders on the reduction of crime, rather than the number of 911 calls responded to, COMPSTAT allows upper level managers to set goals and manage by results. Many have praised COMPSTAT mapping and COMPSTAT-style accountability as a key to the NYPD's success in recent years. See J. Blair, "C.I.A. Chief Slips in to Study Police Department Program," New York Times (Nov. 6, 1999) at B2, col.3 (COMPSTAT "has been widely credited as being at the heart of the city's success in reducing crime"); C. Swope, "The COMSTAT Craze," Governing Magazine (Sept. 1999) at 40 (noting "widespread agreement that Comstat has helped to drive the dramatic reductions in crime that New York has experienced in the past five years").

While adoption of these efficiency and effectiveness tools is laudable, some have argued that management by results is not without cost. Critics of the Department point to allegations that precinct commanders, pressured by the threat of an unsatisfactory COMPSTAT performance, require officers to fill arrest quotas in order to earn reasonable perks such as overtime, special assignments, or promotion. Cf. M. Cooper, "Vote by P.B.A. Rebukes Safir and his Policy," New York Times (Apr. 14, 1999) at A1, col. 1 (statement by James Savage, president of the Patrolmen's Benevolent Association, that officers are "pressured to make arrests and issue summonses in every incident," a practice that harms the public's perception of police officers.).

& frisk" serves as an important wedge into the criminal element.

Order maintenance theory encourages officers to intervene in instances of low-level disorder, whether observed or suspected, with approaches which fall short of arrest.[40] A "stop" intervention provides an occasion for the police to have contact with persons presumably involved in low-level criminality -- without having to effect a formal arrest, and under a lower constitutional standard (i.e., "reasonable suspicion"). Indeed, because low-level "quality of life" and misdemeanor offenses are more likely to be committed in the open, as a theoretical matter, the "reasonable suspicion" standard may be more readily satisfied as to those sorts of crimes. To the extent that "stop" encounters create points of contact between police and low-level offenders, such contacts can lead to the apprehension of persons already wanted for more serious crimes, or who might be prepared to commit them in the near future.[41]

A statistical review of documented "stop & frisk" encounters in New York

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[40] Fixing Broken Windows, at 23.

[41] In addition, to the extent that "stop & frisk" encounters are documented and reviewed later by detectives, the fact that there has been an encounter, and its time and place of occurrence, may provide a clue to solving a specific crime at a later date. Safir Statement, at 12 ("Precinct detective squads also review stop and frisk reports as investigative tools."). Michael Julian, former Chief of Personnel for the NYPD, questions whether the NYPD's "stop & frisk" forms (known as "UF-250's") can be effectively used for investigative purposes: "The utility of the forms depends on several factors: that the arrestee was recently stopped; that the arrestee and any accomplices provided their correct names; that the stopping officer filed the UF-250s; and that the investigating detective has the time and inclination to read through the stop and frisk forms for a needle in a haystack. The number of crimes solved by a review of stop and frisk forms is minimal." See Ltr. from Michael Julian to A.G. Celli, dated October 18, 1999.

City for the period January 1998 through the end of March 1999 demonstrates that more than 10% of all documented "stops" are based on suspicion of "quality of life" or other misdemeanor-level offenses.[42] These numbers, viewed in the light of the order maintenance approach's emphasis on lesser intrusions (i.e., intrusions short of arrest), indicate that "stop & frisk" plays an important role in furthering the NYPD's "quality of life" strategy.[43]

Finally, as implemented by the NYPD, "stop & frisk" serves the Department's No. 1 strategic goal -- "getting guns off the streets of New York."[44] Notwithstanding its origins as a technique designed to ensure officer safety, "stop & frisk" plainly has been used as a method to detect and seize illegal handguns. Over the same fifteen-month period cited above, fully 34% of all documented "stop & frisk" encounters by NYPD officers citywide were for suspected weapons possession.[45] Before its redeployment to the Borough-level commands, the citywide Street Crime Unit (SCU) virtually embodied this tactic. With its "particular emphasis on recovering illegal

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[42] See Chapter Five: "Statistical Review of NYPD's UF-250 Data," Table I.A.5, infra.

[43] In April, Police Commissioner Safir stated that "stop, question and frisk" is usually "unnecessary" where a violation level offense has been committed in an officer's presence. Commissioner Safir explained that, where an officer observes a violation, no "stop" is necessary; a summary arrest may be effected. Safir Statement, at 11. To that extent, it may be reasonable to infer that some number of "stops" for suspected "quality of life" violations actually resulted in "summary arrest" -- and thus were not documented as "stop" encounters at all.

[44] Police Strategy No. 1.

[45] See Chapter Five, Table I.A.5,infra.

firearms,"[46] the SCU -- a unit of approximately 435 officers out of approximately 40,000 -- was responsible for more than 10% of all documented "stop & frisk" encounters citywide.[47]

Thus, a model which values both proactive police interventions short of arrest and an aggressive approach to low-level disorder is well served by aggressive use of "stop & frisk." More to the point, "stop & frisk" has served as an important tactical resource in promoting the Department's specific strategic crime-fighting goals.[48]

Part II
An Overview of NYPD Training on "Stop & Frisk"

If Part I, above, seeks to place "stop & frisk" in perspective as one tactic to assist in accomplishing overall goals, this section begins to focus more narrowly on "stop & frisk" as a technique applied in individual circumstances. The Department's training in "stop & frisk" matters provides some insight into its overall approach to the subject.

Before turning to the specifics, some perspective on the scope of the training task is in order. The New York City Police Department is composed of some

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[46] Safir Statement, at 1.

[47] See Chapter Five, Table I.B.1, infra.

[48] In 1986, the Department implemented a policy requiring officers, in certain specified circumstances, to document "stop & frisk" street encounters on the UF-250 form. See Patrol Guide -- Police Department City of New York, Procedure No. 116-33, effective 11/14/86 ("Patrol Guide 'Stop and Frisk' procedure"). The number of UF-250 forms filed in a particular period is available at COMPSTAT meetings and precinct commanders may be questioned about them.

40,000 sworn officers. According to NYPD sources, if it were a standing army, it would be the sixth largest such army in the world. In the last four years, thousands of police recruits passed through the NYPD Police Academy. In addition, each year, nearly all uniformed members of the force receive "in-service" training -- what amounts to "continuing education" -- under Academy supervision. Further training is conducted by supervisors in the field.

As noted at the outset, the OAG's investigation of NYPD training issues is ongoing. To place the issues in some context, however, a brief review of NYPD training is provided below.

A. Training of Recruits at the Police Academy

Prior to being assigned actual street duty, all NYPD recruits undergo an extensive seven-month training regimen at the NYPD Academy.[49] Six months are devoted to classroom and tactics training at the Academy proper, and one month is devoted to "field experience," where recruits are given closely monitored field assignments after which they return to the classroom for a debriefing period with instructors.

Academy recruit training covers four basic "disciplines": Law, Behavioral Science, Police Science, and Physical Training and Tactics. To graduate from the Academy, recruits must pass multiple-choice tests in each discipline.

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[49] While being trained at the Academy, recruits are paid entry-level officers' salaries. After the seven-month cycle, recruits become probationary officers. Seventeen months after completing their Academy training, probationary employees of the Department become tenured members of the service.

As part of the Law discipline, recruits receive training on the legal standards governing "stop & frisk." The topic is presented in four 90-minute classroom lessons, as part of a larger discussion of Fourth Amendment and related legal concepts. The classroom training covers the basic legal rules surrounding "stop & frisk" (including a discussion of Terry v. Ohio) as well as the basic factors which can, and cannot, create "reasonable suspicion" sufficient to justify a "stop." The NYPD's written objectives for recruit training list, as an objective, the ability to understand and articulate factors which may justify a "stop" or frisk.

Although the Instructor's Guide used at the Academy contains only limited real-world examples of what does, and does not, give rise to "reasonable suspicion," in interviews, Academy personnel explained that part of the classroom time is devoted to an exploration of hypothetical situations, and to discussions about whether specific factual scenarios meet the relevant legal tests. Ultimately, recruits are tested on these various legal principles and must pass such tests in order to graduate.

In Behavioral Science, recruits are taught effective communication, cultural competence, ethics and issues concerning use of authority. Interactive workshops are often used in this training. "Stop & frisk"-related topics are touched upon here as well.

In Physical Training and Tactics, recruits are taught how to use "force" to take persons into custody, including by use of verbal commands, and how to frisk the four (4) quadrants of the body.

Finally, as part of their Police Science curriculum, recruits are instructed

on field encounters, use of discretion, problem solving through critical thinking, ethics, the Department's program for Courtesy, Professionalism and Respect, and the civilian complaint process.

B. "In-Service" Training

The NYPD provides 40 hours of "in-service" training to its officers each year. The NYPD's "in-service" training occurs through a number of different vehicles. The two most structured forms of "in-service" training, discussed here, are Borough-based (or "IN-TAC") training and Precinct-level training.

Borough-based/IN-TAC training consists of two days of training on a variety of subjects, including "stop & frisk." Precinct-level training is less formalized and structured. Materials provided by the NYPD suggest that "search and seizure" issues are taught as a part of Precinct-level training. Unlike recruit training, there is no testing mechanism for "in-service" training.

Finally, periodically during the course of their careers, officers receive "legal bulletins" from the Academy detailing legal decisions that may effect "stop & frisk" practice on the street.

C. The UF-250 Form

The UF-250 is the form by which officers document "stop & frisk" encounters.[50] Among other things, the form requires officers to record:

> * the name, age, gender, physical description, race and other pedigree information of the person "stopped";
>
> * the name, tax identification number, and command of the officer who performed the "stop";
>
> * the time, place and precinct where the "stop" occurred;
>
> * the suspected charge which gave rise to the "stop";
>
> * the "factors which caused the officer to reasonably suspect the person stopped ([i]nclud[ing] information from third persons and their identity, if known)";
>
> * whether the officer used force to effect the "stop";
>
> * whether a frisk was conducted and, if so, whether a weapon or contraband was seized;
>
> * whether a search of the inside of the suspect's clothing was conducted and, if so, the basis for that search; and
>
> * whether the person "stopped" was arrested and, if so, on what charge.[51]

Department policy mandates that officers complete a UF-250 under four specific circumstances: when a suspect is (i) "stopped" by the use of force,[52] (ii) frisked

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[50] Patrol Guide "Stop and Frisk" procedure.

[51] Patrol Guide "Stop and Frisk" procedure. A copy of a blank UF-250 form appears in Chapter 5, Part I, infra.

[52] A verbal "authoritative command," according to Departmental policy, constitutes a use of force. Borough Based Training Program Instructor's Guide, "Stop, Question and Frisk Tactics, Professional Courtesy" (Fall 90) at 22.

(i.e., patdown) and/ or "searched" (i.e., searched inside clothing); (iii) arrested; or (iv) "stopped" and the suspect refused to identify him or herself.[53]

Where a "stop & frisk" encounter has been documented, the officer must submit the completed UF-250 form to his or her supervisor, who reviews and signs the form.[54] At that point, the completed form is given to a desk officer at the precinct in which the "stop" occurred; the desk officer logs the form, assigns it a serial number, and forwards the document to the precinct commander.[55] According to Commissioner Safir, "a supervisor is required to review and sign the form at the time it is prepared, and supervisors are held responsible for ensuring that officers can articulate sufficient levels of suspicion for any action taken. In appropriate instances, if they have committed violations or made mistakes, they are disciplined or retrained."[56]

The overall purpose of the UF-250 is several-fold:

> In addition to informing the court what circumstances led the officer to believe that a stop was necessary, the report also serves to protect the officer and the Department from allegations of police misconduct which may sometimes arise from the proper performance of police duty.[57]

The form may also be used for quality control and integrity-related purposes:

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[53] Precinct Level Training Instructor's Guide, "Preparation of a Stop and Frisk Report" (Cycle 91-6) ("Preparation of a Stop and Frisk Report") at 2. A survey of major police departments around the State revealed that only the NYPD requires the documentation of "stop & frisk" activity.

[54] Patrol Guide "Stop and Frisk" procedure.

[55] Patrol Guide "Stop and Frisk" procedure.

[56] Safir Statement, at 12.

[57] Preparation of a Stop and Frisk Report, at 1.

Department policy indicates that "[p]roper completion of the form will answer any question as to why a particular course of action was employed."[58] The policy further emphasizes that the "quality of the job [done] is reflected in the careful and complete manner" in which information is recorded on these forms.[59] Finally, UF-250 forms are available for use by detective squads as investigative tools, for example, as a means of checking who may have been in a particular location at the time of a major crime.[60]

Completion of the UF-250 form has been required since 1986. In 1997, however, Commissioner Safir declared filing the UF-250's "a priority" that should be "rigorously enforced."[61] As a result, filings by the SCU, to cite one example, rose from 140 in 1996 to 18,000 in 1997.[62]

Part III
Police Attitudes Toward "Stop & Frisk"

Using the stated policies of the NYPD, NYPD-generated survey data, and the statements of a number of current and former New York City police officers as a basis, Part III attempts to provide the Department's view of "stop & frisk" as a day-to-day part of police work.

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[58] Preparation of a Stop and Frisk Report, at 5. The Commissioner testified before the City Council that the NYPD's Internal Affairs Bureau, Quality Assurance Division, and Borough Inspections Units may also use the forms to conduct targeted and random integrity testing and audits. Safir Statement, at 12.

[59] Preparation of a Stop and Frisk Report, at 5.

[60] Safir Statement, at 12.

[61] Safir Statement, at 12.

[62] Safir Statement, at 11.

A. Police Attitudes Toward the Public: A Look At Recent NYPD Survey Data

Every year, tens of thousands of New York City police officers participate in "stop & frisk" encounters with civilians,[63] making "stop & frisk" a common experience for officers throughout the Department. Survey data concerning police officers in general, and NYPD cops in particular, give some indication of the attitudes that NYPD officers take into the many and varied "stop & frisk" encounters they initiate each year.

Social science research going back as far as the 1960s suggests that it is common for police officers to feel isolated from the public that they are sworn to protect.[64] Officers of the NYPD are no different, in this sense, from officers elsewhere in the Nation. A 1994 survey of active-duty NYPD officers found that more than 90% of officer-respondents agreed with the statement: "The public has no understanding of police problems." More than 80% agreed that: "The public believes police use too much force" in their work.[65] Although, in fact, other survey data suggest that, in general, the public's view of police is far more favorable than police officers generally

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[63] NYPD-generated UF-250 data demonstrates that more than 20,000 different officers were involved in approximately 175,000 documented "stop & frisk" encounters that occurred between January 1998 and April 1999.

[64] J.H. Skolnick, Justice Without Trial: Law Enforcement in a Democratic Society ("Skolnick") (1966) at 53-54, 62-65; see also J.H. Skolnick, Justice Without Trial: Law Enforcement in a Democratic Society("Skolnick") (3rd ed. 1994) at 52-60, 65-66.

[65] Police Strategy No. 7, Rooting Out Corruption; Building Organizational Integrity in the New York Police Department ("Police Strategy No. 7") (1995) at 22.

believe,[66] what the Department itself describes as an "Us vs. Them" mentality among its officers persists.[67]

Attitudes such as these do not exist in a vacuum; they exist in the context of police work which, by its nature, puts officers in personal jeopardy, and often requires officers to assert authority over others.[68] The Department acknowledges that these two phenomena -- personal danger and the need to assert authority -- deeply affect officers' views of the world. In its 1995 Police Strategy on fighting police corruption, the Department put the matter this way: "Working together, the factors of danger and authority tend to make police officers constantly vigilant, suspicious, and ready to assert dominant authority" over civilians in situations where an officer's authority is questioned in even the most minor of ways.[69] Necessarily, it would appear, the same vigilance that officers apply to detect criminality as part of their work becomes a "fact of life" for their interactions with the broader public.

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[66] Police Strategy No. 7, at 22 (citing a 1994 poll which indicated that "73% of city residents believe the average New York City police officer is 'very' or 'somewhat honest.'").

[67] Police Strategy No. 7, at 24.

[68] See Skolnick, at 53-54, 65 & 67.

[69] Police Strategy No. 7, at 14.

B. Some Observations From Individual Officers

For further insight into police attitudes toward "stop & frisk," the OAG interviewed several current and former NYPD officials and officers. At one time or another, all of the interviewees had served as uniformed patrol officers. Many went on to become plainclothes officers (in precinct-based and in specialized units, including the Street Crime Unit), supervisors, precinct commanders, and higher ranking officials. The interviewees were of various racial and ethnic backgrounds and represented a range of experience levels. For ease of reference, all current and former sworn members of the service interviewed by the OAG are referred to as "officers," except where reference to their specific experience is relevant.[70]

The interviews began with a discussion of the officers' experience in the Department, including questions about the number of years the person spent on the force, his various assignments, and the extent to which "stop & frisk" was a part of his everyday work life. As the discussion focused on "stop & frisk" as a technique, one thing quickly became clear: From the point of view of individual police officers, the experience of a street encounter is an intensely personal one. "Stop & frisk" represents a moment in time when an officer confronts a civilian unknown to him or her, in public

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[70] One cautionary note is in order: The NYPD is comprised of more than 40,000 sworn officers, in dozens of separate commands. In an organization of that size and complexity, there can be no one, monolithic view of an experience as nuanced and textured as "stop & frisk." Indeed, it is reasonable to assume there are as many views on the experience as there are active and retired officers. For this reason, the OAG does not assert that its informal discussion groups with officers constitute a statistically significant sample or that the views discussed below are representative of the position of the Department as a whole.

and often in front of other witnesses, and utilizes his or her authority to detain and question that person.[71]

Interviewees asked to describe the "stop & frisk" experience consistently focused on the perceived danger to officers associated with the tactic. In public testimony in April, Commissioner Safir spoke of "stop & frisk" encounters as "inherently dangerous[,] . . . often involving loaded firearms and dangerous criminals."[72] The Commissioner's characterizations of these encounters, and his focus on the "personal safety of the police officer," reflect the attitude of officers interviewed by the OAG. From their point of view, "stop & frisk" is where "cops put[] their lives on the line" to deter, investigate, and solve crime. Every such encounter raises the question "whether the cop is going home at the end of his tour."[73] Concluded one officer: "This is about going home."

To be sure, every officer interviewed by the OAG could identify the basic legal standards: "reasonable suspicion" v. "mere suspicion," and "common law inquiry" v. Terry "stop," to cite two examples. These abstract concepts, however, diminished in importance in the face of the perceived danger associated with actual encounters. As one officer put it, "Wherever an officer feels in jeopardy [in a street encounter], like

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[71] Officers sometimes referred to the act of "stopping" and/or frisking a suspect by the slang expression "tossing."

[72] Safir Statement, at 9.

[73] Such attitudes are consistent with the extreme vigilance and suspicion which Skolnick identified as a natural outgrowth of the danger-authority axis.

[when responding to] a 'gun run,' there *will* be a frisk." Asked about how legal concepts would play into the decision to frisk in that circumstance, the officer replied: "Let's argue about [that] in court."

Officers' focus on the dangerous nature of "stop & frisk" encounters is partially explained by their understanding of the role of "stop & frisk" in furthering the Department's overall objectives. Virtually every interviewee expressed the view that "stop & frisk" is an integral part of the Department's goal to rid the streets of illegal weapons and violent criminals. The use of "stop & frisk" to "get a gun collar" or to find a rapist or robber was a common theme in these interviews.[74] To the extent that the "stop & frisk" technique is being deliberately applied to circumstances where weapons are presumed to be involved, officers' concerns about their safety are not surprising.

A third theme that emerged from these interviews concerned the perceived disconnect between the standards set forth in Terry, De Bour and ever-developing case law, and the day-to-day circumstances faced by officers on the street. Many officers said that the legal standards do not readily translate into straightforward rules of conduct which officers can apply in the fluid environment of a street encounter. Officers expressed frustration at what they viewed as the "fine lines" established by the courts; they argued that courts reviewing similar fact patterns sometimes reach different

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[74] One visual representation of this experience was provided in the form of a photograph shown to the OAG by an officer. The photo shows a large handwritten poster on an easel in an NYPD stationhouse. Listed on the poster are four recent violent crimes and general descriptions of suspects in those crimes. At the bottom, in large letters, are the words "TOSS TOSS TOSS" -- an informal expression referring to "stop & frisk."

legal conclusions about whether the standard of "reasonable suspicion" has been met. As one officer put it: "Reasonable people differ [about] what is reasonable. So do judges."[75] This suggestion that legal distinctions of the sort called for in "stop & frisk" encounters are for courts, not cops, to decide was common. Ultimately, most officers expressed exasperation at the (perceived) inconsistencies in the law of "stop & frisk."

In several interviews, the conduct and attitudes of "supervisors" -- sergeants and lieutenants responsible for day-to-day operations on the street -- was cited as an important factor in determining the degree to which line officers take seriously the legal standards of "stop & frisk." "The supervisor sets the tone," said one former supervisor of a specialized unit of the Department. Supervisors who regularly follow up with officers on the scene of a "stop & frisk" encounter, regularly review UF-250 forms to determine that "stops" are properly performed, and regularly point out deficiencies when they are identified, send a strong signal that adherence to legal standards is an important element of police work.[76]

Finally, there was general agreement among those interviewed that not every "stop" which, by rule, would require the completion of a UF-250 form actually results in the completion of such a form. Among the officers interviewed by the OAG,

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[75] In his April testimony, Commissioner Safir made the same point. "[E]ven United States Attorneys and federal judges," he said, "may differ on what is an appropriate stop and frisk." Safir Statement, at 9.

[76] One former senior NYPD official took the position that problems in articulating "reasonable suspicion" should be treated as training issues rather than disciplinary ones, on the theory that the Department wants to encourage *lawful* street encounters, not discourage *all* street encounters.

however, there was no clear consensus about the degree to which "stop" encounters are underreported, or why.

For example, one former supervisor of a specialized unit reported that, in his experience, UF-250 forms were completed "fairly regularly," but not always. The supervisor stated that a "stop" which leads to an arrest is most likely to be the kind of "stop" for which no UF-250 is completed. In an arrest situation, the supervisor explained, the arresting officer must complete an on-line booking sheet, a property voucher, and other paperwork to process the prisoner; "[UF-]250's are just excess Rosario material" -- that is, material that defense lawyers can use to cross-examine the officer at trial.

On the other hand, other officers stated their belief that, routinely, "stops" are not reflected in completed UF-250's forms. Some estimated that only one in three "stops" is documented; others said only one in five. The reasons for this (perceived) failure to adhere to the rules were varied: considerations of time, convenience, and necessity were frequently cited. Notably, the general consensus was that officers were more likely to complete the forms and document a "stop" where there was the possibility that a civilian might later complain about the officer's conduct.[77]

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[77] This sentiment is consistent with one of the primary stated rationales for completing the UF-250 form: to protect the officer and the Department from charges of improper conduct. See Preparation of a Stop and Frisk Report, at 1.

The NYPD approach to “stop & frisk” is complex and multi-faceted. It expresses itself in broad Departmental policies, and it is reflected in individual officer attitudes. This exploration of the Department’s approach is designed to provide context to the perspectives of other interested constituencies and the findings of the OAG’s statistical review that follow.

Chapter Four
Community Perspective

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Shortly after the investigation was announced in March, the OAG commenced an outreach effort aimed at residents of New York City's predominantly minority neighborhoods. The OAG sought information and experiential testimony from people who had either been "stopped" and frisked or witnessed others being "stopped" and frisked. In addition, the OAG sought information from persons affected less immediately, but no less directly, by the occurrence of "stop & frisk": parents of children who had been "stopped" by police; clergy members whose parishioners had recounted their experiences; community leaders with a longer view of the issue.

The OAG sought community perspectives on "stop & frisk" through three avenues: (1) outreach to the leadership community (2) outreach to community residents and (3) monitoring of public fora on "stop & frisk" and related issues.[1]

Between April and October 1999, OAG attorneys and staff met with hundreds of clergy, elected officials, community-based organization directors and their representatives, and New York City residents to hear their views on "stop & frisk." The OAG conducted its own meetings in every borough of the City, and attended more than 30 community events. In addition to describing the OAG's work in this area, office attorneys and staff distributed and collected the "Stop & Frisk" Information Collection Form ("ICF"), a written document prepared by the OAG that permitted civilians to record

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[1] For a complete description of the OAG's outreach efforts, see Methodology (Appendix), infra.

information about “stop & frisk” encounters in which they had been involved, and to submit such information to the OAG for review.

The OAG sought further to ensure broad public participation in August and September by placing fifteen public service announcements (“PSAs”) concerning the Attorney General’s “stop & frisk” investigation in weekly community newspapers whose readership is predominantly minority. In general, the PSAs informed readers of the investigation, and asked them to share with the OAG any information they believed might be relevant. The OAG also directed letters to approximately 50 community-based organizations and civic associations describing the OAG’s inquiry, and seeking information and assistance.

Finally, the OAG sent attorney representatives to dozens of hearings and public forums held around the City. As an audience member, OAG personnel heard testimony given by New York City residents, criminal law experts, sociologists, community leaders, clergy and directors of community-based organizations about the NYPD and its policies and practices, especially as they concern minorities.

The following narratives fall into two categories. Part I of this Chapter recounts “stop & frisk” experiences from the perspective of the person being “stopped.” The purpose of these narratives is not to pass judgment on the legality or the propriety of the officers’ actions, but to provide a “feel” for the experience to a reader who has never experienced such an encounter. The narratives in this section include the “stop & frisk” experience of a middle-aged African American female, a young Latino male, and a middle-aged Caribbean American male. [Pseudonyms are used but the

experiences are those of single individuals, not composites.]

The narratives in Part II of this Chapter explore the views and experiences of community residents and leaders who have felt the secondary effects of "stop & frisk" on their communities and families. The perspectives included in this Part are those of a high school principal, a member of a precinct council, and a clergy member.

Collectively, these narratives provide insight into the impact of policing, particularly "stop and frisk" activities, on individuals, families and communities of color. Of course, they are not the voices of all persons ever subjected to "stop & frisk" or affected by another person's encounter with the police. And, of course, they illustrate situations where the person "stopped" was not engaged in criminality. Nevertheless, they represent a sample of the perceptions, attitudes and reactions that exist on this issue. The thread that binds these narratives together is this: "stop & frisk" has a cost; the decision to "stop" is not without consequence beyond the immediate encounter.

Part I
Personal Narratives

A. John Reyes

John Reyes is a 22-year-old Hispanic male who resides in East Harlem with his ill mother and teenage sister. Mr. Reyes graduated from a New York City public high school in 1996, and matriculated at a community college in Westchester that same year. After only one semester, he could no longer afford the school and was forced to leave. To pay for college, Mr. Reyes entered the federal Americorps

scholarship program. In accordance with the program's requirements, he worked at a community based program site for approximately 1,200 hours to earn scholarship money. Mr. Reyes' "stop & frisk" experience occurred late one night in the summer of 1997.

After working a late shift, Mr. Reyes left the community center at approximately 12:30 a.m. He arrived at his building at approximately 1:00 a.m. Mr. Reyes entered his apartment building, walked to the elevator bank, and was waiting for the elevator when four or five men appeared. "I felt like they came from no where. Although they were not in uniform, a few of the men had their badges on, so I knew that they were police officers." The police officers questioned him about where he was coming from. They frisked him and searched his bag. In the midst of a search of his bag, the officers asked Mr. Reyes if he lived in the building. He told them that he did.

"Once the police officers seemed satisfied that I was not in possession of any contraband, and that they were going to let me go on my way, I felt comfortable to ask them what was going on . . . They told me that they had received a report that shots had been fired, and that I fit the description of the perpetrator. They didn't give me any more details."

Mr. Reyes reported that this was his first encounter with the police. As he explained, "I was nervous about being stopped and searched. I thought that only happened to criminals." The officers searched his bag. He was embarrassed and somewhat afraid. "It felt strange when the police told me to place my hands against the wall, patted down my body, and then rifled through my things. I was somewhat

embarrassed because I knew I had done nothing wrong . . . I was also glad that none of my neighbors witnessed this incident, because they might have gotten the wrong idea." Mr. Reyes added, "I did not tell my mother what had just happened because I didn't want to upset her."

B. Jean Davis

Jean Davis is a 54-year-old African American woman who resides in Brooklyn. Davis works as a home health aide for elderly persons. Her encounter with the NYPD occurred in March 1999 at about 10:30 p.m.

That evening, Ms. Davis had worked as an aide at a client's home five blocks away from her house. At the end of her shift, she left the client's home and walked on foot toward her house. Two blocks from her home, she noticed a white man walking in the street. Ms. Davis thought it was strange to see a white person in her predominately black neighborhood. Since there recently had been reports of crimes in the area, Ms. Davis quickened her pace. She was almost at her home when the man suddenly approached her from behind and grabbed her around her neck. "I screamed . . . I thought I was being attacked, so I screamed. I was only a few houses away from where I lived, and I thought I could scream loud enough that my son would hear me, and come to my rescue."

"The man told me to be quiet because he was a police officer, but I really didn't know whether to believe him because he did not show me any identification . . . the next thing I knew, the man was forcing me to walk down the street, back towards the direction he came from. He pulled me down the street towards a car. As we got

closer to the car, I saw another man get out of it. The man who was holding me forced me to put my hands on the hood of the car, and patted down the sides of my body and legs."

By this time, Ms. Davis knew that the two men were police officers. Her original fear began to subside as her anger grew. Ms. Davis stated that the officer then conducted a full search of her person, removing the contents of her jacket pockets, shaking her pants legs, removing the baseball hat she was wearing, and shaking that out as well.

At this point, Ms. Davis asked the officers for an explanation. One officer explained that the officers had gotten a call informing them that someone had purchased drugs in the area, and that she fit the description of the alleged purchaser. The officer was not specific about the description. The officer then walked up and down the street looking for drugs. Ms. Davis, now suspicious of the officers and irritated by her continuing detention, feared that an officer might plant drugs on her to cover up his mistake. Ultimately, the officer told Ms. Davis that she was free to go.

"I was shocked and humiliated at being treated like a common criminal," Ms. Davis said. She went home immediately and called her co-worker, who in turn called their employer. The employer accompanied Ms. Davis to the police precinct, where she filed a complaint. She also filed a complaint with the Civilian Complaint Review Board.

"I don't trust police officers. Following the incident, I couldn't sleep well for months . . . Eventually, I went to the doctor who prescribed sleeping pills." Ms.

Davis added that, rather than walk the five blocks to her job site, now she takes a taxi.

C. Edward Stevens

Edward Stevens is a fifty-year-old man. He was born in the Virgin Islands, and now resides in the Bronx. Mr. Stevens has been employed by the New York City Board of Education, as a teacher for nearly 20 years. He holds a Bachelor's degree, a Master's Degree and a Ph.D. Mr. Stevens is the father of three children. Until his encounter with a New York City police officer in May 1998, Mr. Stevens had never been arrested, and had never had a confrontation with law enforcement officers.

One day in May 1998, Mr. Stevens left the school during his lunch break to go to a pharmacy to pick up medication for his daughter. As Mr. Stevens drove his Mercedes Benz back to the school, an officer in a marked police cruiser pulled him over. Mr. Stevens reports that he had not been speeding, and to this day, has no idea why he was stopped.[2] The police officer approached Stevens' car, and asked him for his license and registration. He also asked Stevens who owned the car. Mr. Stevens, who was dressed in a suit and tie, responded that he was the owner. The police officer then walked back to his car.

After several minutes, the police officer had not yet returned to Mr. Stevens' vehicle. "I had already been to the pharmacy, and it was nearing the end of my lunch hour, so I leaned out of my car window and told the police officer that I was a

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[2] Although this narrative concerns a car "stop" that resulted in a "stop & frisk" -- not a pedestrian stop -- it has been included in this Chapter because it illustrates a type of "stop" encounter that the OAG heard about from many in the minority community.

school teacher and needed to get back to teach my class." According to Mr. Stevens, the police officer responded by ordering him to stay in his car, telling him not to rush him (the police officer) in doing his job.

Twenty minutes passed. Mr. Stevens again leaned out of his car window, this time saying he needed to call his school to tell someone that he was going to be late. "The police officer then got out of his vehicle, visibly agitated. He came to my car window, and told me to get out of the car. He then told me to turn around and put my hands on the hood of the car, and then he frisked me, saying that I had no right to question a police officer." Mr. Stevens recalls that there were cars passing by and people walking down the street. "I had never been stopped by a police officer before for any reason. I had done nothing wrong. I was humiliated."

"The next thing I knew, the officer placed my hands behind my back and handcuffed me." The officer took Mr. Stevens to the precinct police station, and refused to allow him to call his job.

Mr. Stevens was placed in a cell. At about 3:30 p.m., the officer informed Mr. Stevens that he could leave the precinct. Mr. Stevens asked the police officer for proof that he had been "stopped," so he could justify his absence to his employer. The police officer issued Mr. Stevens a desk appearance ticket for Resisting Arrest, Disorderly Conduct, and other minor infractions; he was not charged with any traffic infractions.

The Board of Education was notified of Mr. Stephens' arrest, and opened an inquiry. After the charges against Mr. Stevens were dismissed, the Board of

Education was so notified and closed its inquiry.

This incident deeply affected Mr. Stevens: "I now believe that, for the most part, police officers in my community do not care about the citizens; they treat the area like a war zone, and brutalize people who challenge them or get in their way."

Part II
Community Perspectives

A. Orlando Gober, Principal, Rice High School, New York City

Orlando Gober is the principal of Rice High School, an all boys Catholic high school in Upper Manhattan. Mr. Gober has worked in the field of education for more than 25 years, and has been a high school administrator for more than 20 years. He is African American, and he works primarily with teenage males who are black or Latino. Gober told the OAG that many of the young men in his school are committed to their education and future -- over one-third of them are on the Honor Role. Even so, Gober said, he fears that these young men of color are at risk of being targeted by New York City police officers because of their race.

"My students often confide in me and tell me about incidents when they were stopped by the police." Mr. Gober recounted the story of a student who arrived at school one Saturday afternoon for basketball practice shaken up because he had been "stopped" and frisked on his way to the school. The 10th grader told Mr. Gober that he had been grabbed by a police officer, pushed against a wall, and frisked. The police officer said the young man "fit the description" of someone for whom they were looking. When another police officer on the scene said that the student's clothing did not match

the suspect's clothing, Mr. Gober was told, the officers walked away, got in their vehicle, and drove off, without so much as an apology or further explanation.

"I often hear stories like this from my students . . . I get so angry about it, but I try not to show it because somebody must be objective . . . I listen, and try not to show any emotion, I then try to talk through the students' actions with them so that I can pull them to a higher level," said Gober. "I sense feelings of hopelessness and anger in my students, and although I understand their feelings, I constantly work to be a positive influence. I try to instill in them a sense of empowerment rather than victimization." Mr. Gober added: "As their principal and role model, I believe that I must work to empower the youth, rather than allow them to continue to feel like victims. It is difficult, though, walking this line, when I learn that these young students have been targeted by police officers -- most likely for the color of their skin."

Mr. Gober conducts special classes to teach his students how to react when they are confronted by police officers. This training, he says, encourages the students to stay calm, to keep their hands visible, and to take mental notes of an officer's behavior and identifying information. Mr. Gober also tries to discourage students from arguing with officers. He has brought special speakers to the school -- including representatives from the Bronx District Attorney's office, One Hundred Blacks in Law Enforcement (an organization of African American police officers), and the local police precinct among others -- to talk with the students about this issue.

Mr. Gober has established good relationships with several of the police officers assigned to the neighborhood precinct. "These relationships have helped

reduce the harassment of the students by police officers in the area of the high school." One particular community affairs police officer has become involved with the students, maintaining a positive presence at the school. This type of presence, Mr. Gober believes, is important to people in the community, and allows police officers to know the people whom they serve.

According to Gober, many of the students' parents with whom he has spoken -- mostly mothers -- seem to feel "hopeless" when it comes to how the police treat their sons. "They are afraid of what is happening in New York City, and constantly fear for their sons' safety. Many of these parents have raised their sons with solid values. But they fear police officers."

"I wish I could teach my students that, if they follow the rules and obey the law, they can avoid conflict. But this would be unrealistic. So, I push them to stay on target, and not let particular incidents, such as being stopped by a police officer, move them off of their goal to be high achievers."

B. Edward Powell, President of the 70th Precinct Council, Brooklyn Resident, Crime Reduction Consultant in NYC, Philadelphia and Hartford

"I like it when I see young children playing in the streets in my neighborhood. Not too long ago, on these very same blocks, people were afraid to come out of their apartments . . . People in my community feel safer today than they have in recent years because of the work done by both the police and organized civilian patrols to reduce crime."

Powell is a resident in the Flatbush area of Brooklyn and president of the

70th Police Precinct Council. It was in the 70th Police Precinct station house where Haitian immigrant Abner Louima was tortured two years ago by a New York City police officer.[3]

In the aftermath of the Louima incident, Inspector Ray Diaz was assigned to the 70th Precinct. Mr. Powell told the OAG, "Inspector Diaz was just what the doctor ordered for the precinct. He was very cool-headed in the aftermath outrage by the community, and [he] put people at ease." "Inspector Diaz listened to people's complaints, looked into them, and then followed up with the complainants . . . There hardly was one community meeting that occurred where he was not present." Mr. Powell believes that, as a result of Diaz's work, the community has come a long way in its efforts to heal. "I see youth who had bad views of the cops start changing after dealing with Ray. Now, they are starting to soften up their abrasive attitudes toward the police."

Mr. Powell believes that, while the 70th Police Precinct and the community it covers have come a long way, there still is a long way to go. He contends that the perception that New York City police officers are more aggressive with minorities has a basis in fact. "I have heard police officers refer to the communities they police, as 'the idiots' and 'the jungle,'" said Powell. But Mr. Powell believes that police officers say these things because they do not understand the communities in

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[3] Shortly after the Louima incident, community residents demanded changes in the precinct. The NYPD responded by making sweeping personnel changes in the 70th Police Precinct: commanding officers and police officers were transferred out and others were transferred into the precinct.

which they work and the people they are there to protect. He further contends that "the negative attitudes towards minorities held by some police officers, as well as the distrust felt by community members of the police, are too deep-seated and ingrained to be changed easily."

C. Rev. Katrina Foster, Pastor, Fordham Evangelical Lutheran Church, Bronx, New York

Reverend Katrina Foster is the pastor of the Fordham Evangelical Lutheran Church, which is located in the Fordham section of the Bronx, and has a membership of approximately 150 people. For five years, Reverend Foster has served as the pastor of the church and has lived in the church parsonage. According to Reverend Foster, though the church's active African American and Latino male membership is just slightly over 10 in number, the run-ins they have had with the New York City police officers are more numerous. "Every man of color in my congregation has had some sort of encounter with the police."

"Our church's minority male parishioners have been 'stopped' and frisked by police officers so many times that we [the church members] are thinking about inviting One Hundred Blacks in Law Enforcement to the church to advise church members on how to respond to police." She added: "Mothers in my church who have sons who are African American or Latino have already been teaching their boys what to do and how to talk when police officers stop them."

According to Rev. Foster, two years ago, a young man in the church was "stopped", arrested and charged with armed robbery. People in the congregation told

Rev. Foster that the young man did not match the description given of the alleged robber. The young man's family hired a private attorney and the charges were eventually dismissed. The legal expenses were approximately $8,000. The working class family fell behind on their bill payments. "They missed payments on their utility bills, like Con Ed, and were without electricity for some period of time," said Rev. Foster. "The church took up several offerings to help the family pay the attorney's bill."

Describing the young man in question, Rev. Foster said, "Since this happened to him, he is angry. He feels that the world owes him something."

Chapter Five
Statistical Review of NYPD's UF-250 Data

As expressed to the Attorney General by a range of New Yorkers, and as illustrated through many of the views set forth in Chapter Four, the *perception* that the police apply "stop & frisk" tactics unfairly cannot be denied. In this Chapter, the Report seeks to test that perception against the approximately 175,000 documented "stop & frisk" encounters that occurred over a fifteen-month period.

Aided by experts from Columbia University's Center for Violence Research and Prevention, the Office of the Attorney General has conducted a detailed statistical analysis of data derived from the UF-250 forms that document "stop and frisk" encounters by the NYPD. This data -- which covers the period January 1, 1998 through March 31, 1999 -- has been compared with census data, crime statistics and other demographic information to yield, for the first time, a statistically valid, quantitative view of the practice of "stop & frisk," including: (1) the rates at which "stops" occur to people in different racial groups and in different locations throughout the City; (2) the extent to which such "stop" rates are predicted by crime data; (3) the facts articulated by police officers as the basis for making "stops"; and (4) the extent to which those facts, as stated, articulate "reasonable suspicion" of potential criminal activity as required by Terry v. Ohio and its progeny.

This data provides a unique view of "stop & frisk" tactics. After years of relying upon individual accounts provided either by officers or by civilians who are "stopped," the OAG's analysis demonstrates, in objective, statistical form, the actual

patterns and trends that occur daily on New York City's streets. Impressions and assumptions can now be evaluated in light of hard data and statistically impartial facts.

Among the key findings of this research are the following:

- There is a strong statistical correlation between race and likelihood of being "stopped." (Part I.A.&B., infra).

- While crime rates partially explain the high correlation between race and likelihood of being "stopped," they do not fully explain this correlation. In other words, even when crime data is taken into account, minorities are still "stopped" at a higher rate than would be predicted by both demographics and crime rates. (Part I.C., infra).

- In roughly one out of every seven "stops" conducted by the NYPD, the facts that the police officer articulates for making the "stop," as stated in the UF-250 form, fail to meet the legal threshold of "reasonable suspicion." (Part II, infra).

The basis for each of these conclusions is discussed in detail below.

Background
The Availability and Accuracy of Forms Documenting "Stops"

According to the NYPD's Patrol Guide, a police officer who engages in a "stop & frisk" encounter with a civilian must complete a NYPD form known as a UF-250. (A copy of a UF-250 is contained on the following page). Specifically, the Patrol Guide directs officers to:

> Prepare [UF-250] for each person stopped if:
> a. Person is stopped by use of force.
> b. Person stopped is frisked or frisked and searched.
> c. Person is arrested.
> d. Person stopped refused to identify himself.

Patrol Guide, Procedure No. 116-33 at p.1.

The above four scenarios give rise to "mandated reports," i.e., situations in which an officer is *required* to complete a UF-250 form. Even though an officer is *not required* to prepare a UF-250 form unless one of the above four criteria is present, the officer may nevertheless choose to complete a UF-250 form in other "stop" contexts; such forms are considered "non-mandated reports." Three-quarters (72.5%) of the UF-250 forms for the period of time reviewed by the OAG reflect "mandated reports" while the remaining quarter (27.5%) reflect "non-mandated reports."[1]

From January 1998 through the end of March 1999, NYPD officers documented 174,919 street "stops" on UF-250 forms. As part of its investigation, the OAG obtained these forms from the NYPD in a computer-readable format.[2] The OAG then retained the Center for Violence Research and Prevention at Columbia University ("the Center") to assist in analyzing this data.[3] In light of comments by some police officials that UF-250's are not filled out in every "mandated" circumstance, the Center initially ran a series of tests to determine the reliability of this data.[4] Those tests resulted in a finding that the UF-250 data available to the OAG does present a

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[1] The OAG determined whether a report was mandated or not by reviewing the form to see whether any of the four situations which give rise to a mandated report were included in the form. The form specifically requests information on each of these four situations.

[2] The forms were input into computer readable form pursuant to a written protocol. See Appendix G.

[3] The CV's of the principal researchers at Columbia are contained in Appendix B.

[4] Those tests are described more fully in Appendix H.

statistically reliable picture of the occurrence and type of "stops" in New York City. Although not every "stop" may be documented on a form, no particular type, location or occurrence of "stop" is over- or under-represented in the UF-250 data. Thus, the aggregate data from the UF-250's mirrors the actual types and occurrence of "stops" in New York.[5]

Having determined the data's reliability, the OAG used the data to consider two basic questions: First, during the covered period, were black and Hispanic New Yorkers "stopped" at a higher rate than whites, even when factors such as crime rates are taken into account? The data generated to answer this question are discussed in Part I, below. Second, to what degree, if any, were black, white and Hispanic New Yorkers subjected to "stops" where the officer did not, on the UF-250 form, articulate facts that amounted to "reasonable suspicion" under the relevant legal standards. The data generated to answer this question are discussed in Part II, below.

Part I
The Rate of "Stops" For Minority and White New Yorkers

As discussed in Chapter One of this Report, a perception exists within the minority community that minorities are disproportionately subjected to "stop & frisk" tactics. The first question then is: "To what extent does this perception meet reality?" As discussed below, an analysis of the UF-250 data for the fifteen-month period demonstrates that (1) minorities in New York City were more likely to be "stopped" than whites; and (2) the rate at which "stops" occur in predominantly minority precincts was

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[5] See Appendix H.

higher than the rate at which they occur in predominantly white precincts. (See Part I.A., infra).

The increased rate at which minorities are "stopped" does not, however, fully resolve this issue. As explained in Chapter Two of this Report, the constitutional groundrules of the Fourteenth Amendment only preclude such "overstopping" where the targeting of minorities is intentional[6] and not explained by other, racially neutral, factors. Indeed, as discussed below, the NYPD -- through Commissioner Safir -- has implicitly recognized that minorities are "stopped" more frequently than whites compared to their representation in the general population. Commissioner Safir has explained this correlation by suggesting that other factors -- most notably crime rates -- explain the disparity.[7] Much of the data obtained from analysis of the UF-250's is inconsistent with this explanation, however.

First, an analysis of the racial breakdown of all stops versus a racial breakdown of stops that led to arrests demonstrates that minorities were more likely to be "stopped" where the "stop" did not result in an arrest. (See Part I.B., infra).

In addition, as part of the OAG's analysis, the rate of "stops," broken down by race, was compared to crime rates -- specifically arrest data. The NYPD -- through Commissioner Safir -- has suggested that minorities are more likely to be

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[6] Intent, in this context, obviously does not include considering the race of a suspect where a race specific description has been provided. See Chapter Two, Part II, supra.

[7] See, e.g., Statement of Police Commissioner Howard Safir Before the New York City Council Public Safety Commission (April 19, 1999) at 10.

"stopped" because they live in high crime neighborhoods where there is increased police presence. A comparison of the rate of "stop & frisk" activity per precinct with precinct-by-precinct crime data, however, shows that during the fifteen-month period between January 1, 1998 and April 1, 1999, crime rates did not fully account for the increased "stop & frisk" activity in predominantly minority precincts (i.e., precincts in which more than 50% of the population were minorities). (See Part I.C., infra). Furthermore, crime data does not explain the rate at which minorities were "stopped" within predominantly white precincts. Id. An examination of crime data from within those predominantly white precincts demonstrates that minorities were "stopped" there at a higher rate than would be predicted by their arrest rates. Id.

A. The Rate at Which Minorities and Whites Were "Stopped"

The fact that minorities were "stopped" at a higher rate than whites (compared with their respective representation in the general population of New York City) is demonstrated in a number of ways. On the grossest level, blacks comprised 25.6% of the City's population, yet 50.6% of all persons "stopped" were black.[8] Hispanics comprised 23.7% of the City's population yet, 33.0% of all "stops" were of Hispanics. By contrast, whites comprised 43.4% of the City's population, but

[8] Throughout this Chapter, the terms "blacks" "Hispanics" and "whites" are used because these are the terms used in the relevant census data. No value judgment should be placed on the decision to use these rather than alternate terms. Similarly, when used in this Chapter, the term "minorities" refers to blacks and Hispanics, because these are the two racially identified groups about whom data was available. Obviously, there is no intent to suggest that these two groups comprise all minorities within New York City.

accounted for only 12.9% of all "stops."[9] Thus, blacks were over six times more likely to be "stopped" than whites in New York City, while Hispanics were over four times more likely to be "stopped" than whites in New York City.[10]

A more subtle analysis focuses upon data at the precinct level.[11] Table

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[9] Unless otherwise noted, all of the percentages reported in this Chapter are based upon all "stops" -- both "stops" for which completion of a UF-250 form is mandated and those for which the form is not mandated. It should be noted, however, that a comparison of "stops" that mandate the completion of a UF-250 form with those that do not demonstrates that whites were considerably over-represented within the non-mandated group. Although whites comprised 12.9% of all "stops" and 10.4% of "stops" that require completion of a UF-250 form, they comprised 19.3% of "stops" for which a form is not mandated. Therefore, an examination of only "stops" for which completion of a UF-250 form is mandated -- which by their very nature are somewhat more intrusive -- will invariably show greater racial disparities than an examination of all "stops." For the sake of providing full information, for each of the Tables presented in this Chapter that report "stop" rates, a parallel Table considering only the universe of "stops" for which completion of a form is mandated is contained in Appendix I.

Though not considered at length in this Report, this finding -- the over-representation of whites within non-mandated reports -- is worthy of note. Although the data does not allow any conclusive explanation of this finding, it would appear that either: (1) the police completed non-mandated UF-250's for "stops" of minorities and non-minorities at the same rate, but that "stops" of whites were less likely to rise to the more intrusive level of force, a frisk or an arrest; or (2) the police were more likely to opt for completing a UF-250 form (and thus contemporaneously documenting their actions) in a non-mandated situation when the person "stopped" was white.

[10] These rates are based upon a comparison of the three "stop" rates: blacks were "stopped" at just under two-times (x2) their percentage of the population; Hispanics were "stopped" at just under x1.5 their percentage of the population; whites were "stopped" at less than x1/3 their percentage of the population. See Table I.A.1., page 3, "Citywide" line of table comparing total percentage of persons stopped with total percentage of persons in the population.

[11] A precinct map, showing the location of the City's precincts is contained on the page following Table I.A.1.

I.A.1.[12] lists all of the City's precincts, ranked in descending order of "stops" per 1,000 residents. The Table also lists the racial breakdown of the population of each precinct. From this listing, a number of trends emerge.

To begin, of the City's 75 precincts,[13] 36, or 48%, are "majority-white" precincts.[14] Of the 10 precincts with the highest rate of "stops" per 1,000 residents, however, only three are majority-white, the 14th, the 84th and the 10th. Moreover, two of those three precincts are business districts in which the census population -- which records the number of people whose home residences are in a given precinct -- does not fairly gauge a precinct's racial population for policing purposes. For example, the 14th precinct is Manhattan's Midtown South. While the census population is 26,275 (61.7% of whom are white), the "daytime" population of this precinct -- that is, the number of the people who are in the precinct during working hours, including residents, workers, passers-through, tourists, etc. -- is 10 times that number, or 264,061.[15] Although a racial breakdown of the daytime population is not available, given the nature of daytime activities in the precinct, and given the limited residential

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[12] All Tables listed in this Chapter, unless otherwise noted, are contained on the page following their first reference.

[13] The 22nd Precinct, which is Central Park, is not included in this analysis.

[14] The term "majority white" describes a precinct in which whites comprise more than 50% of the population of the precinct. There are three additional precincts (for a total of 39) in which whites are the single largest racial group within the precinct but are less than 50% of that population.

[15] A chart, listing the daytime and census populations for each precinct is contained in Appendix I, Appendix Table 1.A.1a.

TABLE I.A.1.
NYPD Stop Rates by Police Precinct -- January 1998 through March 1999
(ranked by stops per 1,000 residents)

		Distribution of Population (%)						**Race of Person Stopped (%)**			
Precinct	1990 Population	Black	Hispanic	White	Other	Total Stops	**Stops per 1,000 Residents**	Black	Hispanic	White	Other
40	76,815	31.7	65.4	2.0	.9	5,958	**77.6**	45.0	51.8	1.9	1.3
41	41,234	21.2	76.1	1.7	1.0	3,094	**75.0**	36.7	55.8	5.9	1.6
14	26,275	11.6	19.7	61.7	7.0	1,946	**74.1**	60.9	23.3	12.3	3.4
25	42,847	54.1	41.2	3.9	.8	2,801	**65.4**	59.3	34.0	5.6	1.2
10	24,205	8.7	25.2	62.6	3.5	1,492	**61.6**	45.9	35.3	16.0	2.8
42	56,692	56.0	42.2	.8	1.0	3,476	**61.3**	62.5	35.5	1.0	.9
101	60,224	52.9	19.3	25.3	2.5	3,199	**53.1**	80.2	13.1	5.1	1.6
79	67,513	80.3	18.0	.9	.8	3,577	**53.0**	89.2	8.9	1.0	.9
84	37,460	23.3	14.6	57.9	4.2	1,858	**49.6**	71.2	19.9	7.3	1.6
73	85,014	81.5	16.8	.7	1.0	3,994	**47.0**	90.6	7.9	.4	1.1
30	60,269	47.5	47.9	2.7	1.9	2,697	**44.7**	46.2	47.3	5.4	1.2
7	63,541	9.0	40.1	20.5	30.4	2,798	**44.0**	26.2	50.0	12.5	11.3
23	67,752	32.2	55.5	9.2	3.1	2,872	**42.4**	44.7	50.7	3.7	.9
48	66,037	25.9	57.9	15.0	1.2	2,753	**41.7**	43.8	51.1	4.0	1.1
69	61,483	18.6	8.4	67.6	5.4	2,386	**38.8**	76.4	8.5	13.4	1.7
60	106,126	20.1	14.9	58.5	6.5	4,110	**38.7**	53.6	25.7	19.3	1.4
103	91,740	60.4	22.9	6.7	10.0	3,490	**38.0**	81.2	11.1	2.1	5.6
18	43,160	7.2	19.2	66.3	7.3	1,615	**37.4**	45.0	38.7	14.2	2.2
115	138,722	14.8	43.8	27.6	13.8	5,145	**37.1**	16.6	67.9	10.0	5.5
120	138,228	18.1	12.1	65.6	4.2	5,028	**36.4**	64.6	16.1	18.3	1.0
47	125,344	60.8	17.8	19.1	2.3	4,493	**35.8**	81.3	13.6	3.5	1.5
28	35,455	83.2	12.9	2.5	1.4	1,169	**33.0**	88.6	8.0	2.5	.9
6	65,075	3.2	5.6	86.5	4.7	2,125	**32.7**	50.9	22.1	24.0	3.0
108	96,092	2.4	30.7	45.8	21.1	3,042	**31.7**	15.9	50.8	22.6	10.7
9	67,619	9.3	31.0	51.3	8.4	2,127	**31.5**	31.9	47.2	18.3	2.6
45	98,030	18.0	13.5	67.3	1.2	2,955	**30.1**	32.6	30.9	33.9	2.6
52	127,320	18.3	48.9	24.3	8.5	3,811	**29.9**	35.0	55.9	6.8	2.2
43	166,274	32.3	52.3	11.6	3.8	4,842	**29.1**	49.9	46.3	2.1	1.6
76	48,043	21.1	28.0	48.5	2.4	1,387	**28.9**	51.4	35.1	11.5	1.9
110	118,550	11.3	39.6	20.1	29.0	3,288	**27.7**	11.3	71.4	9.2	8.1
83	102,979	25.1	64.5	5.7	4.7	2,692	**26.1**	40.7	54.5	3.7	1.1
26	47,027	29.9	19.4	41.5	9.2	1,224	**26.0**	69.7	25.7	3.3	1.4
113	108,549	92.7	3.9	2.4	1.0	2,813	**25.9**	95.1	2.1	.9	2.0

1	29,780	5.8	4.6	80.1	9.5	764	**25.7**	55.8	24.6	14.1	5.5
88	53,642	65.6	16.8	14.4	3.2	1,363	**25.4**	87.5	10.3	1.5	.7
100	47,946	17.8	12.8	62.4	7.0	1,218	**25.4**	66.3	15.7	16.3	1.6
32	63,292	90.9	8.0	.7	.4	1,594	**25.2**	87.0	10.2	1.9	.9
75	166,901	47.5	36.6	11.8	4.1	4,114	**24.6**	69.0	26.1	3.6	1.3
77	93,814	82.2	9.7	6.7	1.4	2,235	**23.8**	93.1	4.7	.8	1.4
33	81,362	19.3	68.9	8.5	3.3	1,916	**23.5**	29.2	60.2	8.6	2.0
78	55,149	11.6	22.4	61.6	4.4	1,286	**23.3**	46.8	40.4	11.4	1.4
49	102,708	14.0	23.2	59.0	3.8	2,330	**22.7**	33.7	41.7	22.7	1.9
81	70,459	87.0	11.6	.5	.9	1,541	**21.9**	89.8	8.6	.5	1.1
114	174,704	9.3	22.5	57.8	10.4	3,725	**21.3**	35.4	30.8	27.4	6.4
109	221,261	4.3	14.6	58.5	22.6	4,652	**21.0**	20.9	36.9	27.0	15.2
70	164,244	43.8	13.2	35.9	7.1	3,389	**20.6**	77.7	13.9	6.5	2.0
34	113,271	6.1	65.4	26.0	2.5	2,238	**19.8**	12.6	78.8	7.1	1.6
112	105,261	1.7	9.5	75.4	13.4	1,919	**18.2**	26.9	26.6	38.5	8.0
5	51,650	5.0	13.3	18.2	63.5	941	**18.2**	27.3	26.7	13.7	32.3
71	105,213	79.5	9.4	9.7	1.4	1,904	**18.1**	93.9	4.3	1.0	.8
67	163,332	88.3	6.3	3.6	1.8	2,872	**17.6**	95.6	2.1	1.2	1.1
44	118,335	41.6	53.6	2.6	2.2	2,005	**16.9**	58.7	39.7	1.1	.5
72	120,935	4.4	46.0	36.6	13.0	1,874	**15.5**	9.1	78.3	10.0	2.6
102	112,488	6.5	23.6	60.7	9.2	1,687	**15.0**	28.1	39.3	16.6	16.0
66	150,614	3.3	12.0	77.2	7.5	2,198	**14.6**	17.0	43.2	33.7	6.1
50	96,457	12.0	24.1	59.2	4.7	1,406	**14.6**	31.6	53.9	12.1	2.4
94	47,604	1.1	22.6	71.8	4.5	691	**14.5**	18.4	46.5	33.9	1.3
106	107,681	20.2	17.3	55.1	7.4	1,548	**14.4**	48.2	21.5	17.6	12.7
111	108,482	2.0	6.6	77.8	13.6	1,547	**14.3**	21.3	19.8	45.1	13.8
24	114,146	15.6	25.8	54.5	4.1	1,486	**13.0**	41.6	49.3	7.8	1.3
104	148,800	.4	14.0	80.4	5.2	1,937	**13.0**	13.7	51.8	32.2	2.3
107	134,023	11.9	14.0	58.6	15.5	1,709	**12.8**	50.8	20.7	18.6	9.8
90	106,347	10.2	52.8	34.5	2.5	1,356	**12.8**	31.1	63.3	4.6	1.0
63	96,305	20.9	5.5	70.7	2.9	1,178	**12.2**	71.4	7.0	19.5	2.1
13	92,679	6.5	9.8	76.6	7.1	1,073	**11.6**	41.7	26.6	28.2	3.5
20	97,784	5.3	9.4	81.6	3.7	1,123	**11.5**	44.3	29.3	24.8	1.6
62	149,468	.6	7.6	80.7	11.1	1,691	**11.3**	10.5	23.7	61.1	4.7
105	177,075	48.6	9.8	35.0	6.6	1,953	**11.0**	80.7	7.6	7.3	4.4
122	172,597	1.4	5.5	87.7	5.4	1,879	**10.9**	17.3	14.4	66.2	2.1
68	108,751	1.1	7.3	84.1	7.5	1,174	**10.8**	7.1	31.8	53.7	7.5
46	121,848	38.3	56.6	2.3	2.8	1,110	**9.1**	46.3	49.5	1.9	2.3
17	74,432	2.3	5.3	84.6	7.8	550	**7.4**	45.6	31.1	19.5	3.8

123	68,152	1.5	4.7	90.5	3.3	436	**6.4**	3.2	9.2	86.5	1.1
61	139,268	2.2	5.8	84.6	7.4	874	**6.3**	29.5	15.4	51.1	3.9
19	210,970	3.1	5.4	87.4	4.1	1,078	**5.1**	43.0	28.8	24.1	4.0
22		Central Park				1,098		65.3	21.1	11.6	2.0
Citywide	7,332,564	25.6	23.7	43.4	7.3	174,919	**23.9**	50.6	33.0	12.9	3.5

characteristics of the precinct, it is not unrealistic to assume that the percentage of minorities in the daytime population is higher than in the census population. A second precinct within the top 10 most "stop"-intensive precincts is the 84th precinct in downtown Brooklyn. The census population of this precinct is 37,460 (57.9% white) while the daytime population is 119,597.

Excluding these two business district precincts, only one of the 10 precincts with the highest rate of "stops" is majority-white. This is a stark divergence from the City as a whole, in which almost half of the precincts (48%) are majority-white.

Closer examination of Table I.A.1. makes this divergence still starker. Of the 36 majority-white precincts, only 13 were in the top half of precincts with the most "stops," while almost twice as many (23) were in the bottom half. Moreover, of the 10 precincts with the lowest "stop" rates, all but two are majority-white. In other words, not only were minorities "stopped" at a far higher rate than their percentage in the overall population, but majority-minority precincts[16] were subject to far more "stop & frisk" activity than majority-white precincts.

Finally, it is worth considering the rate of "stops" within groups of precincts. Table I.A.2. demonstrates the racial breakdown of "stops" within precincts by grouping together like precincts (predominantly white population versus predominantly minority population) and considering the racial breakdown of "stops" within such like

[16] The term "majority-minority" precincts refers to precincts in which minorities constitute more than 50% of the population.

APPENDIX TABLE I.A.2. **Racial Distribution of All Stops by Precinct Racial Composition** Mandated Reports Only			
	% BLACK POPULATION IN PRECINCT		
% HISPANIC POPULATION IN PRECINCT	over 40%	40%-10%	under 10%
over 40%	57.0	38.0	17.1
	38.8	55.1	67.0
	3.3	4.9	10.1
	(4)	(11)	(3)
40%-20%	74.6	31.6	29.5
	19.2	52.0	40.8
	2.9	12.7	22.3
	(2)	(6)	(6)
20%-10%	84.8	56.5	22.9
	11.0	22.2	40.1
	2.9	18.2	26.3
	(8)	(9)	(5)
under 10%	91.6	74.7	30.0
	4.6	8.0	23.4
	2.0	15.4	41.5
	(6)	(2)	(13)
Legend	Racial Distribution:		% Black % Hispanic % White (number of precincts)

precincts. The Table has three columns and four rows, creating a total of 12 squares. The horizontal axis divides all precincts into those with more than 40% black population; between 40 and 10% black population; and under 10% black population. The vertical axis divides all precincts into those with over 40% Hispanic population, between 40 and 20% Hispanic population, between 20 and 10% Hispanic population and less than 10% Hispanic population. Thus, for each square on the Table, the percentage black and Hispanic population and, by subtraction, the percentage white population is known (within a range). For example, the top-left square reports "stops" in precincts which are more than 40% black population, more than 40% Hispanic population and, by subtraction, less then 20% white population.

Each square on this Table, in turn, lists four numbers: The last number, which is in parenthesis, is the number of precincts which have the racial demographics of that square. The first three numbers list, respectively, the percentage of persons "stopped" in those precincts who are black, Hispanic and white. Thus, to continue on with the top-left square, there are four precincts in New York City which are more than 40% black, more than 40% Hispanic and less than 20% white in terms of population. In those four precincts, combined, 57.0% of the "stops" are of blacks, 38.8% of the "stops" are of Hispanics and 3.3% of the "stops" are of whites. (Table I.A.3a. is another four-by-three Table which lists the actual precincts that have the racial demographics of each square. Table I.A.3b. then lists, for each square, the average racial breakdown of the population in the precincts in the square).

TABLE I.A.3a. Distribution of Precincts by Race Categories			
	% BLACK POPULATION IN PRECINCT		
% HISPANIC POPULATION IN PRECINCT	over 40%	40%-10%	under 10%
over 40%	25 30 42 44	23 33 40 41 43 46 48 52 83 90 115	7 34 72
40%-20%	75 103	24 49 50 76 78 110	9 10 94 102 108 114
20%-10%	28 47 70 73 79 81 88 101	14 26 45 60 84 100 106 107 120	5 18 66 104 109
under 10%	32 67 71 77 105 113	63 69	1 6 13 17 19 20 61 62 68 111 112 122 123

NOTE: Numbers in cells are Precincts that fit cell description

TABLE I.A.3b. Racial Composition of Precincts			
	% BLACK POPULATION IN PRECINCT		
% HISPANIC POPULATION IN PRECINCT	over 40%	40%-10%	under 10%
over 40%	47.7	24.5	6.0
	48.1	56.9	52.1
	2.4	14.5	29.1
	(4)	(11)	(3)
40%-20%	52.0	13.8	6.7
	31.8	27.9	25.5
	10.0	48.8	56.8
	(2)	(6)	(6)
20%-10%	64.9	18.3	3.4
	15.7	14.7	14.0
	16.3	59.8	65.5
	(8)	(9)	(5)
under 10%	77.2	20.0	2.5
	7.9	6.7	6.7
	12.3	69.5	83.3
	(6)	(2)	(13)
Legend	Racial Distribution:		% Black % Hispanic % White (number of precincts)

Much of Table I.A.2., especially in heavily minority neighborhoods (the top row and far left column), is unremarkable: the rate of "stops" tracks, albeit imperfectly, the demographic trends of the group of districts in question. However, moving toward the lower right hand corner of the Table (the most strongly white precincts), the racial breakdown of "stops" begins to diverge markedly from the demographics of the relevant precincts. This is most stark in the bottom-right square, which considers the 13 precincts which are less than 10% black and less than 10% Hispanic in terms of population.[17] In those 13 precincts, blacks comprised 30% of the persons "stopped" -- more than ten times *greater* than their percentage of the overall population.[18] Hispanics comprised 23.4% of the persons "stopped" -- more than three times *greater* than their percentage of the overall population. Whites, however, were only 41.5% of the persons "stopped" -- only half of their percentage of the overall population. In other words, in the most strongly white neighborhoods in New York, the disparity between minority and white "stop" rates is most pronounced.

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[17] Table I.A.3a. lists the 13 precincts that have the population demographics of the bottom-right square. Table I.A.3b. shows the actual average racial breakdown of those precincts: blacks comprise only 2.5% of the population; Hispanics comprise 6.7% of the population. It should be noted that at least two of the 13 precincts -- the 1st and 17th -- have significantly higher daytime populations than census populations. See Appendix I, Appendix Table 1.A.1a. (For the 1st precinct: 29,780 census vs. 421,663 daytime; for the 17th precinct, 74,432 census vs. 305,195 daytime). However, neither precinct had a large number of total "stops" and so is not likely to dramatically skew the results.

[18] This figure is derived by comparing the "stop" rate for blacks in those precincts from Table I.A.2. (30%) with the percentage of black population in those precincts from Table I.A.3b. (2.5%).

All of the Tables and data considered so far, taken together, leave no doubt that minorities, and in particular blacks, were, during the fifteen-month period analyzed, more likely to be the subject of "stop & frisk" activity than were whites. This is true both for individuals and for majority-minority precincts. As noted above, without considering other factors, including crime data, this correlation, alone, does not demonstrate that there is a problem with how the police conduct their operations. It does, however, demonstrate, with statistical reliability, that the perception in the minority community that the police "stop" more minorities than non-minorities, and are effecting more "stops" in minority neighborhoods than in white ones in general, has an objective basis in fact.

Before considering the reasons for the high "stop" rate of minorities, one final issue of perception merits consideration: the minority community's particular concerns about the NYPD's Street Crime Unit ("SCU"). This perception is especially relevant because, after the precinct-based commands, the SCU carries out the single largest number of stops of any specialized command. As discussed below, a review of the UF-250 data demonstrates that the perception that the SCU "stops" minorities at higher rates than it "stops" whites has some basis in statistical fact.

Table I.A.4. shows the number of "stops" carried out by various commands and units within the NYPD during the covered period. The majority of "stops" of persons of all races were carried out by non-specialized officers at the precinct level (129,538 "stops" out of a total of 174,919, or 74.1%). However, more than 10% of all "stops" were carried out by the NYPD's Street Crime Unit (19,091

TABLE I.A.4
Racial Distribution of Persons Stopped by Police Officer Command

P.O. Command	Total Stops	% of Total Stops	Black		Hispanic		White		Other	
			Count	%	Count	%	Count	%	Count	%
Precinct Command	129,538	74.1	61,978	47.8	44,141	34.1	18,363	14.2	5,056	3.9
Street Crime Unit	19,091	10.9	11,962	62.7	5,243	27.5	1,583	8.3	303	1.6
Public Housing	8,158	4.7	5,478	67.1	2,200	27.0	356	4.4	124	1.5
Boro Patrol - Task Force	6,028	3.4	2,597	43.1	2,089	34.7	929	15.4	413	6.9
Boro Patrol - Citywide	3,782	2.2	1,981	52.4	1,313	34.7	381	10.1	107	2.8
Transit	3,738	2.1	2,169	58.0	1,199	32.1	300	8.0	70	1.9
Other	2,008	1.1	1,094	54.5	560	27.9	285	14.2	69	3.4
Narcotics - Task Force	1,816	1.0	860	47.4	720	39.6	188	10.4	48	2.6
Narcotics - Citywide	576	0.3	280	48.6	205	35.6	87	15.1	4	.7
Highway & Traffic	184	0.1	85	46.2	45	24.5	42	22.8	12	6.5
	174,919	100.0	88,484	50.6	57,715	33.0	22,514	12.9	6,206	3.5

"stops" out of a total of 174,919, or 10.9%). While citywide, blacks constitute 50.6% of the persons "stopped" (and 47.8% of the persons "stopped" by precinct level police), blacks comprise 62.7% of the persons "stopped" by the SCU. Thus, the SCU "stopped" blacks at a higher rate than their percentage of the general population, and at an even higher rate than other units of the NYPD. To some extent, this statement does not account for the demographics of the high-crime precincts in which the SCU works; however, as is discussed in Part I.C., infra, even when crime rates in these precincts are taken into account, the rate at which the SCU "stops" blacks still was higher than the rate at which precinct level commands "stopped" blacks.[19]

The trend for Hispanics runs in the opposite direction. While Hispanics constitute 33.0% of the persons "stopped" overall, they represent only 27.5% of the persons "stopped" by the SCU. Thus, the SCU "stopped" Hispanics at a lower rate than the NYPD overall, and at a rate that is still higher than their overall percentage of the population (27.5% of SCU "stops" compared with 23.7% of the overall population).

One final table is worth noting. The UF-250 form has a field for "suspected charge," in which the officer lists the crime that he or she suspected when the "stop" was effected. Table I.A.5. lists "stops" broken down by suspected charge. The rate at which "stops" occur for different suspected crimes will be particularly important when comparing "stop" rates to crime (i.e., arrest) rates in Part I.C.

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[19] The Public Housing Police Command is the only police unit which "stopped" blacks at a still higher rate (67.1% of "stops"), although the demographics of the public housing population may affect this rate.

TABLE I.A.5
Racial Distribution of Persons Stopped by Suspected Charge Category

			Race of Person Stopped			
Suspected Charge	**Total Stops**	**% of Total Stops**	**Black**	**Hispanic**	**White**	**Other**
Violent Crime	33,630	19.2	56.8	30.2	9.8	3.2
Weapon	59,519	34.0	58.6	32.3	6.7	2.4
Property Crime	27,578	15.8	33.3	36.4	24.6	5.7
Drug Sale/Possession	15,147	8.7	45.3	36.0	16.4	2.3
Misdemeanor/Quality of Life	17,853	10.2	47.7	33.3	15.2	3.9
Other	6,126	3.5	44.0	33.0	17.0	6.0
Missing Suspected Charge	15,006	8.6	48.2	32.6	14.4	4.8
Total	174,919	100.0	50.6	33.0	12.9	3.5

B. The Rate At Which "Stops" Lead To Arrests

Having established that minorities are "stopped" at a higher rate than would be suggested by their proportion of the City's population, the next question is to what degree the rate at which "stops" lead to arrests varies across races.

Table I.B.1. sets forth the ratio of "stops" per arrest and shows that, citywide, for every "stop" that resulted in an arrest, 9.0 total "stops" were made. Obviously, the fact that a large number of "stops" did not result in an arrest is *not* evidence of poor policing. As discussed in detail in Chapter Two, an officer need only have reasonable suspicion to "stop" an individual; it is not surprising that, given this lower threshold, many such "stops" should fail to result in an actual arrest.

Table I.B.1. also demonstrates, however, that "stops" of minorities are less likely to result in an arrest: during the covered period, police "stopped" 9.5 blacks for every "stop" that yielded an arrest, and 8.8 Hispanics, but only 7.9 whites per one arrest. Because of the large number of cases sampled, luck or random chance cannot explain why police "stopped" 1.6 more blacks than whites to achieve an arrest.

One clue toward understanding this difference in "stop"/arrest rates is to look at "stops" broken down by the division of the NYPD carrying out the "stop."[20] As

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[20] Unlike considerations of the race of persons "stopped" (Part I.A., supra), in which disparities became clearer upon examining the question at a precinct-by-precinct level, the question of "stop"/arrest ratios does not yield to the same analysis. As can be seen in Table I.B.2., the "stop"/arrest ratio varies widely between precincts. Moreover, the ethnicity of the majority of the people living in a precinct is not a predictor of the "stop"/arrest ratio: there are heavily minority precincts in which the "stop"/arrest

TABLE I.B.1
Ratio of Stops to Arrests by NYPD Command - January 1998 through March 1999

				Ratio of Stops to Arrest by Race of Person Stopped			
P.O. Command	**Total Stops**	**Total Arrests**	**Ratio of Stops to Arrests**	**Black**	**Hispanic**	**White**	**Other**
Precinct Command	129,538	15,452	8.4	8.6	8.3	7.7	8.9
Street Crime Unit	19,091	1,279	14.9	16.3	14.5	9.6	15.9
Public Housing	8,158	1,134	7.2	7.4	7.3	4.6	8.3
Boro Patrol - Task Force	6,028	675	8.9	10.9	7.5	9.0	7.8
Boro Patrol - Citywide	3,782	261	14.5	15.5	16.6	8.9	9.7
Transit	3,738	331	11.3	12.3	10.0	11.5	7.8
Other	2,008	140	14.3	16.8	12.7	11.0	13.8
Narcotics - Task Force	1,816	68	26.7	21.5	37.9	23.5	48.0
Narcotics - Citywide	576	40	14.4	12.7	25.6	10.9	2.0
Highway & Traffic	184	29	6.3	14.2	5.0	3.2	12.0
Total	174,919	19,409	9.0	9.5	8.8	7.9	9.0

rate was lower than average and non-minority precincts in which the "stop"/arrest rate was higher than average.

Patterns do emerge when the "stop"/arrest ratio is broken down by daytime versus nighttime "stops." Such analysis shows that, during the covered period, the "stop"/arrest ratio was particularly high for nighttime "stops" of blacks. The "stop"/arrest rate for certain suspected crimes -- most notably weapons -- was also particularly high for blacks. A full discussion of this issue is contained in Appendix H.

TABLE I.B.2
Ratios of Stops to Arrests by Precinct - January 1998 through March 1999
(ranked by % Black population)

	Racial Distribution of Population (%)					All Stops - Ratio of Stops to Arrests						Weapons Stops - Ratio of Stops to Arrests				
								Race of Person Stopped						Race of Person Stopped		
Precinct	Total	**Black**	Hisp.	White	Other	Total Stops	Ratio	Black	Hisp.	White	Other	Total Stops	Ratio	Black	Hisp.	White
113	108,549	**92.7**	3.9	2.4	1.0	2,813	14.1	14.1	6.4	12.0	N/A	1,737	18.9	18.5	26.0	N/A
32	63,292	**90.9**	8.0	.7	.4	1,594	11.6	11.5	14.7	10.3	7.0	808	16.8	17.9	11.3	20.0
67	163,332	**88.3**	6.3	3.6	1.8	2,872	6.5	6.5	5.9	3.9	8.0	1,317	12.4	12.6	6.3	4.0
81	70,459	**87.0**	11.6	.5	.9	1,541	11.1	11.5	8.3	8.0	8.5	839	20.5	20.7	14.8	N/A
28	35,455	**83.2**	12.9	2.5	1.4	1,169	18.6	19.5	15.5	9.7	11.0	546	30.3	40.1	12.0	7.0
77	93,814	**82.2**	9.7	6.7	1.4	2,235	5.9	6.0	4.8	3.4	6.4	968	15.9	17.9	5.2	N/A
73	85,014	**81.5**	16.8	.7	1.0	3,994	9.9	9.7	12.2	8.0	22.5	1,890	16.3	16.2	15.9	7.0
79	67,513	**80.3**	18.0	.9	.8	3,577	11.9	12.4	8.2	12.0	16.0	1,920	18.5	18.9	14.3	12.0
71	105,213	**79.5**	9.4	9.7	1.4	1,904	15.0	15.3	8.2	N/A	N/A	972	19.8	19.4	20.0	N/A
88	53,642	**65.6**	16.8	14.4	3.2	1,363	12.4	12.7	9.4	20.0	N/A	488	21.2	25.3	8.5	N/A
47	125,344	**60.8**	17.8	19.1	2.3	4,493	14.6	15.7	11.6	10.5	11.2	1,580	18.8	18.1	17.1	N/A
103	91,740	**60.4**	22.9	6.7	10.0	3,490	11.8	12.4	12.5	5.7	7.8	1,909	22.2	23.7	26.9	10.0
42	56,692	**56.0**	42.2	.8	1.0	3,476	7.5	7.4	8.0	3.6	8.3	1,651	12.6	11.6	14.9	10.0
25	42,847	**54.1**	41.2	3.9	.8	2,801	6.3	6.4	6.2	5.2	11.0	1,149	30.2	25.0	47.3	30.0
101	60,224	**52.9**	19.3	25.3	2.5	3,199	11.4	11.6	12.0	7.1	52.0	1,565	23.0	22.5	30.8	13.3
105	177,075	**48.6**	9.8	35.0	6.6	1,953	8.7	9.4	7.8	5.7	7.1	842	15.0	15.5	6.3	16.0
75	166,901	**47.5**	36.6	11.8	4.1	4,114	9.5	9.8	9.8	5.4	10.6	2,197	17.3	18.2	16.4	13.8
30	60,269	**47.5**	47.9	2.7	1.9	2,697	16.8	13.4	22.0	16.1	32.0	1,649	17.7	13.3	23.4	18.5
70	164,244	**43.8**	13.2	35.9	7.1	3,389	11.8	12.1	11.8	8.4	16.8	1,209	16.1	16.5	12.9	44.0
44	118,335	**41.6**	53.6	2.6	2.2	2,005	9.6	11.0	8.1	11.0	10.0	926	21.0	19.2	27.5	9.0
46	121,848	**38.3**	56.6	2.3	2.8	1,110	13.7	11.4	16.1	N/A	13.0	493	13.3	12.4	13.5	N/A
43	166,274	**32.3**	52.3	11.6	3.8	4,842	8.5	9.1	8.0	5.8	13.0	1,900	12.2	12.2	12.2	8.3
23	67,752	**32.2**	55.5	9.2	3.1	2,872	14.4	14.1	16.4	7.6	4.5	1,373	29.2	35.3	30.3	15.5
40	76,815	**31.7**	65.4	2.0	.9	5,958	6.4	6.8	6.1	4.9	7.6	2,315	13.9	12.2	15.5	16.5
26	47,027	**29.9**	19.4	41.5	9.2	1,224	10.7	11.1	10.1	10.0	8.5	303	18.9	13.5	96.0	15.0
48	66,037	**25.9**	57.9	15.0	1.2	2,753	11.2	9.4	13.8	11.1	7.3	1,214	23.3	14.4	45.9	42.0
83	102,979	**25.1**	64.5	5.7	4.7	2,692	7.3	7.4	7.4	6.6	3.8	1,344	12.7	11.3	15.4	6.8
84	37,460	**23.3**	14.6	57.9	4.2	1,858	5.0	5.3	4.7	3.3	4.8	359	10.9	12.3	8.6	7.3
41	41,234	**21.2**	76.1	1.7	1.0	3,094	4.5	4.7	4.5	3.1	7.0	1,338	13.1	11.3	14.2	13.8
76	48,043	**21.1**	28.0	48.5	2.4	1,387	6.5	7.3	5.7	6.7	3.9	321	15.3	16.1	14.9	18.0
63	96,305	**20.9**	5.5	70.7	2.9	1,178	9.1	9.7	9.1	7.0	N/A	425	8.7	9.0	5.3	7.9
106	107,681	**20.2**	17.3	55.1	7.4	1,548	9.8	9.2	11.1	9.7	10.4	547	16.6	24.3	12.8	10.8

60	106,126	**20.1**	14.9	58.5	6.5	4,110	16.2	16.3	17.0	14.4	28.5	1,261	24.3	22.0	29.2	3
33	81,362	**19.3**	68.9	8.5	3.3	1,916	9.9	10.4	11.3	5.0	7.6	805	12.8	11.4	15.7	6
69	61,483	**18.6**	8.4	67.6	5.4	2,386	8.8	8.6	8.5	10.6	8.2	743	14.9	16.1	7.7	1
52	127,320	**18.3**	48.9	24.3	8.5	3,811	11.0	10.0	11.8	9.7	17.0	1,450	24.6	36.8	21.6	1
120	138,228	**18.1**	12.1	65.6	4.2	5,028	10.5	12.2	9.4	7.5	16.3	1,277	17.7	18.0	15.4	1
45	98,030	**18.0**	13.5	67.3	1.2	2,955	10.5	10.9	8.5	13.2	7.6	543	17.5	13.8	20.3	2
100	47,946	**17.8**	12.8	62.4	7.0	1,218	6.2	6.1	5.8	6.6	N/A	303	9.8	9.2	7.3	3
24	114,146	**15.6**	25.8	54.5	4.1	1,486	8.6	7.6	9.4	8.9	19.0	418	16.1	21.3	14.3	1
115	138,722	**14.8**	43.8	27.6	13.8	5,145	7.9	10.2	7.5	7.3	8.5	1,335	19.9	27.0	18.9	1
49	102,708	**14.0**	23.2	59.0	3.8	2,330	9.5	10.3	9.1	9.3	9.0	629	34.9	51.4	37.3	1
50	96,457	**12.0**	24.1	59.2	4.7	1,406	9.3	10.3	8.3	10.0	34.0	206	12.9	13.4	13.9	7
107	134,023	**11.9**	14.0	58.6	15.5	1,709	6.2	5.4	6.3	8.4	8.4	340	20.0	14.9	N/A	2
14	26,275	**11.6**	19.7	61.7	7.0	1,946	16.4	18.2	11.9	21.7	13.4	729	26.0	33.1	18.9	2
78	55,149	**11.6**	22.4	61.6	4.4	1,286	5.7	5.1	6.4	6.1	6.0	239	14.9	16.0	13.6	1
110	118,550	**11.3**	39.6	20.1	29.0	3,288	7.5	7.3	7.8	7.4	5.9	818	17.4	11.3	18.0	N
90	106,347	**10.2**	52.8	34.5	2.5	1,356	9.5	9.4	10.3	5.6	4.3	566	19.5	14.2	29.2	8
114	174,704	**9.3**	22.5	57.8	10.4	3,725	7.5	7.8	7.2	7.3	9.5	1,091	17.3	20.3	17.2	1
9	67,619	**9.3**	31.0	51.3	8.4	2,127	12.6	17.4	11.5	9.7	18.7	762	22.4	25.5	21.3	1
7	63,541	**9.0**	40.1	20.5	30.4	2,798	4.7	5.0	5.0	3.1	5.9	524	14.6	27.2	17.9	3
10	24,205	**8.7**	25.2	62.6	3.5	1,492	6.9	6.8	7.4	6.0	10.5	323	35.9	20.0	N/A	4
18	43,160	**7.2**	19.2	66.3	7.3	1,615	17.6	19.1	16.9	14.3	35.0	488	61.0	67.3	43.4	N
13	92,679	**6.5**	9.8	76.6	7.1	1,073	5.4	4.9	7.1	5.1	6.3	183	18.3	10.4	N/A	3
102	112,488	**6.5**	23.6	60.7	9.2	1,687	9.8	8.9	12.8	6.8	10.4	456	19.8	33.8	22.1	9
34	113,271	**6.1**	65.4	26.0	2.5	2,238	14.0	14.8	13.8	13.2	36.0	639	29.0	76.0	24.3	N
1	29,780	**5.8**	4.6	80.1	9.5	764	12.3	11.2	17.1	15.4	7.0	115	115.0	N/A	N/A	2
20	97,784	**5.3**	9.4	81.6	3.7	1,123	3.7	5.9	5.1	1.9	2.6	129	9.2	10.7	19.0	4
5	51,650	**5.0**	13.3	18.2	63.5	941	11.9	11.7	10.9	7.6	17.9	141	23.5	32.0	16.7	1
72	120,935	**4.4**	46.0	36.6	13.0	1,874	15.5	19.0	14.7	17.0	49.0	745	15.9	32.0	14.1	2
109	221,261	**4.3**	14.6	58.5	22.6	4,652	9.0	11.5	9.9	7.9	6.9	725	13.9	20.2	14.9	6
66	150,614	**3.3**	12.0	77.2	7.5	2,198	15.4	11.7	14.6	18.0	26.8	235	21.4	44.0	24.0	1
6	65,075	**3.2**	5.6	86.5	4.7	2,125	14.3	12.7	16.2	16.5	16.0	464	33.1	41.3	23.0	2
19	210,970	**3.1**	5.4	87.4	4.1	1,078	22.9	17.8	25.9	32.5	43.0	116	29.0	31.0	19.0	N
108	96,092	**2.4**	30.7	45.8	21.1	3,042	11.5	11.0	10.7	13.2	13.5	438	16.2	9.6	18.6	N
17	74,432	**2.3**	5.3	84.6	7.8	550	4.5	5.2	3.6	4.7	5.3	64	16.0	10.0	N/A	1
61	139,268	**2.2**	5.8	84.6	7.4	874	9.7	7.4	13.5	10.9	8.5	271	15.9	14.2	13.3	1
111	108,482	**2.0**	6.6	77.8	13.6	1,547	14.7	16.5	12.3	13.7	23.7	120	60.0	N/A	13.0	6
112	105,261	**1.7**	9.5	75.4	13.4	1,919	5.2	4.8	5.7	5.2	5.3	127	10.6	9.3	11.7	9
123	68,152	**1.5**	4.7	90.5	3.3	436	9.9	3.5	13.3	10.5	5.0	57	11.4	1.5	N/A	1
122	172,597	**1.4**	5.5	87.7	5.4	1,879	4.4	4.5	4.2	4.6	2.2	296	9.5	31.0	12.3	7

68	108,751	**1.1**	7.3	84.1	7.5	1,174	10.9	27.7	8.3	12.9	8.0	124	20.7	N/A	17.3	2
94	47,604	**1.1**	22.6	71.8	4.5	691	17.3	18.1	14.0	23.4	N/A	307	14.6	23.0	10.1	3
62	149,468	**.6**	7.6	80.7	11.1	1,691	10.9	8.9	12.5	11.2	7.2	284	23.7	N/A	15.3	2
104	148,800	**.4**	14.0	80.4	5.2	1,937	11.1	7.8	12.2	12.0	6.3	395	18.8	60.0	14.6	2
22	Central Park					1,098	16.4	17.9	12.9	15.9	22.0	144	28.8	27.7	23.0	N
Citywide	7,332,564	**25.6**	23.7	43.4	7.3	174,919	9.0	9.5	8.8	7.9	9.0	59,519	17.4	17.4	18.0	1

Note: N/A is entered in the table where the number of arrests is equal to zero, and the ratio of stops to arrests cannot be computed.

noted above, and detailed in Table I.B.1., non-specialized officers, assigned to the various precincts, carried out 74.1% of all "stops."[21] "Stops" by these precinct officers were the *least* divergent based upon race: 8.6 "stops" of blacks per arrest compared to 7.7 "stops" of whites. This .9 difference is almost half the difference in the citywide average -- a notable fact given that precinct "stops" are three-quarters of all "stops" and thus, should drive the overall average.

This trend becomes clearer when several of the specialized units are examined. The differences in "stop"/arrest rates by race among these units are quite large. After the precinct command, the next largest number of "stops" were carried out by the Street Crime Unit (10.9%).[22] An examination of the "stop"/arrest ratios for the SCU demonstrates that "stops" made by the SCU are less likely to result in an arrest, particularly as to minorities.

Table I.B.1. shows that, during the covered period, at the precinct level, all units, combined, averaged 8.4 "stops" per arrest; however, the SCU performed 14.9 "stops" per arrest, a higher "stop"/arrest rate. At the outset, it is important not to read too much into this data: the SCU is primarily concerned with removing illegal weapons from the street, and weapons "stops" are, statistically, far less likely to result in an

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[21] Non-specialized officers carried out 129,538 (or 74.1%) of the total 174,919 "stops."

[22] The SCU carried out 19,091 (or 10.9%) of the 174,919 total "stops."

arrest than most other "stops."[23] Moreover, as emphasized earlier, the fact that a "stop" does not yield an arrest is not, of itself, evidence that the "stop" was illegal or improper.

As shown on Table I.B.1., however, when the "stop"/arrest rate is broken down by race, a trend that cannot be explained solely by the SCU's mission emerges: the SCU "stopped" 16.3 blacks per arrest and 14.5 Hispanics per arrest, but only 9.6 whites per arrest. Thus, the SCU "stopped" more minorities (especially blacks) per arrest than whites. The rate of this disparity for the SCU is greater than the citywide average or at the precinct level. As discussed above, generally speaking, minorities were "stopped" at a somewhat higher rate per arrest than whites. This trend spikes up even further when viewing "stops" by the SCU.

C. The Rate of "Stops" Adjusted By Race and Crime Data

As noted at the outset of this Chapter, the fact that, during the period January 1, 1998 through March 31, 1999, minorities were being "stopped" at a higher rate than whites does not, of itself, demonstrate any flaw, practical or legal, in NYPD practices. Indeed, the NYPD -- through Commissioner Safir -- has implicitly recognized the higher rate of minority "stops" and has accounted for it by arguing that this correlation is explained by crime rates -- i.e., the rate at which crimes are committed within certain precincts. Using the "stop" data from the UF-250 forms and arrest data

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[23] See Table I.B.3. (showing that in only 2.5% of "stops" where the officer listed the suspected crime that caused the "stop" as weapons possession, did the "stop" result in an arrest for weapons possession. By comparison, 7.0% of all "stops" resulted in an arrest for the crime suspected.).

TABLE I.B.3 Frisks and Arrests by Suspected Charge				
	All Reported Stops			
			% Arrests	
Suspected Charge	Total Stops	% Frisks	On Suspected Charge	On Other Charge
Violent Crime	33,630	66.3	9.4	2.9
Weapon	59,159	93.8	2.5	3.2
Property Crime	27,578	51.3	5.9	3.1
Drug Sale/Possession	10,848	66.7	9.5	3.2
Marijuana Sale/Possession	4,299	66.5	24.0	3.8
Misdemeanor/Quality of Life	17,853	47.0	14.5	6.0
Other *	6,126	54.3	N/A	27.0
Missing Suspected Charge	15,066	45.6	N/A	9.9
Total Stops	174,919	69.1	7.0	4.1

from the New York State Division of Criminal Justice Services ("DCJS"), the OAG sought to test this hypothesis.

As discussed below, crime rates do not fully explain the higher rate at which minorities are "stopped" by the NYPD. That is, even when crime is accounted for statistically, minorities still were being "stopped" at a higher rate than whites. Indeed, for some crimes, some minority groups were "stopped" at more than twice the rate of whites, after controlling for crime.

The OAG examined the relationship between crime rates and "stop" rates in several ways. First, a Poisson random effects regression analysis was conducted, examining UF-250 "stop" rates after controlling for (1) the prior year's race-specific arrest rates within precincts and (2) the population composition of the precinct. This type of regression analysis allows certain variables (in this case race-specific arrest rates and population broken down by race) to be controlled to see whether, when these factors are held constant, other factors vary or become equalized. If the hypothesis -- that higher "stop" rates among minorities simply reflect crime rates in the precincts -- is correct, then, when crime rates and population demographic breakdowns are held constant, "stop" rates of different racial groups should tend to equalize.[24]

The crime rate used in this analysis was the DCJS arrest rate for 1997 for four major crime types: violent crimes, weapons crimes, property crimes and drug

[24] A detailed discussion of this analysis, along with the charts generated by this process, is contained in Appendix H.

crimes.[25] Although arrest rate is not a perfect surrogate for crime rates, when considering serious crimes such as the types listed here, the NYPD -- through Commissioner Safir -- has suggested that arrest rates offer a working approximate for crime, and parallel crime rates approximated by crime victim complaints to the NYPD.[26] Beyond the NYPD's own reliance on arrest rates, a number of studies have also suggested that arrest rates provide a highly reliable approximate of crime. Among serious crimes such as robbery and felony assault, the accuracy of arrest records is comparable to self-reported victimization, including crimes reported to the police.[27]

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[25] Violent crimes included robbery, assault, homicide, kidnapping and sex crimes. Weapons crimes included arrests for both gun and other illegal weapons. Property crimes included larceny and burglary. Drug crimes included both possession and sale offenses. In analyzing the UF-250 forms, 1997 DCJS arrest data was used (instead of 1998 arrest data) to avoid "autocorrelation" between "stops" and arrests -- that is, because some number of "stops" occurring in 1998 resulted in a certain number of arrests, arrest data from 1998 could not accurately be used in the analysis.

[26] See Statement of Police Commissioner Howard Safir before the New York City Public Safety Committee (April 19, 1999) at 10 ("The racial/ethnic distribution of the subjects of "stop" and frisk reports reflects the demographics of known violent crime suspects as reported by crime victims. Similarly, the demographics of arrestees in violent crimes also correspond with the demographics of known violent crime suspects.").

[27] See, e.g., Michael J. Hindelang, Travis Hirschi, and Joseph G. Weis, Correlates of Delinquency: The illusion of discrepancy between self-report and official measures, 44 *American Sociological Review* 995 (1979) (showing consistency of individual characteristics with both arrest records and self-reported crimes across inner city and suburban samples of adolescents); Scott Menard, Short-term trends in crime and delinquency: A comparison of UCR, NCS, and self-report data, 4 *Justice Quarterly* 455 (1987) (citing convergence of three sources of crime trends within cities over time); D.Wayne Osgood, Patrick M.O'Malley, Jerald G. Bachman, and Lloyd D. Johnston, Time trends and age trends in arrests and self-reported illegal behavior, 27 *Criminology* 389 (1989) (comparing self-reported crimes with arrest records for the same individuals over time in national survey data); Albert J. Reiss, Jr. and Jeffrey A.

Moreover, recent analysis has shown a strong convergence between NYPD arrest records for gun and non-gun violent crimes and New York City Department of Health records for injuries from gunshot, stab wounds and blunt instrument trauma.[28] Finally, other approximates for crime rates -- most notably NYPD complaint data -- suffer other flaws. A complaint is not made for every crime committed. Moreover, for some number of complaints, no race specific suspect identification is provided. However, as discussed later in this Chapter, where regressions were run using both DCJS arrest rates and NYPD crime complaint data, the results paralleled one another. See note 46, infra.

The results of the OAG's regression analysis using the above-described data showed that, after controlling for crime and population, there remain statistically significant ($p < .05$) differences in "stop" rates for blacks versus whites and Hispanics versus whites. That is, blacks and Hispanics were significantly more likely than whites to be "stopped" after controlling for race-specific precinct crime rates and precinct population composition by race.[29]

Roth, Understanding and Preventing Violence (1993) (showing consistency of arrest records among major data sources for long-term national trends in serious violence).

[28] See, e.g., Jeffrey Fagan, Franklin Zimring, and June Kim, Declining Homicide in New York: A Tale of Two Trends, 88 *Journal of Criminal Law and Criminology* 1277 (1998) (showing the consistency of arrest records for violent crimes with health records of fatalities and hospitalization for violent injuries). A full discussion of the use of arrest data and the studies which suggest such data's reliability is also contained at Appendix H.

[29] The same results are obtained from regression analyses considering: (1) only "stops" for which a UF-250 form is mandated and (2) only "stops" by the Street

Although this regression analysis does not demonstrate the exact rate at which minorities were being "stopped" more often than whites, it does demonstrate, to a high degree of statistical reliability, that high crime rates do not fully explain the high rate of "stops" of minorities. While higher crime rates may explain some increase in minority "stops" above their overall percentage of the population, crime rates do not explain the *full* extent to which "stop" rates for minorities were elevated.[30]

The next issue to determine is the *extent* to which minorities are "stopped" at a higher rate than whites, in comparison to their crime rates. As a first step in this analysis, the OAG ascertained, from the UF-250 data, the percentages of persons stopped who are black, Hispanic and white and, from the DCJS data set, the

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Crime Unit.

[30] To the extent that Commissioner Safir has suggested that the race of persons "stopped," in aggregate, correlates to the race of violent crime suspects as reported by victims and witnesses, this hypothesis implies that "stop" activity by the NYPD is largely driven by offender descriptions. UF-250 data does not support this suggestion. As is discussed in Part II of this Chapter, a citywide sample of UF-250 forms were coded for, among other things, the facts listed on the form that gave rise to the "stop." Less than one-third (29.9%) of stops take place because the officer believes that the person "stopped" meets the description of a known criminal suspect. (See Appendix I, Appendix Table II.B.1.). Thus, for more than two-thirds of "stops," the reason for the "stop" was not related to any particular reported description and therefore those stops would not be affected by the rate of reported crimes. Moreover, the percentage of blacks, Hispanics and whites within the group of persons "stopped" because they appeared to meet the description of a known criminal suspect, does not vary greatly from overall percentage of black, Hispanics and whites who were "stopped." (See Appendix I, Appendix Table II.B.3.). Therefore, "stops" arising from suspect descriptions did not vary by race from other "stops" and cannot skew any of the results reported herein.

percentages of persons arrested in 1997 who are black, Hispanic and white. This review demonstrated that blacks constituted 50% of the total stops and 51% of the total DCJS arrests for the covered period. Hispanics constituted 33% of all "stops" and 30% of all DCJS arrests. Whites constituted 13% of all "stops" and 16% of all DCJS arrests. However, the fact that, on an aggregate basis, blacks constitute roughly the same percentage of total "stops" and arrests is not probative of the relative treatment of different races by police because it does not compare the treatment of different races but only considers each race in isolation. Moreover, while blacks were "stopped" and arrested in roughly the same percentage of the overall population, whites were 19% less of the "stop" population than of the arrest population (13% versus 16%) -- a difference that will prove relevant in the analysis that follows.

In order to determine the extent to which minorities are more likely to be "stopped" than whites, it is helpful to compare the *ratio* of the absolute number of "stops" of a given group to the absolute number of arrests for that group, and the difference between those ratios for different groups. This analysis reveals that, in aggregate across all crime categories and precincts citywide, blacks were "stopped" 23% more often (in comparison to the crime rate) than whites. Hispanics were "stopped" 39% more often than whites.[31]

However, these numbers do not tell the whole story because the overall

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[31] The ratio of "stops" to arrests for blacks is 1.54 "stops" per arrest; for Hispanics it is 1.72 "stops" per arrest; for whites it is 1.24 "stops" per arrest. The black "stop/arrest" ratio is 23% greater than the white "stop/arrest" ratio; the Hispanic "stop/arrest" ratio is 39% greater than the white "stop/arrest" ratio.

average reported above necessarily is driven by precincts with high "stop" rates. Thus, the OAG controlled for crime rates between precincts to eliminate the undue influence of "high stop" precincts, and thereby provide a more accurate picture of citywide trends for violent crimes, weapons crimes, property crimes and drug offenses. Specifically, exponentiated coefficients were computed from a regression to illustrate the likelihood of a "stop" occurring both overall and, more specifically, for each crime type (violent crimes, weapons crimes, property crimes and drug crimes) for each racial group, controlling for the precinct and using, as a base rate, the number of arrests of persons of that race for that crime category in each precinct.[32]

The results of this analysis are reported in Table I.C.1. The Table is divided into three parts: precincts with less than 10% black population; precincts with between 10 and 40% black population; precincts with more than 40% black population.[33] Each table shows the rate, based on the regression model controlled for precincts, at which blacks, Hispanics and whites were "stopped" in proportion to the rate at which they were arrested for the above-noted four types of crimes. Thus, the top left-hand number on the top table shows, for precincts in which blacks are less than

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[32] A discussion of the way in which this analysis was completed is contained at Appendix H. As noted in Part I.A., the UF-250 form contains a field for "suspected charge" in which the officer is to list the crime that he or she has a "reasonable suspicion" is being committed. Thus, the rate of "stops" for different suspected crimes can easily be determined, and is set forth in Chart I.A.5.

[33] The data was divided in this way because, as was seen in Table I.A.2., the racial composition of the precinct is a potentially significant factor in examining "stop" rates.

TABLE I.C.1.
Comparative Estimates of Race-Specific and Crime-Specific Stop Rates, controlling for 1997 Race- and Crime-Specific Arrest Rates, by Precinct Population, for All Stops (Exponentiated Coefficients)

Black Population in Precinct: ≤ 10%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.52	2.33	0.41	0.13
Hispanic	0.43	1.96	0.69	0.15
White	0.24	0.96	0.70	0.15
Black Population in Precinct: 10-40%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.47	2.12	0.38	0.12
Hispanic	0.39	1.78	0.63	0.14
White	0.22	0.87	0.64	0.14
Black Population in Precinct: ≥ 40%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.36	1.63	0.29	0.09
Hispanic	0.30	1.37	0.48	0.11
White	0.17	0.67	0.49	0.10

10% of the population, the rate at which blacks were "stopped" for suspected violent crimes in proportion to the rate at which blacks were arrested for violent crimes (.52). The bottom left-hand number in the top table shows the parallel rate at which whites were "stopped" (.24), relative to their arrest rate (arrests per thousand persons) for that type of crime. In other words, 52 blacks were "stopped" for violent crimes for every 100 blacks arrested for violent crime; similarly 24 whites were "stopped" for violent crimes for every 100 whites arrested for violent crime.

What is most significant about these numbers is not the absolute rates, but the comparison rates. After controlling for crime, in precincts in which blacks are less than 10% of the population, blacks remained over two times (2.17) more likely to be "stopped" on suspicion of committing a violent crime than whites.[34] Additionally, blacks were almost two-and-a-half times (2.43) more likely to be "stopped" on suspicion of committing a weapons crime than were whites in precincts that are less than 10% black.[35] In the same precincts, Hispanics were 1.79 times more likely to be "stopped" for suspected violent crimes and 2.04 times more likely to be "stopped" for suspected weapons crimes than whites.[36] Again, these differences are evident *after* controlling for

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[34] Blacks were "stopped" at a rate of .52 and whites at a rate of .24, or a ratio of 2.17 to 1 (.52/.24 = 2.17).

[35] Blacks were "stopped" at a rate of 2.33 and whites at a rate of .96, or a ratio of 2.43 to 1 (2.33/.96 = 2.43).

[36] For violent crimes, Hispanics were "stopped" at a rate of .43 and whites at a rate of .24, or a ratio of 1.79 to 1 (.43/.24 = 1.79). For weapons crimes, Hispanics were "stopped" at a rate of 1.96 and whites at a rate of .96, or a ratio of 2.04 to 1 (1.96/.96 = 2.04).

race- and crime- specific arrest rates (within each precinct).[37]

In precincts in which 10-40% of the population is black and precincts in which more than 40% of the population is black, the ratios are virtually identical to precincts in which less than 10% of the population is black.[38] In other words, controlling for crime, the disparity in "stop" rates for blacks and Hispanics on suspicion of violent and weapons crimes did not vary at all depending upon the racial makeup of the precinct.

Finally, it should be noted that while, during the covered period, minorities were more likely to be "stopped," even after controlling for crime, on suspicion of violent crimes and weapons crimes, for property crimes, they were actually "stopped" at a *lower* rate than whites. Across all precincts, blacks were roughly half as likely as whites (.59%) to be "stopped" on suspicion of committing property crimes. Hispanics

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[37] A parallel table, showing "stop" rates for only those "stops" for which completion of a UF-250 form was "mandated" is contained at Appendix Table I.C.1a in Appendix I. As with other analyses involving only "mandated" reports, the use of this sub-group only heightens the racial disparities demonstrated by Table I.C.1.

[38] For precincts in which the population is 10-40% black, blacks were "stopped" for suspected violent crimes 2.14 times (.47/.22 = 2.14) more often than whites, and were "stopped" 2.12 (.36/.17 = 2.12) times more often in precincts that are more than 40% black. For suspected weapons charges, the rates were 2.44 times (2.12/.87 = 2.44) more likely for precincts that are 10-40% black and 2.43 times (1.63/.67 = 2.43) more likely for precincts that are more than 40% black. For Hispanics, the rate of "stops" for suspected violent crimes was 1.77 times (.39/.22 = 1.77) the rate for whites for precincts that are 10-40% black and 1.76 times (.30/.17 = 1.76) the rate for whites for precincts that are more than 40% black. Finally, for Hispanics the rate of "stops" for weapons crimes was 2.05 times (1.78/.87 = 2.05) the rate for whites for precincts that are 10-40% black and 2.04 times (1.37/.67 = 2.04) the rate for whites for precincts that are more than 40% black.

were slightly less likely than whites to be "stopped" on suspicion of such crimes. Again, the racial make-up of the precinct does not appear to have affected this fact.

While minorities were "stopped" less often for suspected property crimes, only 15.8% of all "stops" were based on such a suspicion. By contrast, more than half (53.2%) of all "stops" were based on suspected violent or weapons crimes.[39] See Table I.A.5., supra.

Finally, "stops" effected by the Street Crime Unit ("SCU") are examined separately.[40] Table I.C.2. shows the comparative rates of "stops," controlling for crime, of the SCU. As is evident from the table, the bulk of all "stops" by the SCU, during the covered period, were for suspected weapons offenses. The rate at which the SCU "stopped" minorities for such suspected offenses, however, is higher than the rate at which the NYPD as a whole "stopped" minorities for the same offenses. While the NYPD as a whole "stopped" blacks roughly 2.4 times as often as whites on suspected weapons charges,[41] the SCU "stopped" blacks between 2.8 and 2.9 times as often,

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[39] 19.2% of "stops" were based upon suspicion of violent crimes and 34.0% of "stops" were based upon suspicion of weapons crimes. See Table I.A.5., supra.

[40] The Street Crime Unit has been historically deployed to "high crime" areas in New York City. See Statement of Police Commissioner Howard Safir Before the New York City Council Public Safety Commission (April 19, 1999) at 10 (". . . the Street Crime Unit . . . goes where there are high concentrations of violent street crime . . ."). Data show that the SCU predominantly stops civilians at night -- the SCU stops blacks at night at a rate more than two times the rate of Hispanics at night, and more than 10 times the rate of whites in the day or night. See Appendix H, "Day and Night Arrest Rates."

[41] The range is between 2.43 and 2.44. See notes 35 & 38, supra.

TABLE I.C.2.
Comparative Estimates of Race-Specific and Crime-Specific Stop Rates, controlling for 1997 Race- and Crime-Specific Arrest Rates, by Precinct Population, Street Crime Unit Only (Exponentiated Coefficients)

Black Population in Precinct: ≤ 10%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.05	0.53	0.05	0.01
Hispanic	0.06	0.41	0.07	0.01
White	0.03	0.18	0.07	0.01
Black Population in Precinct: 10-40%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.04	0.43	0.04	0.005
Hispanic	0.05	0.33	0.06	0.005
White	0.02	0.15	0.06	0.006
Black Population in Precinct: ≥ 40%				
	Suspected Crime			
Race of Suspect	**Violent**	**Weapon**	**Property**	**Drug**
Black	0.08	0.75	0.07	0.01
Hispanic	0.08	0.58	0.10	0.01
White	0.04	0.26	0.10	0.01

even after controlling for race-specific crime rates.[42] The SCU's "stop" rate for Hispanics is roughly 2.2 times that of whites, compared with a citywide average of 2.0.[43]

The last issue to be addressed in this section is the question of "stop" rates between precincts. The Poisson regression analysis, along with the data from Table I.C.1., demonstrates that, in absolute terms, minorities were "stopped" at a higher rate than non-minorities, even after controlling for crime rates. As noted in Part I.A., however, *setting aside the race of the person "stopped,"* there is a higher overall "stop" rate in majority-minority precincts than in majority-white precincts. (See Table I.A.I. supra). An analysis was conducted to see if crime data could explain this correlation.[44]

As demonstrated in Table I.A.1., most of the precincts with the highest "stop" rates were majority-minority in make-up, while most of the precincts with the lowest "stop" rates were majority-white. A regression analysis was conducted to control these "stop" rates for crime rates -- to see whether crime rates (i.e., arrest rates in the aggregate) explained the difference in "stop" activity. As discussed below, this analysis

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[42] The rates range from 2.94 times (.53/.18 = 2.94) more likely in precincts with a black population of less than 10% to 2.87 times (.43/.15 = 2.87) more likely in precincts with a black population of 10-40% to 2.88 times (.75/.26 = 2.88) more likely in precincts with a black population over 40%.

[43] For the citywide rates, see notes 35 & 38, supra. The SCU rates range from 2.28 times (.41/.18 = 2.28) more likely in precincts with a black population of less than 10% to 2.20 times (.33/.15 = 2.20) more likely in precincts with a black population of 10-40% to 2.23 times (.58/.26 = 2.23) more likely in precincts with a black population over 40%.

[44] A detailed, technical explanation of how this analysis was conducted is contained in Appendix H.

demonstrates that crime rates do not explain the difference.

Table I.C.3. shows the same precincts in the same order as in Table I.A.1.[45] In Table I.C.3., however, not only is the "stop" rate of the precinct displayed, but the DCJS arrest rate is used to predict what the predicted "stop" rate would be after controlling for the crime rate. Finally, the chart shows the difference between the actual "stop" rate and the predicted "stop" rate: a negative difference means that the actual "stop" rate is lower than predicted by crime rate; a positive difference means that the actual "stop" rate is higher than predicted by crime rate. Thus, for the 41st Precinct (located in the Bronx), the predicted "stop" rate (contolling for crime) is 39.7 "stops" per 1,000 residents and the actual "stop" rate is 61.1 "stops" per 1,000 residents. The difference is 21.4, which means that the actual "stop" rate is more than 50% higher than would be predicted by crime rates.

As can be seen from this table, most precincts with the highest "stop" rates (the top of the table), have actual "stop" rates higher than would be predicted by crime rates. Moreover, most precincts with the lowest "stop" rates (at the bottom of the table), have actual "stop" rates lower than would be predicted by crime rates. In other words, crime rates alone do not explain the heightened "stop" rates in the mostly minority precincts at the top of the chart nor do they explain the lowered "stop" rates in

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[45] There is a slight variation in the order of precincts because Table I.C.3. is based solely on 1998 data while Table I.A.1. included data from the first three months of 1999. Because Table I.C.1 compares "stop" rate with crime rate, and the crime rate used was single year data, only a single year of "stop" rate data was employed.

TABLE I.C.3.
NYPD Stop Rates controlling for DCJS Arrest Rates by Police Precinct - January 1998 through December 1998
(ranked by stop rate per 1,000 residents)

			Racial Distribution of Population (%)								
Precinct	Total Stops	Total DCJS Arrests	Total	Black	Hispanic	White	**Stop Rate per 1,000 residents**	Arrest Rate per 1,000 Residents	Predicted Stop Rate controlling for Arrest Rate and Pop Size	Actual - Predicted Stop Rate	Ratio of Stops to Arrests
40	5,036	2,000	76,815	31.7	65.4	2.0	**65.6**	26.0	26.0	39.5	2.5
14	1,636	4,782	26,275	11.6	19.7	61.7	**62.3**	182.0	75.2	-12.9	0.3
41	2,518	2,552	41,234	21.2	76.1	1.7	**61.1**	61.9	39.7	21.4	1.0
101	2,976	1,090	60,224	52.9	19.3	25.3	**49.4**	18.1	25.4	24.0	2.7
10	1,150	766	24,205	8.7	25.2	62.6	**47.5**	31.6	32.8	14.8	1.5
42	2,625	1,096	56,692	56.0	42.2	.8	**46.3**	19.3	26.1	20.2	2.4
25	1,839	1,016	42,847	54.1	41.2	3.9	**42.9**	23.7	28.7	14.2	1.8
79	2,859	1,518	67,513	80.3	18.0	.9	**42.3**	22.5	25.9	16.4	1.9
84	1,479	1,640	37,460	23.3	14.6	57.9	**39.5**	43.8	34.9	4.6	0.9
7	2,311	487	63,541	9.0	40.1	20.5	**36.4**	7.7	22.1	14.3	4.7
30	2,006	2,516	60,269	47.5	47.9	2.7	**33.3**	41.7	32.1	1.2	0.8
47	4,161	1,517	125,344	60.8	17.8	19.1	**33.2**	12.1	17.4	15.8	2.7
120	4,457	2,153	138,228	18.1	12.1	65.6	**32.2**	15.6	17.1	15.2	2.1
48	2,096	1,881	66,037	25.9	57.9	15.0	**31.7**	28.5	27.8	4.0	1.1
73	2,668	1,614	85,014	81.5	16.8	.7	**31.4**	19.0	23.2	8.1	1.7
103	2,864	2,190	91,740	60.4	22.9	6.7	**31.2**	23.9	24.0	7.2	1.3
23	2,106	1,147	67,752	32.2	55.5	9.2	**31.1**	16.9	24.3	6.7	1.8
18	1,332	1,811	43,160	7.2	19.2	66.3	**30.9**	42.0	33.8	-3.0	0.7
69	1,809	899	61,483	18.6	8.4	67.6	**29.4**	14.6	24.3	5.1	2.0
6	1,883	1,196	65,075	3.2	5.6	86.5	**28.9**	18.4	25.0	3.9	1.6
60	3,043	1,329	106,126	20.1	14.9	58.5	**28.7**	12.5	19.4	9.3	2.3
108	2,612	1,025	96,092	2.4	30.7	45.8	**27.2**	10.7	19.8	7.4	2.5
115	3,768	1,689	138,722	14.8	43.8	27.6	**27.2**	12.2	16.1	11.1	2.2
9	1,735	1,343	67,619	9.3	31.0	51.3	**25.7**	19.9	25.2	0.5	1.3
45	2,466	952	98,030	18.0	13.5	67.3	**25.2**	9.7	19.3	5.8	2.6
43	4,134	2,904	166,274	32.3	52.3	11.6	**24.9**	17.5	14.9	10.0	1.4
28	873	1,408	35,455	83.2	12.9	2.5	**24.6**	39.7	33.9	-9.3	0.6
76	1,146	623	48,043	21.1	28.0	48.5	**23.9**	13.0	25.1	-1.3	1.8
113	2,474	1,328	108,549	92.7	3.9	2.4	**22.8**	12.2	19.0	3.8	1.9
88	1,203	1,046	53,642	65.6	16.8	14.4	**22.4**	19.5	26.4	-4.0	1.2

110	2,643	1,710	118,550	11.3	39.6	20.1	**22.3**	14.4	18.7	3.6	1.5
1	663	1,233	29,780	5.8	4.6	80.1	**22.3**	41.4	35.0	-12.7	0.5
32	1,380	1,737	63,292	90.9	8.0	.7	**21.8**	27.4	27.8	-6.0	0.8
83	2,142	1,636	102,979	25.1	64.5	5.7	**20.8**	15.9	20.6	0.2	1.3
26	919	769	47,027	29.9	19.4	41.5	**19.5**	16.4	26.2	-6.7	1.2
100	918	448	47,946	17.8	12.8	62.4	**19.1**	9.3	24.1	-5.0	2.0
78	1,033	652	55,149	11.6	22.4	61.6	**18.7**	11.8	24.1	-5.4	1.6
70	3,049	1,929	164,244	43.8	13.2	35.9	**18.6**	11.7	13.5	5.1	1.6
75	3,022	3,013	166,901	47.5	36.6	11.8	**18.1**	18.1	15.0	3.1	1.0
81	1,246	1,300	70,459	87.0	11.6	.5	**17.7**	18.5	24.5	-6.8	1.0
77	1,637	1,902	93,814	82.2	9.7	6.7	**17.4**	20.3	22.8	-5.3	0.9
49	1,789	943	102,708	14.0	23.2	59.0	**17.4**	9.2	18.7	-1.3	1.9
109	3,848	1,582	221,261	4.3	14.6	58.5	**17.4**	7.1	6.6	10.8	2.4
52	2,148	2,172	127,320	18.3	48.9	24.3	**16.9**	17.1	18.6	-1.7	1.0
114	2,886	1,387	174,704	9.3	22.5	57.8	**16.5**	7.9	11.4	5.1	2.1
33	1,336	2,099	81,362	19.3	68.9	8.5	**16.4**	25.8	25.5	-9.1	0.6
112	1,507	906	105,261	1.7	9.5	75.4	**14.3**	8.6	18.3	-4.0	1.7
71	1,503	1,601	105,213	79.5	9.4	9.7	**14.3**	15.2	20.2	-5.9	0.9
5	725	1,053	51,650	5.0	13.3	18.2	**14.0**	20.4	26.9	-12.9	0.7
44	1,634	2,506	118,335	41.6	53.6	2.6	**13.8**	21.2	20.6	-6.8	0.7
67	2,044	2,612	163,332	88.3	6.3	3.6	**12.5**	16.0	14.8	-2.3	0.8
111	1,349	500	108,482	2.0	6.6	77.8	**12.4**	4.6	16.9	-4.5	2.7
66	1,800	899	150,614	3.3	12.0	77.2	**12.0**	6.0	13.2	-1.2	2.0
102	1,326	1,343	112,488	6.5	23.6	60.7	**11.8**	11.9	18.6	-6.8	1.0
106	1,247	967	107,681	20.2	17.3	55.1	**11.6**	9.0	18.2	-6.6	1.3
34	1,271	1,114	113,271	6.1	65.4	26.0	**11.2**	9.8	17.9	-6.7	1.1
104	1,664	1,104	148,800	.4	14.0	80.4	**11.2**	7.4	13.8	-2.6	1.5
94	520	561	47,604	1.1	22.6	71.8	**10.9**	11.8	24.8	-13.9	0.9
50	1,031	684	96,457	12.0	24.1	59.2	**10.7**	7.1	18.8	-8.1	1.5
24	1,201	945	114,146	15.6	25.8	54.5	**10.5**	8.3	17.4	-6.9	1.3
107	1,402	932	134,023	11.9	14.0	58.6	**10.5**	7.0	15.1	-4.6	1.5
90	1,029	1,077	106,347	10.2	52.8	34.5	**9.7**	10.1	18.7	-9.0	1.0
13	857	1,406	92,679	6.5	9.8	76.6	**9.2**	15.2	21.4	-12.2	0.6
62	1,352	864	149,468	.6	7.6	80.7	**9.0**	5.8	13.2	-4.2	1.6
105	1,538	1,239	177,075	48.6	9.8	35.0	**8.7**	7.0	10.9	-2.2	1.2
63	835	905	96,305	20.9	5.5	70.7	**8.7**	9.4	19.4	-10.8	0.9
20	834	739	97,784	5.3	9.4	81.6	**8.5**	7.6	18.8	-10.2	1.1
68	898	749	108,751	1.1	7.3	84.1	**8.3**	6.9	17.5	-9.2	1.2
46	995	2,845	121,848	38.3	56.6	2.3	**8.2**	23.3	20.9	-12.7	0.3

122	1,347	822	172,597	1.4	5.5	87.7	**7.8**	4.8	10.7	-2.9	1.6
72	929	1,359	120,935	4.4	46.0	36.6	**7.7**	11.2	17.5	-9.9	0.7
17	411	565	74,432	2.3	5.3	84.6	**5.5**	7.6	21.0	-15.5	0.7
61	650	873	139,268	2.2	5.8	84.6	**4.7**	6.3	14.4	-9.7	0.7
19	899	1,332	210,970	3.1	5.4	87.4	**4.3**	6.3	7.4	-3.1	0.7
123	280	315	68,152	1.5	4.7	90.5	**4.1**	4.6	20.8	-16.7	0.9

the mostly white precincts at the bottom of the chart.[46]

In sum, even when population rates and crime rates are controlled for, minorities were "stopped" at a higher rate in New York City than whites. Crime rates do not account for the disparity.

Part II
Do the UF-250 Rationales, As Stated, Comport with the Fourth Amendment?

The OAG next set out to examine the reasons that police officers provided for "stopping" civilians and to determine the extent to which those reasons, as stated, meet constitutional standards -- specifically the Fourth Amendment requirement of "reasonable suspicion."[47] To accomplish this, the rationales for "stops" from more than 15,000 UF-250 forms were analyzed. Using the database of approximately 175,000 UF-250 forms representing fifteen months of "stops," the analysis was undertaken on a citywide basis and in greater detail within eight precincts. With the assistance of trained statistical researchers, the OAG categorized more than 10,000 stated rationales for "stops" and determined, on an aggregate and quantitative basis, (i) whether and to what extent these rationales, as stated, constituted "reasonable suspicion"; and (ii)

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[46] A similar table was created using the NYPD's complaint data, which tracks crime not by arrest but by complaints made to the police. There is no significant difference in the analysis when this approximate for crime is used. A copy of the table using this data is labeled Appendix Table I.C.3. and is contained in Appendix I. (Because the OAG was not supplied with this data broken down by race, similar parallel charts could not be completed for the other regressions.)

[47] Precinct Level Training Instructor's Guide, (Cycle 91-6) at Introduction ("[The UF-250] inform[s] the court what circumstances led the officer to believe that a "stop" was necessary.").

how, if at all, the rationales varied across different precincts in New York City.

A. Explanation of Categories of "Stops"

1. Development of the Categories of "Stop" Rationales

The UF-250 form (set forth supra at page 90) requires that the officer set forth the "Factors Which Caused Officer to Reasonably Suspect Person Stopped (include information from third persons and their identity, if known)." According to NYPD training materials, inclusion of accurate and complete information on the "factors" for the "stop" is important:

> The [UF-250] is an essential tool for a police officer in New York City. It explains why an officer takes the action he/she does. The report also helps to document the factors leading to a lawful and justifiable arrest. Proper completion of the form will answer any question as to why a particular course of action was employed.[48]

These same training materials note other important reasons for fully and completely filling out the form:

> [B]ecause of the intrusive nature of [a "stop" and frisk] encounter, civilian complaints are often made against officers who are acting in the proper performance of their duty....Therefore, the Department requires officers initiating a "Stop and Frisk" to prepare a report which documents their police action. In addition to informing the court what circumstances led the officer to believe that a "stop" was necessary, the report also serves to protect the officer and the Department from allegations of police misconduct which may sometimes arise from the proper performance of police duty....In law enforcement we must be courteous to the public we serve. This includes the officer providing "a

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[48] Precinct Level Training Instructor's Guide, (Cycle 91-6) at 5.

reasonable explanation for his/her conduct" and the preparation of written reports which document our actions.[49]

Rationales stated on the UF-250 forms range from detailed accounts of why the individual was "stopped" to brief descriptions of the basis for the "stop." The following are examples:

- *"At TPO[50] male was with person who fit description of person wanted for GLA* [grand larceny auto] *in 072 pct. log . . . upon approach male discarded small coin roller which contained 5 bags of alleged crack."*

- *"At T/P/O R/O[51] did observe below named person along w/3 others looking into numerous parked vehicles. R/O did maintain surveillance on individuals for approx. 20 min. subjects subsequently stopped to questioned w/ neg results*."

- "*At T/P/O subject was observed entering and exiting a known drug location. Served time. Subject was stopped and questioned about location. Subject is super of above project."*

- *"Observed silver van plate # [ ] MTU (CT) parked and running with 3 males inside as I approached the vehicle there was a lot of movement inside and occupants seemed nervous during questioning."*

Some shorter, less descriptive rationales read as follows:

- *"Slashing occurred at Canal street; person fit description; person was running."*

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[49] Id. at "Introduction."

[50] "TPO" is used by police officers as an abbreviation for "time and place of occurrence."

[51] "R/O" appears to mean "reporting officer," in this context.

- *"Several men getting in and out of a vehicle several times."*
- *"Several men got in and out of a vehicle several times in front of a store."*
- *"Observed person with large bulge in front right coat, thought to be a weapon."*

The OAG, together with its experts, developed a mechanism for coding the stated rationales to analyze the data statistically.

As discussed more fully below, throughout this coding and analysis, any ambiguity of factual or legal interpretation was resolved in favor of a determination that a factual basis had sufficiently articulated the requisite "reasonable suspicion." Necessary assumptions were always made in favor of a finding that the rationale as stated was either sufficient or incomplete; no ambiguous "stop" rationales were held to be insufficient under the relevant legal standards.

The first step of the process was to examine "stop" rationales from a random sample of 400 UF-250 forms pulled from across all New York City precincts. Two persons from the expert team acted as "coders"; as an initial matter, each read the rationales found in 200 UF-250 forms.[52] From the 200 stated rationales, each coder developed generic categories into which the rationales naturally fell. The coders then switched batches to determine, first, whether the categories each coder developed were applicable to the other batch of 200, and second, to cross-check the other coder's

[52] To prevent bias, throughout the coding process, the race of the person "stopped" in a particular UF-250 was suppressed and thus unknown to the coder.

determination of categories. This initial coding process culminated in the identification of an initial 42 categories of stated rationales for "stops."

After the initial coding had been completed, the OAG met with the research team to discuss the categories. During this review process, the OAG reviewed each code category. The expert team explained the range of rationales that fell within each category. As a result of the review, the OAG determined that some of the generic categories were too broad and included two or three separate and distinguishable rationales for a "stop." In some of these instances, one of the rationales, as stated, was constitutionally sufficient to support a "stop" while another was not. Therefore, a number of codes were divided into more distinct categories, ultimately creating 67 categories from the original 42. For example, the category "bulge in clothing," was further divided into "bulge in clothing" and "bulge in waistband," because New York's courts have held that a bulge in clothing, alone, is insufficient to support a legal "stop," while a bulge in waistband is legally sufficient to support a "stop."[53] In another instance, one category originally entitled "observed/suspected drug sale" was split into two categories: "observed drug sale" clearly provided legal justification for a "stop," but the rationales in the "suspected drug sale" category, which were far more tenuous, did not contain sufficient information to make a determination as to whether, as stated, the rationales met the constitutional standard. The "observed drug sale" category included those instances where the officer who completed the form

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[53] See discussion of case law infra at 150-60.

either *saw* the drug transaction take place or saw a transaction that *appeared to be* a drug transaction. The "suspected drug sale" category, in contrast, included stated rationales in which the officer did not provide any direct evidence of a drug transaction, and the activity observed was as easily explained by innocence as by guilt. For example, a person observed to have entered an apartment building in a "drug-prone area" and to have left the building five minutes later might have visited the building for any number of non-criminal reasons. Without more, the "suspect drug transaction" on that basis is not sufficient to support a "stop." In situations like these, the dichotomy of scenarios warranted that the one category be split into two.

Once the categories went through the "refining" process, 67 rationale codes (the "codes") were identified. These codes are set forth in Table II.A.1.

Once the codes were isolated and identified, the OAG examined the 67 specific codes and grouped them more generally into seven broad categories, as set forth in Table II.A.2. The OAG then examined the seven categories, and grouped them into the final three categories. The final three categories were:

(1) rationales that, as stated in the UF-250 form, met constitutional standards (categories A, B, C, D)

(2) rationales that, as stated in the UF-250 form, did <u>not</u> meet constitutional standards (categories E, F); and

(3) rationales, as stated in the UF-250 form, where either

(i) insufficient information was provided to determine the sufficiency of the rationale (category G), or

TABLE II.A.1.	
1	Fit Description
2	ID'd/ Information From Third Party at Scene
3.1	Pocket / Clothing Activity
3.2	Bulge in Clothing
4.1	Waistband Activity
4.2	Bulge in Waistband
5	Observed Object That Could Be (Appeared to Be) Gun (Weapon)
6	Person in Area That Crime / Suspicious Activity Was Reported
7.1	Attempted to Elude Police
7.2	Eluding The Police Plus Other Factors / Suspicious Activity
8	Fleeing Crime Scene
9	Suspicious Behavior (Nervousness, Pacing)
10	Suspicious Clothing
11	Association (with a Suspect, Person Arrested, Known Dealer)
12	Gang Affiliation (Known Member or Clothing)
13	Location (Out of Place)
14	Location Known For Drug Activity
15	Location Known For Drug Activity Plus "Suspicious Behavior" (Pacing, Standing Around Talking With Passersby or Known Dealers)
16	Location Prone to Robbery / Burglary / Grand Larceny
17	Location Prone to Robbery, Etc. Plus "Suspicious Behavior" (Pacing, Talking to Known Dealers, Loitering)
18	Location Known For Prostitution
19	Location Known For Prostitution Plus Suspicious Behavior
20.1	Observed Drug Sale
20.2	Suspected Drug Sale
21.1	Observed Drug Use
21.2	Suspected Drug Use
22.1	Observed Alcohol Consumption / Open Bottle
22.2	Suspected Alcohol Consumption / Open Bottle
23	Carrying Theft Equipment / Other Paraphernalia
24	Moving Furniture/carrying "Out of Place" Objects (Computers)
25	Observed Felony / Crime in Progress
26	Observed Harassing / Fighting
27	Jumping Turn-style / Metrocard Fraud / Theft of Service (TOS)
28	Panhandling
29	Loitering

30	Suspected Trespassing
31	Trespass Affidavit Program / Clean Halls Program
32	Building Vertical -- Building Sweeps
33	Disorderly Conduct
34	Truancy
35	Public Urination
36	Laser Light Activity / Toy Guns
37	SNEU Operation (Street Narcotics Enforcement Unit - Buy & Bust)
38	Search Warrant
39	Bail Jumping
40.1	Auto Stop / Traffic Violation
40.2	GLA Pattern / In Possession of Stolen Vehicle
40.3	Taxi Stop
41	Soliciting Undercover (Prostitution)
42	Insufficient Information
43	Observed Assault
44	Possession of Stolen Property / Burglary in Progress
45	Knife in Pocket
46	Street Gambling
47	Graffiti
48.1	Known to Police
48.2	Known and Wanted by Police / Active Warrant
49	Suspected Break-in / Burglary / On Fire Escape
50	Questioned Individual in Ongoing Investigation
51	Observed (Suspected) Lewd Behavior
52	Placing / Retrieving Object (Drugs)
53	Administrative Code Violations (Bike on Sidewalk, Unleashed Dog ...)
54	Loitering on Subway Platform for Extended Period
55	Looking Into Parked Cars / Trying One Door
56	Extended Observation of Suspicious Activity (for example, Trying Multiple Car Doors, Extended Observation of Activity, Walking Back And Forth on Same Street For Period of Time, Etc.)
57	Suspected Criminal Activity (Observed Tampering With Padlock, Selling Stolen Mdse., Etc.)
58	Black / Silver Object - Exchange of Object

TABLE II.A.2. Stop Rationale Categories						
		Category	**Codes in Category**			
Facts, as stated, articulate reasonable suspicion	A	Crime Observed	20.1	27	37	47
	B	Fit Description	1	2	39	48.2
	C	Weapon Observed	4.1	4.2	5	36
	D	Suspicious Plus	7.2 15	17 19	23 49	52 56
Facts, as stated, do not articulate reasonable suspicion	E	Activity Deemed Suspicious	3.1 3.2 7.1	9 10 11	12 29 48.1	54 55 58
	F	Wrong Place	13	14	16	18
Insufficient Information	G		6 8 20.2	21.2 22.2 24	28 42	45 50

(ii) the legal status of the rationale was unclear under relevant case law (category G).

While the 67 codes are categorized into seven groups and then further categorized into three groups, the coders were required only to make determinations as to the appropriate code (out of the 67) for each stated rationale. On the basis of the code assigned by the coder, the stated rationale would be placed first into one of the seven categories and then, ultimately, into one of three categories.[54]

2. How the OAG Determined Whether A Rationale, as Stated in a UF-250 Form, Met Constitutional Standards

While the coding of the rationales was completed by the OAG's expert team in consultation with the OAG, the determination of whether the code was sufficient to satisfy the "reasonable suspicion" standard was determined solely by the OAG, on the basis of state and federal law.

As an initial matter, the OAG accepted the stated rationale on each UF-250 form as true. Therefore, the benefit of the doubt in countless instances went toward accepting the information on the form without questions. For example, where the UF-250 rationale read "suspect fit description" (code 1), the assessment of the officer was accepted as correct with no attempt to question or challenge the officer's basis for the statement. Likewise, where the officer "observed object that could be gun" (code 5) or "observed drug sale" (code 20.1), the officer's stated rationale was

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[54] Because of the number of rationales examined -- more than 15,000 overall -- not every rationale will match perfectly a particular code. However, because of the broad range of situations with separate codes, there will be a strong tendency for the rationales to match the codes assigned.

accepted despite that in court such conclusory statements could be subject to challenge and cross-examination.[55]

Next, the OAG reviewed all 67 codes to determine whether the given code could legally support a "stop" or frisk under extant law. Six categories -- vehicular "stops," "vertical sweeps" of buildings, and search warrants (codes 31, 32, 38, 40.1, 40.2, 40.3) -- were, at the outset, excluded from the sample, because these categories included "stops" that were not the consequence of a street encounter, the focus of this part of the Report's analysis. In addition, where it could not be determined whether the coded rationale would legally support a "stop" or not, or where there was not enough information to make such a determination, those codes were grouped into an "insufficient information" category. In many instances, where the code on its face appeared legally inadequate, the code was nonetheless grouped into the "insufficient information" category because some possibility existed that some information, not listed on the form but readily hypothesized, might justify the "stop." For example, the code "moving furniture/carrying 'out of place objects'" (code 24) might well have been deemed legally insufficient, since the moving of furniture or carrying of objects appearing to be out of place, alone, would not support a "stop."[56] Instead, the OAG

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[55] Other code rationales that might ordinarily be subject to legal/factual debate include, but are not limited to: "waistband activity" (code 4.1), "observed drug use" (code 21.1), and "placing/retrieving objects" (code 52).

[56] See People v. Howard, 50 N.Y.2d 583, 430 N.Y.S.2d 578 (1980) (holding "stop" illegal where suspicion based on man walking with woman's vanity case); People v. Skinner, 65 A.D.2d 704, 410 N.Y.S.2d 704 (1st Dep't 1978) (holding "stop" illegal where court found that "the sacks and television set carried by the defendants in the

assumed that there might have been facts that were left out. Accordingly, to ensure that code 24 "stops" were not unfairly deemed deficient, the OAG placed the code -- and all of the rationales that fell within it -- in the "insufficient information" category. Ultimately, 10 of 67 codes were grouped as "insufficient information."

After "insufficient information," the remaining codes were placed either into the category for rationales that, as stated on the UF-250 form, could be legally supported or the category for such rationales that could not. The OAG determined that the rationales stated in 35 codes were sufficient to sustain a lawful "stop." Sixteen categories of stated rationales were clearly insufficient to sustain a lawful "stop."

In general, the 35 codes of stated rationales that were deemed sufficient to support a permissible "stop" fell into the following four categories: actual observation of illegal activity or seeming illegal activity, fit description, weapon observed (including "waistband bulges"), and "location plus suspicious behavior." The OAG also classified as justifiable many of the codes that arguably might have been coded as "insufficient information." For example, "stops" based on presence in "location known for drug activity plus suspicious behavior" (code 15) are not *consistently* deemed legally sufficient by New York courts.[57] Because some courts might, under the appropriate

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early afternoon are hardly items of contraband that would justify further inquiry on the part of the police").

[57] See, e.g., People v. Powell, 246 A.D.2d 366, 667 N.Y.S.2d 725 (1st Dep't 1998) (insufficient reasonable suspicion where suspect was observed walking with arm stiffly against his body in a "high-crime" location and answers to questions were deemed "evasive").

circumstances, uphold the sufficiency of a "stop" made on that basis, the OAG deemed the rationale legally sufficient for purposes of this analysis. Likewise, the OAG deemed "waistband activity" sufficient to support a legal "stop" despite some lack of uniformity in the case law.[58]

Before turning to those codes which were deemed not to meet the constitutional standard for a "stop," one point must be emphasized. A "stop" is a seizure of the person under the Fourth Amendment. "Stops" for which "reasonable suspicion" cannot be articulated are unlawful. This is not to say, however, that an officer must have "reasonable suspicion" before he or she responds to suspicious conduct or circumstances. An officer may *always* observe activities in public, speak with people in a non-coercive manner, or make his or her presence known as a method for deterring nascent criminality. Thus, to the extent that circumstances described below may not be sufficient to permit a formal "stop" (i.e., a temporary detention of a civilian), they may and often are sufficient to arouse police suspicion, to warrant further police surveillance, and to encourage an officer to make his or her presence known to a suspected person. An officer who comes upon circumstances that are suspicious, but not sufficient to permit a "stop," need not and should not turn away.

Out of 67 codes, the OAG determined that 16 codes contained rationales

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[58] While much case law holds that a "stop" where the police observe an individual adjusting his waistband is legal, People v. Douglas, 227 A.D.2d 130, 641 N.Y.S.2d 637 (1st Dep't 1996); People v. Thomas, 685 N.Y.S.2d 716, 717 (1st Dep't 1999), some courts have held that even the observation of an individual adjusting his *waistband* "is readily susceptible of an innocent as well as a guilty interpretation." People v. Moore, 176 A.D.2d 297, 299, 574 N.Y.S.2d 400, 401 (2d Dep't 1991).

that, as stated, would clearly fail to sustain a "stop" under current law. The OAG made a determination of legal insufficiency only in "bright-line" instances where the law was clear that the "stop" could not be legally sustained, and where the officer fully articulated his or her rationale for the stop such that the rationale could be evaluated without fear that crucial facts had been omitted. The following examples show UF-250 forms in which the facts as articulated by the officer were enough to determine the officer's reason for the "stop," but where that reason, by itself, did not amount to "reasonable suspicion":

- "*At T/P/O above deft where stopped inside* [name of park redacted]*, a known gang location.*"
- *"Male was in company of M/B who fit description of male wanted for robbery. Male was observed within 2 blocks of bank.*
- *"Person stopped did stop walking and reverse direction upon seeing police. Attempted to enter store as police approached; Frisked for safety.*"

By comparison, the following are examples of UF-250 forms in which the officer *did not* enter sufficient information from which the stated rationale could be evaluated:

- *"Investigate Bronx rape pattern."*
- *"Radio run F/O Loc male with firearm."*
- *"At T/P/O R/R of drug sales obs/a group of male walking in and out of loc above."*
- *"At T/P/O person was stopped and questioned person produced proper I.D."*

This latter group of UF-250 forms were therefore coded as "insufficient information"

rather than being coded as rationales that fail to articulate the basis for a "stop." The 16 categories of stated rationales that would clearly fail to sustain a "stop" under current law were then divided into two broader categories: "Activity deemed suspicious" (codes 3.1, 3.2, 7.1, 9, 10, 11, 12, 29, 48.1, 54, 55, 58) and "Wrong Place" (codes 13, 14, 16, 18). See Table II.A.I. for the list of "stop rationale codes."

For purposes of describing why stated rationales in these categories would not legally sustain a "stop," they are grouped into four categories: Bulge in pocket or clothing/clothing activity/exchange of black or silver object (codes 3.1, 3.2, 58), suspicious behavior (codes 7.1, 9, 10, 29, 48.1, 54, 55), association (codes 11, 12), and location (codes 13, 14, 16, 18). Examples of the rationales that fall into these groups, along with a brief analysis of the relevant case law, follows:

(i) Bulge in Pocket or Clothing/Clothing Activity/Exchange of Black or Silver Object [59]

- *"At T/P/O below deft had a bulge in his jacket neg results."*
- *"Def. Did have on a large bubble coat with a bulge in right pocket."*
- *"Suspect reaching in inside coat pocket w/ large bulge. Revealed to be a bag of rubber bands."*
- *"At T/P/O below person had a suspicious bulge under his shirt on his left side. Person stopped w/ neg results."*

Bulges observed in a pocket, without more, are insufficient lawfully to sustain a "stop." Indeed, the New York Court of Appeals has distinguished the *pocket*

[59] Examples from UF-250 forms follow each category; the forms are quoted verbatim in their entirety.

bulge which "could be caused by any number of innocuous objects" from the *waistband* bulge, which is "telltale of a weapon."[60] Thus, an officer may not constitutionally "stop" an individual based on his observation of an "undefined" bulge, when that bulge is situated in a person's pocket.[61]

Likewise, mere movement of hands in the pocket area of clothing or in clothing generally does not alone support a legal "stop."[62]

(ii) Suspicious Behavior

- **Eluding Police**

- *"Person stopped did stop walking and reverse direction upon seeing police. Attempted to enter store as police approached; Frisked for safety."*

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[60] People v. De Bour, 40 N.Y.2d 210, 221, 386 N.Y.S.2d 375, 383 (1976); People v. Holmes, 81 N.Y.2d 1056, 1058, 601 N.Y.S.2d 459, 461 (1993); People v. Thomas, 685 N.Y.S.2d 716, 717 (1st Dep't 1999) (holding that a waistband bulge in combination with late hour in area known for illicit drugs is sufficient to support "stop").

[61] People v. Smith, 161 Misc.2d 832, 837, 615 N.Y.S.2d 243, 246, (N.Y. Co. Sup. Ct. 1994). Where there was no evidence that defendant made any movements suggesting that the bulge was a weapon, "the bulge in the defendant's jacket was equivocal in nature and could have been caused by any number of innocuous objects." Id., 161 Misc. at 838, 615 N.Y.S.2d at 247.

[62] People v. Marine, 142 A.D.2d 368, 370, 536 N.Y.S.2d 425, 426 (1st Dep't 1989) (finding that police officer who believed that defendant was reaching into his jacket for a weapon "could just as well have assumed that defendant was scratching his stomach or tucking in his shirt"); People v. Allen, 109 A.D.2d 24, 489 N.Y.S.2d 749, 751 (1st Dep't 1985) (individual placing his "hand to his right side pocket" held insufficient to sustain "stop" where no indication that individual was the fugitive police were seeking and no indication that individual was armed); see also U.S. v. Arenas, 37 F. Supp.2d 322, 328 (S.D.N.Y. 1999) (no "reasonable suspicion" where defendant reached into breast pocket of jacket, pulled out dark object and placed it into right outside jacket pocket).

- *"At T/P/O A/O, observed below person, w/another in a vacant lot. When they saw the police they began to walk quickly away. Stopped both and did not frisk."*

Under governing New York law, an individual has a constitutional right to refuse to respond to questions posed by a police officer, may remain silent, and may walk away without fearing an arrest or detention by the officer. [63]

New York law is in step with United States Supreme Court precedent holding that a citizen who does not wish to answer police questions may disregard the officer's questions and walk away.[64]

- **Unusual Conduct**

- *"Def was walking down street on beautiful day attempting to*

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[63] People v. Howard, 50 N.Y.2d 583, 586, 430 N.Y.S.2d 578, 581 (1980). "Flight alone . . . or even in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit because an individual has a right 'to be let alone' and refuse to respond to police inquiry." People v. Holmes, 81 N.Y.2d 1056, 1058, 601 N.Y.S.2d 459, 461 (1993) (internal citations omitted). In contrast, if the officer has evidence or a reasonable belief that crime is afoot, then the individual's flight, *taken in conjunction with the surrounding circumstances*, may be sufficient to establish the requisite reasonable suspicion needed to pursue the individual. See People v. Sierra, 190 A.D.2d 202, 205, 599 N.Y.S.2d 6, 8 (1st Dep't 1993). Without coupling the flight from the officer with other factors such as time, location, or suspicious actions of the individual, fleeing from the police will not satisfy the "reasonable suspicion" element necessary to detain that individual. See People v. Martinez, 80 N.Y.2d 444, 448, 591 N.Y.S.2d 823, 825 (1992).

[64] United States v. Mendenhall, 446 U.S. 544 (1980). See also Brown v. Texas, 443 U.S. 47, 49 (1979) (no reasonable suspicion justified a seizure where the police "stopped" the defendant in an alley associated with drug trafficking and the defendant "refused to identify himself and angrily asserted that the officers had no right to stop him"). Note that the United States Supreme Court has recently granted certiorari with respect to whether police may "stop" a suspect solely on the basis of flight. See Illinois v. Wardlow, 183 Ill.2d 306, 701 N.E.2d 484 (1998), cert. granted, 119 S. Ct. 1573 (1999).

cover face w/hood."

- *"Suspect allowed number of trains to go thru station before going through exit gate."*

- *"Person stopped was walking slowly down the block carrying misc. object and a knapsack."*

New York's highest court long ago declared that behavior that is equally "susceptible of innocent as well as culpable interpretation" standing alone -- does not give rise to a legally supportable "stop."[65] "Odd" behavior has been held not to rise to the level of supporting a *first tier* request for information under the De Bour test, much less a "stop."[66]

▸ **Suspicious Clothing**

- *"Subject was wearing a coat which belonged to a perp from*

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[65] People v. De Bour, 386 N.Y.S.2d at 380 ("innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand"). As noted elsewhere however, facially innocent actions in combination with other factors can give rise to "reasonable suspicion."

[66] See People v. Powell, 246 A.D.2d 366, 667 N.Y.S.2d 725 (1st Dep't 1998) (insufficient reasonable suspicion where suspect was observed walking with arm stiffly against his body in a "high-crime" location and answers to questions were deemed "evasive"); People v. Howard, 50 N.Y.2d 583, 430 N.Y.S.2d 578 (1st Dep't 1989) (holding "stop" illegal where suspicion based on man walking with woman's vanity case); People v. Cornelius, 113 A.D.2d 666, 667, 497 N.Y.S.2d 16, 18 (1st. Dep't 1986) (asserting that police simply "do not have carte blanche to search or 'touch the pocket' of every individual on the street who walks in a 'little out of the ordinary' manner, looks over his shoulder, wears a 'wrinkled up and dirty' 'ragged and old' coat, or appears to have a bulky object in his pocket"); People v. Skinner, 65 A.D.2d 704, 410 N.Y.S.2d 704 (1st Dep't 1978) (holding "stop" illegal where court found that "the sacks and television set carried by the defendants in the early afternoon are hardly items of contraband that would justify further inquiry on the part of the police"). See also People v. Dent, N.Y.L.J., 4/20/90, p. 25 (Sup.Ct. N.Y. Co.) ("nervousness" alone cannot generate the requisite founded suspicion for a "stop").

a past crime."

- *"At T/P/O perp was standing F/O* [front of] *a known crime loc. and was over dress for mild weather and frisked for officers safety."*

In light of the inherently subjective interpretation of the assessment, "suspicious" clothing, like suspicious behavior, cannot alone provide the justification for a lawful "stop."[67] In People v. Cornelius, for example, the court held that the level of police activity could not be premised on the fact that the defendant was wearing a "wrinkled up and dirty" and "ragged and old" trenchcoat.[68]

- **Loitering**

- *"Individual were observed loitering in rob prone location."*

- *"Person in area where numerous robberies have occurred. On same corner for 45 minutes."*

- *"At T/P/O below person was with group of males loitering in front of [address deleted] impeding flow of ped. traffic frisked for PO's safety."*

The United States Supreme Court has struck down as unconstitutionally vague loitering ordinances that, because they lack objective statutory criteria, "furnish a convenient tool for harsh and discriminatory enforcement by local prosecuting officials

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[67] People v. Cornelius, 113 A.D.2d at 672, 497 N.Y.S.2d at 20.

[68] Id. See also People v. Giles, 223 A.D.2d 39, 647 N.Y.S.2d 46 (1st Dep't 1996) (that defendant was wearing a long winter coat on a summer night, standing alone, is no more than "odd" behavior, insufficient to justify police intrusion). Clothing may, however, be a factor where other suspicious indicia are present. People v. Skinner, 65 A.D.2d 704, 410 N.Y.S.2d 84 (1st Dep't 1978).

against particular groups deemed to merit their displeasure." [69]

In New York, the Court of Appeals has held that a statute that merely prohibits loitering, without more, is unconstitutionally vague.[70] "Such a generalized law fails to distinguish between conduct calculated to cause harm and conduct that is essentially innocent, thereby failing to give adequate notice of what conduct is prohibited."[71] In Bright, the Court of Appeals struck as unconstitutionally vague a New York penal law[72] provision prohibiting persons from loitering in "any transportation facility" where such person is "unable to give a satisfactory explanation of his presence."[73] More specific forms of "loitering" *are prohibited* -- including, when a person loiters in a public place "for the purpose of begging," "for the purpose of gambling," "in or about school grounds," or in "any transportation facility . . . for the purpose of soliciting . . ." [74] While "stops" based on any of these types of loitering may

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[69] Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972); City of Chicago v. Morales, 119 S. Ct. 1849 (1999) (striking gang-loitering ordinance as unconstitutionally vague).

[70] See People v. Bright, 71 N.Y.2d 376, 383, 526 N.Y.S.2d 66, 71 (1988).

[71] Id.

[72] N.Y. Penal Law § 240.35 (7) (McKinney 1999).

[73] Bright, 71 N.Y.2d at 384-85, 526 N.Y.S.2d at 71. In addition, the Court ruled that the statute's provision requiring that the person loitering provide a "satisfactory explanation" was violative of the individual's right to remain silent under the federal Constitution and article I, section 6 of the New York State Constitution. Id., 71 N.Y.2d at 385, 526 N.Y.S.2d at 71.

[74] N.Y. Penal Law §§ 240.35 (1), (2), (5), (6) (McKinney 1999).

be legally sufficient, "stops" based on "loitering" alone are not.[75]

- **Known to Police**

- *"Person was questioned as to reason for wanting to gain access to model block, subject had no legitimate reason for being in area and was refused access (person is a known drug dealer)."*

- *"At T/P/O person appear to be loitering for purpose of narcotics person is known drug user."*

- *"Person stopped is a known drug dealer at location and has been told numerous times not to congregate on corner with his friends."*

- *"At T/P/O observed individual a known pick pocket in a pick pocket prone location - individual is not wanted at this time."*

Police may only make a temporary seizure for investigation when the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity is afoot."[76] The touchstone of testing the propriety of a "stop" is reasonable suspicion based on "concrete observations." [77]

Given these federal and state constitutional standards, a "stop" based solely on whether the individual is "known to police" as someone with a criminal record

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[75] Where an individual was "stopped" (per the UF-250 rationale) for "loitering" in the lobby of a private building and the person "stopped" could not explain his/her presence, the rationale was coded as "suspected trespassing" (code 30) and was deemed a legally sufficient "stop." Where an individual was "stopped" (per the UF-250 rationale) for "loitering" in the lobby of a private building with no additional explanation, the rationale was coded as "insufficient" information (code 42).

[76] Terry v. Ohio, 392 U.S. 1, 30 (1968).

[77] De Bour, 40 N.Y.2d at 216, 386 N.Y.S.2d at 380.

-- and not based on the actions of the individual -- cannot be legally sustained.

(iii) Association

- *"At T/P/O individual was stopped while in company of someone who was believed to be in possession of narcotic."*

- *"Person was leaving a known gang location, stop, questioned, negative results."*

- *"At TPO person was stopped and questioned about gang activity and asked if she was a member of a gang because of the red hat and shirt she was wearing."*

- *"TPO person stopped was unlawfully assembled at above location - display of gang color bloods."*

Under both federal and New York law, a person may not be "stopped" solely because he or she is in the company of an individual whom the police reasonably suspect is involved with criminal activity.[78]

(iv) Location

- *"At T/P/O person stopped and inquiry made regarding presence in area. Person couldn't give reasonable explanation for presence in area person suspected of - unclear - drug sales -- frisked for officers safety."*

- *"At T/P/O suspect had been seen hours earlier hanging around subway* @ [address redacted]*, now he was standing* [address redacted]*."*

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[78] See Ybarra v. Illinois, 444 U.S. 85 (1979); Sibron v. New York, 392 U.S. 40, 64 (1968); People v. Russ, 61 N.Y.2d 693, 472 N.Y.S.2d 601 (1984); People v. Terrell, 185 A.D.2d 906, 907-08, 587 N.Y.S.2d 8 (2d Dep't 1992). See also People v. Martinez, 594 N.Y.S.2d 292 (2d Dep't 1993) ("reasonable suspicion" cannot be based on individual's conversation with two alleged drug sellers); People v. Kinsella, 139 A.D.2d 527 N.Y.S.2d 899, 901 (4th Dep't 1988) ("The mere fact that defendant was observed . . . walking down the street with the individual who [was suspected] did not give rise to reasonable suspicion . . ").

The United States Supreme Court has made clear that an individual's presence in a "high crime" area is insufficient to support a finding of reasonable suspicion.[79]

New York courts likewise hold that location "alone cannot serve as the justification for untoward or excessive police behavior against those of our citizens who happen to live, work or travel in what are characterized as 'high crime areas'."[80]

3. The Sampling Process

After establishing the list of 67 initial codes, the expert team coded rationales for a citywide sample and a sample of specifically chosen precincts. 4,383 UF-250 forms were randomly sampled for the citywide analysis. For the individual precinct sample, eight precincts were selected -- the 79th, 42nd, 30th, 43rd, 33rd, 107th, 72nd and the 19th -- to represent a spectrum ranging from majority-minority precincts with high "stop" rates, to majority-white precincts with low "stop" rates.[81] In addition, for purposes of comparison, the OAG directed that the sample of precincts include both a majority-minority precinct and majority-white precinct with high crime rates. For each precinct, approximately half of the UF-250 forms were randomly sampled. (Table II.A.3. shows basic demographic and "stop" rate information for each

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[79] Brown v. Texas, 443 U.S. 47, 52 (1979).

[80] People v. Howard, 147 A.D.2d 177, 182, 542 N.Y.S.2d 536, 540 (1st Dep't 1989); People v. Powell, 667 N.Y.S.2d 725 (1st Dep't 1998) (high-crime area alone cannot supply the requisite reasonable suspicion for the stop/frisk).

[81] A detailed, technical explanation of the sampling process is contained in Appendix H.

TABLE II.A.3.
Racial Distribution of Street Stops in 8 Precincts and Citywide Sample
(ranked by % Black population)

	Population Distribution					**Racial Distribution of Stops**					
Precinct	**Black**	Hispanic	White	Total Stops in Sample - 16 months	Stops per 1,000 residents - 1998	Black	Hispanic	White	Ratio Stops: Arrest	DCJS Arrest Rate 1998	NYPD Crime Complaint Rate 1998
79	**80.3**	18.0	.9	1,744	42.4	89.1	9.2	.9	13.7	22.5	41.8
42	**56.0**	42.2	.8	1,495	46.3	64.5	34.0	.5	7.7	19.3	35.8
30	**47.5**	47.9	2.7	1,093	33.3	45.2	48.2	5.8	18.5	41.8	26.9
43	**32.3**	52.3	11.6	2,193	24.9	52.3	44.2	2.1	9.7	17.5	23.2
33	**19.3**	68.9	8.5	740	16.4	29.3	63.4	6.2	10.9	25.8	20.6
107	**11.9**	14.0	58.6	679	10.5	57.0	19.9	17.5	5.0	6.7	28.0
72	**4.4**	46.0	36.6	854	7.7	9.3	79.4	8.9	14.0	11.2	21.3
19	**3.1**	5.4	87.4	417	4.3	49.9	32.1	13.7	20.9	6.3	23.2
Citywide	**25.5**	23.7	43.5	4,383	18.8	53.5	31.7	11.7	9.4	14.4	29.1

of these eight precincts.) Thus, between the citywide sample and the targeted (eight-precinct) sample, more than 10,000 individual rationales for "stops" were examined.

B. The Extent to Which "Stop" Rationales, As Stated in UF-250 Forms, Meet Constitutional Standards and the Extent to Which This Varies By Race

An analysis of the rationales provided by officers in their UF-250 forms yields a number of interesting results. As with the analysis in Part I of this Chapter, perhaps the most significant aspect is the data itself: Although anecdotal accounts of the reasons for "stops" and the extent to which "stops" meet constitutional standards vary, for the first time this issue can be viewed in a quantified, statistically objective manner.

For each of the eight selected precincts and for the citywide sample as a whole, Table II.B.1 shows the percentage of rationales, in which the facts as stated: (i) articulated "reasonable suspicion" so as to justify a lawful "stop"; (ii) did not articulate "reasonable suspicion" so as to justify a lawful "stop"; and (iii) did not provide enough information to determine whether the constitutional standard has been met.[82]

For the citywide sample, 15.4% of all rationales provided by officers in the UF-250 forms, without more, failed to articulate facts sufficient to establish the requisite

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[82] As noted in Part II.A. above, the "stops" were not actually coded for legal sufficiency, but were coded for one of 67 types of rationales, that were then grouped within seven more general categories. These seven general categories were then divided into those that were, and were not, constitutionally sufficient. For each table listing the number of stops which fell within the three categories described here, a more detailed parallel Table showing a breakdown of how many stops fell into each of the seven broader categories is contained in Appendix I.

TABLE II.B.1.
ALL STREET STOPS - 8 PRECINCTS and CITYWIDE SAMPLE

		PRECINCT								
		79th	42nd	30th	43rd	33rd	107th	72nd	19th	Citywide Sample
Facts, as stated, articulate reasonable suspicion	Count	1029	861	619	1328	465	472	531	314	2678
	Column %	59.0%	57.6%	56.6%	60.6%	62.8%	69.5%	62.2%	75.3%	61.1%
Facts, as stated, do not articulate reasonable suspicion	Count	362	287	303	266	131	98	178	28	673
	Column %	20.8%	19.2%	27.7	12.1%	17.7%	14.4%	20.8%	6.7%	15.4%
Insufficient Information	Count	353	347	171	599	144	109	145	75	1032
	Column %	20.2%	23.2%	15.6%	27.3%	19.5%	16.1%	17.0%	18.0%	23.5%
Total	Count	1744	1495	1093	2193	740	679	854	417	4383
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

"reasonable suspicion" under extant case law. This means that, for slightly more than one out of every seven "stops," when the police officer filled out the UF-250 form documenting the "stop," the rationale that the officer provided in the form for "stopping" the individual did not meet the "reasonable suspicion" standard. Such a salient deficiency in explaining the reason for the "stop" is particularly noteworthy given the emphasis placed by the NYPD itself on fully documenting the reason for a "stop" in a UF-250 form.[83]

Also noteworthy is that, citywide, roughly one-quarter of all forms (23.5%) did not appear to provide sufficient information to allow a reader (including a police supervisor checking a junior officer's work) to determine whether the facts articulated amount to "reasonable suspicion." See Table II.B.1. Obviously, this does *not* mean

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[83] One hypothesized explanation for the high rate of "stops" for which no legally sufficient rationale was provided is that officers will complete UF-250 forms, for investigative purposes, to document encounters that do not rise to the level of a "stop." In those circumstances, the argument goes, no reasonable suspicion would be provided, but neither would any be necessary. The OAG tested this hypothesis by examining, from the sample of UF-250 forms that were coded, those UF-250 forms that were "*mandated.*" Because of the nature of "stops" for which UF-250 forms are mandated -- those that require force, a frisk, an arrest or where the suspect refuses to identify him or herself -- "stops" that mandate completion of a UF-250 clearly rise to the legal level of a "seizure" and thus require "reasonable suspicion" to justify them. Table II.B.1a. provides the same data analysis as Table II.B.1., but only for "stops" for which a form is "mandated." As this Table demonstrates, while 15.4% of all "stops" were without sufficient facts to support a lawful "stop," 14.0% of "stops" for which completion of a UF-250 form was mandated, were similarly flawed. Thus, while the practice of officers filling out UF-250 forms in situations in which a "stop" did not occur may have accounted for some number of the "stops" without sufficient facts to articulate reasonable suspicion, they cannot have accounted for a large number of those "stops" because the rate of flawed rationales in this category is almost as high as the rate of flawed "stops" overall.

TABLE II.B.1a.
ALL STOPS FOR WHICH A UF-250 FORM WAS MANDATED - 8 PRECINCTS and CITYWIDE SAMPLE

		PRECINCT								
		79th	42nd	30th	43rd	33rd	107th	72nd	19th	Citywide Sample
Facts, as stated, articulate reasonable suspicion	Count	918	767	499	1109	383	370	451	231	2114
	Column %	61.0%	62.3%	54.8%	67.3%	63.3%	71.0%	64.9%	79.7%	64.4%
Facts, as stated, do not articulate reasonable suspicion	Count	284	238	263	215	99	54	120	16	459
	Column %	18.9%	19.3	28.9%	13.0%	16.4%	10.4%	17.3%	5.5%	14.0%
Insufficient Information	Count	302	227	149	324	123	97	124	43	709
	Column %	20.1%	18.4%	16.4%	19.7%	20.3%	18.6%	17.8%	14.8%	21.6%
Total	Count	1504	1232	911	1648	605	521	695	290	3282
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

that the actual facts giving rise to those "stops" failed to meet the legal standard of "reasonable suspicion"; at the most, it means that in one out of every four stops, sufficient facts were not *articulated* to permit supervisory review for legal sufficiency.

These findings raise the question of whether, for the 15.4% of "stops" for which "reasonable suspicion" was not articulated, the error lies in an officer not fully completing the form or in the actual activity on the street. To answer this question, the OAG made a comparison of the stop/arrest ratio for UF-250 forms which did and did not articulate facts suggesting "reasonable suspicion." As noted above (see Table I.B.1.) citywide, for every nine stops by the NYPD, one stop resulted in an arrest. Table II.B.2. reflects the "stop"/arrest ratio of UF-250 forms in the citywide sample, broken down by whether or not the UF-250 form articulated facts that sufficiently described "reasonable suspicion." For the UF-250 forms in which the facts, as stated, articulated "reasonable suspicion," one in 7.3 stops yielded an arrest. However, for the 15.4% of UF-250 forms that did not contain facts articulating "reasonable suspicion," only one in 29.3 stops resulted in an arrest. In other words, stops in which the officer articulated facts amounting to "reasonable suspicion" were four times more likely to result in an arrest than stops in which the officer did not articulate such facts. This precludes any assumption that there is no difference between these two groups of "stops" except for the quality and completeness of the UF-250 forms.

Table II.B.1. further demonstrates that the rate of "stops" for which no legally sufficient rationale was provided varies widely among the eight precincts chosen

TABLE II.B.2. Justification for Street Stops (Citywide Sample) and Arrest Outcome			
	Total Stops	**Stops resulting in Arrest**	**Ratio of Stops to Arrests**
Facts, as stated, articulate reasonable suspicion	2,678	368	7.3
Facts, as stated, do not articulate reasonable suspicion	673	23	29.3
Insufficient information	1,032	76	13.6
Total	4,383	467	9.4

for closer study. Moreover, race appears to have affected[84] the rate of "stops" in which the facts, as stated, did not articulate "reasonable suspicion." Of the eight precincts, three had such "stop rates" below the citywide average of 15.4%: The 19th precinct (Manhattan) (6.7%), the 43rd precinct (the Bronx) (12.1%) and the 107th precinct (Queens) (14.4%). Two of these three precincts, the 19th and the 107th, are majority-white precincts. See Table II.A.3. Moreover, of these three precincts, only the two majority-white precincts also had more properly documented "stops" than the citywide average. The one majority-minority precinct, the 43rd, had fewer properly documented "stops" and an extremely high percentage of "stops" for which insufficient information was provided.

By contrast, of the five remaining precincts -- where the rate of stops for which "reasonable suspicion" was not fully articulated in the UF-250 forms was higher than for the citywide average of 15.4% -- all were majority-minority neighborhoods. Indeed, in the 30th precinct (Manhattan), more than one-quarter (27.7%) of all "stops" did not include facts that articulate "reasonable suspicion." The others had rates of such "stops" that ranged from 17.7% to 20.8% -- all well above the 15.4% citywide average.

Table II.B.3. demonstrates the actual racial breakdown of "stops" citywide

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[84] The data can only support the statement, as to this Table, that race "appears to affect" "stops" where the facts, as stated, did not articulate reasonable suspicion because only eight precincts were coded and sampled. To make this statement with greater certainty, a larger number of precincts -- or precincts chosen through a randomized process -- would need to be coded and analyzed. Time and resources did not permit this final step.

TABLE II.B.3. ALL STREET STOPS - CITYWIDE SAMPLE						
		RACE OF PERSON STOPPED				
		Black	Hispanic	White	Other	Total
Facts, as stated, articulate reasonable suspicion	Count	1431	870	295	82	2678
	Row %	53.4%	32.5%	11.0%	3.1%	100.0%
	Column %	61.0%	62.6%	57.5%	60.7%	61.1%
Facts, as stated, do not articulate reasonable suspicion	Count	368	199	85	21	673
	Row %	54.7%	29.6%	12.6%	3.1%	100.0%
	Column %	15.7%	14.3%	16.6%	15.6%	15.4%
Insufficient Information	Count	547	1389	513	135	4383
	Row %	53.0%	31.7%	11.7%	3.1%	100.0%
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%
Total	Count	2346	1389	513	135	4383
	Row %	53.5%	31.7%	11.7%	3.1%	100.0%
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%

where the facts, as stated, articulated "reasonable suspicion" and "stops" citywide where the facts, as stated, did not articulate "reasonable suspicion."[85] As can be seen in this Table, the percentage of "stops" of each racial group in the coded sample is roughly equal to the percentage of each racial group "stopped" overall.[86] This suggests that the sample was properly drawn and accurately represents the universe of "stops" as a whole.

An examination of Table II.B.3. shows that "stops" in which the facts, as stated, did not articulate "reasonable suspicion," occurred at roughly the same rate for blacks, Hispanics and whites: 15.7% of all "stops" of blacks were those in which the facts, as stated, did not articulate "reasonable suspicion"; 14.3% of all "stops" of Hispanics were those in which the facts, as stated, did not articulate "reasonable suspicion"; and 16.6% of all "stops" of whites were those in which the facts, as stated, did not articulate "reasonable suspicion." In other words, it does not appear that "stops" of any one group were more likely to be those in which the facts, as stated, did not articulate "reasonable suspicion" than any other.

As discussed at the outset of this Chapter, when only "stops" for which a UF-250 was mandated were considered, the racial disparities increased. When

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[85] A parallel Table setting forth the racial breakdown of "stops" into the seven overall categories (described in Table II.A.2.) is provided in Appendix I.

[86] As noted in Table I.A.1., 50.6% of all "stops" were of blacks; 53.5% of the "stops" in the coded citywide sample were of blacks. Similarly, Hispanics made up 33.0% of all "stops" and were 31.7% of the citywide sample, while whites were 12.9% of all "stops" and 11.7 percent of the citywide sample.

considering this group of stops, a racial disparity emerged here as well. Table II.B.4. sets forth for the citywide sample the racial breakdown of all "stops" for which a UF-250 was mandated -- those in which the facts, as stated, articulated "reasonable suspicion" and those in which the facts, as stated, did not articulate "reasonable suspicion." As this Table demonstrates, when only "stops" for which a UF-250 form was mandated are considered, the overall percentage of "stops" in which "reasonable suspicion" was not fully articulated goes down to 14.0%. However, the rate at which minorities, and blacks in particular, were "stopped" without stated facts sufficient to articulate "reasonable suspicion" was now greater than the rate at which whites were "stopped" on the same basis. At the extremes, 15.4% of "stops" of blacks were those that failed to list facts sufficient to articulate "reasonable suspicion," while only 11.3% of whites were "stopped" without listing facts sufficient to articulate "reasonable suspicion."

While "stops" for which UF-250 forms are mandated are only a subset of "stops" overall, they are also the group of "stops" for which police should be particularly mindful of the need for "reasonable suspicion," because they often involve physical force, a frisk or an arrest. Indeed, as explained at note 83, supra, the rate of "stops" overall in which the facts, as stated, did not articulate "reasonable suspicion" was slightly lower for "stops" in which a UF-250 was mandated. With this background, the fact that such "stops" of minorities were more likely to be those that failed to document facts sufficient to articulate "reasonable suspicion" than "stops" of whites is particularly worthy of

TABLE II.B.4.
ALL STOPS FOR WHICH A UF-250 FORM WAS MANDATED
CITYWIDE SAMPLE

		RACE OF PERSON STOPPED				
		Black	Hispanic	White	Other	Total
Facts, as stated, articulate reasonable suspicion	Count	1172	690	192	60	2114
	Row %	55.4%	32.6%	9.1%	2.8%	100.0%
	Column %	64.3%	65.4%	60.4%	69.8%	64.4%
Facts, as stated, do not articulate reasonable suspicion	Count	281	133	36	9	459
	Row %	61.2%	29.0%	7.8%	2.0%	100.0%
	Column %	15.4%	12.6%	11.3%	10.5%	14.0%
Insufficient Information	Count	370	232	90	17	709
	Row %	52.2%	32.7%	12.7%	2.4%	100.0%
	Column %	20.3%	22.0%	28.3%	19.8%	21.6%
Total	Count	1823	1055	318	86	3282
	Row %	55.5%	32.1%	9.7%	2.6%	100.0%
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%

note.[87]

One final issue merits attention: the rate of "stops" by the Street Crime Unit in which the facts, as stated, did not articulate "reasonable suspicion." Table II.B.5. shows the percentage of "stops" within the coded sample -- both citywide and for the eight specific precincts -- carried out by the SCU and by the precincts and other commands. One out of every 10 "stops" in the citywide sample (10.3%) were carried out by the SCU. This means that the SCU's actions had an impact upon "stop" activity within the sample.

Table II.B.6. then shows the rate of SCU "stops" in which the facts, as stated, articulated "reasonable suspicion" and those in which the facts, as stated, did not articulate "reasonable suspicion." As can be seen in this Table, the rate at which the SCU carried out "stops" without articulating facts that constituted "reasonable suspicion" was higher than the citywide average. While, as stated, "reasonable suspicion" was not articulated in 15.4% of "stops" citywide (see Table II.B.1., supra), "reasonable suspicion" was not articulated in 23.2% of "stops" by the SCU. Thus, in almost one-quarter of its cases, a person was stopped by the SCU where the facts, as stated, did not articulate "reasonable suspicion."

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[87] Unlike the fact that minorities were, overall, "stopped" at a higher rate than whites, the increased rate of insufficiently articulated "stops" cannot be explained in whole by crime data. While crime data may partially explain an increased rate of "stops" of minorities, it cannot explain the higher percentage within the overall group of minority "stops" without sufficiently articulated "reasonable suspicion." "Reasonable suspicion" is not a sliding scale and the standard for effecting a lawful "stop" does not alter by neighborhood.

TABLE II.B.5. ALL STREET STOPS - 8 PRECINCTS and CITYWIDE SAMPLE				
		P.O. Command		
		Precinct or Other Command	Street Crimes Unit	Total
79th	Count	1610	134	1744
	Row %	92.3%	7.7%	100.0%
	Column %	12.8%	12.8%	12.8%
42nd	Count	1374	121	1495
	Row %	91.9%	8.1%	100.0%
	Column %	10.9%	11.6%	11.0%
30th	Count	965	128	1093
	Row %	88.3%	11.7%	100.0%
	Column %	7.7%	12.2%	8.0%
43rd	Count	2119	74	2193
	Row %	96.6%	3.4%	100.0%
	Column %	16.9%	7.1%	16.1%
33rd	Count	713	27	740
	Row %	96.4%	3.6%	100.0%
	Column %	5.7%	2.6%	5.4%
107th	Count	670	9	679
	Row %	98.7%	1.3%	100.0%
	Column %	5.3%	.9%	5.0%
72nd	Count	773	81	854
	Row %	90.5%	9.5%	100.0%
	Column %	6.2%	7.8%	6.3%
19th	Count	398	19	417
	Row %	95.4%	4.6%	100.0%
	Column %	3.2%	1.8%	32.1%
Citywide sample	Count	3931	452	4383
	Row %	89.7%	10.3%	100.0%
	Column %	31.3%	43.3%	32.2%
Total	Count	12553	1045	13598
	Row %	92.3%	7.7%	100.0%
	Column %	100.0%	100.0%	100.0%

TABLE II.B.6. ALL STREET STOPS - CITYWIDE SAMPLE for SCU ONLY						
		RACE OF PERSON STOPPED				
		Black	Hispanic	White	Other	Total
Facts, as stated, articulate reasonable suspicion	Count	187	65	20	7	279
	Row %	67.0%	23.3%	7.2%	2.5%	100.0%
	Column %	63.0%	57.0%	62.5%	77.8%	61.7%
Facts, as stated, do not articulate reasonable suspicion	Count	69	28	7	1	105
	Row %	65.7%	26.7%	6.7%	1.0%	100.0%
	Column %	23.2%	24.6%	21.9%	11.1%	23.2%
Insufficient Information	Count	41	21	5	1	68
	Row %	60.3%	30.9%	7.4%	1.5%	100.0%
	Column %	13.8%	18.4%	15.6%	11.1%	15.0%
Total	Count	297	114	32	9	452
	Row %	65.7%	25.2%	7.1%	2.0%	100.0%
	Column %	100.0%	100.0%	100.0%	100.0%	100.0%

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Finally, as noted in Section I.A., the SCU was far more likely to "stop" blacks than were precinct level commands. As demonstrated by Table II.B.6., for the citywide sample, 65.7% of all SCU "stops" were of blacks, while only 52.1% of the rest of the sample "stops" were of blacks.

These final findings are significant. While, in aggregate, minorities have not been subjected to "stops" lacking documentation that supports "reasonable suspicion" at a higher rate than whites, the types of "stops" to which they have been subjected tend to have been more intrusive, tend to have occurred in minority neighborhoods, and tend to have been carried out by the SCU.

Chapter Six
Next Steps

This Report has served the Attorney General's first overriding goal: to gather and present independent information and dispassionate analysis of "stop & frisk" practices in New York City. In the process, the Report answers -- but also raises -- a range of questions about how police practices in New York City affect minority New Yorkers and why.

Given the depth and breadth of public concern about "stop & frisk" issues, and the scope of the OAG's quantitative and qualitative analyses, the OAG had a public duty to offer its own hypotheses about what the results mean. In this Report, the OAG has done so, sensitive to the fact that the overwhelming majority of New York City police officers do their jobs conscientiously and well and often under extraordinarily difficult circumstances, and in the firm conviction that criticism, so long as it is constructive, gives rise to growth. The process of challenge, response, comment, and review has now begun. It is now for the Department and others interested in a constructive dialogue to review the data and offer their perspectives.

This ensuing dialogue will occur on several levels.

First, the OAG will address the Department directly, as indeed it already has begun to do. Through private meetings and public fora, the OAG will call upon the Department to attend to the data with care, and to respond to the serious concerns set forth in this Report. It is the OAG's hope that this dialogue can occur in the best spirit of public policy discussion -- without rancor or recrimination.

Second, the OAG's hope is that this Report gives rise to robust scholarly discussion and debate. For criminologists, statisticians, legal scholars and others, this Report provides a wealth of material for consideration, analysis and comment.

Third, the OAG hopes that leaders in the community -- clergy, elected officials, and concerned New Yorkers of all kinds -- and members of the organized Bar will read this Report, consider it, and have their voices heard on its broad implications. Community leaders are well positioned to review the findings and hypotheses set forth in this Report, and to opine about what they mean for all New Yorkers. Lawyers -- who develop the legal doctrine, apply it as judges at common law, and seek to fashion it as advocates for individual clients -- have a particular responsibility to analyze the data in the context of thirty-plus years worth of legal doctrine.

Finally, and in light of this dialogue, the OAG itself will continue its investigative work. In the next phase, the OAG will hear the voices that have responded to this call for dialogue, and turn to the host of open questions that are alluded to, but never resolved, in this Report. Specifically, with the continuing cooperation of the New York City Police Department, the OAG expects to continue its examination of: (i) the Department's training of managers, supervisors, and line officers regarding "stop & frisk"; (ii) its methods for supervising officers who apply the technique on the street; and (iii) the degree to which complaint-based crime data may shed further light on the issues discussed in this Report. In these areas -- by virtue of recent events and this investigation itself -- the seeds of change may already have been planted. This work already is underway, as the OAG looks forward to open lines of

communication with the Department and other interested parties.

The OAG's first goal in this investigation was to create an understanding of "stop & frisk" that is both broad and deep; that goal has been met. The hope now is that this understanding will lead to positive change.