

2016

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Recommended Citation

Smith, Isabel P., "Did the Curtailing of the "Stop, Question, and Frisk" Policy Lead to An Increase in New York City's Homicide Rate in 2015?: An Examination of the Relationship Between Stop-and-Frisk and Violent Crime Rates" (2016). *Scripps Senior Theses*. Paper 817.

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Did the Curtailing of the “Stop, Question, and Frisk”
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Relationship Between Stop-and-Frisk and Violent
Crime Rates

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In Partial Fulfillment of the Requirements for the Degree

Of

Bachelor of Arts in Politics and International Relations

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SCRIPPS COLLEGE

Claremont, California

April 25, 2016

Introduction:

During the summer of 2013, Democrat Bill de Blasio launched his campaign for New York City Mayor. His platform relied heavily on the promise to end the New York Police Department’s controversial “Stop, Question and Frisk” policy, commonly known as “stop-and-frisk.” Stop-and-frisk occurs when a police officer stops a citizen on the street, questions that person, and, if the officer deems it necessary, frisks the individual with the intention of recovering contraband. Like other “hot spot” policing tactics, it encourages officers to focus on small geographic areas where crime is most concentrated.¹

While not without its defenders, the policy has been widely criticized for being racially discriminatory by scholars, politicians, media pundits, and others. Those arguing in favor of stop-and-frisk believe that the tactic reduces the rate of murders and other violent crimes, and were alarmed when de Blasio took office in 2014 and made good on his campaign promise.² In his first year as Mayor, the number of stops conducted by the NYPD fell by 75.9% as compared to the previous year.³ During this same period, the homicide rate decrease slightly by .6%, from 335 to 333—the lowest rate in the city’s history—disproving the notion that the policy curbs violent criminal behavior.⁴ At the

¹ United States. Department of Justice Office of Community Oriented Policing Services. La Vigne, Nancy G., Pamela Lachman, Shebani Rao, and Andrea Matthews. *Stop and Frisk: Balancing Crime Control with Community Relations*. (2014): 3. Web.

² Grynbaum, Michael M. “Taking Office, de Blasio Vows to Fix Inequality.” *New York Times* 1 January 2014. Web.

³ The City of New York. New York City Police Department. *Stop, Question, and Frisk Report Database*. New York: 2015. Web.

⁴ The City of New York. New York City Police Department. *Historical New York City Crime Data*. New York: 2015. Web.

close of his first year in office, Mayor de Blasio touted the success of his administration's reform, saying, "Now we know that the broken policy of stop-and-frisk is in the past."⁵

However, during the first two months of 2015, the homicide rate in New York City spiked by 20% as compared to the same period in the previous year.⁶ Reports of this increase sparked a media frenzy in the city, with news outlets and political elites claiming without evidence that the repeal of stop-and-frisk had led to New York City's latest "crime wave."⁷ In this article, I examine statistical data culled from the New York Police Department's extensive reports on both the city's crime rates and the numbers of stops conducted by law enforcement officers to assess whether or not there is any relationship between implementation of stop-and-frisk and the homicide rate. That is, did the curtailing of the number of stops made by the NYPD since Mayor de Blasio took office cause the increase in homicides in the first two quarters of 2015? More generally, is there any evidence to support the suggestion that a reduction in the number of stops led to an increase in homicides and other violent crimes in New York City?

Historical crime data suggests that there is no discernable relationship between the number of stops conducted per year and the annual homicide rate in New York City. Additionally, national crime statistics confirm that the homicide rates in many cities across the United States increased in the early months of 2015, with "at least 30 of the

⁵ The City of New York. The Office of the Mayor. "Transcript: Mayor de Blasio and Commissioner Bratton Announce Safest August-November Period Since Modern Crime Statistics Began in 1993." 2 December 2014. Web.

⁶ Parascandola, Rocco, Tina Moore, Bill Hutchinson. "Murders up 205 in 2015 in Year-to-Year Comparison, NYPD Says." *New York Daily News* 3 March 2015. Web.

⁷ Post Editorial Board. "How Many New Yorkers Must Die Before the Mayor Brings back Stop-and-Frisk?" *New York Post*. 1 June 2015. Web.

nation's cities report[ing] increases in murders, violent crimes, or both.”⁸ This suggests that the surge in violent crime is not unique to New York or a function of the change in NYPD policy, but is a part of a national trend. Some may argue that New York might have been exempt from this countrywide phenomenon if stop-and-frisk had not been repealed. However, a cross-sectional analysis of crime and policing statistics in Newark, NJ and Chicago, IL reveal that the homicide rates in both cities increased in the early months of 2015, despite the continued use of the stop-and-frisk policy by their respective police departments.

In the next section, I detail the history of crime in New York City and its relationship to the origins of stop-and-frisk, paying particular attention to the rise of “broken windows” policing and the vast expansion of stop-and-frisk between the years of 2002 to 2011. I then examine the different theories posited by criminologists, law enforcement officials, and political actors regarding the causes of the increase in violent crime in both New York City and across the nation in early 2015. Following this, I present historical crime and law enforcement data in New York City and a cross-city analysis of violent crime rates throughout the United States in 2015.

History of Crime in New York City and The Origins of Stop-and-Frisk:

In order to understand the intense contemporary focus on the efficacy of stop-and-frisk, the origins and trajectory of the policy need to be examined in the context of violent crime in New York City. From 1965 to 1990, the homicide rate in NYC saw a cumulative

⁸ Davey, Monica, Mitch Smith. “Murder Rates Rising Sharply in Many U.S. Cities.” *New York Times* 31 August 2015. Web.

increase of 254%.⁹ This era is often referred to as “the bad old days,” when the city was notorious for its high levels of violence and drug use, particularly in the late 1980s due to the influx of crack cocaine.¹⁰ The homicide rate reached its zenith in 1990 when the NYPD reported 2,245 murders, constituting an average of 6 a day.¹¹ From 1990 to 2014, however, the trend reversed, with the homicide rate decreasing each year (save for 2002, which saw an increase of 1.7%). The number of reported murders dwindled to just 333 in 2014—a decrease of 85.17% as compared to 1990.¹² Critically, the reduction in violent crime throughout the 1990s is largely attributed to the implementation of “broken windows” policing, a policy whose purported success ultimately led to the vast expansion of the NYPD’s stop-and-frisk policy.

First described by social scientists James Q. Wilson and George L. Kelling in a 1982 article for *The Atlantic*, the “broken windows” theory is the notion that cracking down on minor offenses or “quality-of-life” crimes will lead to a reduction in more serious crimes.¹³ So for example, closely monitoring minor incidents of vandalism will discourage both future minor incidents as well as felonious criminal activity. They explain:

...at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend to agree that if a window in a building is broken and is left unrepaired, all the rest of

⁹ The City of New York. Office of the Mayor. “Mayor Bloomberg and Police Commissioner Kelly Announce 2012 Sets All-Time Record for Fewest Murders and Fewest Shootings in New York City History.” 28 December 2012. Web.

¹⁰ Egan, Timothy. “Crack’s Legacy: A Special Report; A Drug Ran its Course, Then Hid With Its Users.” *New York Times*. 19 September 1999. Web.

¹¹ Ibid.

¹² The City of New York. New York City Police Department. *Historical New York City Crime Data*. New York: 2015. Web.

¹³ Kelling, George L., James Q. Wilson. “Broken Windows: The Police and Neighborhood Safety.” *The Atlantic*. The Atlantic, March 1983. Web.

the windows will soon be broken... Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.¹⁴

“Broken windows” policing first manifested underground, as a policy used by the New York City Transit Police Department. In the late 1980s, an NYCTP officer named Jack Maple created the “Charts of the Future” system.¹⁵ Maple created a map, which took up “55 feet of wall space,” of the entire NYC subway system.¹⁶ He then “used crayons to mark every violent crime, robbery and larceny that occurred,” and marked them as “solved or unsolved.”¹⁷ The map revealed “patterns and chronic conditions” of criminal activity in certain areas which allowed Maple to anticipate future crimes and efficiently deploy officers to those areas. In an interview, Maple explained, “The beauty of the mapping is that it poses the question, ‘Why? What are the underlying causes of why there is a certain cluster of crime in a particular place?’”¹⁸

In 1990, William J. Bratton became the chief of the New York City Transit Police, at which point he saw Maple’s map as an opportunity to apply the “broken windows” approach to transit policing.¹⁹ Under Bratton, the NYCTP used Maple’s map to chart and crack down on minor offenses such as fare-dodging and graffiti. Between 1990 and 1993,

¹⁴ Ibid.

¹⁵ Martin, Douglas. “Jack Maple, 48, Designer of City Crime Control Strategies.” *New York Times* 6 August 2001. Web.

¹⁶ Dussault, Raymond. “Jack Maple: Betting on Intelligence.” *Government Technology Magazine* 31 March 1999. Web.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Bratton, William J. “Interview: Victory in the Subways.” *City Journal*. Summer, 1992. Web.

“underground” crime rates fell by 35.9%.²⁰ The crime rate of the “city above” also decreased by 17.9%, where, Bratton maintains, quality-of-life enforcement was “less rigorous.”²¹ Because of the NYCTP’s success, then Mayor Rudolph Giuliani appointed Bratton to be the Commissioner of the NYPD in 1994.²²

As NYPD Commissioner, Bratton appointed Maple as Deputy Police Commissioner and implemented his “Charts of the Future” system on a city-wide scale, renaming it “CompStat” (short for Comparative Statistics). CompStat records “weekly, monthly, and year-to-date statistics for criminal complaints...arrests for major felony categories, and gun violations” with a focus on geographical patterns.²³ This information is then compiled in an online database. Bratton describes CompStat as a “crime accountability system,” which uses crime-mapping and “organizational accountability practices,” and which has “recreated, at the executive level, the Broken Windows philosophy.”²⁴ Giuliani and Bratton adopted a strict, “zero tolerance” policy against minor offenses or “quality-of-life” crimes, such as public urination, graffiti, public drunkenness, and vandalism, which they called the “Quality of Life Initiative.”²⁵ Supporters of “broken windows” note that, from 1993 to 1996, the crime rate for all index crimes—homicide, rape, robbery, felony assault, burglary, grand larceny, and

²⁰ The City of New York. The New York City Police Department. Bratton, William J. “Broken Windows and Quality-of-Life Policing in New York City.” 2015. Web.

²¹ Ibid.

²² Nagy, Andrea R, Joel Podolny. “William Bratton and the NYPD: Crime Control Through Middle Management Reform.” *Yale School of Management* 07. 15. 12 (2008). 1-28. Web.

²³ Silverman, Eli B. “Crime in New York: A Success Story.” *Public Perspective*. 1998. Web.

²⁴ Bratton, W. op. cit. 3.

²⁵ Samaha, Joel. *Criminal Law*. Belmont: Wadsworth, Cengage Learning, 2001. Print.

grand larceny of motor vehicles²⁶—fell by 38.7%, while the homicide rate alone fell by 48.9%.²⁷

During this period from the early to mid 1990s, the NYPD was using stop-and-frisk, but the policy was restricted to an elite force called the Street Crime Unit—a small, plain-clothes unit with the primary stated goal of the recovery of firearms.²⁸ The NYPD first adopted stop-and-frisk in 1971, when the New York State Legislature added a provision to the Criminal Procedure Law which authorized police officers to stop, question, and frisk individuals on the street if he or she has reasonable suspicion, and required the officers to submit paperwork outlining the basis for the stop.²⁹ The policy was rooted in a 1968 Supreme Court case, *Terry v. Ohio*, which ruled that a police officer is not in violation of the Fourth Amendment prohibition of unreasonable searches and seizures if he or she has reasonable suspicion for the stop.³⁰ Concurrent with the adoption of stop-and-frisk in 1971, the NYPD created the SCU—originally comprised of 60 to 100 members—as the sole unit with the authority to employ the policy. From the the time of

²⁶ State of New York. New York State Division of Criminal Justice Services. *Criminal Justice Statistics*. 2015. Web.

²⁷ Silverman, Eli B. “Crime in New York: A Success Story.” *The Public Perspective*. June/July (1997). Web.

²⁸ *Report on the NYPD’s Stop-and-Frisk Policy*. The Association of the Bar of the City of New York. New York: 2013. Web.

²⁹ New York State. Criminal Procedure Law § 140.50 (1971). This provision required NYPD officers to record individual stops on a form called a UF-250, which includes information such as the time of the stop, the period of observation prior to the stop, the location of the stop, the duration of the stop, the suspected felony or misdemeanor justifying the stop, whether or not the individual was questioned or frisked, and whether or not the individual was arrested or issued a summons. It also includes personal information of the individual stopped including his or her name, their “nickname” or “street name,” their date of birth, their address, their sex, their race, and a description of their physical appearance.

³⁰ *Terry v. Ohio*, 392 U.S. 1. Supreme Court of the United States. 1968. Legal Information Institute, Cornell University Law School. Web.

the unit's inception to the height of "broken windows" in the mid 1990s, the SCU maintained its small size.

In 1997, however, the SCU expanded, proximally because of an "emphasis on crime statistics" in the early 1990s, and distally because of the city's infatuation with the "broken windows" approach to policing.³¹ Howard Safir, who replaced Bratton as NYPD Commissioner in 1996, claimed to be "so impressed by the unit's performance" that he increased the size of the SCU by 175%, adding 242 officers to the SCU.³² Due to this surge of officers and the NYPD's fixation on crime statistics, members of the SCU "were forced to adhere to an unwritten quota system that demanded that each officer seize at least one gun a month."³³ In an interview published by *The New York Times*, one SCU officer claimed, "There are guys who are willing to toss anyone who's walking with his hands in his pockets... And if it's the 25th of the month and you haven't got your gun yet? Things can get a little desperate." This desperation is reflected in the vast increase in the number of stops the unit performed, which rose from 18,023 in 1997 to 27,061 in 1998.

Using the "broken windows" model, SCU officers began targeting communities of color, where there were higher levels of crime. In 1999, *The New York Times* reported that the increase in the number of stops conducted that year "contributed to the perception—particularly in minority neighborhoods—that the Police Department's aggressive tactics pose a threat to the safety and civil liberties of the people it is supposed to protect." That same year, the SCU was embroiled in controversy after the fatal

³¹ Ibid.

³² Kocieniewskie, David. "Success of Elite Police Unit Exact a Toll on the Streets" *New York Times* 15 February 1999. Web.

³³ Ibid.

shooting of Amadou Diallo, an unarmed immigrant from Guinea on February 4th, 1999. As Diallo “stood, unarmed in the vestibule of his apartment building,” four SCU officers fired a total of 41 bullets at him, claiming they mistook his wallet for a gun.³⁴ Diallo’s death “ignited demonstrations across the city,” largely organized by the Coalition Against Police Brutality.³⁵ That same year, the Center of Constitutional Rights filed a case against the NYPD—*Daniels et al. v. The City of New York et al.*—which cited racial profiling and called for the disbanding of the SCU.³⁶

Michael Bloomberg was elected Mayor of New York City in 2002. That year, Bloomberg disbanded the SCU while the *Daniel’s* case was still in progress.³⁷ Rather than tempering police stops, however, the closure of the SCU led to a huge expansion of the stop-and-frisk policy. No longer confined to one department, the policy became a “widespread official practice” of the NYPD across *all* departments.³⁸ In 2003, Bloomberg appointed Raymond Kelly as Commissioner of the NYPD and together, Bloomberg and Kelly greatly expanded the use of the policy. When Bloomberg took office in 2002, the

³⁴ Fritsch, Jane. “The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted of All Charges.” *New York Times* 26 February 2000. Web.

³⁵ *Ibid.* NYPD Officers Carroll, McMellon, Boss, and Murphy were acquitted of all charges on February 25, 2000 by a Bronx District Court. It should be noted that all four officers were white and that the jury which decided the case consisted of four black women, one white woman, and seven white men. Though the officers were acquitted, the suit challenged the legality of stop-and-frisk, on the basis that it violated the Fourth amendment prohibition against unreasonable searches and seizures. The case was settled on December 12, 2003, and the settlement agreement required the NYPD to both audit officers who engaged in stops and to provide the results of the audits to the Center for Constitutional Rights on a quarterly basis.

³⁶ “*Daniels, et al. v. the City of New York.*” *Center for Constitutional Rights*. 1999. Historic Cases. Web.

³⁷ Rashbaum, William K., Al Baker. “Police Commissioner Closing Controversial Street Crime Unit.” *New York Times* 10 April 2002. Web.

³⁸ *Report on the NYPD’s Stop-and-Frisk Policy*. The Association of the Bar of the City of New York. New York: 2013. Web.

NYPD conducted 97,296 stops. In 2011, the year which saw the most stops ever conducted by the NYPD, the number had risen to 685,724—an increase of 604.8%. During Bloomberg’s three terms as Mayor, several reports found the policy to be racially discriminatory and numerous lawsuits were filed against the city, citing racial profiling. In 2011, then Manhattan Borough President Scott Stringer, along with several other elected officials in the city government, asked the U.S. Department of Justice to open an investigation into the NYPD.³⁹ From 2011-2013, Bloomberg’s last two years in office, the number of stops decreased slightly. Mayor Bloomberg said in an interview that the decrease in stops was a result of the decrease in crime rates. He explained, “The crime goes down, the number of stop-and-frisks... goes down.”⁴⁰ However, several media outlets including *The New York Times* have posited that the decrease was more likely due to the “increasing pressure” on the NYPD to reform the policy.⁴¹

The Cyclical Nature of Crime:

William Bratton, who first introduced the “broken windows” approach to policing to the NYPD in 1994, reassumed his position as Police Commissioner under Mayor de Blasio in 2014.⁴² Under de Blasio, Bratton has defended the repeal of the policy, and even points out its inefficacy. In an op-ed piece he wrote for *The New York Post*, Bratton asserted, “It’s time for a sense of proportion about the increase in shootings and murders

³⁹ Mathas, Christopher. “Stott Stringer, Officials Call For Federal Investigation of NYPD’s Stop-And-Frisk Program.” *The Huffington Post* 20 October 2011. Web.

⁴⁰ Durkin, Erin and Joe Kemp. “Mayor Bloomberg: Stop-and-frisk is Lowering NYC Crime, Need for Searches.” *New York Daily News* 8 May 2013. Web.

⁴¹ “Injustices of Stop and Frisk.” *New York Times*. 13 May 2012. Web.

⁴² Goodman, David J. “Bratton to Lead New York Police for Second Time.” *New York Times* 5 December 2013. Web.

in New York City in the first five months of 2015.”⁴³ He asserts, “To suggest that this relatively minor increase has been caused by Mayor Bill de Blasio’s opposition to reasonable-suspicion stops is a ludicrous misrepresentation.”⁴⁴ To defend his position, Bratton points to the inconsistent crime statistics the policy has returned in recent years. “In 2011,” he writes, “the NYPD reported about 685,000 reasonable-suspicion stops. That year, rapes, robberies, assaults, burglaries and grand larcenies all increased. . . Last year, stops had been cut. . . by more than 90 percent,” and the city saw “an overall decline in index crime of 4.1 percent.”⁴⁵ He concludes, “Clearly, the supposed relationship between decreasing stops and increasing crime is not supported by the numbers.”⁴⁶

As an alternative theory, Bratton points out that crime rates are somewhat cyclical, and follow a general trend of ebbs and flows. “. . . These numbers tend to move in ranges, with small upticks in some years and some categories,” he explains, “even during periods when overall crime is declining.”⁴⁷ This theory is supported by criminologist Ana Joanes. In an article published by the Columbia Journal of Law and Social Problems in 2000, Joanes demonstrates that the decline in NYC’s homicide rate in the 1990s was part of a larger decline of homicide rates nationwide and explains that this universal decline is a function of the fact that, historically, the national homicide rate in the U.S. follows a recurrent trend of increases and decreases. Joanes explains, “Since the 1930s, the trend in U.S. homicide rates shows both an unprecedented rise in the number of homicides and a

⁴³ Bratton, Bill. “Crime Surge Not a Return to NYC’s ‘Bad Old Days.’” *The New York Post*. The New York Post, 9 June 2015. Web.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

cyclical pattern covering three distinct periods of increase and decline.”⁴⁸ The mid-1930s saw a peak in homicide rates, followed by a thirty-year period of decline, during which the national homicide rate fell to “4.6 homicides per 100,000 persons in 1963.”⁴⁹

Homicides increased again for the next seventeen years, “peaking in 1980 at a rate of 10.2, which was more than twice the rate in 1963.”⁵⁰ The rate decreased again over the next five years, “only to begin another increase in 1985” which continued until 1991.⁵¹

Joanes notes that, since its peak in 1991, the national homicide rate again began to fall, continuing the cycle, and the decline in NYC’s homicide rate in the 1990s is a function of this pattern. Using a cross-city comparison of homicide cycles in seventeen cities nationwide over the twenty-two-year period from 1976 to 1998, Joanes found, “from a cyclical perspective, the decline in New York City’s homicide rate from its 1991 peak, although dramatic, is well within the range of decreases observed in half of the seventeen largest U.S. cities, and below the declines of five other cities.”⁵²

Just as this decline in the 1990s followed a national trend, national crime statistics suggest that the increase in NYC’s homicide rate in early 2015 suggest that the uptick is, again, a function of this cyclical pattern. For example, *The New York Times* reported that, from January to August of 2015, as compared to the same period in 2014, “at least 35 of

⁴⁸ Joanes, Ana. “Does the New York City Police Department Deserve Credit for the Decline in New York City’s Homicide Rates? A Cross-City Comparison of Policing Strategies and Homicide Rates.” *Columbia Journal of Law and Social Problems* 33 (1999-2000): 265-312. Web. 281.

⁴⁹ *Ibid*, 284.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

⁵² *Ibid*, 298.

the nation's cities report[ed] increases in murders, violent crimes, or both.”⁵³ While the cyclical nature of the homicide rate might partly explain this upturn, the immediate effects of increases in violent crimes and the extent of cross-city increases in 2015 in some major cities—up by as much as 76% in Milwaukee—is large enough to have incited anxiety across the U.S. as exhibited by the plethora of news stories on the subject, and the response of criminologists, political actors and law enforcement officials.⁵⁴

The “Ferguson Effect”:

The report on the nationwide increase in homicide rates in 2015, published by *The New York Times* in August of that year, noted that the three U.S. cities which saw the most dramatic increases were Milwaukee, St. Louis, and Baltimore. The article points out that, in these particular cities, “tensions over race and police conduct have risen” recently due to local incidents of police brutality. The article goes on to explain that, because the largest increases in homicide rates occurred in cities where protests against police misconduct have been the most fervent, “Some officials say intense national scrutiny of the use of force by police has made officers less aggressive and emboldened criminals.” This “popular theory” among “some experts and rank-and-file officers,” the *Times* clarified, is known as the “Ferguson effect.”⁵⁵

The “Ferguson effect” refers to the city of Ferguson, Missouri, a suburb of St. Louis, which has become a symbol for the deterioration of police-community relations and the recent focus on the racially disparate violence on the part of law enforcement

⁵³ Davey, Monica and Mitch Smith. “Murder Rates Rising Sharply in Many U.S. Cities.” *New York Times* 31 August 2015.

⁵⁴ Ibid.

⁵⁵ Ibid.

officers towards black men and women. The contemporary concentration on police brutality was prompted by the murder of Trayvon Martin, an unarmed black teenager who was fatally shot by George Zimmerman in Sanford, Florida on February 26, 2012.⁵⁶ Zimmerman, who was not a police officer but a captain of the local neighborhood watch, called 911 to report a “suspicious person” after he observed Martin “just walking around looking about,” wearing a hoodie.⁵⁷ Zimmerman was charged with both second-degree murder and manslaughter.⁵⁸ On July 13, 2013, Zimmerman was acquitted of all charges. Martin’s death prompted nationwide protests, including the “Million Hoodie March” in Manhattan.⁵⁹

A little more than a year after Zimmerman’s acquittal, the city of Ferguson erupted in protests following the death of Michael Brown—an unarmed black teenager who was shot by a white police officer named Darren Wilson on August 9, 2014.⁶⁰ Wilson, who believed that Mr. Brown “fit the description of a suspect in a convenience store theft,” shot him through the window of his police vehicle. Mr. Brown’s death “prompted weeks of demonstrations” throughout the city. Wilson was brought before a St. Louis County grand jury, and on November 24th, 2014, the jury ruled not to indict him.⁶¹ The non-indictment decision prompted another series of protests throughout

⁵⁶ Alvarez, Lizette, Cara Buckley. “Zimmerman Is Acquitted in Killing of Trayvon Martin.” *New York Times* 14 July 2013. Web.

⁵⁷ Toobin, Jeffrey. “The Facts in the Zimmerman Trial.” *The New Yorker* 16 July 2013. Web.

⁵⁸ Johnson, Kevin, Yamiche Alcindor. “No Federal Charges for Zimmerman in Trayvon Martin Death.” *USA Today* 24 February 2015. Web.

⁵⁹ Hajela, Deepti. “Trayvon Martin ‘Million Hoodie March’ March Draws Hundreds in New York City.” *The Huffington Post* 21 May 2012. Web.

⁶⁰ “What Happened in Ferguson?” *The New York Times*. 10 August 2015. Web.

⁶¹ *Ibid.*

Ferguson, which lasted for several weeks and which prompted Governor Jay Nixon to deploy the Missouri National Guard.⁶²

A week after the grand jury decision in Ferguson was announced, a grand jury in Staten Island also decided not to indict an NYPD officer for the murder of Eric Garner.⁶³ Garner, an unarmed black man, was killed by NYPD officer Daniel Pantaleo, during an encounter in which a group of NYPD officers approached Garner for selling “loose cigarettes.”⁶⁴ The incident was filmed by Staten Island resident Ramsey Orta. In the video, Pantaleo is seen putting Garner in a chokehold while other NYPD officers wrestled Garner to the floor. Garner can be heard saying “I can’t breathe,” at total of eleven times until he was fatally suffocated.⁶⁵ The recording went viral, sparking protests throughout New York City and across the country. The decision not to indict officer Pantaleo was followed by emboldened protests in Ferguson, as well as other cities across the nation.

The decision not to indict Zimmerman for the death of Trayvon Martin marked the beginning of a national focus on police brutality, specifically the widespread and disproportionate violence of police officers towards young brown and black men. The grand jury decisions in both Ferguson and Staten Island highlighted the systemic nature of police brutality, as well as the complicity of both city and state governments, who failed to hold the officers accountable for their actions, even in cases wherein the

⁶² Ibid.

⁶³ Goodman, David J., Al Baker. “Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Garner Chokehold Case.” *New York Times* 3 December 2014. Web.

⁶⁴ Baker, Al, J. David Goodman, and Benjamin Mueller. “Beyond the Chokehold: The Path to Eric Garner’s Death.” *New York Times* 13 June 2015. Web.

⁶⁵ Baker, Al, J. David Goodman, and Benjamin Mueller. “Beyond the Chokehold: The Path to Eric Garner’s Death.” *New York Times* 13 June 2015. Web.

evidence is incontrovertible, such as the Eric Garner decision. The protests in Ferguson were a response to the general issue of police misconduct. As *The Huffington Post* wrote of the protests in Ferguson, “The marchers...are not just protesting Brown’s slaying. They are also voicing pent-up anger at an old problem.”⁶⁶

The “Ferguson effect” theory is the notion that the increase in the homicide rate in 2015 can be explained by the fact that the recent focus on police misconduct and widespread criticism of certain police officers who have perpetrated violence against people of color has made law enforcement officials reluctant to do their jobs. The theory was first termed by St. Louis Police Chief Sam Dotson in November of 2014. Dotson, in an interview at the police headquarters in St. Louis, said, “I’ve experienced an uptick in crime. While I’m sure some professor, later on, will study it, it certainly does appear that individuals are using the cause or the conversation that’s going on, to justify some of their actions.”⁶⁷ In other words, the “conversation that’s going on,”—the nationwide condemnation of discriminatory policing policies—has created a rift in police-community relations, wherein law enforcement officials are reluctant to do their jobs. The theory suggests that officers either fear the possibility of being the next subject of national scrutiny or they resent the fact that the officers in these incidents were widely condemned for acting as they were trained to—for “just doing their job”—and have reacted by shirking community engagement.

⁶⁶ Bach, Natasha. “Police Violence Has Been Going On Forever. No Wonder People Are Fed Up With It.” *The Huffington Post*. 23 August 2014. Web.

⁶⁷ Byers, Christine. “Crime Up After Ferguson and More Police Needed, Top St. Louis Area Chiefs Say.” *St. Louis Today* 15 November 2014. Web.

The “Ferguson effect” garnered a more legitimate place in the national debate when the Director of the Federal Bureau of Investigation, James B. Comey, claimed the validity of the theory in a speech he gave on October 23rd, 2015. He asserts, “...something has changed in 2015. Far more people are being killed in America’s cities this year than in many years. And let’s be clear: far more people of color are being killed in America’s cities this year. And it’s not the cops doing the killing.”⁶⁸ He then lists a number of theories that he’s heard in “a lot of thoughtful conversations with law enforcement, elected officials, academics, and community members,” regarding this change, such as “the return of violent offenders”, “cheap heroin or synthetic drugs,” “smaller groups fighting for turf,” “a change in the justice system’s approach to bail or charging or sentencing,” or a change “with respect to the availability of guns.” Comey dismisses these theories saying, “None of them explain both the map and the calendar in disparate cities over the last 10 months.” He then comes to his own conclusion—the “Ferguson effect.” “Nobody says it on the record,” Comey claims, “nobody says it in public, but police and elected officials are quietly saying it to themselves. And they’re saying it to me, and I’m going to say it to you.”⁶⁹ He explains:

In today’s YouTube world, are officers reluctant to get out of their cars and do the work that controls violent crime? Are officers answering 911 calls but avoiding the informal contact that keeps bad guys from standing around, especially with guns? I spoke to officers privately in one big city precinct who described being surrounded by young people with mobile phone cameras held high, taunting them the moment they get out of their cars. They told me, ‘We feel like we’re under siege and we don’t feel much like getting out of our cars.’ ...The question that has been asked of me, is whether these kinds of things are changing police behavior all over the country...I don’t know whether this explains it entirely, but I do have

⁶⁸ The United States. The Federal Bureau of Investigation. Comey, James B. “Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice.” 23 October 2015. Web

⁶⁹ Ibid.

a strong sense that some part of the explanation is a chill wind blowing through American law enforcement over the last year. And that wind is surely changing behavior.⁷⁰

When Comey refers to the “chill wind blowing through American law enforcement,” he is referring to the national acknowledgement and disparagement of racist and violent behavior on the part of police officers towards people of color.

Director Comey’s official recognition of the “Ferguson effect” theory, which, as he mentions, was at first only “quietly” discussed amongst elected officials and police officers, prompted a response from President Barack Obama. During a speech he gave at the International Chiefs of Police annual conference in Chicago on October 27, 2015, Obama refuted the theory. While he doesn’t refer to the “Ferguson effect” by its name, he denies its underlying premise by asserting, “I reject any narrative that seeks to divide police and communities that they serve.”⁷¹ He goes on:

It is true that in some cities, including here in my hometown of Chicago, gun violence and homicides have spiked—and in some cases they’ve spiked significantly... And let’s face it, the media tends to focus on the sensational and the controversial, and folks on both sides who say stuff that’s not designed to bring people together but oftentimes makes the situation more polarized... What we can’t do is cherry-pick data or use anecdotal evidence to drive policy or to feed political agendas... With today’s technology, if just one of your officers does something irresponsible, the whole world knows about it moments later. And the countless incidents of effective police work rarely make it on the evening news... But you know as well as I do that the tensions in some communities, the feeling that law enforcement isn’t always applied fairly, those sentiments don’t just come out of nowhere.⁷²

While Obama acknowledges that the anger surrounding incidents of police brutality has translated into a universal distrust of law enforcement officials in general, he maintains

⁷⁰ Ibid.

⁷¹ Sweet, Lynn. “Obama’s Chicago Criminal Justice Speech. Transcript.” *Chicago Sun-Times*. 27 October 2015. Web.

⁷² Ibid.

that this anger is warranted. He then invalidates the “Ferguson effect” theory by pointing out that the concept is not supported by hard evidence. Its supporters are “cherry-picking data” by relying on piece-meal information and “anecdotal evidence” to support their claim. Rather than pointing to statistics, Comey is basing his support of the theory on private conversations he’s had with officers who are most likely biased.

The comments of both Comey and Obama has created a division in the Obama administration between government officials who either support or deny the validity of the “Ferguson effect” theory. Charles Rosenberg, the Acting Administrator of the Drug Enforcement Administration, supported Comey by saying, “I think he’s spot on...I think there’s something to it.”⁷³ He explains, “I rely on the chiefs and the sheriffs who are saying that they have seen or heard behavioral changes among the men and women of their forces...The manifestation of it may be a reluctance to engage.”⁷⁴ He goes on, “Rightly or wrongly, you become the next viral video...Now you can do everything right and still end up on the evening news.”⁷⁵ As a response, White House press secretary Josh Earnest directly refuted both Comey’s and Rosenberg’s assertion. During a press conference held the White House, Earnest said, “Mr. Rosenberg is the second administration official to make that kind of claim without any evidence...The fact is, the evidence does not support the claim that somehow our law enforcement officers all across the country are shirking their duties.”⁷⁶ Indeed, the problem with the “Ferguson

⁷³ Frankel, Todd C. “DEA Chief Joins FBI Chief in Giving Credence to ‘Ferguson Effect.’” *Washington Post* 4 November 2015. Web.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Fabian, Jordan. “White House Rebuffs DEA Chief on ‘Ferguson Effect.’” *The Hill* 6 November 2015. Web.

Effect” theory is that it is just that—a theory. There has been very little discussion of data or statistics to support this claim.

Drugs and Gangs:

Mayor Bill de Blasio has attributed the rise in violent crime rates in NYC in early 2015 to both “drug-related violence” and “gang-related activity,” which are frequently interconnected. In a press release issued on July 29, 2015 by the Office of the Mayor, de Blasio asserted, “Despite dramatic reductions in violent crime, New York City experiences isolated shooting spikes, often connected to drug gangs.”⁷⁷ He maintains that these spikes in violent crime are not city-wide, but occur in specific neighborhoods. He explains, “Although shootings vary year to year and borough to borough, these incidents tend to be concentrated in a few neighborhoods and largely committed by a few gangs and street crews.”⁷⁸ The press release points to the fact that, “Four of the top 10 precincts for narcotics arrests are also in the top 10 precincts for shooting incidents. These four precincts account for 12.8 percent of narcotics arrests and 18.4 percent of shooting incidents citywide.”⁷⁹ In other words, the assumption that the repeal of stop-and-frisk contributed to a general increase in violent behavior does not take into account the fact that the overall NYPD statistics on violent crime are heavily influenced by just a few precincts.

The assertion that 2015 saw an increase in gang activity is supported by the fact that the city has seen an enormous increase in the distribution of heroin in recent years.

⁷⁷ The City of New York. Office of the Mayor. “Mayor de Blasio Announces Over \$2 Million Annual Investment to Fund Anti-Violence Prosecution Strategies That Target Intersection Between Violence and Narcotics.” 29 July 2015. Web.

⁷⁸ Ibid.

⁷⁹ Ibid.

As *The New York Post* reported, in 2015, “Federal authorities seized a record-breaking amount of heroin in New York City...that accounted for roughly one-third of all the drugs recovered nationwide.”⁸⁰ That year, the DEA confiscated 880 kilograms total, which “was far above the 517 kilograms...netted in 2014, and more than ten times 2009’s total of 86 kilograms.”⁸¹ In fact, in 2015, “In January alone, 148 kilos were seized—or about double for all of 2009.”⁸² This influx of heroin is reflected in the recent surge in heroin overdoses throughout the city. In July of 2015, the Special Narcotics Prosecutor under de Blasio, Bridget Brennan, reported that, in New York City, “...heroin overdoses have outpaced homicides for two years in a row.”⁸³

In response to this growing epidemic, the de Blasio administration allocated “a more than \$2 million annual investment” to expand the Office of the Special Narcotics Prosecutor in July of 2015.⁸⁴ The funds will go towards the “investigation and prosecution of crimes involving gun violence and narcotics trafficking, as well as the Office’s strategies to address the heroin epidemic.”⁸⁵ With this investment, Mayor de Blasio is focusing on treating the underlying societal problems which perpetuate the degraded status of communities of color in New York and which are the cause of higher crime rates in certain areas.

Data, Methods, and Results:

⁸⁰ Celona, Larry and Daniel Prendergast. “Record-Breaking Amount of Heroin Seized in NYC Last Year. *New York Post* 8 February 2016. Web.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ The City of New York. Office of the Mayor. “Mayor de Blasio Announces Over \$2 Million Annual Investment to Fund Anti-Violence Prosecution Strategies That Target Intersection Between Violence and Narcotics.” 29 July 2015. Web.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

In this section, I gather the relevant data covering stop-and-frisk practices from its expansion in 2002 to the first two quarters of 2015 (the most recent period for which data on stop-and-frisk in NYC is available), as well as data on the annual homicide rate in New York City over this time period. In Table 1, I compare the percent change in the frequency of stops from year-to-year to the the percent change in the annual homicide rate to determine whether or not whether or not there is a discernable relationship between the two variables. More specifically, I examine whether or not there is a direct, inverse correlation between a change in the number of stops and a change in the homicide rate. That is, whether or not the purported reason for the stop-and-frisk policy—a reduction in violent crime—has produced the expected result.

I then compile the data pertaining to the number of guns seized by the NYPD each year over the same period. In Table 2, I compare this information with the annual rate of stops in order to discern how effective the policy is in terms of firearm recovery. Following this, I present a statistical analysis of the racial breakdown of stops each year in Table 3 to ascertain whether or not and the extent to which the policy is racially discriminatory.

Historical crime data is published by the NYPD on a weekly, quarterly, and yearly basis on the department’s website and can be found in the “Crime Statistics” section of the site. The information reflects both city-wide crime statistics and specific data for each individual precinct, and is broken down into all seven index crime categories. Data on the frequency of stop-and-frisk is drawn from the NYPD’s online information database—the CompStat system—introduced by Commissioner Bratton in 2002. The NYPD publishes stop-and-frisk data annually on the department’s website,

which can be accessed by the public on the “Stop, Question, and Frisk Report Database” in the “Reports and Information” section of the site. The publication of this information, as I noted earlier, is a result of the settlement reached in the *Diallo* case, so information released by the NYPD only dates back to 2003. It is compiled in the form of downloadable Excel spreadsheets, which include information on each individual stop made and the specific information pertaining to each stop collected on UF-250 forms.

While the NYPD itself releases stop-and-frisk data to the public on a yearly basis, as part of the *Diallo* settlement, it is required to release stop-and-frisk information on a quarterly basis to the Center for Constitutional Rights. The CCR then passes these quarterly reports to the American Civil Liberties Union of New York, which posts the information on the “NYPD Quarterly Reports” page of their website. In addition to releasing the NYPD data on a quarterly basis, the ACLU releases annual reports on stop-and-frisk which include data on both the number of arrests made as a result of the policy and a racial breakdown of the stops performed. The ACLU also intermittently publishes in depth analyses of stop-and-frisk statistics. The data on the rate of firearm seizure is culled from an ACLU report published in 2014.

Table 1:Homicide Rate vs. Number of Stops, NYC: 2002-2015

Year	Number of Homicides	Number of Stops	Percent Change in Homicide Rate from Previous Year	Percent Change in Stops from Previous Year	Correlation between % Change in Stops and % Change in Homicide Rate	Did Stop and Frisk Produce Expected Result?
2002	587	97,296	N/A	N/A	N/A	N/A
2003	597	160,851	+1.7%	+65.3%	Positive	No
2004	570	313,523	-4.5%	+94.9%	Negative	Yes
2005	539	398,191	-5.4%	+27%	Negative	Yes
2006	596	506,491	+10.6%	+27.2%	Positive	No
2007	496	472,096	-16.8%	-6.8%	Positive	No
2008	523	540,302	+5.4%	+14.4%	Positive	No
2009	471	581,168	-9.9%	+7.6%	Negative	Yes
2010	536	601,285	+13.8%	+3.5%	Positive	No
2011	515	685,724	-3.9%	+14%	Negative	Yes
2012	419	532,911	-18.6%	-22.3%	Positive	No
2013	335	191,558	-20%	-64.1%	Positive	No
2014	333	46,235	-.6%	-75.9%	Positive	No
2015, First 2 Quarters*	161	13,604	145 homicides during first two quarters of 2014=+11%	27,527 stops during first two quarters of 2014=-50.6%	Negative	Yes

*The 2nd quarter of 2015 ended on June 30th, 2015. I stopped including data after the 2nd quarter of 2015 because, while the homicide rate for the third quarter of 2015 is available, the stop-and-frisk data has not yet been released.

The data shows that the number of stops performed annually by the NYPD increased each year from 2002 to 2011, save for 2007, when the number of stops decreased by 6.8%. In 2002, the year that Mayor Bloomberg began the expansion of stop-and-frisk, the NYPD conducted 97,296 stops. In 2011, when the number of stops made by the NYPD was at its highest, the number of stops had increased to 685,724, an

increase of 604.8% as compared to 2002.⁸⁶ During that time period, the homicide rate did drop by 12.3%.⁸⁷ While this decrease does coincide with expansion of the policy, when compared to the huge increase in the number of stops performed, the relatively small decrease in the number of homicides does not represent an appreciable change.

Additionally, broken down into annual increments, the crime statistics from 2002 to the first two quarters of 2015 suggest that year-to-year, the percent change in the number of stops performed by the NYPD does not directly and inversely affect the crime rate, as proponents of stop-and-frisk would have us believe. For example, from 2002-2003 the number of stops increased by 65.3% while the homicide rate increased by 1.7%. Proponents of stop-and-frisk might suggest that, in 2002, the policy had only just begun to be widely practiced by NYPD officers and the increase in the homicide rate that year is a function of the city needing time to adjust to its implementation. And, indeed, over the following two-year period from 2003-2005, the rate of stops increased by 147.5% while the homicide rate fell by 9.7%. However, from 2005-2006, the number of stops again increased by 27.2% while the homicide rate actually increased by 10.6%, suggesting that, even after an adjustment period, an increase in stops does not necessarily result in a decrease in homicides. Even worse for stop-and-frisk proponents, from 2006-2007 the number of stops actually decreased by 6.8% while the homicide rate fell by 16.8%. This concordant trend continued the following year when, from 2007-2008, the number of stops increased by 14.4% while the homicide rate increased by 5.4%. The number of

⁸⁶ The City of New York. New York City Police Department. *Stop, Question, and Frisk Report Database*. New York: 2015. Web.

⁸⁷ The City of New York. New York City Police Department. *Historical New York City Crime Data*. New York: 2015. Web.

stops made by the NYPD has decreased each year since 2011, as have homicide rates up until this recent increase.

In sum, out of the thirteen years of examined data, only five of the thirteen years demonstrate a direct, inverse correlation between the number of stops performed and the homicide rate. Put differently, data from eight of the thirteen years suggest that homicide rates would actually decrease if the practice of stop-and-frisk is reduced. The inconsistency of the data demonstrates that there is no consistent, discernable relationship between the number of stops performed annually and the number of homicides reported by the NYPD.

In addition to the lack of any correlation between these two variables, the data shows little correlation between the number of stops conducted by NYPD each year and the annual crime rate in all seven index crime categories. As the New York City Bar Association (NYCBA) reported, “the increase of 100,000 stops between 2008 and 2011 did not correspond to an appreciable change in the violent crime rate, which then dropped again in 2012 even as the number of stops fell by 150,000.”⁸⁸ Additionally, “the years 2008-11 show that, despite a 27% increase in stops and frisks, shootings had not gone down, and indeed in 2011, a year with nearly 686,000 stops, the number of shootings actually rose.”⁸⁹ As in the category of homicide, the data shows that stop-and-frisk has no relationship to the rate of robbery, with only five out of the thirteen years showing a direct, inverse correlation.⁹⁰ Grand Larceny showed only six out of the thirteen years

⁸⁸ *Report on the NYPD’s Stop-and-Frisk Policy*. The Association of the Bar of the City of New York. New York: 2013. 11. Web.

⁸⁹ *Ibid.*

⁹⁰ The City of New York. New York City Police Department. *Historical New York City Crime Data: Citywide Seven Major Felony Offenses 2000-2014*. New York: 2015. Web.

returning the expected result, while the categories of burglary, felony assault, and rape showed 8 out of the thirteen years returning the expected result.⁹¹ Grand larceny of motor vehicles seems to be the crime category that’s most directly impacted by a change in the rate of stops, with nine out of the thirteen years showing a direct, inverse correlation.⁹²

Table 2:

Rate of Firearm Seizure vs. Number of Stops, NYC: 2002-2015

Year	Number of Firearm Seizures	Number of Stops	% Firearm Recovery vs. Number of Stops	% Change in Rate of Seizure from Previous Year	Percent Change in Stops from Previous Year	Correlation	Did “Stop and Frisk” Produce Expected Result?
2002	N/A*	97,296	N/A	N/A	N/A	N/A	N/A
2003	633	160,851	.39%	N/A	+65.3%	N/A	N/A
2004	745	313,523	.24%	+17.70%	+94.9%	Positive	Yes
2005	676	398,191	.17%	-9.26%	+27%	Negative	No
2006	700	506,491	.14%	+3.55%	+27.2%	Positive	Yes
2007	687	472,096	.15%	-1.86%	-6.8%	Positive	Yes
2008	840	540,302	.16%	+22.27%	+14.4%	Positive	Yes
2009	762	581,168	.13%	-9.29%	+7.6%	Negative	No
2010	790	601,285	.13%	+3.67%	+3.5%	Positive	Yes
2011	819	685,724	.12%	+3.67%	+14%	Positive	Yes
2012	729	532,911	.14%	-10.99%	-22.3%	Positive	Yes
2013	397	191,558	.21%	-45.54%	-64.1%	Positive	Yes
2014	201 ⁹³	46,235	.43%	-49.37%	-75.9%	Positive	Yes
2015, First 2 Quarters	79 ⁹⁴	13,604	.58%	-60.70%	27,527 stops during first two quarters of	Positive	Yes

⁹¹ Ibid.

⁹² Ibid.

⁹³ Destefano, Anthony M. “Gun Seizures Down After Drop in NYPD Stop-And-Frisk Activity, Rise in Homicides, Data Shows.” *Newsday*. Newsday, 1 September 2015. Web.

⁹⁴ Ibid.

					2014= -50.6%		
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*Data for 2002 excluded because 2003 was the first year for which gun-seizure information was collected.

Stop-and-frisk was initially proposed as a means to collect firearms, based on the expectation that the seizure of guns would lead to an eventual reduction in homicide rates.⁹⁵ The data show that, for the twelve years of available data, the annual rate of firearm recovery is responsive to changes in the number of stops made, with ten out of the twelve years showing a direct, inverse correlation. However, the overall number of firearms collected is extremely low. From 2003 to the first two quarters of 2015, the NYPD conducted a total of 5,141,235 stops and seized just 8,058 guns, which is a recovery rate of .15%. In other words, the NYPD seized one gun for every 638 people they stopped—a rate which suggests that the policy is ineffective in this regard. In addition to a low firearm recovery rate, stop-and-frisk data shows a low arrest rate in general. From 2002 to the first two quarters of 2015, the number of stops conducted that did not result in an arrest or the issuing of a summons made up 86.7% of all stops. The low arrest rate has remained relatively consistent each year, despite major fluctuations in the annual rate of stops. Over the fourteen-year period between 2002 and the first two quarters of 2015, the number of arrests made as a result of stop-and-frisk has deviated by only 9%.⁹⁶ This suggests that the annual arrest rate is not affected by changes in the rate of stops.

⁹⁵ *Report on the NYPD's Stop-and-Frisk Policy*. The Association of the Bar of the City of New York. New York: 2013. 11. 3. Web.

⁹⁶ Ibid.

While the data presented thus far suggests that stop-and-frisk’s relationship to crime is nonexistent, further evidence presented in Table 3 suggests that there is a planned component to the execution of stop-and-frisk. In Table 3 I examine the demographic breakdown of stops performed annually in terms of race. The annual NYPD stop-and-frisk reports include a racial breakdown of the statistics, for which the categories are divided into “American Indian,” “Asian/Pacific Islander,” “Black Hispanic,” “White,” “White Hispanic,” and “Not Listed.” In my analysis, I focus on the categories of “Black,” “Latino,” and “White,” in that these three demographics comprise the vast majority of stops and are the racial categories for which stop-and-frisk data is published by both the ACLU and the Center for Constitutional Rights, and which are the subject of litigation which cites racial discrimination against the city.

Table 3: Racial Breakdown of Stops, NYC: 2003-2015

Year	Number of Stops	Black	Latino	White
2002	97,296	N/A*	N/A	N/A
2003	160,851	77,704=54%	44,581=31%	17,623=12%
2004	313,523	155,033=55%	89,937=32%	28,913=10%
2005	398,191	196,570=54%	115,088=32%	40,713=11%
2006	506,491	267,468=53%	147,862=29%	53,500=11%
2007	472,096	243,766=54%	141,868=31%	52,887=12%
2008	540,302	275,588=53%	168,475=32%	57,650=11%
2009	581,168	310,611=55%	180,055=32%	53,601=10%
2010	601,285	315,083=54%	189,326=33%	54,810=9%

2011	685,724	350,743=53%	223,740=34%	61,805=9%
2012	532,911	284,229=55%	165,140=32%	50,366=10%
2013	191,558	104,958=56%	55,191=29%	20,877=11%
2014	46,235	24,777=55%	12,662=29%	5,536=12%
2015, First 2 Quarters*	13,604	7,158=54%	3,944=29%	1,541=12%
Average	367,231	54.2%	31.2%	10.8%

*Racial breakdowns of “stop and frisk” statistics were not collected before 2003.

As of 2010, the the population of New York City was 8,175,133 denizens.⁹⁷ Of that population, 33.3% identified as “White non-Hispanic,” 22.8% as “Black/African American non-Hispanic,” and 28.6% as of “Hispanic Origin.” Despite the relatively close margins between these demographics, the data show that white men and women are grossly underrepresented in stop-and-frisk statistics as compared to their overall representation in the population, constituting an average of just 11% of all stops performed each year. Latino men and women constitute, on average, one third of the annual stop rate, a statistic which is just slightly higher than their overall representation in the city’s population, while black men and women consistently make up more than half of all stops conducted each year by the NYPD. Taken together, the black and Latino demographics make up the vast majority of the annual stop rate. A report issued by the RAND Corporation and supported by the New York City Police Foundation found that in

⁹⁷ United States Census Bureau. 2010 was the last year for which the USCB published population data for New York City.

2006, “89 percent of the stops involved nonwhites. Fifty-three percent of the stops involved black suspects, 29 percent Hispanic, 11 percent white, and 3 percent Asian.”⁹⁸

Opponents of stop-and-frisk point to these statistics as evidence of racial bias while supporters maintain that racial disparities can be explained by a necessary targeting of certain neighborhoods and demographics. In other words, the policy’s advocates argue that, because certain racial or ethnic groups are more often the victims and perpetrators of crimes, they are likely to see more stops. Indeed, NYPD representatives have conceded that stop-and-frisk operates with intent to target specific demographics. As Former Police Commissioner Kelly explained:

[t]he statistics reinforce what crime numbers have shown for decades: that blacks in this city were disproportionately the victims of violent crime, followed by Hispanics. Their assailants were disproportionately black and Hispanic too... [The NYPD] must continue to fight crime where it finds it, and use those tactics that have proven successful.⁹⁹

However, a report issued by the RAND Corporation and supported by the New York City Police Foundation found:

...when frisked, white suspects were 70 percent likelier than black suspects to have had a weapon on them... Officers recovered contraband (such as weapons, illegal drugs, or stolen property) in 6.4 percent of the stops of white suspects. The contraband recovery rate was 5.7 percent for similarly situated black suspects and 5.4 percent for similarly situated Hispanic suspects.¹⁰⁰

In light of this information, the reasoning behind excusing racial disparities in stops is clearly unfounded. The depiction of an increase in criminality in minority groups in terms of possession of firearms (the stop-and-frisk policy’s main focus) is not supported by

⁹⁸ Ridgeway, Greg. “Analysis of Racial Disparities in the New York Police Department’s Stop, Question, and Frisk Practices.” Santa Monica: The RAND Corporation, 2007. Web. This report can be found on the NYPD website.

⁹⁹ Ibid.

¹⁰⁰ Ridgeway, G. op.cit. xi.

evidence. This suggests that the NYPD is not targeting communities of color with the intent of ensuring their safety, but, rather, is using the policy to create a perception of criminality in these communities.

This seemingly racist intent is supported by the fact that both the arrest rate and contraband-recovery rates of stop-and-frisk are most effective in terms of minor drug offenses. In fact, most arrests made as a result of stop-and-frisk are based on the possession of marijuana, not firearms. For example, in 2012, the ACLU of New York reported that “the NYPD recorded more than 26,000 stops for suspected marijuana-possession offenses.”¹⁰¹ This figure accounts for almost 5% of all stops conducted that year. That same year, the NYPD made 21,708 arrests during stops. Of those arrests, 5,307 were a result of marijuana possession, a figure representing more than a quarter of total arrests made via stop-and-frisk.¹⁰² Data on marijuana arrests show a huge racial disparity. Despite the fact that marijuana use is relatively equal among racial groups,¹⁰³ of the individuals arrested through stop-and-frisk for “suspected marijuana-possession” in 2012, 61.4% were black, while only 8.7% were white.¹⁰⁴ This suggests that, as the ACLU notes, “despite the NYPD’s repeated claim that it’s stop-and-frisk program is valuable because it targets guns, the facts show that it is much more a marijuana arrest program.”¹⁰⁵

¹⁰¹ Dunn, Christopher. *Stop-And-Frisk 2012: NYCLU Briefing*. The American Civil Liberties Union of New York. 2012. Web.

¹⁰² *Ibid.*

¹⁰³ *The War on Marijuana in Black and White*. American Civil Liberties Union. June 2013. Web. This report, based on the National Household Survey on Drug Abuse and Health, found that, “In 2010, 14% of Blacks and 12% of whites reported using marijuana in the past year.” Additionally, the report found that, “In every year from 2001 to 2010, more whites than Blacks between the ages of 18 and 25 reported using marijuana in the previous year.”

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

Cross-City Comparison:

As noted previously, from January to August of 2015, when compared to the same period in 2014, more than 35 cities across the U.S. reported an increase in violent crimes, including homicides.¹⁰⁶ This cross-city data suggest that the increase in the homicide rate observed in New York is part of a larger, national trend rather than being unique to New York City or a function of Mayor de Blasio’s repeal of stop-and-frisk. What’s more, several cities across the country whose police departments continued to employ stop-and-frisk in early 2015 also experienced an increase in the homicide rate during that time.

The issue of stop-and-frisk maintains a high profile in New York City, yet in other municipalities, the extent of the policy, or even its existence, appears to be intentionally disguised from the public eye. Police departments across the U.S. that use stop-and-frisk often refer to it by different names. This deliberate move away from the term “stop-and-frisk”—language handed down by the Supreme Court in the *Terry* decision—suggests that the renaming of the policy is an implicit acknowledgement that the term has become synonymous with controversy and arbitrary discrimination along racial and ethnic lines. For example, in Newark, New Jersey, stops are referred to as “field inquiries.”¹⁰⁷ In an interview, former Director of the Newark Police Department Samuel DeMaio explained the decision to adopt this term saying, “We don’t use *stop-and-frisk*...It sounds too invasive.”¹⁰⁸

¹⁰⁶ Davey, M. op. cit.

¹⁰⁷ Bergner, Daniel. “Is Stop-and-Frisk Worth It?” *The Atlantic*. April 2014. Web.

¹⁰⁸ Ibid.

In addition to attempting to disguise the policy in less “invasive” language, police departments have almost universally refrained from publishing data on stop-and-frisk. In 2013, after a concerted political effort to demand police transparency, the Newark Police Department joined the NYPD as the only other police department publishing stop-and-frisk data on a monthly basis.¹⁰⁹ The call for transparency in Newark was formally launched on September 9th, 2010, when the ACLU of New Jersey filed a formal petition to the Department of Justice to open an investigation into the NJPD’s policing practices.¹¹⁰ The DOJ opened an investigation on May 9th, 2011, citing “allegations of use of excessive force” and “discriminatory policing.”¹¹¹ During the investigation, on July 8, 2013, the Newark Police Department issued a general order called the “Police Transparency Policy.”¹¹² Under this policy, the Newark Police Department is now required to publish statistics every month including the total number of “field inquiries” along with detailed information including the “race, gender, age, and limited English proficiency” of those stopped.¹¹³

The Newark Police Department waited until the DOJ was two years into their investigation to adopt this policy, but the new policy was announced a year before the investigation was concluded in July of 2014. The timing of the policy adoption suggests

¹⁰⁹ “Order Requires Documentation of Police Stops and Regular Public Reporting of Data.” The American Civil Liberties Union of New Jersey. 9 July 2013. Web.

¹¹⁰ “Petition to Investigate the Newark Police Department: Request for the U.S. Department of Justice to Investigate Police Misconduct and Mistreatment.” The American Civil Liberties Union of New Jersey. 9 September 2010. Web.

¹¹¹ The United States. The United States Department of Justice Office of Public Affairs. “Justice Department Opens Investigation into the Newark, N.J., Police Department.” 9 May 2011. Web.

¹¹² “Order Requires Documentation of Police Stops and Regular Public Reporting of Data.” The American Civil Liberties Union of New Jersey. 9 July 2013. Web.

¹¹³ Ibid.

the possibility that Newark Police sought to preempt the political impact of the conclusions of the DOJ investigation. The policy shift also occurred, as the ACLU of New Jersey pointed out, while controversy continued over New York City's practice of stop-and-frisk.¹¹⁴ Some commentators believe that the controversy surrounding the policy in NYC helped prompt the Newark Police Department to release its data.

In February, 2014, the ACLU of New Jersey published a report entitled "Stop and Frisk: A First Look," which analyzed the first six months of data made available on "field inquiries." DeMaio's concern that stop-and-frisk sounded too "invasive" is perhaps valid, in that the tactic, as employed by the NJPD, was discovered to be extremely invasive. The report found that Newark police officers stop citizens "with troubling frequency," and "make 91 stops per 1,000 residents" as compared to the "8 stops per 1,000 residents" made by the NYPD in the same time period.¹¹⁵ The report also found that, as in New York, the NJPD "field inquiry" policy is racially discriminatory. It states, "Although black Newarkers represent 52 percent of the city's population, they make up 75 percent of all stops."¹¹⁶ This is probably a skewed statistic in that, as the report notes, the department "...did not report data on stops of Latino residents during the six months analyzed...meaning that the number of white individuals stopped in the data is likely inflated."¹¹⁷ Possibly as a result of this report, the NPD has not published a report on "field inquiries" since December, 2014, violating their own "transparency policy," and

¹¹⁴ Ibid. The ACLUNJ noted that the policy was adopted "As debate concerning New York City's 'stop-and-frisk' policy carries on."

¹¹⁵ Ofer, Udi, Ari Rosmarin. "Stop-and-Frisk: A First Look; Six Months of Data on Stop-and-Frisk Practices in Newark." The American Civil Liberties Union of New Jersey. 2014. Web.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

leaving New York City as the only city for which stop-and-frisk data is regularly made available.¹¹⁸

In 2015, the violent crime rate in Newark increased. According to the Federal Bureau of Investigation, the total number of homicides reported by the NPD was 93 in 2014.¹¹⁹ As of December 10, 2015, the number of homicides reported by the NPD reached 95, surpassing the previous year's total.¹²⁰ Given that the NPD is no longer publishing their "field inquiries" data, there is no way to compare the annual rate of stops to the yearly homicide rate. However, the NPD has made no mention of an effort to change the "field inquiries" policy and, as the department's statistics are not subject for review and are therefore free from the possibility of criticism, one can assume that the number of "field inquiries" conducted from 2014-2014 did not decrease. Despite the continuation of the policy, the homicide rate increased, which would suggest that even if the NYPD had maintained a high stop rate, the homicide rate would have still increased.

The Chicago Police Department employs stop-and-frisk through what they call "investigatory stops," and refers to its law enforcement officers as "peace officers."¹²¹ Illinois state law describes an investigatory stop as "temporary questioning without arrest," and maintains that "...a peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the

¹¹⁸ The State of New Jersey. The Newark Police Department Office of Professional Standards Website. 2015. Web.

¹¹⁹ The United States. Federal Bureau of Investigation. *Uniform Crime Reporting*. 2014. Web.

¹²⁰ Coleman, Vernal. "Man Shot to Death Marks Newark's 95th Homicide of 2015." *NJ Advance* 10 December 2015. Web.

¹²¹ The State of Illinois. The Chicago Police Department. "Contact Information System." Special Order S04-13-09. 07 January 2015.

officer reasonably infers from the circumstances that the person is committing, is about to commit, or has committed an offense.”¹²² The policy is monitored through what’s called a “Contact Information System.”¹²³ Police officers of the CPD use “Contact Information Cards” to document “investigatory stops” as well as “enforcement of the Gang and Narcotics-Related Loitering Ordinances.”¹²⁴ Information on the cards are then tabulated in a Contact Card Database. These cards include “information concerning the individual temporarily detained” and “a narrative section used to describe the circumstances of the contact.”¹²⁵

Unfortunately, Chicago administration and reporting of stop-and-frisk is not as clear cut as this. Information in the Contact Card Database is not available for review, and the number of “investigatory stops” recorded in the Contact Card Database does not reflect the actual number of stops conducted by CPD officers. As the ACLU explains, “the CPD does not record stops that lead to arrests or tickets and makes no record of frisks.”¹²⁶ In other words, stops that actually lead to an arrest or the issuance of a ticket are not reported as stops. The problems go beyond this, however, as discovered by the ACLU of Illinois when it filed a Freedom of Information Act request to “look at the nature and number of stop-and-frisks performed by the Chicago Police Department.”¹²⁷

¹²² The State of Illinois. Illinois General Assembly. Code of Criminal Procedure. 725 ILCS 5. 1963. Web.

¹²³ The State of Illinois. The Chicago Police Department. “Contact Information System.” Special Order S04-13-09. 07 January 2015.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ “Stop and Frisk in Chicago.” The American Civil Liberties Union of Illinois. March 2015. Web.

¹²⁷ Ramos, Elliot. “Poor Data Keep Chicago’s Stop and Frisk Hidden From Scrutiny.” *WBEZ* 12 September 2013. Web. This article was republished on the ACLUI website.

In response to the FOIA request, the CPT consistently dissembled, refused, and otherwise resisted releasing data on stop-and-frisk. Initial data released by the CPD was based on data collected from June 1, 2012 to August 31, 2012, and from March 1, 2013 to May 31, 2013.¹²⁸ However, “prior to April 2014, officers used contact cards to record voluntary interactions with civilians, making it difficult to isolate stops and frisks.”¹²⁹ Given the inadequacy of the information released by the CPD, the ACLU “ran a word search of terms selected...to identify stops and frisks in that broader database.”¹³⁰ The search showed that, of the six months of data analyzed, the database contained 18,943 contact cards which pertained to “investigatory stops.”¹³¹ Responding to the ACLU’s request for access to the 18,943 contact cards, the CPD’s FOIA office agreed to produce only the narrative sections of 300 contact cards, “...asserting there was a burden” on the CPD “due to the need to redact personally identifying information from the narratives.”¹³² The ACLU argued that this number was most likely lower than the actual number of stops conducted, noting that “[i]t is possible that some records of stops did not contain the search terms.”¹³³

The ACLU’s legal persistence ultimately paid off: as a result of another FOIA request, the CPD released information drawn from the Contact Card Database from May through August of 2014, with an exclusive focus on “investigatory stops.”¹³⁴ Analysis of

¹²⁸ “Stop and Frisk in Chicago.” The American Civil Liberties Union of Illinois. March 2015. Web.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

the resultant data showed that, during this time period, the CPD conducted “more than 250,000 stops that did not lead to an arrest.”¹³⁵ In March of 2015, the ACLU released a report on the six months of data from 2012 and 2013 as well as the four months of data from 2014 that found that the “investigatory stop” policy is racially discriminatory. The ACLU reported that “Black Chicagoans were subjected to 72% of all stops, yet constitute just 32% of the city’s population.”¹³⁶

The ACLU report led to an August 7, 2015 “landmark agreement” between the CPD, the City of Chicago, and the ACLU. The agreement allows for “an independent evaluation of the practices and procedures, and increased transparency and public disclosure regarding Chicago police investigatory stops.”¹³⁷ However, then Superintendent of the CPD Garry McCarthy, who served as the Chief of Police of the Newark Police Department from 2006-2011 (when the DOJ began its investigation into the NPD), clarified CPD’s understanding that the agreement will not “be a change in the actual way that we stop people.”¹³⁸ Rather, “it’s going to be a change in the way that we record it.”¹³⁹ The agreement was not reached until after the first two quarters of 2015, when number of homicides recorded by the CPD was 217, an 18.6% increase from the same period in 2014, when the number of homicides recorded by the CPD was 183.¹⁴⁰

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ “Landmark Agreement Reached on Investigatory Stops in Chicago.” The American Civil Liberties Union of Illinois. 7 August 2015. Web.

¹³⁸ “CPD Agrees to ‘Stop-And-Frisk’ Reforms, Avoids ACLU Lawsuit.” *ABC 7 Chicago* 7 August 2015. Web.

¹³⁹ *Ibid.*

¹⁴⁰ “Chicago Murders.” *DNAInfo*. 2015. Web. The CPD compiles crime statistics through CompStat and releases this information on a weekly basis on its website. This information is compiled by DNAInfo, a “hyper-local news source,” on a monthly basis. I

Since the agreement was not reached until after the second quarter of 2015, and the CPD has maintained that it will not affect the actual practice of “investigatory stops” anyway, *ceteris paribus* the ubiquity of “investigatory stops” from 2014 to 2015 has likely remained unchanged, and the increase in the homicide rate cannot be explained by a decline in the police tactic of stop-and-frisk by the CPD.

Conclusion:

The historical crime data for New York City and a cross-city comparison of contemporary crime statistics show that there is no evidence that the rise in homicide rates in New York City in 2015 is a function of the curtailing of the NYPD’s stop-and-frisk policy. Those who make this claim are making a correlative argument rather than a causal argument. This shortsighted conclusion is based on observing and relying on specific, isolated data points which show a correlative relationship between the two variables—the homicide rate and the rate of stops—and disregard the whole data set which disproves the causation entirely. The argument also undermines the possibility that other factors could be causing the rise in the violent crime rate.

The claim that the spike in the homicide rate is a function of the decrease in stop-and-frisk is essentially asserting that it is necessary for citizens to forfeit their personal freedoms in order to secure our safety as citizens. Moreover, this assumption maintains that this violation of individual liberties must be disproportionately applied to communities of color in order to secure the safety of the community. This is a tacit, if not overt, endorsement of institutionalized racial profiling. The debate over whether or not

calculated these figures by adding up monthly homicide data for the first two quarters of 2014 as well as the first two quarters of 2015.

stop-and-frisk is, in fact, an illegal application of racial discrimination has resulted in a legal battle between several legal institutions, citizens, and the city government.

On January 31, 2008, the Center for Constitutional Rights filed a case against the city, *Floyd, et al. v. City of New York, et al.*, claiming that the policy is unconstitutional in that the vast majority of stops are conducted without reasonable suspicion and that the policy is racially discriminatory.¹⁴¹ The case was filed on behalf of David Floyd and Lalit Clarkson, both black men who were subjected to stops by the NYPD.¹⁴² On August 12, 2013, the United States District Court of the Southern District of New York handed down a “liability opinion,” which ruled that the policy is unconstitutional.¹⁴³ The case was presided over by United States District Court Judge Shira Scheindlin,¹⁴⁴ who wrote a lengthy and thorough opinion delineating the unconstitutional nature of the policy. Scheindlin’s liability opinion ruled that stop-and-frisk violates the rights of New Yorkers protected by both the Fourth and Fourteenth amendments to the United States constitution.

The Fourth amendment states that, “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

¹⁴¹ “Floyd et al. v. City of New York, et al.” The Center for Constitutional Rights. 2015. Web.

¹⁴² *Ibid.*

¹⁴³ *Floyd, et al., v. City of New York et al.*, 08 Civ. 1034. United States District Court for the Southern District of New York. 2013. Web.

¹⁴⁴ Judge Scheindlin also presided over the *Daniels* case, from which the *Floyd* case “stems,” according to the Center for Constitutional Rights.

things to be seized.”¹⁴⁵ In terms of the policy’s bearing on citizens’ Fourth amendment rights, Judge Scheindlin ruled that the stop-and-frisk policy violates this right in that a large amount of stops are not justified by reasonable suspicion and the vast majority of stops do not result in arrest. In her decision, Scheindlin refers to the ruling in the *Daniels* case of 1999, in which “The City agreed to conduct regular audits of whether stops recorded on UF-250s were based on reasonable suspicion.”¹⁴⁶ Scheindlin writes:

The NYPD’s senior officials...have received both actual and constructive notice since at least 1999 of widespread Fourth Amendment violations occurring as a result of the NYPD’s stop and frisk practices. Despite this notice, they deliberately maintained and even escalated policies and practices that predictably resulted in even more widespread Fourth amendment violations...this conclusion is supported by the number of UF-250s that do not identify a suspected crime (36% of all forms in 2009), the problems inherent in the two most commonly checked stop factors (Furtive Movements and High Crime Area), and the fact that only 6% of all stops result in an arrest for any crime...Likewise, the pervasiveness of unconstitutional frisks was established by the uncontested fact that over half of all people stopped are frisked, while only 1.5% of frisks reveal a weapon.¹⁴⁷

In other words, the required audits of stops stipulated in the *Daniels* settlement show that a large amount of stops are not based on reasonable suspicion. Additionally, both the policy’s low arrest-rate and low contraband recovery rate reveal an unnecessary invasion of privacy.

In terms of the Fourteenth Amendment, which states that, “No state shall deny...to any person within its jurisdiction the equal protection of the laws,” Scheindlin ruled that the policy violates this amendment in that its racially discriminatory nature does not

¹⁴⁵ United States Constitution, Amendment IV. Cornell University, Legal Resources. 2015. Web.

¹⁴⁶ Floyd, et al., v. City of New York et al., 08 Civ. 1034. United States District Court for the Southern District of New York. 2013. Web.

¹⁴⁷ Floyd, et al., v. City of New York et al., 08 Civ. 1034. United States District Court for the Southern District of New York. 2013. Web.

provide “equal protection.”¹⁴⁸ Scheindlin explains:

Plaintiffs have established the City’s liability for the NYPD’s violation of plaintiffs’ Fourteenth Amendment rights under two theories... *First*, plaintiffs showed that the City, through the NYPD, has a *policy* of indirect racial profiling based on local criminal suspect data. *Second*, plaintiffs showed that senior officials in the City and at the NYPD have been *deliberately indifferent* to the intentionally discriminatory application of stop and frisk at the managerial and officer levels... The City’s policy of targeting ‘the right people’ for stops clearly violates the Equal Protection Clause...

Scheindlin is pointing out that the location-based aspect of the policy, which targets communities of color, is essentially an institutionalized form of racial profiling and does not qualify as “equal protection” under the law.

In addition to her “liability opinion,” Judge Scheindlin handed down a “remedies opinion” pertaining to the *Floyd* case which stipulated a number of reforms the NYPD should make to the stop-and-frisk policy. The “remedies opinion” was a joint opinion which applied to both *Floyd* and *Ligon v. City of New York*, a case filed by the ACLU, the Bronx Defenders, The Latino Justice Puerto Rican Legal Defense and Education Fund, and civil rights attorney Chris Fabricant on March 28, 2012, also citing racial discrimination on the part of the NYPD.¹⁴⁹ In her second opinion, Scheindlin called for a number of reforms including changes to NYPD training practices, changes regarding documentation, and the appointment of an independent monitor to oversee these reforms.¹⁵⁰ The remedies stipulated in Scheindlin’s *Floyd* decision also applied to a third case filed against the city, *Davis et al. v. City of New York, et al.*, which was filed by

¹⁴⁸ United States Constitution, Amendment XIV. Cornell University, Legal Resources. 2015. Web.

¹⁴⁹ *Floyd and Ligon et al., v. City of New York et al.*, 08 Civ. 1034. United States District Court for the Southern District of New York. 2013. Web.

¹⁵⁰ *Ibid.*

several residents of the New York City Housing Authority on January 29, 2010, claiming that NYCHA, “operating through and in conjunction with the New York City Police Department (‘NYPD’), have implemented and continue to conduct, enforce and sanction an unlawful vertical patrol and trespass arrest policy which has resulted in a pattern and practice of illegal stops, seizures, questioning, searches, and false arrests of residents.”

Both of Judge Scheindlin’s rulings, which “issued a permanent injunction against unconstitutional encounters” and mandated NYPD reforms, did not hold.¹⁵¹ The City of New York filed a motion to stay Judge Scheindlin’s appeal and, on October 31, 2013 the U.S. Court of Appeals for the Second Circuit voted to stay Judge Scheindlin’s ruling. The stay “render[ed] the lower court’s ruling of violations inoperative until the appeal is ruled on by another judge and halt[ed] implementation of any remedies ordered by the court.”¹⁵² The ruling also removed Judge Scheindlin from all three stop-and-frisk cases, claiming that Scheindlin “ran afoul of the Code of Conduct for United States Judges by taking the *Floyd* and *Ligon* cases as ‘related’ to a previous case, *Daniels*, that was before her.”¹⁵³ Additionally, the Court found that “...the judge had given a series of media interviews and public statements while the *Floyd* trial was ongoing,” and found that “the judge’s ‘appearance of impartiality might reasonably be questioned.’”¹⁵⁴ On January 30, 2014, the City reached an agreement with the plaintiffs and dropped its appeal “in

¹⁵¹ New York City Law Department, Office of the Corporation Counsel. “Federal Appeals Court Issues Stay, Rendering Lower Court Ruling Inoperative in ‘Stop, Question, & Frisk’ Cases.” 31 October 2013. Web.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

exchange for placing a three-year time limit on the court-appointed monitor.”¹⁵⁵ The *Davis* case was settled on January 7, 2015, under the agreement that the case would “become part of the court monitoring process” in *Floyd*.¹⁵⁶

Scheindlin’s ruling highlights the fact that, whether or not the policy is effective, it is simply illegal. By relying on stop-and-frisk, the NYPD has attempted to solve a chronic problem by (ineffectually) treating its symptoms without addressing its causes. Proponents of the policy are oblivious to the underlying social problems which contribute to certain geographical areas being subject to higher rates of crime. A more cynical interpretation of this would be that, rather than ignorance, support for the policy stems from a desire to perpetuate these underlying social problems.

This interpretation is supported by the statements of Director Comey in his previously mentioned speech. Comey, who served as the Deputy Chief of the Criminal Division in the U.S. Attorney’s Office for the Southern District of New York from 1987-1993, addressed the dramatic reduction in violent crime in NYC during that period. Comey noted, “Many in law enforcement in New York City—where I worked then—believed we were destined to have a structural level of violence of more than 2,000 murders each year,” (Referring to the 2,245 homicides reported in 1990).¹⁵⁷ He goes on, “That was so wrong...Last year, 328 people were murdered in New York...a number that

¹⁵⁵ “*Floyd et al. v. City of New York, et al.*” The Center for Constitutional Rights. 2015. Web.

¹⁵⁶ *Davis et al., v. City of New York et al.*, 10 Civ. 0699. United States District Court for the Southern District of New York. 2015. Web.

¹⁵⁷ Comey, James B. “Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice.” The Federal Bureau of Investigation. 23 October 2015. Web.

was unimaginable 25 years ago.”¹⁵⁸ (The actual figure is 333). While not directly using the term “stop-and-frisk,” he is celebrating its successes. Comey explains, “Like so many in law enforcement in the 1980s and 1990s, we worked hard to try to save lives...in those black neighborhoods—by rooting out the drug dealers, the predators, the gang bangers, the killers.”¹⁵⁹ He then acknowledges and defends the intentional racial targeting of the policy, which he oversaw in Richmond, Virginia as the Managing Assistant for the U. S. Attorney for the Eastern District. He explains:

As we did that work, I remember being asked why we were doing so much prosecuting in black neighborhoods and locking up so many black men. After all, Richmond was surrounded by areas with largely white populations. Surely there were drug dealers in the suburbs. My answer was simple: We are there in those neighborhoods because that’s where people are dying. These are the guys we lock up because they are the predators choking off the life of a community. We did this because we believed that all lives matter, especially the most vulnerable.¹⁶⁰

Comey is asserting that the targeting of specific neighborhoods and demographics is necessary in order to secure a community’s safety in that, “young men of color have long been dramatically over-represented among both homicide victims and killers.”¹⁶¹ He acknowledges that this “over-representation” is a function of larger societal problems. He explains, “Each arrest and each prosecution represented a failure on multiple levels of society, and there are many reasons for those failures, stretching back many, many years—frankly, all the way back to the beginning of this country and even before that.”¹⁶² However, rather than asserting that the solution would be to focus on solving the underlying societal problems, Comey upholds the policy a necessary evil. He then uses

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

this claim to justify the larger assertion that the intentional mass incarceration of brown and black men simply isn't true. He explains:

Nobody 'disappeared' from Richmond or New York...in the 1980s and 1990s. Instead, case by case, bad guys were arrested, prosecuted, convicted, and sentenced...they were removed from their neighborhoods to state and federal prisons, where they received the protections of the Constitution and where family and friends could visit them...And it didn't happen 'en masse.' Each drug dealer, each mugger, each killer, and each felon with a gun had his own lawyer, his own case, his own time before judge and jury, his own sentencing, and, in many cases, an appeal or other post-sentencing review. There were thousands and thousands of those individual cases, but to speak of 'mass incarceration' I believe is confusing, and it distorts an important reality.¹⁶³

He concludes, "Yes, we put a whole lot of people in jail, but over that same period, our cities were transformed."¹⁶⁴

President Obama directly addressed this misinterpretation in his speech. Like Comey, he acknowledges the general decline in violent crime over the past two decades. He asserts, "Over the last 20 years, police have helped cut the violent crime rate and the homicide rate in America by almost half."¹⁶⁵ However, while he applauds the decline in the overall violent crime rate, he reminds us, "That doesn't...mean that we shouldn't have a serious and robust debate over fairness in law enforcement, over our broader criminal justice system when it comes particularly to communities of color."¹⁶⁶ He then goes on to refute Comey's claim that the targeting of communities of color is an unfortunate necessity. Obama counters:

Things have been working and so a lot of folks say, 'What's the problem?' But for generations, we've had African-American and Latino communities who have pointed to racial disparities in the application of criminal justice, from arrest rates

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Sweet, Lynn. "Obama's Chicago Criminal Justice Speech. Transcript." *Chicago Sun-Times*. 27 October 2015. Web.

¹⁶⁶ Ibid.

to sentencing to incarceration rates. And all too often these concerns, no matter how well documented, have been brushed aside. And we can't have a situation in which a big chunk of the population feels like maybe the system isn't working as well for them. At the same time, too often law enforcement gets scapegoated for the broader failures of our society and our criminal justice system...we can't expect [police officers] to contain and control problems that the rest of us aren't willing to face or do anything about—problems ranging from substandard education to a shortage of jobs and opportunity, an absence of drug treatment programs, and laws that result in it being easier in too many neighborhoods for a young person to purchase a gun than a book.¹⁶⁷

When Obama refers to “substandard education,” “a shortage of jobs and opportunity,” “an absence of drug treatment programs,” and the ease with which people can buy guns in this country, he is referring to the underlying societal problems which result in crime rates being higher in communities of color. Unlike Comey, who seems to look at these underlying problems as too-deeply rooted to change, Obama suggests that they must be reformed in order to change the nature of criminal justice.

President Obama is acknowledging that, by relying on stop-and-frisk and location-based policing tactics, police departments are only addressing the symptoms of crime without addressing the underlying causes of crime. In essence, the criminal justice system is blaming communities of color for the failures of our society as a whole and, rather than attempting to correct these failures, law enforcement officials are relying on an easier, quicker solution—arresting and incarcerating people of color at extremely high rates. If the criminal justice system continues to address crime only on a surface level, higher rates of crime will continue to proliferate in communities of color, community-police relations will only continue to deteriorate, and the general mistrust of police forces will increase. In order to effectively reduce violent crime rates and restore a productive

¹⁶⁷ Ibid.

relationship between local police forces and the communities they serve, the U.S. criminal justice system must reallocate resources to address the underlying causes of high crime rates in certain geographical areas.

Acknowledgements:

I would first like to thank my first thesis reader, Professor Thomas Kim, for helping me through this process and for educating me about racial formation and the notion of “racial projects.” It was his class, “Race in American Politics,” which taught me how to both understand and effectively discuss institutional racism and which prompted me to pursue this topic for my senior thesis. Secondly, I would like to thank my second reader, Professor Vanessa Tyson, for painstakingly combing through my thesis and offering her corrections and suggestions. Without Professor Tyson’s patience and insightful comments, this project would not be anywhere close to what it has become. Next, I would like to thank Professor Nancy Neiman Auerbach, who has guided me throughout these four years as both my general and major advisor. It was in Professor Auerbach’s classes that I was able to grow from a young first year with an amateur knowledge of politics to a politics student able to understand complicated, political theories and structures. Lastly, I would like to thank my parents—Priscilla Painton, Timothy Smith, Andrew Heyward, and Jennifer Smith— and my brother, Anthony Smith, who were always available to answer my frantic phone calls and support me during this difficult and rewarding process.