

Testimony of Annette Dickerson, Director, Education & Outreach, Center for Constitutional Rights.

Presented to the New York City Council Committee on Public Safety and Civil Rights re: NYPD's stop-and-frisk practices and recommendations for reform.

Thursday, April 30, 2009

Good morning Councilmembers:

My name is Annette Dickerson and I am the Director of Education & Outreach at the Center for Constitutional Rights. CCR is a non-profit legal and educational organization based in New York City. We have been active in efforts for police accountability both in New York City and nationally since our inception in 1966.

Before I begin, I want to note that in light of CCR's is current involvement in ongoing litigation in the United States District Court in Manhattan concerning the stop-and-frisk practices of the NYPD, the statistical analysis and recommendations I will discuss this morning do not necessarily reflect the conclusions, evidence, arguments, or claims for relief that will be presented by plaintiffs in that litigation.

Now, because the members of this committee and the members of the public in attendance this morning are already well aware of the problems concerning the NYPD's stop-and-frisk practices, I would like to spend the majority of my time today discussing CCR's recommendations for addressing this problem.

.But before I do that, I would like to provide you with a brief background on CCR's work on stop-and-frisk issues in New York City because it helps to inform and provide context for our recommendations for how to move forward.

As many of you know, in 1999, CCR filed a federal class-action lawsuit, *Daniels v. the City of New York*, which charged the NYPD with engaging in racial profiling and unconstitutional, suspicion-less stops-and-frisks of Black and Latino New Yorkers. In 2003, plaintiffs reached a settlement with the City under which the NYPD was required to design and implement its own anti-racial profiling policy and to monitor its own officers' stop-and-frisk practices to make sure they complied with the anti-racial profiling policy and the Constitution. In other words, the settlement provided no external, independent mechanism for monitoring the NYPD's stop-and-frisk practices.

What the settlement did provide for was the dissemination of the NYPD's stop-and-frisk data. The NYPD was required to provide CCR, as plaintiffs' counsel, with quarterly stop-and-frisk data for 2003 through 2007. And what that data showed was that the tremendous racial disparity in stops-and-frisks persisted throughout the entire 4-year period.

So in January 2008, CCR went back to federal court. We filed *Floyd v. City of New York*, the successor case to *Daniels*, which is still pending in federal court here in Manhattan. Last September, the federal court ordered the NYPD to, for the first time, publicly disclose a decade's worth of raw stop-and-frisk data, from 1998 through the first half of 2008.

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As many of you may recall, at the hearing before this committee in January on the Civilian Complaint Review Board, CCR provided testimony and presented copies of our preliminary analysis of the stop-and-frisk data from 2005 through the first half of 2008. Since that hearing, CCR has received the stop-and-frisk data for the 2nd half of 2008, and as we predicted in our January report, 2008 saw the most NYPD-initiated pedestrian stops of any year on record, 535,123, 82% of which involved Black and Latino New Yorkers, who only make up about 50% of the City's population. Thus, over the first seven years of the Bloomberg administration and Commissioner Kelly's tenure as Police Commissioner, the number of NYPD-initiated pedestrian stops has increased more than 500%, while the tremendous racial disparity in who gets stopped has persisted.

Our experiences challenging the NYPD's stop-and-frisk practices over the last 10 years have therefore taught us that the NYPD cannot police itself. Instead, if we are serious about addressing misconduct and illegal practices by the NYPD at all levels and making New York a safer place by guaranteeing the rights and dignity of all of its residents, *we must enact reforms that increase the accountability and transparency of the NYPD.*

To increase accountability, we must establish independent, external monitoring and investigative bodies that focus on: (1) the accountability of law enforcement agencies to the broader community for the policies they enact and services they are supposed to provide, and (2) the accountability of individual officers for their mistreatment of individual civilians, particularly with respect to the use of force and violations of civil rights. These bodies must be external from

the Police Department and the Mayor's Office, since it is the Mayor who appoints the Police Commissioner. Instead they should be under the supervision of you, the City Council, as empowered representatives of the residents of New York City.

To ensure meaningful accountability, transparency is vital. For decades, the NYPD has refused to publicly release policing data concerning things such as “stop and frisks,” use of force, reported crimes, arrests, and internal investigations of officer conduct. Access to this data by the public and the independent review of policing data is integral to confronting and correcting police misconduct as well as fostering stronger relationships between the police and the communities.

So with these guiding principles in mind, here are three recommendations for addressing the NYPD's problematic stop and frisk practices:

1. INDEPENDENT POLICE AUDITOR

The first recommendation we propose is the creation of an independent police auditor. The establishment of this office will go to considerable lengths to obtain real independent monitoring of the NYPD, transparency of information and data, and recommendations for necessary department-wide reforms. This is essential as we are not facing an issue of simply a few “bad apples” in the police department committing illegal stops-and-frisks. Rather, there are departmental norms that permit and encourage both racial profiling and unlawful stops of New York residents. In taking on the department-wide problems, the independent monitor will build

the trust of the communities of New York and help repair the severely damaged relationships between the NYPD and New York communities, particularly communities of color.

An auditor reviews agency-wide practices, policies and statistics, and issues recommendations for departmental change. For example, the auditor can adequately assess the NYPD's failure or success in implementing their anti-racial profiling policy or assess the racial disparities and legitimacy of such things as issuance of Desk Appearance Tickets. The duality of this position being a governmental official and a permanent position will allow the auditor to fully investigate the policies and practices and to follow up on issues and recommendations to ensure compliance. This is crucial to maintaining sustainable and long-term reform.

Currently, there are thirteen police auditors in large jurisdictions throughout the country, including Los Angeles County, Philadelphia, Seattle, and San Jose, California. The voters of New Orleans recently voted in a citywide referendum to amend the city charter to create a permanent office of independent police auditor. We would like to see such an auditor become part of the New York City Charter to enshrine its independence and ability to make and pursue recommendations for systemic reform in the NYPD.

2. CIVILIAN COMPLAINT REVIEW BOARD (CCRB) REFORM:

A second way to promote accountability is through reform of the Civilian Complaint Review Board (CCRB). Although the existence of the CCRB is a positive first step toward securing accountability of the NYPD, the CCRB in its current form is inadequate to provide a truly

independent review of incidents of misconduct and recommendations for departmental policy and individual remedies. This greatly impacts efforts to reform the NYPD's stop-and-frisk practices because the vast majority complaints received by the CCRB each year involve stop-and-frisk incidents.

One major problem with the CCRB is that its effectiveness is compromised by the appointment process for the board members. Currently, the Mayor and Police Commissioner together appoint 7 of the 12 members, while the City Council only appoints 5. In order to give the various communities in the City real confidence that the agency is independent of the Police Department, the police commissioner should not appoint any members to the Board, and the City Council should appoint a majority of the Board for CCRB. The diversity of the City Council is a better reflection of the population of the City of New York and would democratize the process, making it more likely that the Board meets the needs of the Civilians it answers to. We believe a better balance towards achieving those ends would be for the City Council to appoint ten members, while the Mayor can appoint three.

The CCRB also needs to have the authority, independent of the NYPD itself, to impose disciplinary penalties on police officers who the CCRB has concluded have committed misconduct. We heard detailed testimony in January regarding the failure of the NYPD to implement discipline in the CCRB-substantiated cases of police officer misconduct. We have also heard from a former CCRB employee that it is the NYPD Advocate Office's longstanding practice to NOT pursue disciplinary charges against any officer with a substantiated CCRB complaint for

an illegal stop-and-frisk. Consequently, since the NYPD will not hold its own officers accountable for breaking the law, the CCRB should be empowered to do so.

3. NYPD DATA COLLECTION AND REPORTING

Finally, we believe it is necessary for the NYPD to end its love affair with secrecy. Transparency is key in our quest for accountability and democracy. The NYPD should be required to increase its reporting and collection of data. We are encouraged by the Council's January 7th vote to improve the NYPD's firearm discharge reporting. We are also pleased by the City Council's renewed demand for regular reporting of the UF-250 "Stop-and-Frisk" reports. We can't stop there, however. Increased transparency around incidents involving use of force, searches, and rape and sexual assault, which are often times a result of a stop-and-frisk, is essential. This information should be included in the COMPSTAT NYPD Management Reporting System.

In conclusion, we believe that the NYPD's stop-and-frisk practice is an ineffective crime fighting strategy, relies upon racial profiling and other unconstitutional bases for stopping people, and only serves to further damage the relationships between the NYPD and New York communities, especially communities of color. Considering that stop-and-frisk is the primary form of interaction between an officer and a civilian and the number of stops is only increasing, this hearing and the calls for reform that I have outlined are extremely urgent. The racialized style of stop-and-frisk, the apparent unlawfulness of the majority of stops, and frequency of use of force

employed have caused many to think of the practice not as a crime-fighting strategy, but instead, a strategy of occupation. It is high time that this ends.