

# **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID FLOYD, LALIT CLARKSON, DEON DENNIS,  
and DAVID OURLICHT, individually and on  
behalf of a class of all other similarly  
situated,

Plaintiffs, Index No

-against- 08 CIV 01034

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
COMMISSIONER RAYMOND KELLY, in his  
individual and official capacity, et al,  
Defendants.

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March 4, 2011

9:59 a.m.

DEPOSITION of DENNIS C. SMITH, Ph.D.,  
taken by the Plaintiffs, held at the law offices  
of Covington & Burling LLP, The New York Times  
Building, 620 Eighth Avenue, New York, New York,  
10018-1405, before Eleanor Greenhouse a Shorthand  
Reporter and Notary Public by and for the State  
of New York.

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MR. LARKIN: I don't raise my voice, counsel. You raised your voice. I'm speaking in a conversational tone and you might giggle about that and attempt to deceive the record in a silly ridiculous way, but that's completely up to you, counsel. Go ahead. You can answer.

A. The conversations at CompStat are about crime.

Q. Are they about stop and frisk?

MR. LARKIN: Objection. Please don't interrupt the witness.

A. They are about stop and frisk as a response on the part of police to crime patterns. In many of the neighborhoods where the police are focusing their efforts to reduce crime and I might say succeeding in their efforts to reduce crime, there isn't any variation in race. They're working in areas that are overwhelming, if not exclusively, Hispanic or Black. Operation Impact, as I've explained in my reports, are sometimes two blocks by four blocks. You do know that in New York City there are areas that are two blocks by four blocks in which there are no

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2 white residents.

3 So what is the issue of race to  
4 discuss there?

5 Q. What about -- for example, I live in  
6 the 88th Precinct, Professor. I don't know if  
7 you're familiar with the 88th Precinct. It's in  
8 Fort Greene, Brooklyn, Clinton Hill, a very  
9 racially diverse neighborhood. You have the big  
10 brownstones with yuppies. I guess I include  
11 myself there. You have public housing  
12 developments, you have mostly older Black and  
13 Hispanic residents who have been there since the  
14 early '90s. This is all one precinct.

15 So have you ever been in a CompStat  
16 meeting, where a precinct commander for a  
17 racially diverse precinct is presenting, where  
18 discussions about the racial breakdown of who is  
19 being stopped, the trends, the statistics have  
20 been discussed?

21 MR. LARKIN: Objection to form.

22 A. I don't recall any such  
23 conversation.

24 Q. I think hopefully we can close this  
25 loop. We've talked about a lot of people. Is

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required to reside in the communities they police, whether they should be required to have a college education before they are either appointed or -- like that.

Q. Have you studied, prior to serving as an expert in this case, have you studied issues around fairness and equity of particular urban police practices?

MR. LARKIN: Objection to form.

A. The studies that I did with Elinor Ostrom in Indianapolis, Chicago and St. Louis, and then subsequently follow-up studies going back to St. Louis and Tampa/St. Petersburg, Florida, and Rochester/New York metropolitan areas, in all of those studies, our performance measurement included effectiveness, efficiency and equity.

Q. When you say equity, how did you include that in your analysis?

A. We used citizen surveys and asked citizens about the fairness of their treatment, the respect that they received in their treatment by police officials. We looked at equity in deployment of resources in terms of whether

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neighborhoods with similar levels of crime were getting similar levels of attention. Because in the '60s and the '70s, it was a different issue. The issue concerned was that in many places police were not providing enough police protection to minority neighborhoods, that they were basically ignoring the crime problems in the neighborhoods or if they dealt with crime by minorities, it was only to, quote, "protect the whites." So we were very much interested in analyzing that and including that in our frame of measurement.

Q. You said these were studies with Elinor Ostrom.

A. Um-hum.

Q. They were published studies?

A. There were a variety of published studies, yes.

Q. Let's actually turn to Exhibit A of your report.

A. Okay.

Q. Do you know what Exhibit A is?

A. It's my curriculum vitae.

Q. Based on your review of it, if you

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want to look through it, as of March 4, 2011, is this an up-to-date curriculum vitae?

A. There are a few sort of things that would be added if I were doing it today.

Q. What would those be?

A. I'm appointed by Governor Elect Cuomo to be on his transitional committee for public safety so I've participated with senior officials from the Cuomo administration. I'm now a participant in the Police Executive Research Forum's exploration of CompStat and leadership in policing. I've attended a meeting of police officials in Washington in connection with that. I'm attending another conference on that next week. Those would be the sort of things that would be on my resume that aren't there now.

Q. Specifically turning to page 4 of your CD where it says "Articles and Publications," and this continues on, it looks like, for several pages, is this list -- I guess it goes from page 4 to 8 -- is this a complete and up-to-date list of your publications?

A. There are -- there is a review of a book on New York City government that I have

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2 submitted. I don't think it's come out yet, but  
3 it will appear on my next CD, but it's not  
4 related to policing.

5 Q. Anything else?

6 A. I think this is complete.

7 Q. So going back to the -- you said you  
8 did some research with Elinor Ostrom.

9 A. Right.

10 Q. Is that O-S-T-R-O-M?

11 A. It is.

12 Q. And you said that those studies --  
13 I'm sorry, how many studies did you do with  
14 Dr. Ostrom?

15 A. It depends on how you count them. I  
16 guess you would say four, but the fourth one was  
17 actually a study of three metropolitan areas.

18 Q. And how many of those four studies  
19 dealt with what you referred to as equity issues  
20 in policing?

21 A. All of them.

22 Q. Were any of those studies published?

23 A. Yes. "On the Fate of Lilliputs in  
24 Metropolitan Policing," small police departments.  
25 "The Effects of Training on Education and Police



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2 Attitudes in Performance," "The Potential For  
3 Reform of Criminal Justice," and "Dangers of  
4 Police Professionalization," Journal of Criminal  
5 Justice." "Impact of Residency," Urban Affairs  
6 Quarterly.

7 Q. Did any of those studies include  
8 multi-variate statistical analyses?

9 A. Yes.

10 Q. Which ones or one of those four?

11 A. All of them.

12 Q. So let's start with the first one  
13 then. You said it was the -- "On the Fate of  
14 Lilliputs." I'm going in the order of the way  
15 you recited them. Maybe if we can go  
16 chronologically, it's better. So should we start  
17 with the first one, "A Multi-Strata, Similar  
18 Design for Measuring Police Performance." Did  
19 that study include analyses related to equity of  
20 particular police practices?

21 MR. LARKIN: Objection to form. Go  
22 ahead.

23 A. That was the methodological paper  
24 that explained how we were doing basically all of  
25 those studies that I have identified so far, and

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2 those are the ones in which we used  
3 effectiveness, efficiency and equity as the  
4 dimensions of performance that we wanted to  
5 include in analyzing. In one case, the size of  
6 department is a variable in response to debate in  
7 the field about whether or not we should  
8 consolidate police in metropolitan areas. "The  
9 Effects of Residency," which was a study that  
10 used that data, was concerned with whether or not  
11 police officers who reside in a community had a  
12 better understanding of adversity in their  
13 community than people who were outsiders coming  
14 in and policing. So it was a -- it was the  
15 approach to performance measurement that pervaded  
16 that side.

17 Q. Is it fair to say that this first  
18 publication is actually just describing  
19 methodology, it doesn't have results?

20 A. That's correct.

21 Q. So then the second one, which is  
22 "The Effects of Training and Education on Police  
23 Attitudes and Performance," did that include  
24 multi-variate statistical analyses?

25 A. It did.

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Q. Did that study address issues of equity?

A. In the way I describe, yes.

Q. So in other words, were there multi-variate statistical analyses addressing whether or not a particular police practice was fair or equitable?

A. No. It had to do with whether officers' attitudes were more sensitive to equity concerns.

Q. What about "The Fate of Lilliputs in Metropolitan Policing," did that study include multi-variate statistical analyses?

A. Yes.

Q. Did any of those statistical analyses relate to whether or not a particular police practice was fair and equitable?

MR. LARKIN: Objection to form.

A. In the way I described. We looked at whether or not big city police departments, small police departments, in the ways that we could measure it, were similar or different with respect to attitudes of officers about the importance of fairness, their respect for

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citizens of all kinds. Whether or not when we had citizen data, because we used citizen survey data as well as police officer survey data, we looked at whether or not the attitudes of minorities in those communities toward police varied from the attitudes of majorities out of concern for whether or not policing was being seen as legitimate equally in the different communities under those different conditions of big city police departments, small community police departments.

Q. So in that study, did you analyze data on how any particular police practice was impacting a particular segment of the population?

MR. LARKIN: Objection to form.

A. Only in the larger context that how you organize public services is a policy choice. And we were looking at whether or not communities of various kinds would be better off or worse off if the organization of police services were different. So in the broader sense, yes, but it wasn't in the way this case raises those issues.

Q. That is three. What about the fourth one? What was the fourth study you did

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with Dr. Ostrom, or was it only those three that were published?

A. Well, you know, the studies that were published were not typically papers that were about the whole study. I focused on police professionalization in my research and my dissertation and so my publications, whether by myself or with Elinor Ostrom, tended to go in that direction.

Other people who were part of the team doing research published other articles on other dimensions, so some people wrote about the way that police organizations work together in the metropolitan area and that wasn't the focus of my research.

I did the Journal of Criminal Justice study with the data that I had because there was a debate about education and training of police. There were people who had great hopes for it, and those hopes were the hypotheses tested in the Elinor Ostrom paper that appeared in the Sage Criminal Justice Annuals report, and then because there were people out there who were saying that actually professionalization would

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have some adverse effects, I did another paper to see if the evidence supports the fears about professionalization and published that in the Journal of Criminal Justice.

Q. Have you ever published any articles or other written pieces that reflect analyses you've done, statistical analyses, to test for racial disparities in any kind of police practice?

A. Only in the way I've already described which is in the studies that we did in Indianapolis, Chicago and St. Louis, we were interested in the way in which citizens of different backgrounds, including race, experienced the public service and, in particular, policing. For reasons that would be probably present today, race appears as kind of a strange variable in some of this research because we did our first study of three neighborhoods in the Indianapolis area adjacent to neighborhoods served by the City of Indianapolis, so Speedway, Lawrence and Beach Grove are independent communities.

Across the street from very similar

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2 neighborhoods in Indianapolis, you have  
3 Indianapolis neighborhoods served by the  
4 Indianapolis Police Department and the suburban  
5 neighborhoods served by the very small, arguably  
6 less professional police forces.

7 So the question is: Is the service  
8 provided by the big city police departments with  
9 their greater technology and greater training and  
10 so forth producing less crime, greater feelings  
11 of safety, greater sense of respect and  
12 professionalism on the part of the police that  
13 are serving them?

14 People advocating reform by  
15 consolidation would have said yes. Elinor Ostrom  
16 is from the small is beautiful sort of world, so  
17 she was not surprised. In fact, she was not  
18 pleased when our studies showed that small  
19 departments performed as well or better than big  
20 city police departments, but the problem was  
21 those were all basically white working class  
22 neighborhoods. And in the early 1970's, we were  
23 presented with who cares about white working  
24 class neighborhoods? The problems of crime and  
25 civil disorder and police community relations are

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2 in Black neighborhoods, African-American  
3 neighborhoods. So we did our next study in  
4 Chicago looking at Black neighborhoods in Chicago  
5 served by the Chicago Police Department and  
6 suburban communities that were overwhelmingly  
7 Black to try to reproduce the design of this  
8 multi-system, multi-strata similar system design,  
9 but in a different metropolitan area where we had  
10 the race variable.

11 Q. I'm almost done with this line of  
12 questioning. The data you're talking about that  
13 you analyzed was the survey data; is that right?

14 A. Citizen and police officer survey  
15 data.

16 Q. But you didn't look at, for example,  
17 arrest rates for Blacks versus other demographic  
18 groups?

19 A. No.

20 Q. You didn't look at crime rates for  
21 Blacks versus other demographic groups?

22 A. No.

23 Q. Have you ever published a study that  
24 analyzes data on whether it be crime rates,  
25 arrest rates or stop rates for different



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demographic groups?

MR. LARKIN: Objection to form. You  
can answer.

A. Stop, question and frisk has that as  
part of the study, yes.

Q. So that's the study that you did  
with Professor Purtell?

A. Right.

Q. Any other studies?

A. No.

MR. CHARNEY: We can take a break.

(Luncheon recess: 12:31 p.m.)

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binomial kind of construct to enable us to use complicated statistical analysis in which you're mostly using continuous variables like number of crimes and population characteristics that can go from 1 to a million or something like that in a continuous way, but some of them don't.

Q. Have you ever conducted a statistical analysis of data either in the policing context or in any other context using negative binomial regression?

A. Not that I specifically remember of that characteristic.

Q. What is a general estimating equation?

A. My understanding is that that is an equation that describes the factors that you're going to include to try to predict some variable.

Q. Have you ever conducted a study where you analyzed data using a general estimating equation in your analysis?

A. Yes. Both of the studies that I presented as appendices present those kind of equations.

Q. That would be the Operation Impact

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Appendix D and the stop and frisk Appendix E of your expert report?

A. Correct.

Q. What is a poisson regression, P-O-I-S-S-O-N regression?

A. I don't actually remember. I've heard of it and I've been in conversations about it through my life, but I'm not a statistician and I haven't focused on it.

Q. And then what is a marginal R square statistic?

A. It is a statistic that identifies the specific contribution of a variable in a multi-variate analysis.

Q. Have you ever conducted a statistical study analyzing data either from the police context or any other context where you have used marginal R square statistics in your analysis?

A. Yes.

Q. Which studies have you used that in?

A. These studies, these two that are Appendix D and E. A study of SATCOM, which is a study of a command structure in Brooklyn.

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looking at the fact -- it was a concept in public service called co-production. And this was an empirical study of alternative modes of producing public safety. There are some communities who rely entirely upon the police. There are some communities who very heavily take care of their own public safety and there are some that are mixtures in between. And we had number variation in the communities we studied in St. Louis to examine that so that was the focus of that study.

Q. Earlier we discussed studies you had done around fairness and equity of particular police practices and you mentioned the work you did with I guess Dr. Ostrom.

A. Yes.

Q. Other than the work you did with Dr. Ostrom, have you conducted any other studies related to fairness and equity in particular police practices?

MR. LARKIN: Objection to form. You can answer.

A. Not with that as a specific variable, no.

Q. Have you ever conducted a study

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where you've done statistical analysis of data in which the study addresses claims of racial discrimination whether it be in policing or any other arena of life?

A. No. I had said earlier, so I assume you're not asking me again, the study of stop, question and frisk addresses the issue of whether or not the police practice of stop, question and frisk might be explained as something other than racial bias. So it is a -- it's part of the conversation, the analysis in that study.

Q. Other than that study, were there any other --

A. No. There's one study at the very beginning of my career, what I call the constitution of police legitimacy.

Q. Is that in your CV?

A. It is, and it was published in a book edited by Joseph Hawes, H-A-W-E-S.

Q. What year was that?

A. Way back, but it got published with the title Reforming the Police Organizational Strategies For the Urban Crisis.

Q. Okay. I've actually read that

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article you wrote, a very interesting article,  
but I guess my question about it is, did you do  
statistical analysis of police data?

A. No.

MR. CHARNEY: The article you did  
with Dr. Baillargeon, I think this is the  
article you're referring to. I'll  
introduce this as Smith Exhibit 2.

(Smith Exhibit 2, article entitled  
In Pursuit of Safety: Alternative Patterns  
of Police Production in Three Metropolitan  
Areas, by Diane L. Baillargeon and Dennis  
C. Smith, marked for identification.) .

Q. If you want a minute to review it, I  
was going to ask you about a particular page but  
if you want to read through it --

A. If I need to go back on it, I will.

Q. Based on your very quick review, is  
this the article that you were referring to that  
you did with Dr. Baillargeon?

A. She is not Dr., but she is  
Baillargeon.

Q. She doesn't have a Ph.D. I guess?

A. No.