

Exhibit A

United States District Court
Southern District of New York

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David Floyd et al.,

Plaintiffs,

-against-

08 Civ. 01034 (SAS)

Report of

Dennis C. Smith, Ph.D.

City of New York et al.,

Defendants.

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Qualifications

I am an Associate Professor of Public Administration at the Robert F. Wagner Graduate School of Public Service at New York University. I have served as the Director of the Program in Public Policy and Management and Associate Dean.

I joined the faculty of NYU in 1973. I have studied urban police policy and management since undertaking studies of police management in the Indianapolis, Indiana, Chicago, Illinois and St. Louis, Missouri metropolitan areas with Professor Elinor Ostrom of Indiana University, recent recipient of the Nobel Prize in Economics. My dissertation was on the subject of police professionalization and performance based on a study of twenty-nine police departments in the St. Louis metropolitan area. I have done police studies with National Science Foundation and National Institute of Justice funding in the Tampa/St.Petersburg, Florida, Rochester, New York, and additional work in the St. Metropolitan areas since coming to NYU. I have been studying the New York City since the late 1970s when I began an analysis of the organizational and performance effects of a twenty-five reduction in the size of the department in the wake of the fiscal crisis, and have studied how well the Police Academy was preparing recruits for community policing, evaluated the effects of command structure reform at the borough level on police performance, the introduction and impact of the Compstat (alone and with William Bratton), assessed the performance effects of Operation Impact, evaluated the management crime integrity efforts of NYPD, analyzed the relationship between crime and economic conditions at the neighborhood level, evaluated the reform of the Internal Affairs Bureau, and assessed the efficacy of stop and frisk practices as crime prevention strategy. I also recently completed an organizational assessment of the

Department of Environmental Protection Police that in charged with protecting the New York City water system. I am currently studying the effects of the adoption of a CompStat approach to policing big cities in New York. I have also studied the adoption of evidence based, outcome oriented management practices in social services, non profit organizations, the Departments of Corrections and Parks. I have been a consultant to the NYC Office of Operations on the Mayor's Management Report, and to United Way of New York and numerous nonprofit organization of the use of performance measurement and management.

My research on police has been published in six books and articles in peer reviewed journals, including the **Public Administration Review**, **Urban Affairs Quarterly**, **Journal of Criminal Justice**, **The Journal of Social Issues**, **Public Administration and Development**, and most recently my case for evidence based, outcome driven performance managed was an invited article in the **Journal of Public Policy Analysis and Management**. I am on the editorial board of the **Journal of Comparative Policy Analysis and of Policy, Organization and Society**. I have a Ph.D. in Political Science from Indiana University. My curriculum vitae are presented in Appendix A.

Response to the report by Jeffrey Fagan in the case of Floyd v. the City of New York.

Dennis C. Smith

This report will address of the specific allegations, evidence and analysis presented in the report by Professor Jeffrey Fagan on the Stop, Question and Frisk practices of the New York City Police Department (NYPD).

Summary of Issues Addressed

This is a response to two reports, one by Professor Jeffrey Fagan and one by Lou Reiter. The Fagan report addresses two claims of plaintiffs under the Fourth Amendment which alleges that the stop, question and frisk (SQF) behavior of the New

York City Police Department (NYPD) shows a pattern of unconstitutional stops by officers, and a second, Fourteenth Amendment claim that alleges that "the City, through NYPD, has 'often' used race and/or national origin in lieu of reasonable suspicion, as the factors that determine whether officers decide to stop and frisk persons. Plaintiffs claim that this practice violates the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs also claim that Black and Latino males are the population group most affected by the alleged violation." I also respond to Professor Fagan critique of a study done by the Rand Corporation that challenged early work on stop, question and frisk done by Professor Fagan and colleagues that claimed to find evidence of racial and ethnic bias in the pattern of stops. The response presented here also addresses the report of Lou Reiter that criticizes the management practices of the New York City Police Department in its management and supervision of stop, questions, and frisk practices. In this response underlying assumption are identified and the quality of evidence and analysis used to support them are subjected to critical scrutiny.

Additional Evidence Presented

In addition to a direct response to the reports of Professor Fagan and Mr. Reiter I present two empirical studies, one of the Department's Operation Impact strategy of hot spot policing and the other of the effect on crime of police stops based on suspicion, which are directly relevant to one of the claims presented in my response to their critique of NYPD practices, namely that both reports are predicated on models of police practice no longer used by NYPD and that this failure to align their analyses to take into account current police practices disable their efforts to fairly assess the motivation behind and effects on the Black and Hispanic communities of all ages in the City.

Summary of the Response to the Fagan Report

The Fagan Report acknowledges the complexity of the circumstances facing police officers on the street in complying with legal issues when take action upon

observing behavior arousing suspicion that a crime has been committed, is being planned or is about to be committed. Professor Fagan says the actual complexity is too great to fully represent it in the coding scheme he uses to code thousands of stops reported by NYPD. Using his simplified coding scheme he find the 70% by his criteria are "justified" and that 6.7% are not. The remaining 23.3% are found to be of "indeterminate legality." I argue that those which are indeterminate cannot be used as evidence of police misconduct, that if those cases are treated as missing data, or if they are distributed in the same proportion as the ones he is able to code, at least 90% of the stops are "justified." I further argue that the "unjustified" stops cannot be automatically accepted as evidence of racial or ethnic bias without further investigation. This leads me to conclude that this analysis offers no support for a claim that the NYPD is using race or ethnicity, rather than for example, a commitment to protecting the community from crime, in the decision to stop or question pedestrians,

The Fagan analysis does not explicitly confront the historic shift at NYPD away from a primary mission of responding to crime to a mission of preventing crime through proactive and crime targeted police vigilance. The management innovation brought to NYPD in 1994 includes increased targeting of police vigilance in places where, and at times when violent crime is high. Police managers at the precinct level were challenged to convey to the officers under their commands the expectation that police will intervene in response to suspicious behavior, rather than wait until a crime has occurred to take action.¹

The Fagan analysis does not ask, and therefore cannot answer, the question of whether police practices are consistent with a pattern of policing by NYPD aimed at crime reduction and increasing public safety. Nor, therefore, does the Fagan Report ask whether the benefits of these efforts are equally distributed or disproportionately

concentrated in Black and Hispanic communities in the City, which is in fact the case. Any credible analysis of the determinants of stop and frisk activity must first control for the impact of evidence-based management practices before trying to parse out any other factors that may or may not have contributed to stop and frisk patterns.

The reactive (fight crime by responding to calls, making arrests) model of policing and the statistical measures implicitly built into the Fagan Report to test his models' assumptions are not the model used by NYPD to effect the most dramatic crime decline achieved by any large city in America.

Another critical flaw found in the model used in the statistical analyses in the Fagan Report is the assumption, repeatedly stated, that police crime pattern analysis and resource deployment are based at the precinct level rather than small areas within precincts. The report misses the major shift in the approach to producing public safety introduced in 2003, Operation Impact, or "hot spot policing." Operation Impact was introduced in 2003, the year before the period analyzed in the Fagan Report. All of Professor Fagan's analyses are based on precinct level of analysis when small areas of violent crime within selected precincts have been the locus of crime fighting efforts during the entire period included in the Fagan statistical tests.

The Fagan Report relies heavily on elaborate statistical analyses to find evidence that police stop Black and Hispanic New Yorkers out of proportion to their share of the population. This is somewhat strange because the fact that police stops do not mirror the characteristics of the general population is regularly conceded by the NYPD in terms not only of race and ethnicity, but also age or genders. The NYPD claims that it, as a problem solving police agency focused on crime reduction, cannot randomly distribute its scarce resources but must concentrate its vigilance and enforcement activities in areas where the preponderance of crime, particularly violent crime occurs, which is in community where a disproportionate share of the Black and Hispanic population reside.

It has to target is scarce patrol resources on current crime patterns, which are created disproportionately by young Black and Hispanic males. Thus, it does not remotely approximate in its stops females or children or senior citizens in proportion to their share of the population. The crime and arrest statistics and victims identification of suspect characteristics would not warrant such a pattern of policing aimed at crime prevention. We examine and find evidence to support the NYPD claim that violent crime is not randomly distributed, and that its stops are concentrated in high crimes areas and that police stops approximate the share of suspects identified by victims across all areas of the City, not just high crime areas or in communities of color. We also find that the approach used by NYPD has produced record levels crime reduction, and that the benefits of this greater public safety are, in human rather than percentage terms, greatest in the Black and Hispanic communities of New York City.

Professor Fagan claims that by introducing control variables in equations used in his analysis he is able to adjust for the factors related to crime and economic conditions as an alternative to directly controlling for patterns of suspect identification, but we question on a variety of grounds the variables he includes and ignores in his analysis. We find problems in his operationalization of key variables, a lack of transparency in some of his statistical decisions, and question some the interpretations of findings based on limits in the methods he employs.

Professor Fagan's review of the Rand Analysis is essentially a debate over the use of suspect identification data as a benchmark in assessing the claim of racial bias, which largely eliminates any sign of such bias, and Fagan's claim that the general population distribution provides a more appropriate benchmark. We conclude that the Rand Study is on firmer ground, given the reasonableness of the best use of "best evidence" in making deployment decision and managing police vigilance, especially in the absence

of any provision by Professor of reasons or evidence to believe that the race or ethnic pattern of victimizations where suspect identify is unknown differs in the direction of higher level of crime by whites than is found in the known suspect distribution. After devoting most of the report that addresses the Rand Study to criticizing its methods, Professor Fagan concludes that section of his report identifying and claiming as supportive selected findings from the matched pairs analysis. It appears that the Fagan report cannot have it both ways, either the methods used by Rand in its effort to draw lessons from the behavior from officers who make exceptionally high or low number of stops are flawed and are not reliable, or they are sound and the Rand main findings of no consistent pattern of bias in stops stands. The internal benchmarking study could be viewed as an effort to develop a tool for use by NYPD in managing stops and frisks rather than a test of the general practices of police stops which Rand addressed in it external benchmarking analysis that found no pattern of racial bias.

The response to the Reiter report is that his analysis also is out of date and does not appear to understand the shift in the NYPD to an outcome orientation in which the outcome of crime reduction is the focus, not activities. With respect to his inquiry into management and supervisory practices the Reiter report does not present systemic evidence to support his harsh indictment of the police management and supervisory practices of NYPD. It relies instead on ex cathedra pronouncements about what he claims are standard management practices in properly run departments without citing a single example of another department in the nation that exemplifies his preferred practices and does not provide any operational detail regarding the practices he finds wanting in NYPD. It does not appear to me that the Reiter Report offers any evidence that bears directly on the claims of the plaintiffs of racial bias in its police practices.

We present two rigorous empirical studies that test the proposition that NYPD strategies and practices are contributing significantly to crime reduction and public safety in New York City, and find evidence that both Operation Impact and stop, question and frisk practices are having a positive impact in achieving crime reduction.

Consequently, we conclude that there is no compelling evidence that NYPD officers are making stops based on race or ethnicity but instead are pursuing a strategy and using tactics that prevent crime and benefit the City as a whole, and communities of color in particular. Young Black and Hispanic males especially are being murdered, robbed and assaulted at far lower rates, and are being deterred from committing crime that victimize their communities disproportionately. As a result, far fewer young Black and Hispanic males are committing crimes, being arrested and sent to prison than was the pattern just two decades ago.

The Fagan Report

The Fagan Report addresses three claims regarding police practices and reviews a study that challenges the his approach to assessing police practices:

1. "The Fourth Amendment claim alleges that the City has engaged in a pattern of unconstitutional stops of City residents that are done without requisite reasonable and articulable suspicion required under the Fourth Amendment."
2. "The Fourteenth Amendment claim alleges that the City, through NYPD, has 'often' used race and/or national origin in lieu of reasonable suspicion, as the factors that determine whether officers decide to stop and frisk persons. Plaintiffs claim that this practice violates the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs also claim that Black and Latino males are the population group most affected by the alleged violation."

- o Suspect Is Associating With Persons Known For Their Criminal Activity
- o Proximity To Crime Location
- o Evasive, False Or Inconsistent Response to Officer's Questions
- o Changing Direction At Sight Of Officer/Flight
- o Ongoing Investigation, e.g. Robbery/Pattern
- o Sights And Sounds Of Criminal Activity, e.g., Bloodstains, Ringing Alarms
- o Other (Describe)

For anyone familiar with Operation Impact, the "hot spot policing" crime prevention strategy used by NYPD over the past eight years the reason for some of the items on the "Additional Circumstances" list is quite clear: a team of officers is assigned to a hot spot, an Impact Zone, in precisely those blocks where a violent crime pattern has been found, at the hours of the day and days of the week when the crime pattern occurs, fully briefed on the crimes in the pattern and the information available about known suspects related to those crimes.

Given the salience of Operation Impact in the work of NYPD to maintain the downward trend in violent crime, recognition of factors such as Area Has High Incidence of Reported Offense of Type under Investigation or Time Of Day, Day Of Week, Seasons Corresponding to Reports of Criminal Activity is needed to understand the decisions made by officers on patrol.

By Fagan's count there are, based on the items to be checked on the UF250, 1,024 possible combinations before growing exponentially if the option of providing "additional circumstances" is taken by the officer. Professor Fagan concludes that "The enormous number of combinations of circumstance made an analysis of the legal sufficiency of

individual cases extremely difficult, unwieldy and uninformative. " Difficult and wieldy is clear, but why "uninformative"? He describes his response to the complexity encountered in attempting to crystallize the officers stop decisions as follows:

Instead, using the analyses of prima facie sufficiency or conditional sufficiency of each stop circumstance discussed in appendix D, stops are classified as justified, unjustified, or indeterminate, according to the following criteria:

1. Stops are justified if the circumstances provided are considered sufficient as the sole rationale for the stop and need no additional information or qualification (i.e., Casing, Drug Transactions, or Violent Crime)
2. Stops are justified if the circumstances listed are conditionally justified e.g., carrying a suspicious object, fitting a suspect description, acting as a lookout, wearing clothing indicative of a violent crime, furtive movements, or a suspicious bulge in one's clothing), and an "additional circumstance" is also indicated.
3. Stops are unjustified if no primary stop circumstances are provided. For example, stops are unjustified if the only listed circumstances is that the suspect was present in a high crime area. Stops that list "Other Stop Factors" only are unjustified.
4. Stops are of indeterminate legality if the circumstance or circumstances listed are (all) conditionally justified, and no additional circumstances are indicated.
5. Stops are of indeterminate legality if the only circumstances listed are "other circumstances" or if no additional circumstances are indicated.

In a report that goes to great lengths to analyze potential bias in measures used by others (NYPD, the Rand Study) the only caveat attached to the method used here is to suggest that it may be too generous in justifying stops and says nothing about how the coding used might miss factors that legitimate officer suspicion.

Using this very significant simplification of the complex world of the officer, where the exponentially large combination of circumstances are potentially present, the author classifies all stops. The form, in addition to all the boxes to check, includes a number of open ended questions where the instruction is to "specify." How these further specifications are coded by NYPD or interpreted by Professor Fagan in his own coding

is not described. Imbedded in the simplified coding scheme developed by Professor

Fagan is a compound criterion for one of the "justified "categories:

2. Stops are justified if the circumstances listed are conditionally e.g., carrying a suspicious object, fitting a suspect description, acting as a lookout, wearing clothing indicative of a violent crime, furtive movement, or a suspicious bulge in one's clothing), **and** an additional circumstance is also indicated.(emphasis added)

Professor Fagan does not tell us how a U250 that lacks the additional circumstance called for was coded in his tabulation, or even why the second condition is required. In effect, Professor Fagan is substituting his own judgment for that of an informed police officer with substantive knowledge of the circumstances surrounding the stop decision, which may in fact be presented on the form but in a combination too complicated for the coding scheme developed for the Fagan Report, and may be imposing conditions on the validity of a stop that neither the court nor the plaintiffs anticipated when the revised UF250 form was reviewed and approved.

Based on a coding of the records produced by NYPD officers Professor Fagan finds that 70% of the hundreds of thousands of stops made by NYPD are "justified," and 6.7% are "unjustified." The key question is: Are those that are coded "unjustified" by Professor Fagan unconstitutional, even though they have not been subjected to all the legal distinctions elaborated in his review of case law in Appendix D? Does checking "Other Stop Factors" in a situation that Professor Fagan acknowledges is too complicated for him to fully code automatically equal "unjustified" or unconstitutional? Does it matter what the "other stop factors" are? Further, Professor Fagan has chosen in his analysis to combine unjustified and indeterminate stops together, and to analyze the combined category as if they were all unjustified.

Timing plays a crucial role in efforts to draw causal inference from an analysis of data. If, for example, one wants to test a hypothesis that gentrification caused crime decline in New York City, a finding that the temporal sequence is the opposite of that hypothesis, ie , neighborhood residence patterns changed after crime declined, one can use chronology to help draw conclusions about the logic of an argument. Similarly, for processes that occur over a period of months or even years, the modeling of time is a crucial factor in attempting to know where to look for effects. Statistical analyses often address this by specifying theoretically justifiable "lag times" that are consistent with stated management practices to examine patterns. Are events in the real world simultaneous or are they sequential with some predicted lag between cause and effect? Setting the appropriate lag, and correctly estimating when to expect effects, are crucial aspects of proper modeling. The importance of setting the time dial correctly reveals another critical flaw in the Fagan analyses: the use of crime data from the previous quarter as a means to "control for crime" in analyzing police stop behavior. Three month old crime patterns are virtually ancient history in the tactical management of crime fighting in New York City (or combating the threat of terrorism, for that matter) by NYPD.

Throughout this response to the Fagan Report, I will contend that the central motivating factor in police policy and practice at the street level is crime reduction, not harassment of Black and Hispanics, and that police actions are based on the use of the most recent information available and that actions focus on small response areas. Instead, the statistical models presented in the Fagan Report that include crime, only use it as a control variable, never as a dependent variable as does NYPD-- and as we do in two studies I will present in this report.

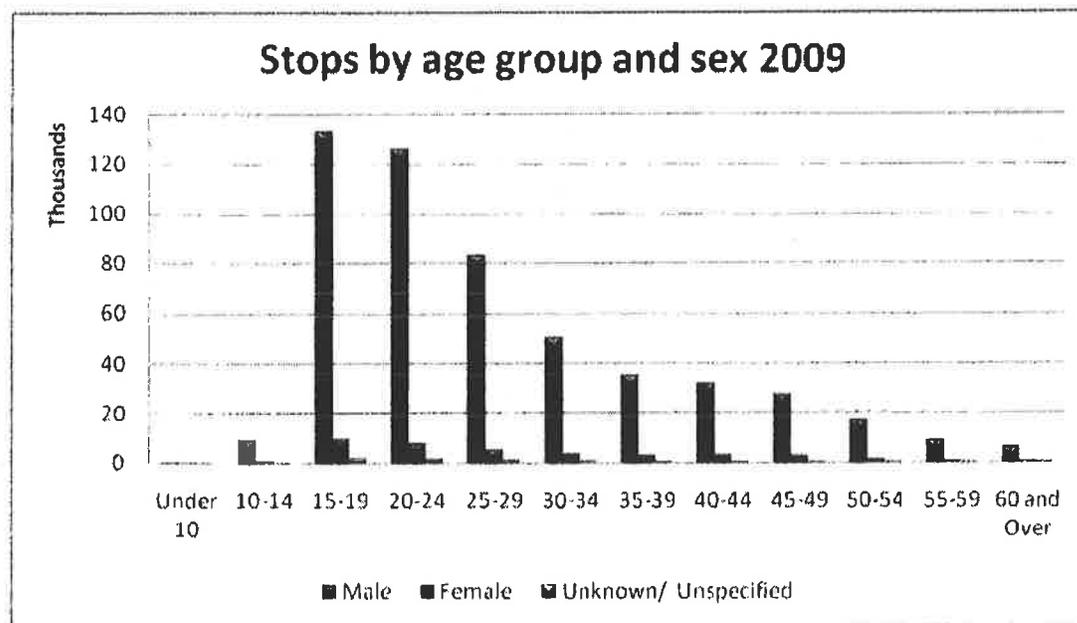
NYPD does what it does because it works. In empirical studies of crime and policing in New York done during the past five years my co-author and I tested the

theory that violent crime plateaus would lead to selection of "hot spots," that the introduction of an "impact zone" in a precinct would produce a lagged decline in crime. Therefore, in our study a time lag was used in searching for evidence of crime reduction effects. In a separate but related study, entitled "Does Stop and Frisk Stop Crime" we similarly expected that a spike in violent crime in one month would be followed by a surge in stops by police, followed by a decline in reported crime the next month. In our study of the efficacy of stop and frisk practices, finding significant positive effects on the rate of decline in crime depended on setting the time dial correctly. Our study demonstrated that the impact of stop activity on crime dissipated with time and that with lags of more than two months, there was no statistically-significant impact on crime. We observed that this phenomenon would lead police managers to constantly adapt and innovate. For Professor Fagan's analysis to have been valid, he would have had to conduct a similar sensitivity analysis using lags shorter than three months. The entire sequence of crime increases, stops increase, followed by crime declines included in our empirical study of the crime reduction effects of stop and frisk, would be indistinguishably embedded in the quarterly lags used in the Fagan multiple regression models.

The Compstat based critical shift in NYPD management to using "timely and accurate" intelligence about crime, and searching for and disseminating effective tactics, combined with the rapid deployment of resources is also missing in the models Professor Fagan used to analyze NYPD practices from 2004 to 2009. In the real time world of NYPD today and for the past fifteen years, data from three month ago would appear in the trend analyses used to track long-term progress, not in rapid deployment decisions.

A key factor in the quality of any statistical analysis is the validity and reliability of measures of variable used in the analysis. The validity question is: Does the measure

Figure 12



The omission of gender and age in Fagan's analysis, which otherwise argues for using population characteristics to benchmark police stop patterns, biases results. It would have been informative to replicate Professor Fagan's analysis and then include the gender variable in the multiple-regression to test this plausible hypothesis. Similarly, although the Fagan Report estimates the population available to encounter the police, the analysis does not adjust for unemployment patterns, which are notably higher among young, Black, and Hispanic males, who are also often identified as suspects, stopped on suspicion, and arrested by the police. Those who are unemployed have potentially forty additional hours a week to be on the street and to encounter the police on patrol. I will return to the issue of problem of choosing which variables to include in the analysis, but first a review of the problem of a mismatch between the model of policing that informs the statistical analyses in the Fagan Report and model used by NYPD to police the City.

When the Bloomberg administration came into office in 2002, the problem of crime city-wide was dramatically less than under previous administrations. However, because the 1990 peak in violent crime in New York City was so high, even with reductions of two third in some categories, murders down by hundreds, rapes reduced by several thousand, and tens of thousands fewer robberies and assaults, grand larcenies and burglaries, crime still plagued the City. The evidence-based targeting of resources and police vigilance approach that was used in the 1990s was used to refine the crime fighting effort by focusing on local "hot spots" within precincts where plateaus of violent crime remained relatively high. During the entire time studied by Professor Fagan, a major feature of NYPD practice was a focus on very small local area hot spots (some Impact Zones were only several blocks square), which led to disproportionate police presence and vigilance, and thus stops, in specific Impact Zones.

In addition, at the start of the new administration the 9-11 attack had significantly increased pressure on NYPD to guard the City against terrorist attacks. More than a thousand NYPD officers are now deployed in either the Counterterrorism or Intelligence divisions of the Department, but the entire department has been put on a heightened sense of alert. The public has been repeatedly admonished to say something if they see something, but the command to police is they see something, do something.²⁸

The analyses conducted and reported by Professor Fagan do not address these realities of the effectiveness of police practice, and do not consider the evidence that shows that Operation Impact significantly accelerated the existing downward trend in reported violent crime in the City. Additionally, Professor Fagan's analysis, which aggregates data to the police precinct level, ignores variation within precincts, such as the existence of one or more Impact Zones. Like the first phases of crime reduction

²⁸ Christopher Dickey, *Securing the City: Inside America Best Counterterror Force—NYPD*, 2009

under the community policing approach in the early 1990s when the upward trend in violent was finally stopped and the Compstat period introduced in 1994 after which crime trends plummeted, to the current Operation Impact strategy (2003 to the present), the parts of the City that have experienced the greatest relief from crime victimization are the low-income neighborhoods with high Black and Hispanic populations. Robbery rates (a high volume violent crime compared to murder and rape victimizations) in the ten precincts with the highest concentrations of poverty are lower today than they were in the wealthiest precincts in 1990 (in the precincts with the highest mean income).²⁹ There has been a positive, disproportionate impact in the form of dramatically reduced victimization on Black and Hispanic residents, men, women and children, of the proactive, data driven approach to police during the past decade and a half. As a by product of reduced crime commission fewer young Black and Hispanic males are being arrested for felony offenses, being convicted and imprisoned. The Fagan Report does not address nor test the hypothesis that the pattern of police stops can be explained the crime prevention strategies employed by the NYPD, epitomized by Operation Impact, the City's hot spot policing initiative.

Statistical analysis is a powerful tool and it can be persuasive if properly and carefully used. In addition to the larger issue of the failure to address the rival hypothesis that patterns of violent crime, not race or ethnicity, explains variations in police practice across the City and the people who reside, work and visit here, I will now consider some of the ways Professor Fagan's use and interpretation of statistics are problematic.

²⁹ Dennis C. Smith and Robert Purtell, "Crime Reduction and Economic Development in New York City: The Re-distributional Effects of Improving Public Safety " A paper presented at the 27th Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Madison, Wisconsin, November 3-5, 2006.

The categories Black and White used in tables and charts presented in this report therefore represent Black Non-Hispanic and White Non-Hispanic.

The definition of race described and presumably used in this analysis by Professor Fagan, and the definition used by NYPD are clearly different. If this is the case such differences pose problems for assessing competing claims about the role of race and ethnicity in policing New York.

A major issue is the likelihood that there are omitted variables in Fagan's analysis. As noted, Fagan does not control for unemployment and known suspect patterns, gender or age. We know that stop question and frisk patterns vary along these dimensions, and are also correlated with crime. Omitting these variables from the model leads to omitted variable bias. An alternative way to describe this is that there is potential "confounding" by known suspect patterns, age and gender. Omitted variable bias (confounding) can distort the observed relationship between the likelihood of observing suspicious behavior by a particular population subgroup and the likelihood of being stopped by an NYPD officer. The estimated relationship between race and SQF activity may diminish after including these important control variables. Since they are not included in the analysis we can only hypothesize how the results would be altered.

Professor Fagan discusses of the need to include all important explanatory variables in regression analysis. He observes, for example (p.13) that "The goal of specifying these models is to identify the effects of race on outcomes after simultaneously considering factors that may be relevant to race. Failure to do so raises the risk of 'omitted variable bias' which could lead to erroneous conclusions about effects of variables that do appear in a regression test."

Professor Fagan uses an inaccurate technical definition of "omitted variable bias." Two conditions must hold true for omitted-variable bias to exist in linear regression: the omitted variable must be a determinant of the dependent variable (i.e.,

its true regression coefficient is not zero); and the omitted variable must be correlated with one or more of the included independent variables. Omitting variables that meet these two conditions from the model leads to omitted variable bias, which would result in substantive changes to the estimated relationship between the independent and dependent variables.

The Fagan Report addresses the issue of potential exposure to police encounters as an important consideration and includes some control variables that relate to this factor; yet these analyses omit unemployment rates for young Black and Hispanic males, which is likely correlated with both the outcome and the main effect (race). This is another instance where there is reasonable concern about an "omitted variable bias." I have previously noted that Professor Fagan states in his report (p.7)

Analyses were conducted using police precincts as the principal (sic) unit of analysis. Precincts were used instead of smaller geographical areas (beats sectors, census block groups, census tracts) because precincts are the unit where police patrol resources are aggregated, allocated supervised and monitored. Precinct crime rates are the metric for managing and evaluating police performance and are sensitive to tactical decisions in patrol and enforcement.

The concern with this statement noted earlier is that the characterization of police management appears to be based on two cited books published in 1998 and 1999. This characterization has been out of date at least since the 2003 launch and subsequent success of Operation Impact (hot spot policing). Since 2003, hot spot policing within precincts has been solidly established as a central police strategy.

The statistical problems are further compounded by the use of precincts as the unit of analysis. This is a problem because precincts are not homogenous with respect to either population or crime patterns. Within precincts, there may be a large difference in racial and socioeconomic characteristics by block or police beat. Fagan acknowledges this in his sensitivity analysis which takes into account public housing

complexes. He also acknowledges it on pg. 30: "Precinct commanders are accountable for precinct-level statistics on crime trends, though they have discretion to allocate officers tactically within precincts to specific beats or sectors." (emphasis added) The use of data aggregated at the precinct level, when the object of a study is to focus on localized effects within a larger unit, is known as "ecological fallacy" and "Simpson's paradox." RAND explains issues with Simpson's paradox when looking at data aggregated across NYC (see RAND pg.41) but there is no consideration of the potential ecological fallacy in Professor Fagan's analysis.³¹ Large units of analysis which do not include appropriate controls can distort the observed relationship between patterns of stops and population characteristics, given the evidence of different criminal activity across sub groups, especially when one variable is aggregated at a higher level (precinct) and another variable is at the individual officer behavior level (stop decisions). It is hard to anticipate what the distortion may be.

The sensitivity analysis reported by Professor Fagan combines racially mixed and predominately white precincts (p. 43). These are not homogenous groups with respect to the factor he is trying to isolate for analysis. Lumping these groups likely distorts the effect between the likelihood that the police will encounter different population mixes on the street and the frequency of observing suspicious behavior. There is no conceptual basis for thinking these precincts are similar. When a step such as this appears in statistical analyses, it is typical characterized as a "data fishing exercise," in which the analyst manipulates the data to generate desired results. At a minimum, it suffers from inadequate explanation.

³¹ This point was raised specifically in the criticism above of the explanation provided by Professor Fagan of his use of log transformed precinct level crime statistics.

without statistically-insignificant variables calls into question both the validity of the results that professor Fagan presents in his report as well as his interpretation of those results. For example, the presentation of the SES Factor variable in Table 5 (pg. 33) should describe how the variable should be interpreted, whether theory would predict a positive or negative sign, and how the regression results compare to what is expected. Professor Fagan, by dropping variables from the analysis, is introducing omitted variable bias, then reporting surprise when his coefficient on race changes, but that is what is expected to happen.

Commentary on the tables (e.g. Table 6, pp. 36-38) should describe whether the coefficients have consistent interpretations across the model specifications. If they don't (which they do not), the commentary would provide text to clarify unexpected results.

The idea that the distribution of police action across subgroups should be compared to their share of the population implicitly assumes that crime is randomly distributed when all evidence is to the contrary. This is exactly the issue that Professor Fagan uses to criticize the Rand study when he faults them for using incomplete data on suspect descriptions. Professor Fagan's failure to control for race as reported in the available data, dismisses the claim that stop and frisk activities are justified by the available evidence without disproving it.

Challenging rival hypothesis is the norm in scientific inquiry. Professor Fagan has expressed his doubts about the distribution of known suspects as an explanation of the pattern of police stops. Controlling for suspect description, at least for violent crime where the proportion is known is appreciable and is the focal point of police strategy, would have been an appropriate way to examine the claim of the NYPD that he contests--- but does not directly test.

The use of crime lagged by past quarter in analyzing the work of a police department that is committed to rapid response to crime surges, further discredits his

analysis. A study in 2008 ³²showed that stop and frisk had a statistically-significant impact on the rate of decline in crime but that the effect dissipated within one month at the longest. This is consistent with my discussions with the police, who reported that they immediately adapt their police deployment based on the prior week's crime data. Further, Professor Fagan erroneously assumes that precinct-level analysis reflects police practice when the focus on small areas within precincts ("hot spot" policing) has been the NYPD's widely noted and effective approach for the past eight years. Finally, the interpretation of a decreasing number of weapons found in stops made by police based on suspicion as a failure when the prevention goal of the police is to remove guns and other weapons used in violent crime from the street reflects the success of stop and frisk activities not its failure.

.All of the statistical issues encountered in the analyses in the Fagan Report and noted above contribute additional weight to the conclusion that neither the Fourth Amendment nor the Fourteenth amendment claims are supported by the evidence presented.

The Fagan Report's analysis of the Rand Report

In the face of charges of racial profiling by NYPD based on a claim that the pattern of stops of Black and Hispanic pedestrians by the police were not proportionate to their share in the population of New York, the NYPD engaged the Rand Corporation, a distinguished public policy research institute, to study and report on the claim that police stopping practices reflect bias. The extensive study, whose primary author is a leading police practice scholar, countered that using population characteristics to benchmark

³² Dennis C. Smith and Robert Purtell, "Does Stop and Frisk Stop Crime?—A draft paper prepared for presentation at the Annual Research Conference of the Association of Public Policy and Management, Los Angeles, Ca., November, 2008

APPENDIX A. CURRICULUM VITAE

DENNIS CHARLES SMITH
Associate Professor of Public Administration

NEW YORK UNIVERSITY
ROBERT F. WAGNER GRADUATE SCHOOL OF PUBLIC SERVICE

The Puck Building 295 Lafayette, Room 3073
New York, NY 10012
telephone: 212- 998-7425
telefax: 212- 995-4162
e-mail: dennis.smithde@nyu.edu

BORN: August 12, 1945 - Chicago, IL

DEGREES: B.A. University of New Mexico - Political Science 1967
M.A. Indiana University - Political Science 1969
Ph.D. Indiana University - Political Science 1976

AWARDS AND HONORS:

B.A. *magna cum laude* in Political Science
magna cum laude in General Honors

Phi Beta Kappa
Woodrow Wilson fellowship

National Defense Education Act Fellowship, Title IV, Department of Political Science,
Indiana University

TEACHING: Associate Professor (Fall 1978 - present)
Professor in Residence New York State Assembly(Spring,2006-present)
Assistant Professor (1973 - 78)
Robert F. Wagner Graduate School of Public Service
New York University
Lecturer in Political Science, Indiana University Southeast, Jefferson, Division of Social
Sciences (1969-71)
Visiting Professor Bocconi University, Milan, Italy, Fall, 2005.

ADMINISTRATION at Robert F. Wagner Graduate School of Public Service
New York University:

Program Manager, Wagner/Accenture Leading Large Scale Change Executive Briefings,
July 2007- present.
Director, Wagner International Initiative, 1998-2002.
Director, Public Policy Specialization, 1992-1997
Director, Public Administration Program, 1982-90
Associate Dean, 1986-88

RESEARCH/CONSULTANT:

Evaluation consultant, Assessment of Public Involvement Strategies of the NY Metropolitan Transportation Authority, Federal Transportation Administration funded project., Rudin Center for Transportation Policy and Management.

Consultant: Office of the Commissioner, NYC Department of Environmental Protection, Study of the organization and management of the DEP Police, May, 2007 to April, 2008.

Consultant., Office of the Commissioner, New York City Police Department, Assessment of Operation Impact: Strategies to reduce crime hotspots in New York City, November, 2005- June 2007.

Consultant, Office of the Commissioner, New York City Police Department, Assessment of the process of maintaining the integrity of crime reports, 2005.

Consultant, NYC Human Resources Administration, Assessing the implementation of the WeCare Initiative, 2005-present.

Consultant, Office of the Commissioner, New York City Police Department, Assessment of Borough Command Structure, 2003-2004.

Consultant, Office of the NYC Deputy Mayor for Operations, Project on Performance Based Contracting 2002-2004.

Consultant, Charles Hayden Foundation, Evaluation of General Support Initiative, 1996-1998

Consultant, Dewitt-Wallace-Reader's Digest Fund, Evaluation of the "Management Initiative" A Program to Develop the Management Capacity of Youth Serving Organization (1995).

Consultant, New York City Police Foundation, Study of the Recruit Training Program of the New York Police Department Academy (1994)

Co-Director, study of ambulance service in New York City, with James R. Knickman, Health Research Program, with support from the Commonwealth Fund (1989 - 1991)

Director, study of the New York City Mayor's Management Planning and Reporting System, in collaboration with Barbara Gunn, Director of the Mayor's Office of Operations, with support from the Fund for the City of New York (1988-90).

Co-Director, study of the impact of retrenchment on the New York City Police Department (1980-81), under the auspices of the NYPD Research Advisory Committee.

Principal Investigator of "A Two-Wave Panel Study of the Impact of Education on Police Attitudes and Performance," a study funded by the Office of Criminal Justice Education and Training, Law Enforcement Assistance Administration (1977-80).

Director of Survey of Police Officials in the Police Services Study, Phase II, a study of police performance in three metropolitan areas under a grant from the National Science Foundation, Research Applied to National Needs Division (full time, Summers 1976 and 1977).

Design and execution of a study, "Institutional Arrangements and the Police: St. Louis Metropolitan Area," 1971-73, a grant to Dr. Elinor Ostrom, Associate Professor of Political Science, Indiana University, from the Center for Studies of Metropolitan Problems, National Institute of Mental Health.

Research Consultant, studies on citizen evaluations of the police in Indianapolis and Chicago metropolitan areas, 1969-71, under a grant to Dr. Elinor Ostrom from the National Science Foundation.

Research Associate, "The Organization of Government Response to Civil Disorders in Indiana," under a grant to Dr. Philip S. Kronenberg, Assistant Professor of Political Science, Indiana University, from the Law Enforcement Assistance Administration, Summer 1969.

PROFESSIONAL ACTIVITIES:

Keynote speaker, New York State Leadership and Accountability Conference, Albany, May, 2008.

Senior Consultant on Performance Management, SEDCO/N-PAC, 1996 to present.

Member of Board, Institute of Public Administration, 1998-present.

Member, New Progressive Scholars Network of the Progressive Policy Institute, 1996-present.

Consultant, Innovation in Government Award Program, Harvard University, 1990 – 1998.

UNIVERSITY AND COMMUNITY SERVICE:

Faculty Advisory Committee, King Juan Carlos I Center at NYU, 1998- present.

Member, Faculty Advisory Committee, European Union Center at New York University, 1998-present.

Member, NYU Graduate Commission, 1996-present.

Chairman, Subcommittee on Graduate and Professional Education, New York University, Chancellor's Task Force on Internal and External Communication., 1983

Chairman, New York University Faculty Council, 1982-83

Vice-Chairman, New York University Faculty Council, 1980-82

Member, Editorial Board, NYU Press, 1980-83.

Member, Presidential Search Internal Advisory Commission, 1980-81

RESEARCH AND TEACHING INTERESTS:

Management of international public service organizations

Performance measurement in the public and nonprofit sector

Program evaluation and public policy impact analysis

Urban public service delivery systems

EDITORIAL BOARD MEMBERSHIP:

The Journal of Comparative Policy Analysis
Policy, Organization, and Society

ARTICLES AND PUBLICATIONS:

"A Multi-Strata, Similar Design for Measuring Police Performance," with Elinor Ostrom and Roger B. Parks; paper presented at the Annual Meeting of the Midwest Political Science Association (Chicago, 1973).

"The Effects of Training and Education on Police Attitudes and Performance: A Preliminary Analysis," with Elinor Ostrom, in Herbert Jacob, ed., **The Potential for Reform of Criminal Justice** (Volume III, **Sage Criminal Justice Systems Annuals**, 1974).

"On the Fate of Lilliputs in Metropolitan Policing," with Elinor Ostrom, **Public Administration Review** (March-April, 1976). Earlier version presented at the American Society for Public Administration meetings in Chicago, April 2-5, 1975. Excerpts from this paper comprised the main article in the **Criminal Justice Newsletter: A Bi-Weekly Report on Significant Developments for Leaders in Criminal Justice Administration**, Vol. 6, No. 11, May 26, 1975. Edited version in D. Hagman, **Public Planning and Control of Urban and Land Development** (West, 1980).

Police Professionalization and Performance: An Analysis of Public Policy from the - Perspective of Police as Producers and Citizens as Consumers of a Public Service (unpublished Ph.D. dissertation, Indiana University, 1976).

"Dangers of Police Professionalization: An Empirical Analysis." **Journal of Criminal Justice**, Vol. 6, Fall 1978. Earlier version presented to the American Society for Public Administration, Annual Meetings, Washington DC, 1976).

"Police Attitudes and Performance: The Impact of Residency." **Urban Affairs Quarterly**, Vol. 15, No. 3 (March, 1980).

The Effects of Higher Education on Police Performance: A Critical Review of Findings, a consultant report for the National Advisory Commission on Higher Education for Police Officers, Washington DC: The Police Foundation, 1978.

"Racial Context as a Factor in Changing Police Organizations," with Diane Baillargeon, presented at the Annual Meeting of the American Society for Public Administration, Phoenix AZ, 1978.

"Value Biases in Performance Assessment." presented at the Annual Meeting of the American Political Science Association. New York, 1978. Accepted for publication in **Evaluation Review**.

"Reforming the Police: Organizational Strategies for the Urban Crisis." in Joseph Hawes, ed. **Law and Order in American History**: Port Washington NY: Kennikat Press, 1979.

Educating the Police: An Interim Assessment, with Diane Baillargeon, the final report of "A Two-Wave Panel Study on Police Attitudes and Performance" to the Office of Criminal Justice Education and Training (LEAA Grant 78-CJ-AX-00027, August 1979).

Booking the Police: Police Education Re-examined, with Diane Baillargeon, the final report of "A Two-Wave Panel Study..." (LEAA *op. cit.*) An earlier version was presented at the annual meeting of the American Society for Criminology, 1979.

"In Pursuit of Safety: Alternative Patterns of Police Production in Three Metropolitan Areas," with Diane Baillargeon, in **Journal of Social Issues**. Vol. 30, No. 4 (1980).

"Police," in **Setting Municipal Priorities, 1982**. Charles Brecher and Raymond D. Horton, eds., New York: Russell Sage Foundation, 1982. Reprinted in **Setting Municipal Priorities: American Cities and the New York Experience**. C. Brecher and R.D. Horton, eds., NYU Press, 1984.

John Mathiason and Dennis Smith, "The Diagnostic of Reform: The Evolving Tasks and Functions of the United Nations," **Public Administration and Development** (Vol. 7, No.2, 1987).

Performance Management in New York City: A Review of the Mayor's Management Plan and Reporting System (Preliminary Report, October 1990).

Improving Ambulance Use in New York City: A Final Report (with James R. Knickman and Carolyn Berry) New York University Health Research Program report to the Commonwealth Fund, March 1991.

"Managing the Demand for Emergency Service: The New York City EMS" (with James R. Knickman and Carolyn Berry); a paper presented at the 13th Annual Research Conference of the Association of Public Policy and Management, Denver, Colorado, October 1992.

"HRA Adrift: Social Spending without Direction" (with William Grinker) in **City Journal**, September 1993.

"Performance Management in New York City: The Mayor's Management Plan and Report System in the Koch Administration, a paper presented at the 15th Annual Research Conference of the Association of Public Policy and Management, Washington, D.C., October, 1993.

"Managing Organizational Transformations: The Case of Problem-solving Community Policing in New York City," a paper presented at the 16th Annual Research Conference of the Association of Public Policy and Management, October, 1994.

"Implementing UN CIVPOL: The Challenges of International Public Management, presented at the International Studies Association Toronto Convention, March 19, 1997

"What can public managers learn from police reform in New York? COMSTAT and the promise of performance management," presented at the 19th Annual Research Conference of the Association of Public Policy and Management (APPAM) in Washington, D.C., Nov. 6-8, 1997.

"Using Technology to Create International Educational Partnerships," a paper presented at parallel plenary sessions at the 50th Anniversary Conference of the Council on International Education Exchange in Barcelona, Spain, November 18-20, 1997.

"Making Management Count: Toward Theory-Based Performance Management," (with R. Barnes) 20th Annual Research Conference of the Association of Public Policy and Management (APPAM) in New York, NY., November 2-4, 1998. Revised version submitted for final review to **Nonprofit Leadership and Management**.

"Performance Management in New York City: COMPSTAT and the Revolution in Police Management,"(with William Bratton) in **Quicker, Better, Cheaper?: Managing Performance in American Government**, edited Dall Forsythe, SUNY Press Albany, 2001.

"Electronic government, transparency, and performance management in the governance of cities," a paper presented at the United Nations/Metropolitan Seoul Conference on E-Governance, Seoul, Korea, August, 2001.

"Old Wine, New Bottles? The Distinctive Challenges of Managing International Public Service Organizations," A paper presented at the 23rd Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Washington DC, November 1-3, 2001.

"Managing UNCIVPOL: The potential of performance management in international public services," in Dijkzeul, D., Beigbeder, Y (eds.) **Rethinking International Organizations: Pathologies and Promise**, Berghahn Books, Oxford/New York, 2003.

"The Promise and Pitfalls of Performance Base Contracting," A paper presented at the 25th Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Washington DC, November 6-7, 2004.

" An Empirical Assessment of Seven Years of SATCOM: The NYPD Command Structure in Brooklyn North" (with Joseph Benning) A paper presented at the 26th

Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Atlanta, Georgia November 3-5, 2005.

"The Transformation of Social Services Management in New York City: "CompStating" Welfare" (with William Grinker) A paper presented at the 26th Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Atlanta, Georgia November 3-5, 2005.

"Partners in Performance: Effectiveness and integrity in the public sector," with Frank Anechiarico, paper presented at the ASPA conference "Ethics and Integrity in Governance: A Trans-Atlantic Dialogue, in Leuven, Belgium, June 1-3, 2005.

"Practice, practice, practice: The education and training of policy analysts at NYU/ Wagner" in Iris Geva-May ed., **Thinking Like a Policy Analyst: A Clinical Approach to Policy Analysis**, Palgrave, 2005.

"Putting it all together: E-government, Transparency and Performance Management." Presented at the APEC/Korean Independent Commission Against Corruption Seminar on E-government, Transparency and Governance. Seoul, Korea, September 1-2, 2005.

"Managing for Performance and Integrity: Administrative Reform in New York City Government" (with Frank Anechiarico). Presented at the Annual Meetings of the American Society for Public Administration, April 4, 2006, Denver, Colorado.

"Performance as Integrity, Integrity as Performance: A New Paradigm for Public Administration" (with Frank Anechiarico). Presented at the ASPA conference "Public Sector Performance: A Trans-Atlantic Dialogue, in Leuven, Belgium, June 1-3, 2006. Also presented at City University of Hong Kong, June 9, 2006.

"Crime Reduction and Economic Development in New York City: The Redistributive Effects of Improving Public Safety" (with Robert Purtell) A paper presented at the 27th Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Madison, Wisconsin, November 3-5, 2006.

"An Empirical Assessment of NYPD's 'Operation Impact': A Targeted Zone Crime-Reduction Strategy" (with Robert Purtell), a paper presented at the APPAM Annual Research Conference, Washington DC, November, 2007.

"Can New York CompStat State Government Performance?" an invited paper presented in Workshop on Performance Measurement in Multi-level Governments at the 4th TransAtlantic Public Administration Dialogue in Milan, Italy, June, 2008.

"Does Stop and Frisk Stop Crime" (with Robert Purtell) A paper presented at the 29th Annual Research Conference of the Association for Public Policy Analysis and Management (APPAM) in Los Angeles, California, November 6-9, 2008.

"Evaluation of the New York Integrity System" in Local Integrity Systems: World Cities Fighting Corruption and Safeguarding Integrity, edited by Leo Huberts, et al., BJU Legal Publishers, 2008.

"Making Management Count: A case for theory and evidence based public management,"

Journal of Policy Analysis and Management, Summer 2009.

"Are New York State's Public Authorities Performing Well? Who knows?"

Government, Law and Policy Journal, forthcoming, Winter, 2010,

"Right from the Start: The Managerial Advantages of Combining Effectiveness and Integrity in Policy Design," (with Frank Anechiarico) paper presented and annual research conference of the Association of Public Policy and Management, Washington DC, November 5-7, 2009.

"Implementing Police Management Reform: the diffusion of Compstat in the cities of New York State" With Robert Purtell. paper presented and annual research conference of the Association of Public Policy and Management, Washington DC, November 5-7, 2009.