

Thousands of Street Stops by New York Police Were Legally Unjustified, a Study Finds

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and RAY RIVERA

Tens of thousands of times over six years, the police stopped and questioned people on New York City streets without the legal justification for doing so, a new study says.

And in hundreds of thousands of more cases, city officers failed to include essential details on required police forms to show whether the stops were justified, according to the study written by Prof. Jeffrey A. Fagan of Columbia Law School.

The study was conducted on behalf of the Center for Constitutional Rights, which is suing the New York Police Department for what the center says is a widespread pattern of unprovoked and unnecessary stops and racial profiling in the department's stop-question-and-frisk policy. The department denies the charges.

The study examined police data cataloging the 2.8 million times from 2004 through 2009 that officers stopped people on the streets to question and sometimes frisk them, a crime-fighting strategy the department has put more emphasis on over the years.

Police Commissioner Raymond W. Kelly has rejected the accusation of racial profiling, and said the racial breakdown of the stops correlated to the racial breakdown of crime suspects. Mr. Kelly has also credited the tactic with helping to cut crime to low levels in the city and with getting guns off the street.

But as the number of stops has jumped — to more than 570,000 last year from 313,000 in 2004 — the practice has come under increasing scrutiny, from lawmakers at City Hall and Albany and from civil libertarians including the constitutional rights center and the New York Civil Liberties Union.

Professor Fagan found that in more than 30 percent of stops, officers either lacked the kind of suspicion necessary to make a

stop constitutional or did not include sufficient detail on police forms to determine if the stops were legally justified. The study also found that even accounting for crime patterns in the city's various neighborhoods, officers stopped minorities at disproportionate rates.

Nearly 150,000 of the stops — 6.7 percent of all cases in which an officer made a stop based on his own discretion, rather than while responding to a radio call in which some information had already been gathered — lacked legal sufficiency, the study concluded.

Stops were considered unjustified if officers provided no primary reason articulating a reasonable suspicion for the stop.

For example, if an officer conducted a stop solely because a person was in a high-crime area — without listing a primary reason, like the person "fits a description" of a crime suspect or appeared to be "casing" a store — the stop was considered unjustified.

If an officer cited only "other" as the reason for the stop, with no other details, it was deemed unjustified in the study.

An additional 544,000 cases, or 24 percent of all discretionary stops, did not have enough information on the forms that officers are required to fill out after such encounters.

The United States Supreme Court has held that in order for police officers to stop someone, they must be able to articulate a reasonable suspicion of a crime. To frisk them, they must have a reasonable belief that the person is armed and dangerous.

Darius Charney, a lawyer for the Center for Constitutional Rights, said the study crystallized the primary complaints in the lawsuit. "It confirms what we have been saying for the last 10 or 11 years, which is that stop-and-frisk patterns — it is really race, not crime, that is driving

this," Mr. Charney said.

Mr. Kelly, responding to the professor's study, said on Tuesday, "I think you have to understand this was an advocacy paper." He also noted that Professor Fagan was paid well to produce the report.

"We haven't had a chance to look at it," Mr. Kelly added, "but I wouldn't take the position that this is an objective document."

The commissioner acknowledged that the department was paying its own expert, Dennis C. Smith, a professor at the Robert F. Wagner Graduate School of Public Service at New York University, to produce its own study in the case.

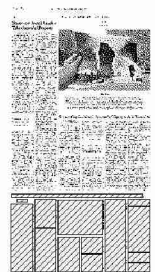
Police officials have pointed to a 2007 study of the practice by the Rand Corporation, which found no racial profiling being done by officers.

They said the study, commissioned by the Police Department, showed that stops mirrored crime — that while a large percentage of stops involved blacks, an even larger percentage of violent crimes involved suspects described as black by their victims.

Professor Fagan challenged the Rand report's findings and methodologies because the report used as a benchmark violent crime, which accounts for 10 percent of all criminal cases. And in half of those, his study found, the races of the suspects are not known.

Another of the Fagan study's main areas of focus was where stops were concentrated.

It found that the highest proportion of stops occur within police precincts that cover areas with large numbers of black and Hispanic residents. A chart in the study shows that in the quartile of the city with the highest concentrations of black residents, the police stopped people at a rate two to three times as much per criminal complaint than in the quartile of the precincts with the lowest percentage of black residents.



A report in The New York Times in July found that the highest concentration of stops in the city was in a roughly eight-block area of Brownsville, Brooklyn, that was predominately black. Residents there were stopped at a rate 13 times as much as the city average.

Professor Fagan said he would not speak about the study until he was deposed in the case. He was chosen to do it based on his experience in studying race and policing for three decades, Mr. Charney said.

Other findings in the study echoed some familiar ideas about the practice.

Force was 14 percent more likely to be used in stops of blacks and 9.3 percent more likely for Hispanics, compared with white suspects.

Guns were not often found (they were discovered in 0.15 percent of all stops). And weapons and other contraband were

seized nearly 15 percent less often in stops of blacks than of whites, and nearly 23 percent less often in stops of Hispanics.

If stops that resulted in some form of sanction, blacks were 31

percent more likely than whites to be arrested than issued summonses.

Mr. Charney said Professor Fagan could serve as a witness in a potential trial.



TODD HEISLER/THE NEW YORK TIMES

Residents in an area of Brooklyn's 73rd Precinct were among the most likely in the city to be stopped and frisked by officers.