

The New York Police Department's Stop and Frisk Policies Are They Effective? Fair? Appropriate?

Summary of a NYC Bar Association Forum March 9, 2010

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On the evening of March 9th 2010, the New York City Bar Association's Council on Criminal Justice and Committee on Civil Rights hosted a public forum to discuss the use of a policing practice commonly known as stop, question, and frisk. These encounters between New York City Police Department (NYPD) officers and pedestrians continue to generate considerable debate in the city marked by widely divergent views, in particular, whether the stops are racially biased and whether they are instrumental in reducing crime. In welcoming participants to the forum, Harlan Levy, chair of the Bar Association's Council on Criminal Justice referenced the debate by noting that stop, question, and frisk "reflects the intersection of public safety on the one hand and issues of fairness on the other." For this very reason, Levy said, the Bar Association was excited to convene a public discussion.

Jeremy Travis, President of John Jay College of Criminal Justice and moderator of the evening's discussion, offered an introduction to the subject by showing five slides that graph key statistics about stops of pedestrians in New York City. Those graphs and many other illustrations and statistics are featured in *Stop, Question & Frisk Policing Practices in New York City: A Primer*, which the Center on Race, Crime and Justice at John Jay College of Criminal Justice published in conjunction with the forum.¹

Heather Mac Donald, Professor Tracey Meares, Dr. Jeffrey Fagan, and John Timoney – who have examined stop, question, and frisk from perspectives that range from law and public policy, to social science, to the profession of policing – offered some of their views on the nature and impact of this police practice.² The NYPD was invited to make a

* The Open Society Institute and Atlantic Philanthropies generously provided funding for this publication.

¹ *Stop, Question & Frisk Policing Practices in New York City: A Primer* is available for download at www.jjay.cuny.edu/primer. Please refer to page 1 of the *Primer* for information about the data used to derive the five illustrations included in this summary document.

² Heather Mac Donald is John M. Olin Fellow at the Manhattan Institute, a contributing editor to *City Journal* and author of *Are Cops Racist?* – a collection of her articles on the subject for *City Journal*. Tracey Meares is Deputy Dean and Walton Hale Hamilton Professor at Yale Law School; her scholarly work explores the role of legitimacy in policing. Jeffrey Fagan is Professor of Law and Public Health at Columbia Law School, Director of the Center for Crime, Community and Law at Columbia, and author of several studies on police-citizen interactions, including stop, question, and frisk. John Timoney was

presentation but declined the invitation citing pending litigation challenging its current stop, question, and frisk policies. Following the presentations, there was time for comments and questions from members of the public attending the forum and for discussion of the issues.

This summary captures key issues raised by the panelists and individuals attending the forum and their differing viewpoints; as such, its scope is limited to the March 9th discussion and does not include supplementary information. The issues are: the volume of stops in New York City; the relationship between stops and public safety, including the implications of low rates of arrest and recovery of contraband; racial disparities in who police stop and concerns about racial bias; the costs beyond dollars of this police tactic; the importance of training for officers; and demands for increased public safety in high-crime neighborhoods. These issues obviously are interconnected and hopefully the summary as a whole reflects this complexity.

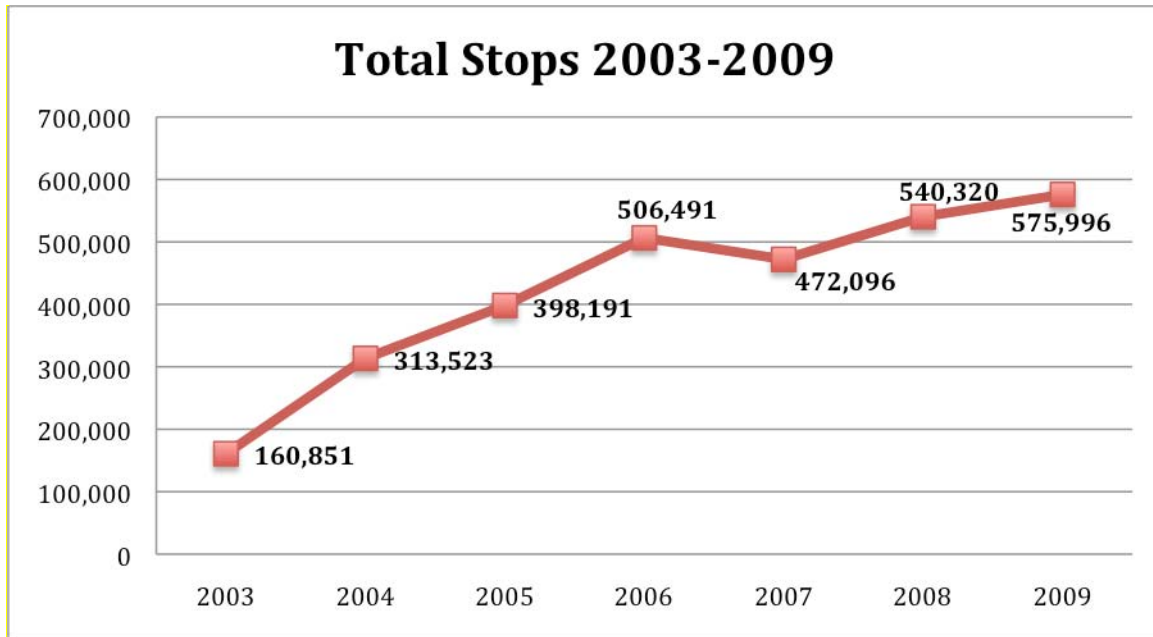
This summary is based on a transcript of the proceedings. It is available for download at www.jjay.cuny.edu/forum for those seeking a complete and chronological account of the March 9th event.

I. A Policing Practice on the Rise

In introducing the subject of stop, question, and frisk, Jeremy Travis presented a slide (copied on the following page) illustrating a dramatic increase in the number of stops annually in New York City – from 160,851 stops in 2003 to 575,996 in 2009, an increase of more than 300 percent in six years. The sheer number of stops combined with a record of more of them every year sparked debate about the “right” number of stops and doubts about whether official counts reflect reality.³

formerly Chief of Police in Miami, Commissioner of Police in Philadelphia, and First Deputy Commissioner of the New York City Police Department under Commissioner William Bratton. They are listed here in the order in which they spoke. Detailed biographies are included as an appendix to this document.

³ Officers are required to fill out a UF-250 form if the stop involves any of the following: a frisk or more extensive search of the person, the use of force, results in an arrest, or if the person refuses to identify him or herself. More information can be found in *Stop, Question & Frisk Policing Practices in New York City: A Primer*.



“Numbers matter here”

“Numbers matter here,” Tracey Meares said. “Hundreds of thousands people in New York are stopped every year.” Moreover, the number of stops citywide masks the concentration of stops in certain neighborhoods and among certain groups of people. In some areas of New York City, according to Meares, close to 90 percent of young Black men have been stopped by police. “There’s a role for stops and frisks,” she said, but also warned, “overinvesting in this kind of strategy will backfire.” (See sections III and IV of this summary for Meares’s views about the nature and consequences of the backfire.)

The number of stops appears so large to Jeffrey Fagan that he wonders whether “there’s some other purpose here.” Fagan and others question whether stops are increasing in number because they have become a proxy for the productivity of individual officers, precincts, and the police department as a whole.⁴ Fagan also expressed concern that the NYPD is using stops as a system for gathering intelligence, amassing a large and growing database of information about mostly Black and Hispanic New Yorkers.

“An out-of-control department”

Heather Mac Donald sees the numbers differently. Critics of stop, question, and frisk, she claims, point to the total number of stops – 575,996 in 2009 – as “prima facie evidence of an out-of-control department.” “I would like to know,” Mac Donald asked, “what the critics think is the proper number of stops, and what formula they used to arrive at that number?” In her presentation, Mac Donald referred to the more than 400,000 arrests in 2009 for purposes of comparison. “Given that the probable cause

⁴ The NYPD does track stops through its CompStat system. CompStat, an abbreviation for computer statistics, is the NYPD’s central management system for holding commanders accountable for reducing crime in their precincts

standard for making an arrest is considerably higher than the reasonable suspicion standard for questioning someone,” she concluded, “the number of stops is not out of proportion to the number of arrests.”

“I’m guaranteeing it’s not triple”

John Timoney also believes that the number of stops is more reasonable than it appears at first glance. If the roughly 25,000 NYPD patrol officers and detectives each made just one stop a week, he said hypothetically, the number of stops in a year would total 1.1 million – making the nearly 600,000 stops in 2009 seem less “shocking.” Timoney believes that the documented increase in stops annually is largely a function of better reporting, rather than a shift in actual practice. “I think the reporting is way better as a result of the lawsuit back in 2003. ... [T]here’s an old adage in policing, expect what you inspect. And this is a form of inspection. There may be an increase, but I’m guaranteeing it’s not triple.”

Timoney warned against interpreting even a sharp increase in stops as evidence of over-policing, using Philadelphia – a police department he commanded from 1998 through 2001– as an example. Following the election of Michael Nutter on November 6, 2007, as Mayor of Philadelphia, stops doubled over the course of a single year – jumping from 100,000 in 2007 to 200,000 in 2008.

When I left Philadelphia [in 2001], the [crime reduction] program [I started] wasn’t kept in place. There was rapid regression to where it was before I got there, and in some cases worse. And a new chief of police, Chuck Ramsey, African-American ... was brought in for one reason and one reason only – to deal with those shootings and those homicides. ... And sure, the stop and frisks increased 100 percent. I would suggest to you that the 100,000 was basically nothing the year before. That [the police] were disengaged, and that the 200,000 was more reflective of a police department going out there and doing their thing.”

All four panelists seemed to believe that despite clearer directives from within the NYPD to document stops, coupled with monitoring through CompStat, not all stops are recorded. According to Jeffrey Fagan, his own research reveals “wild variation” among officers in submitting the required form and also in completing the form thoroughly and legibly.

II. The Questionable Connection Between Stops and Public Safety

For Heather Mac Donald, stop, question, and frisk is a natural part of what she calls “proactive” policing – in other words, the effort to go beyond responding to crime to actually preventing it, the goal that William Bratton established when he became Commissioner of the NYPD in 1994. According to Mac Donald:

The department started gathering and analyzing crime data daily, and deploying officers where crime patterns were emerging. If officers observed suspicious behavior in a violence-plagued area, they were expected to intervene pursuant to their legal authority before a crime actually occurred. Precinct commanders were

held ruthlessly accountable for the safety of their precincts. And the department stopped tolerating the disorder that had engulfed so many public spaces. CompStat created a sense of urgency about fighting crime that has never dissipated.

The payoff, Mac Donald believes, has been an impressive and sustained drop in crime, outpacing the rest of the country: “In the 1990s, New York’s crime drop was twice the national average. Homicides, robberies, larcenies, and burglaries dropped 70 percent. And in the 2000s, while the crime decline in the rest of the country flattened out, crime in New York dropped an additional 34 percent.”

In stark terms, Mac Donald argues that the primary beneficiaries of the crime decline are residents of the city’s poorer neighborhoods, where, as she said, “the costs of crime hit the hardest.” “Over 10,000 Black and Hispanic males are alive today who would have been dead had homicide rates remained at their early 1990s levels,” Mac Donald said. “No other public policy change of the last quarter century has had as positive an impact on the wellbeing of the city’s poor as CompStat policing,” she concluded. And, in her view, “There’s no sign yet of diminishing returns.” Mac Donald emphasized that despite the recession, homicides dropped 19 percent and overall crime dropped 10 percent in 2009.

“Bad science”

That crime has declined in New York City is indisputable. However, both Tracey Meares and Jeffrey Fagan point out that the causes are far from clear. “What we know is that hundreds of thousands of people have been stopped in this city over time, and we also know that there has been a crime decline,” Meares said. “But we don’t know that there’s a straightforward relationship between those two things. ... what we’re getting out of this probably isn’t what we thought we were getting out of it.” Fagan refers to causation as the “unknowable question.” He reasons:

There’s a lot of enforcement in this city. There’s a lot of marijuana arrests. There’s a lot of police on every corner signaling the high risk, the possibility of detection were one to do a crime. There are trespass arrests in public housing. There are hundreds of thousands of stops and frisks every year. ...there’s a lot of people in state prison. So arguing that, in fact, this tactic, and this tactic alone, over and above, at the margins or at the core is bringing down the crime rates, I think is probably based on bad science.”⁵

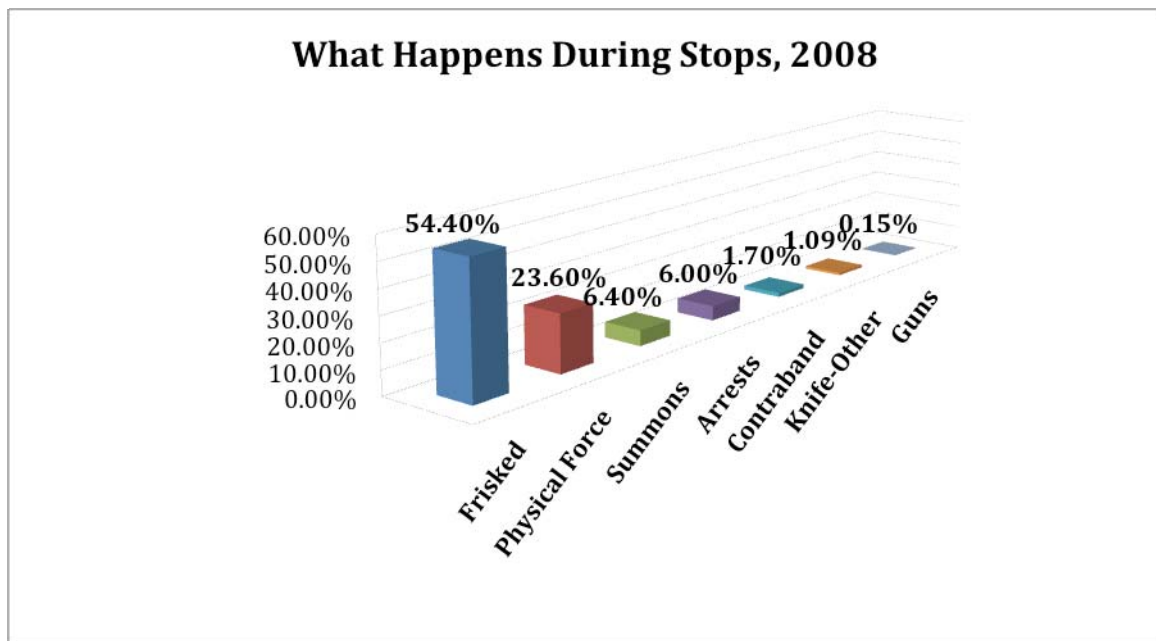
Where Heather Mac Donald sees the benefits of stop, question, and frisk accruing largely to poor and minority communities, Fagan sees the intractability of poverty. According to him, the neighborhoods where stops are concentrated are also the most disadvantaged

⁵ As suggested reading, Jeffrey Fagan mentioned *Race, Ethnicity, and Policing: New and Essential Readings*, edited by Stephen Rice and Michael White. The book contains a chapter that Fagan co-authored entitled, “Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City.”

neighborhoods in the city. Map any indicia of social disadvantage – from low birth weights to high school dropout rates, from incarceration rates to domestic violence rates – Fagan argues and the same neighborhoods will stand out. “In effect, these are poverty traps,” he emphasized. “And the same neighborhoods, no matter how much better off they are today than they were a decade ago, are still the worst neighborhoods relative to the other neighborhoods.”

“A really, really small number”

The graph below, one of the slides Jeremy Travis presented at the start of the forum, shows the small proportion of stops in 2008 that led to an arrest (6%), issuance of a summons (6.40%), confiscation of a gun (0.15%), or recovery of another weapon (1.09%).



For Jeffrey Fagan, these low “hit rates” are proof that stops are inefficient. (Hit rates refer to the proportion of stops that result in an arrest, summons, or recovery of contraband.) “Let me talk quickly about efficiencies,” he said. “Police are most likely to stop people based on furtive movements or other actions that seem to suggest they’re about to commit a felony offense, such as a robbery. Yet... [stops] don’t yield felony arrests for concealed weapons, nor do they yield arrests for robberies. We find there’s no sanction at all in 89 percent of the stops, perhaps 88 percent. It depends on the year.”

Fagan along with Tracy Meares focus in particular on what they view as an extremely low rate of gun seizures. Responding to the less than one percent of stops that result in the seizure of a gun, Meares said, “That’s a really, really small number for the kind of intrusion of liberty that has to be sustained.” Fagan estimates that just one gun is recovered for every 666 stops, for a total of about 700 guns annually. And the recovery rates, he noted, are “getting worse.” According to Fagan, police in Chicago get more guns off the street:

“And they do it without a stop, question, and frisk program. And they do it, in fact, in a city that is much more difficult to patrol. It’s more spacious. People aren’t clustered together. You don’t see them as easily. And they do it with less than half the number of cops. So there are other ways to get guns off the street...”

“Not an insignificant yield”

Heather Mac Donald looks at the same outcomes and reaches very different conclusions. According to Mac Donald, NYPD officers collected 4 machine guns, 36 assault weapons, and 639 handguns during stops of pedestrians in 2009, “not an insignificant yield,” she said. Equally important, Mac Donald is convinced that stops deter crime and that critics of stop, question, and frisk fail to appreciate it as a crime prevention strategy. As she explained:

Someone stopped in a high-crime area because he appears to be casing a location or victim or acting as a lookout could well have been engaged in that activity, but there will be no evidence of casing on which to base an arrest. Nevertheless, that stop will likely have prevented a crime by alerting the participants that the police are on to them. The fact that no drugs or guns were found on someone engaged in the familiar choreography of a drug ring does not mean that he was not acting as a runner or lookout.”

As for Fagan’s suggestion that policing in Chicago offers an alternative to a reliance on stop, question, and frisk, Mac Donald said, “Why we would emulate Chicago I don’t know, since, again, the homicide rate in New York is 40 percent that of Chicago, and there’s an epidemic of youth shootings there. ...the shootings are four times higher per capita of juveniles under the age of 17.” Fagan suggested that “there has to be a better way, a more efficient way, to get guns off the street.”

A former NYPD precinct commander offered his own experience as support for the deterrent effect of stop, question, and frisk:

I was a precinct commander in 1994, the first year when Commissioner Bratton came to New York, and we started to engage in more proactive policing. ...after a few months, the number of arrests, which had been going up, peaked, and the number of arrests started to go down. But the number of shootings continued to go down. And one of the reasons, at least in my precinct, that that happened was people on the street knew that there was a real increased risk that they were going to be stopped. ... So as a result of that, a lot of guns were not being carried on the street anymore.

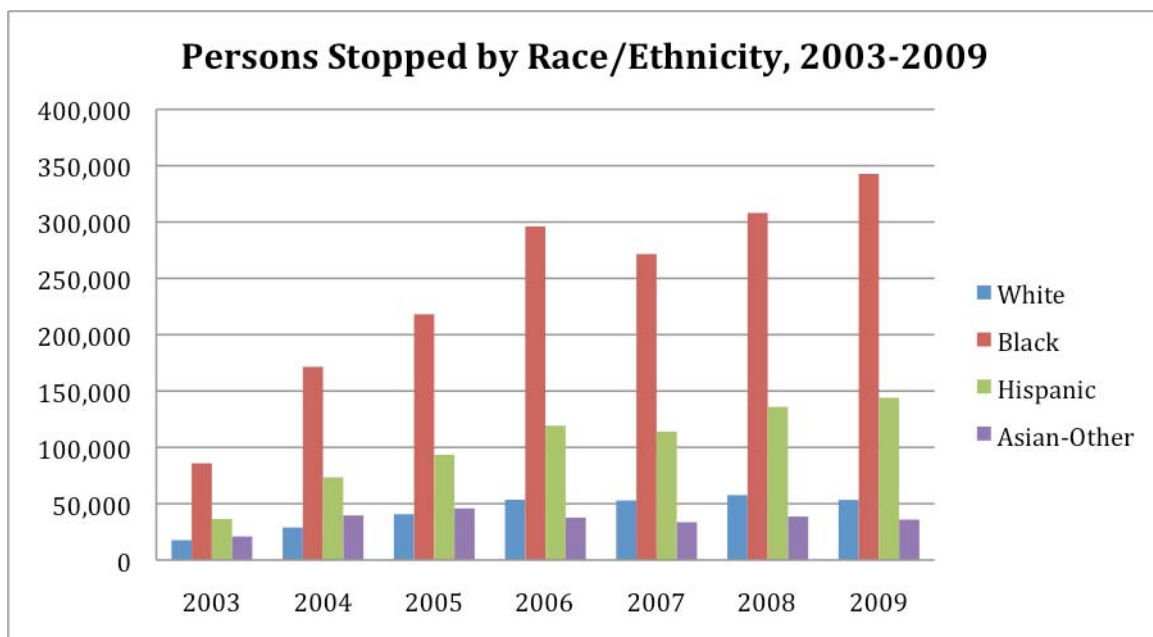
Jeffrey Fagan’s research paints a more complex picture, suggesting that additional dynamics were in play. In the mid-1990s, Fagan and his team of researchers interviewed 400 kids in the South Bronx and East New York whom he described as “shooters.” “They told us that the police actually were not really a significant part of their decision making. ... And that, in fact, much of the decision to stop carrying guns and to turn the heat down was simply something that developed indigenously within communities of African-American kids.” He assumes that the kids also were deterred by the “sheer presence” of officers on the street. For Fagan, these research findings raise the question:

How many stops, in combination with other police tactics, do you need to produce this effect?”

A few people questioned whether departmental statistics might undercount the actual number of arrests and weapons recovered in the course of stopping people. A doctoral student at John Jay College who is also a police sergeant in Connecticut said, “I’m wondering...whether contraband and possibly weapons have been found, but the officer utilizing their discretion has not made an arrest; and whether that’s skewing the data somehow.” John Timoney suspects a “huge” undercounting. “I can almost guarantee you there are plenty of [uncounted] arrests that came as a result of a stop and frisk.” Why? Timoney believes that many officers will complete the arrest report but never bother to fill out the UF-250 form documenting the stop, so the connection between the stop and the arrest is forever lost.


III. Racial Disparities: Profiling or Race-Neutral Policing?

In his introduction, Jeremy Travis presented a bar graph (copied below) depicting the racial and ethnic breakdown of people stopped by police. It plainly shows what is becoming common knowledge – the overwhelming majority of stops in recent years are of Blacks and Hispanics. Travis also presented a map (copied on the following page) showing where in New York City stops are concentrated.



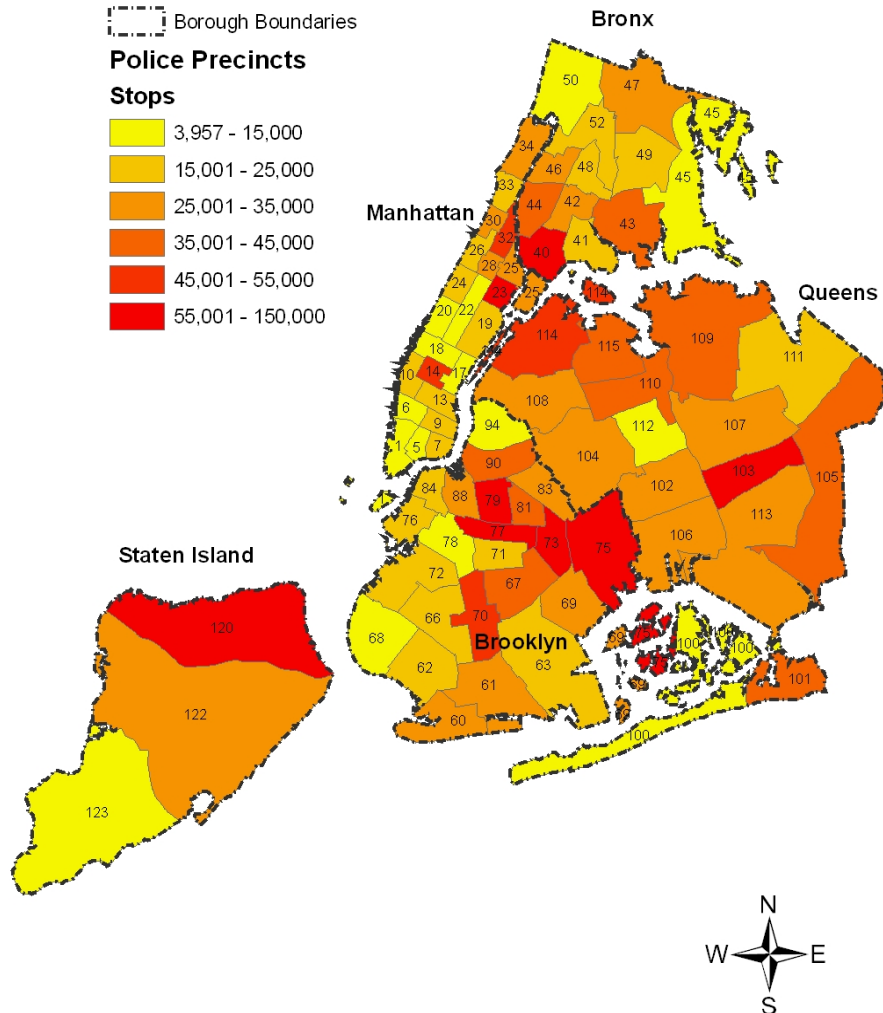
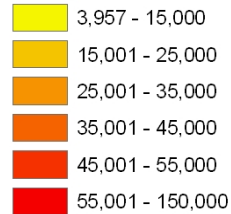
Stops Per Precinct 2003-2008

Legend

 Borough Boundaries

Police Precincts

Stops



According to Jeffrey Fagan, his own research shows that as stops became more common in New York City, they became even more focused on racial and ethnic minorities. According to Fagan, the rate of stops per 1,000 persons in New York City increased by roughly 210 percent between 2003 and 2006, and all of that increase took place in a handful of police precincts – Brownsville, East New York, Central Harlem, East Harlem, Bedford Stuyvesant, and Mott Haven – where residents are predominantly Black or Hispanic. Citywide during this period, the stop rate for Black and Hispanic New Yorkers

increased by about 250 and 225 percent respectively; the increase for Whites was less than 200 percent, Fagan reported.

“Crime drives everything”

These statistics are not surprising to Heather Mac Donald. There should be more officers on the streets and more stops in minority neighborhoods, in her view, because these are the high-crime neighborhoods. “In the CompStat era,” she said, “...crime drives everything that the department does.” To support her point, Mac Donald reported several statistics about the racial and ethnic background of perpetrators of violent crime in New York City.

We learn, according to the *Primer*, that Blacks made up 54 percent⁶ of stops in 2009, and are 24 percent of the city’s population. Here’s what you will never ever hear in such a discussion. Blacks committed 66 percent of all violent crimes in the first half of 2009. How do we know that? That’s what the victims of and witnesses to those crimes reported to the police, victims who are overwhelmingly minority themselves. Blacks committed 80 percent of all shootings in the first half of 2009, again, according to victim and witness reports. Together, Blacks and Hispanics committed 98 percent of all shootings. Blacks committed nearly 70 percent of all robberies their victims reported to the police. These ratios have held steady for years. Whites, by contrast, committed 5 percent of all violent crimes in the first half of 2009, though they are 35 percent of the city’s population. They committed 1.8 percent of all shootings, and less than 5 percent of all robberies. ... Compared to their rates of violent crime, 66 percent in other words, Blacks are being significantly under-stopped at 54 percent of all stops.

“For a decade now, we’ve been having the wrong conversation about crime and policing,” Mac Donald concludes. “We’ve been focusing exclusively on alleged police bias in order to avoid talking about a far more pressing problem – disproportionate rates of Black crime.”

“Bluelining”

As if in direct response to Heather Mac Donald, Jeffrey Fagan described the central findings of his research: that stops are not necessarily targeted at crime or disorder. “[W]e find that, in fact, the concentration of Black residents in a precinct predicts the stop rate after we control for crime, after we control for disorder, after we control for all those other poverty trap conditions.” Fagan noted that other research has revealed similar patterns in misdemeanor marijuana arrests and arrests for trespassing. “I doubt that anybody in this room seriously believes that 58 percent of the marijuana smokers in New York City are Black,” Fagan said, “...[y]et the numbers pretty much show that that’s the pattern of enforcement.”

A student member of Fagan’s research team labeled this phenomenon “bluelining,” and Fagan believes it has a “fairly corrosive effect” on neighborhoods. Moreover, according to

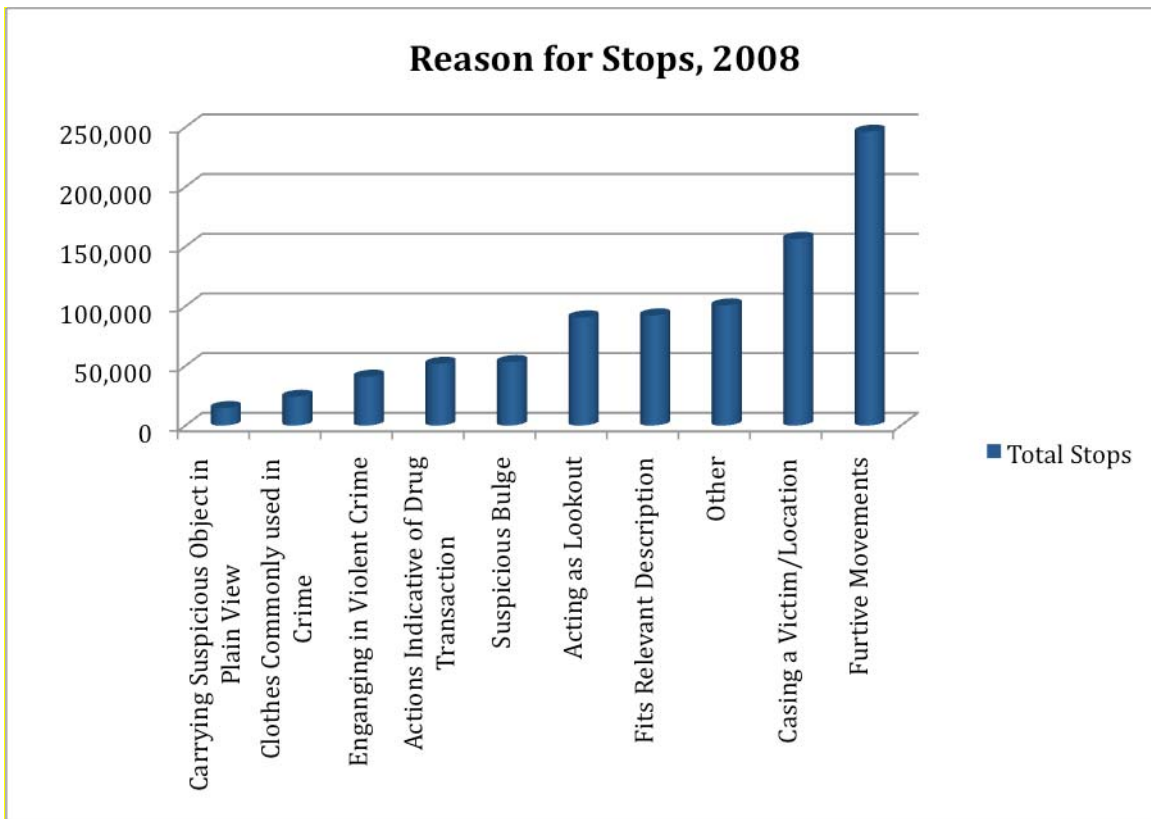
⁶ Mac Donald erroneously said that Blacks made up 55 percent of all stops in 2009 according to the *Primer*. Her error has been corrected in this document.

Fagan, the proportion of stops that result in arrest, issuance of a summons, or recovery of weapons and other contraband are lowest in the minority neighborhoods where police activity is concentrated. “The hit rates are higher outside of those places,” Fagan said. “The irony is the less we do, the better we do. Less, in this case, truly appears to be more.”

“Winging it”

A retired NYPD officer recounted his experience policing the Lower East Side of Manhattan in the mid-1970s. “We were not looking for race; we were looking for individuals. ... Now, the reason I came tonight is I believe that my alum, the NYPD, is in a perfect position to pull off one of the greatest coups in democratic policing. And that is colorblind policing.” He believes the department has the technology and leadership, and the good will created by a low crime rate, to engage in “micro-suspect profiling.” Yet the data on stops suggests to him that the opposite is occurring.

The graph below, included among the introductory slides opening the forum, shows that “furtive movements” was the most commonly listed reason for stopping someone in 2008. “Is that furtive movements like I’m looking over my shoulder because I don’t want to get mugged in my neighborhood?” this former officer asked. “Furtive movements right there tells me that the cops are out there winging it a bit, that they really don’t have the data, they’re really not looking for individuals,” he said. Jeffrey Fagan expressed a similar concern that “other” is also frequently selected as a reason for stopping someone.



An African-American staff attorney at the Legal Aid Society described a recent experience in which a police officer exercised the kind of judgment and restraint that, in his view, exemplifies effective policing and should be more common:

I was...in the park, knew that I was under observation by a uniform police officer who was quite clearly checking me out and radioing for a description. Clearly, there was a person being sought, and he was radioing because I appeared to fit the description of that person. He did not approach me. He did not say anything to me. ... And when he determined that I did not, in fact, fit the description of the person, simply walked away. ... What do we do in terms of training to try and reach that ideal?

“Really, really difficult to deal with”

As Police Commissioner in Philadelphia, John Timoney used data analysis and training to detect and respond to racial bias – but not without difficulty.

I set up a system where as soon as a stop was made, the officer would get on the radio and give his location, and then the race of the person stopped. ... And we found two police officers in particular who looked like they were giving a disproportionate number of summonses to African-Americans. And so they were brought in for counseling and guidance and directions. But it made for a poor picture when the White lieutenant brought in two African-American police officers... You could see where we were going with this stuff. It was really, really difficult to deal with.

Timoney recalled that as soon as the department had collected enough data and begun to analyze it for possible patterns of racial bias, the terrorist attacks on September 11th took place and “the whole issue of racial profiling was off the table for us and policing. Off the table completely.” Only in the last two years, according to Timoney, have police departments, including the NYPD, come back around to focus on this issue.⁷

IV. The Costs Beyond Dollars

At several points during the discussion, the panelists and others raised concerns about the nature of these police-citizen encounters and their consequences. “Everything we know right now,” Jeffrey Fagan said, “everything we understand from what data there are – limited though it may be – suggest that these are anything but pleasant encounters.”

Fagan briefly discussed four possible harms to individuals who have done nothing wrong and are stopped by police, citing Harvard Law Professor William Stuntz. The first is the harm to the victim’s privacy, or as Fagan explained, “the injury suffered if some agent of the state rummages around in a person’s backpack ... or perhaps examines the contents of his jacket pockets, or perhaps even his pants pockets.” The second is “targeting harm,”

⁷ For further information, John Timoney referred to his new book, *From Beat Cop to Top Cop: A Tale of Three Cities*. The final chapter looks across cities to discuss how issues of race influence policing in America.

when someone is singled out by police and publicly treated like a criminal suspect. The third is the injury that results from discrimination, or the perception of discrimination – the harm that a young Black man feels, for example, when he believes a police officer is stopping him because he is Black. And the fourth harm is physical injury or simply the fear of physical injury. Fagan noted that he has some data indicating “an extraordinary racial disparity in the number of incidents when police actually draw their weapon during a stop.”

“The costs are clear”

The harm to individuals is compounded, according to Fagan, when they are clustered in certain “racially defined” neighborhoods. “We, most of the folks in this room, don’t see it,” he said. “It is hidden from us because of the patterns of segregation and routine movements that we make. But it is there.” Tracy Meares believes that saturating a neighborhood in this way fosters very different views of police and the law. “[T]he costs are clear in one domain. And that is with respect to legitimacy,” Meares said, noting that the perception of legitimacy, or lack of it, has consequences for behavior. According to Meares, her own research and studies by others show that individuals are more likely to obey the law when law enforcers treat them with dignity and in ways that they identify as neutral, rather than discriminatory.⁸ As a result, Meares said, “[w]e have to pay attention to the dynamics of those encounters.”

Heather Mac Donald agrees that legitimacy is extremely important and that officers need to do a “far better job” of courteously explaining to people why they were stopped if the officer’s suspicions proved unfounded. Later in the discussion, Mac Donald said, “Cops get street hardened and cynical. That is no excuse for failing to treat people with courtesy and respect.” At the same time, Mac Donald pointed out that perceptions of legitimacy rise or fall for other reasons as well. “[F]or a long time the racial rep against the police was that they ignored crime in minority neighborhoods. And one way for police to gain legitimacy is to be seen as effective in getting the drug dealers off the street.”

John Timoney noted that New York City Police Commissioner Raymond W. Kelly has instituted a pilot program in several precincts in which officers tell people why they were stopped and also hand people a card with information about where and how to make a formal complaint about the encounter if the person feels it was unjust or inappropriate in any way. “It is all about respect,” Timoney said.

All four panelists noted that such efforts, and better training for officers generally, are crucial, but Meares is concerned that the sheer volume of stops may make it impossible to ensure that they are always respectful encounters. “My guess is,” she said, “...that the more police officers stop people, the less likely they are to invest in these kinds of dignity-enhancing strategies. ... And to the extent that these things are not happening,

⁸ Tracy Meares referred to two articles she authored, “When Criminals Obey the Law” and “Attention Felons,” as sources of additional information.

again and again and again and again – I won't say again 600,000 times – we can predict that there will be costs to procedural justice.”

“Criminalizing people who have done nothing”

“I watch young kids over the years being stopped dozens and dozens of times to the point where they don't know how many times they're stopped,” a public defender who has lived in various neighborhoods in Upper Manhattan remarked. She continued:

“They are given summonses here and there. They are never, ever carrying anything. My first concern is bringing up a culture of young people of color who think that police, law enforcement, prison is normal. ... And my other concern is the summonses that are written that are incomplete and insufficient. ... the police are obviously fulfilling the quota ... Which means that if somebody doesn't appear for the summons, there will be a warrant out for their arrest even if they had shown up and the summons would have been thrown out for insufficiency. So this is another step to criminalizing people who have done nothing...”

There is no publicly available data on case outcomes, including dismissal rates, for individuals who are arrested or issued a summons in conjunction with a stop.

In Heather Mac Donald's view, “occasionally accosting innocent people is a real cost of proactive policing.” Later in the discussion, Mac Donald referred to the burden on law-abiding residents of high-crime neighborhoods who may be repeatedly stopped, questioned, and frisked as a “crime tax.” “Whether that cost outweighs the benefits of lowered victimization in high-crime areas is obviously a decision society needs to make on an ongoing basis,” she said.

Judges will be part of making that decision, as the legality of the NYPD's stop, question, and frisk practices continues to be challenged in court. Fagan offered his view:

The truth is that ordinary people never feel free to terminate a conversation with a police officer. If the seizure standard and law means what it says, every street encounter between a police officer and a citizen is subject to Terry's reasonable suspicion standard.⁹ But that doesn't seem to be the case in New York. ... The conduct of street stops in New York, in fact, looks an awful lot like the early '60s. It looks like the enforcement of vagrancy laws, loitering laws, laws which went by the wayside in the late '60s, and which were discouraged and, in fact, negatively sanctioned by the Supreme Court in a series of landmark cases in the early '60s. ... Often those cases were tossed out for reasons of racial disparity.

A student at John Jay College raised the idea of random stops or checkpoints as an alternative to the NYPD's current stop, question, and frisk practices. Tracy Meares, who mentioned an article that she co-authored entitled “Randomization and the Fourth Amendment,” remarked that she finds this idea interesting for its potential to erase or at least diminish the kind of targeting harm that Jeffrey Fagan mentioned, “[b]ecause there's

⁹ Jeffrey Fagan is referring to the 1968 Supreme Court decision in the case *Terry v. Ohio*.

no longer an association necessarily with the public police stop and wrongdoing.” According to Fagan, the research on checkpoints suggests that they can produce many of the same gains – recover illegal weapons and other contraband and identify individuals with outstanding warrants – without the negative consequences of stop, question, frisk. Mac Donald disagrees that random checkpoints can have the same benefit as deploying officers in high-crime neighborhoods.

V. Meeting Demands for More Effective Policing

Early in the discussion, Heather Mac Donald said, “There are no fiercer proponents of public order and quality-of-life policing than law-abiding residents of poor neighborhoods.” All four panelists noted that people living in impoverished, high-crime neighborhoods want their neighborhoods to be safer and, in particular, want police to be more involved and effective in fighting crime. Views diverge on whether or not the NYPD’s stop, question, and frisk tactics are an appropriate and effective way to meet these just demands.

“Your cops just drive by”

Drawing on his own experience, John Timoney described the pressure on police commanders. Timoney became Police Commissioner in Philadelphia in 1998, when, according to him, the number of murders annually exceeded 400 and violent crime in general remained stubbornly high in comparison to New York and other cities.

When I went to Philadelphia, I took a page from Ray Kelly’s book and I went around visiting churches, particularly in the African-American areas. ... And the complaint – now, this was strictly [an] African-American audience – the complaint was universal that your cops are doing nothing. “We call 911. We see the drug boys out on the streets. They’re plying their trade. They’re carrying their guns. And your cops just drive by. Even when we call, they don’t get out. They just drive by. So either they don’t care, they’re getting paid off, or what have you. But the bottom line is they’re not doing their job.”

The demands were much the same, according to Timoney, when he became Chief of Police in Miami five years later.

My first meeting in Miami, my first week there, I met with a group of citizens from Overtown, which is an African-American neighborhood, really depressed neighborhood, in Miami. But about half a dozen to a dozen good citizens come in, and one older woman said, “You know, Chief Timoney, just ‘cause we live in Overtown doesn’t mean we don’t deserve a good quality of life. And you need to get your cops out there, and get them out of the cars, and confronting the drug dealers and the people who are shooting up and urinating in the alleyways.”

Mac Donald described hearing similar complaints and pleas for better service from residents of poor neighborhoods in New York City. “The irony,” she noted early on in the conversation, “is that the police cannot respond to these heartfelt requests for public order without also generating disproportionate stop data that can be used against them in

a racial profiling lawsuit such as the Center for Constitutional Rights is now bringing against the NYPD.”

“We are probably doing more than we need to”

For Jeffrey Fagan, MacDonald’s comment is evidence of a “false binary” that stymies real solutions to the crime problems in poor neighborhoods – as if the choices are limited to de-policing or saturating communities with officers who stop, question, and frisk individual residents based on relatively low levels of suspicion or without a legitimate reason. “It’s not a choice between withdrawal and send[ing] in large numbers of troops,” Fagan said. He comment underscored one he made early in the evening: “It’s important, I think, to understand that we are probably doing more than we need to do.”

Tracy Meares agrees. She sees a role for stops as part of a “policing toolkit” but warns against conflating stop, question, and frisk – a particular police tactic – with CompStat or with problem-oriented policing generally. “[W]e know from looking at policing agencies all over the country that there is a smart, sharp, focused way to do policing,” Meares said. “And it usually turns out that the sharp, focused, smart way in deploying force and deploying the power of the police can often coincide well with legitimate policing.”

A defense attorney who was formerly a prosecutor described a friend of hers who is Black and lives in a predominately African-American neighborhood. She said he always wears dress shoes, even with jeans, because he knows police will stop him if he wears sneakers. She wants the NYPD to reinvest in genuine community policing rather than stops of pedestrians that appear to be triggered by skin color and attire: “...the officers in the community need to get back on the beat, interact with individuals, go to co-op board meetings, go to the schools and the like. ... the police have to get back out there and realize that they’re actually people.”

Conclusion

The discussion on March 9th was characterized by widespread agreement on some issues. The panelists and others agree that there is a role for stop, question, and frisk as one police tactic among many; that the nature of these encounters has a huge influence on how they are perceived by the individuals stopped and by the larger community; and that training for officers can help to promote more respectful and effective police-citizen encounters.

These points of agreement were overshadowed by the disagreements that surfaced during the discussion. Heather Mac Donald and John Timoney are convinced that the NYPD’s use of stop, question, and frisk is appropriate in degree and essential to public safety. As Mac Donald concluded, “I would be reluctant to change what has been an extraordinarily winning formula in this city.” Jeffrey Fagan, on the other hand, is entirely unconvinced that stops have been instrumental in reducing crime. “[E]verybody’s entitled to their own opinion, but no one’s entitled to their own facts,” he concluded. “And I think the claim

that this particular tactic is bringing down the crime rate and keeps it low, and deters young men from picking up guns and carrying them out in the street is a claim and nothing more than a claim. And I would like to see us actually study it.” Moreover, Fagan and Tracy Meares believe the evidence suggests that the NYPD’s current use of stop, question, and frisk is actually counter-productive. For them, less is more. As Fagan said, “We’re challenged in our city to establish mechanisms to rein in street policing.”

The forum at the New York City Bar Association provided an opportunity for robust public discussion about the use of stop, question, and frisk in New York City. Since then, the debate has only intensified. More discussions, involving all communities with a stake in the issue; further research into the nature and consequences of this policing practice; and open dialogue between the NYPD and residents of New York City are needed in order to ensure that these practices are widely viewed as both fair and effective.

Appendix: Biographies of the Panelists and Moderator

Jeffrey Fagan is a Professor of Law and Public Health at Columbia University, Director of the Center for Crime, Community and Law at Columbia Law School, and a Senior Research Scholar at Yale Law School. In 2009-10, he was a Visiting Professor of Law at Yale Law School. In 2010-11, he is a Fellow in residence at the Straus Institute for the Advanced Study of Law & Justice at New York University School of Law. Dr. Fagan's research and scholarship focuses on crime, law and social policy. His current research examines capital punishment, racial profiling, the jurisprudence of adolescent crime, and perceptions of the legitimacy of the criminal law. Dr. Fagan has served on the Committee on Law and Justice of the National Academy of Science from 2000-2006 and was the Committee's Vice Chair for the last two years. From 1995-2006, he was a member of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. From 2002-2005, he was a Robert Wood Johnson Foundation Health Policy Research Scholar. He was a Soros Senior Justice Fellow from 2005-2006. He is past editor of the *Journal of Research in Crime and Delinquency* and serves on the editorial boards of several journals on criminology and law. Dr. Fagan has served as Executive Counselor on the Boards of both the American Society of Criminology and the Crime, Law & Deviance Section of the American Sociological Association. He received the Bruce Stone Award from the Academy of Criminal Justice Sciences. He is a Fellow of the American Society of Criminology.

Heather Mac Donald is a John M. Olin fellow at the Manhattan Institute and a contributing editor to *City Journal*. She also is a recipient of 2005 Bradley Prize for Outstanding Intellectual Achievement. Heather's work at *City Journal* has canvassed a range of topics, including homeland security, immigration, policing and "racial" profiling, homelessness and homeless advocacy, educational policy, the New York courts, and business improvement districts. Ms. Mac Donald's writings have also appeared in *The Wall Street Journal*, *Washington Post*, *New York Times*, *The New Republic*, *Partisan Review*, *The New Criterion*, *Public Interest*, and *Academic Questions*. Her book *The Burden of Bad Ideas* – a collection of essays from the pages of *City Journal* – details the effects of the sixties' counterculture's destructive march through America's institutions. Her second book, *Are Cops Racist?* – another *City Journal* anthology – investigates the workings of the police, the controversy over so-called racial profiling, and the anti-profiling lobby's harmful effects on black Americans. Her newest book, *The Immigration Solution: A Better Plan Than Today's*, coauthored with Victor Davis Hanson and Steven Malanga, chronicles the effects of broken immigration laws and proposes a practical solution to securing the country's porous borders.

Tracey Meares is Deputy Dean and Walton Hale Hamilton Professor at Yale Law School. She came to Yale in 2007 from the University of Chicago Law School where she was Max Pam Professor and Director of the Center for Studies in Criminal Justice. Her writings focus on the immensely difficult problem of high crime rates in primarily poor and minority urban neighborhoods, and both her academic writings as well as her grounded projects connected to this topic attempt the use of innovative approaches to

interdisciplinary legal scholarship in an effort to develop constructive and practical proposals to improve both legal doctrine and police practices.

John Timoney served as Chief of the Miami Police Department from 2003-2009. Prior to that, he served for four years as the Police Commissioner of the Philadelphia Police Department, where he commanded a diverse police force of approximately 7,000 officers and over 900 civilian employees in the fifth largest metropolitan city in the United States. The majority of his career, 29 years, was spent as a member of the New York City Police Department where he rose through the ranks to become the youngest four-star chief in the history of that department. Mr. Timoney is a past-President of the Police Executive Research Forum. He currently serves on the boards of the Penn Institute for Urban Research and Philadelphia University and is Co-Chair of the FBI's South Florida Joint Terrorism Task Force. Mr. Timoney is author of the book, *Beat Cop to Top Cop: A Tale of Three Cities*, published in 2010 by the University of Pennsylvania Press.

Jeremy Travis (Moderator) is President of John Jay College of Criminal Justice at City University of New York. Prior to his appointment, he served as a Senior Fellow in the Urban Institute's Justice Policy Center where he launched a national research program focused on the reentry of prisoners into society. From 1994-2000, Mr. Travis directed the National Institute of Justice, the research arm of the U.S. Department of Justice. Prior to his service in Washington, he was Deputy Commissioner for Legal Matters for the New York City Police Department (1990-1994), a Special Advisor to New York City Mayor Edward I. Koch (1986-89), and Special Counsel to the Police Commissioner of the NYPD (1984-86). Before joining New York City government, Mr. Travis spent a year as a law clerk to then U.S. Court of Appeals Judge Ruth Bader Ginsburg. He began his career in criminal justice working as a legal services assistant for the Legal Aid Society, New York's indigent defense agency. He has taught courses on criminal justice, public policy, history, and law at Yale College, New York University's Wagner Graduate School of Public Service, New York Law School, and George Washington University. He has a J.D. from New York University School of Law, an M.P.A. from the New York University's Wagner Graduate School of Public Service, and a B.A. in American Studies from Yale College.