

The Racism of Stop-and-Frisk

Stop-and-frisk is inherently racist. Research and real-world experience have proven that relying on police officers' vague feelings and suspicions instead of evidence consistently leads to disproportionate targeting of Black individuals and people of color (POC). Therefore, stop-and-frisk must be fully banned via legislation and more substantial limitations placed on when officers may stop and search individuals. Otherwise, no ban on racial profiling, bias training, or other limited reforms, will ever be even nominally effective.

How “Reasonable Suspicion” Upheld and Emboldened Racist Policing

The current standard by which a stop-and-frisk (or stop and “pat down”) of a person’s body must be judged to determine if it is constitutional has been called “reasonable articulable suspicion”—a term coined during the 1968 Supreme Court case *Terry v. Ohio*. The resulting decision in *Terry* significantly lowered the standard for a search, which had previously required probable cause. A report by the NAACP on racial profiling described the ruling as “a blow to the Fourth Amendment.”¹

Terry v. Ohio established that the extremely vaguely defined, “reasonable suspicion” was enough cause to detain and frisk a person (as opposed to the more evidence-based probable cause). The ruling appeared to still put some limits on the reasons that could be used for a stop, however those limitations were soon proven to be essentially worthless when it came to preventing discrimination and abuse.

“Reasonable suspicion” must, according to the *Terry* decision, be supported by “specific and articulable facts’ justifying suspicion of criminality and danger.”² However, this still leaves the reasoning and suspicion to the officer’s judgement. Professor Sharad Goel points out in his analysis of stop-and-frisk in New York City, that, “True, a stop-and-frisk is illegal under *Terry* if the officer cannot identify specific facts justifying the intrusion, but a minimally inventive officer can almost always find a facially legitimate reason to suspect someone the officer wishes to frisk. In a pinch, there is always something like, ‘he looked nervous and acted evasive.’”³

This has permitted police officers to act solely on their biases with no need for evidence. From Professors David Rudovsky and David A. Harris’s study on stop-and-frisk: “The vagueness of the factors that may justify stops and frisks increases the risk that police will act on biases in deciding whether there is sufficient suspicion for forcible intervention. Thus, if police associate

¹ NAACP, “Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America,” September 2014 https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf

² David Rudovsky and David A. Harris, “Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data” <https://www.law.upenn.edu/live/files/7898-rudovskyoslj>

³Sharad Goel, Maya Perelman, Ravi Shroff, “Combatting Police Discrimination in the Age of Big Data,” May 31, 2016 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2787101

racial minorities with criminal conduct where the same actions by whites are not regarded as suspicious, or if they consider race or ethnicity as surrogates for criminal conduct, even on a sub-conscious level, bias may become a causative factor.”⁴

Professor Devon Carbado expanded on that criticism even further, stating that his research found that *Terry v. Ohio* “facilitates the ‘wholesale harassment’ of African Americans” through a process he called “prophylactic racial profiling,” allowing police to target and harass Black residents without evidence of any actual crime. “While police officers are not permitted to say that they stopped a suspect because he is black, or that they systematically target a group of people because they are black, *Terry’s low evidentiary bar enables them to engage in both practices without admitting it* (emphasis added).”⁵

Scholars and sociologists who pushed for the use of stop-and-frisk even predicted that it would be used to harass people of color, but claimed that harassment was worth the cost.⁶ In his 1994 *New York Magazine* feature advocating for widespread use of stop-and-frisk, well known sociologist James Q. Wilson admitted that, “Innocent people will be stopped. Young black and Hispanic men will probably be stopped more often than older white Anglo males or women of any race.” Wilson then immediately dismissed those concerns as the price worth paying to get “illegal guns off the street.”⁷

We know now that Wilson’s indifferent prediction—and much more—has been borne out. This can be clearly seen in decades of collected data throughout the country. We already knew through severely limited data, that in Washington DC, between 2012 and 2016, over 80 percent of all stop-and-frisks were of Black DC residents, who make up less than 48 percent of DC’s total population. And once the DC Metropolitan Police Department began to follow the legal requirements to collect full data on stops, we learned that in just a five month period (July 22 to December 31, 2019) DC Police conducted *nearly 63,000 stops* with Black people making up 72 percent of those stops.⁸ Additionally, Black people were *seven times* more likely to be frisked than white DC residents.⁹ (The fact that the DC MPD stopped releasing the required stop-and-frisk data after just one year, placing it once again in violation of the law, until it was sued yet again by the ACLU seems to indicate a clear concern that the data will continue to

⁴ David Rudovsky and David A. Harris, “Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data” <https://www.law.upenn.edu/live/files/7898-rudovskyoslj>

⁵ Devon W. Carbado, “From Stop and Frisk to Shoot and Kill: Terry v. Ohio’s Pathway to Police Violence” <https://www.uclalawreview.org/wp-content/uploads/securepdfs/2018/02/Carbado-64-6.pdf>

⁶ Adina Schwartz, “Just Take Away Their Guns’: The Hidden Racism of Terry v. Ohio”

⁷ James Q. Wilson, *New York Times Magazine*, “Just Take Away Their Guns,” March 20, 1994 <https://www.nytimes.com/1994/03/20/magazine/just-take-away-their-guns.html>

⁸ DC Metropolitan Police Department, Stop Data Reports <https://mpdc.dc.gov/stopdata>

⁹ WUSA9, “DC Police Search And Frisk Black People 6 Times More Often During Stops, Data Shows,” June 15, 2020

<https://www.wusa9.com/article/news/crime/stop-and-frisk/blacks-6-times-more-likely-to-be-searched-in-dc-than-whites-stop-and-frisk-black-lives-matter/65-379ed07f-bc94-45c0-a7a8-2193601c6df0>

show huge racial disparities¹⁰).

This is a pattern that repeats in city after city: In Chicago Black people made up 72 percent of all stops while representing only 32 percent of the city's population,¹¹ in New York City at least 80 percent of stops each year were of Black and/or Latinx people,¹² in Philadelphia 72.2 percent of stops were of Black residents while they made up only 44 percent of the population,¹³ and in Baltimore 84 percent of pedestrian stops were of Black residents despite making up only 63 percent of the city's population.¹⁴

And in every city, not only are Black and POC residents disproportionately targeted, the “hit rate,” or number of successful times police actually found weapons or contraband, was incredibly low, hovering around 1-2 percent—proving most stops to be wholly unjustified. From Rudovsky and Harris: “The hit rate for all frisks in departments that have collected comprehensive data on stop-and-frisk practices, shows a hit rate that rarely exceeds 1%–2%. Thus, in Philadelphia, data for the years 2012–2016 show a frisk hit rate for weapons of approximately 1%. In New York City, the hit rate for frisks over the period 2004–2012 was 1.5%.”¹⁵ (Additionally, in NYC, white people were *twice as likely* to be found with a gun, meaning the extremely small number of white people who were frisked actually make up much of that 1.5 percent hit rate.¹⁶) And just as in those other cities, in DC the hit rate for finding weapons is barely 2 percent. In fact, DC Police found weapons on Black people at about the same rate they did on white people, despite Black people being seven times more likely to be frisked.¹⁷

Stop-and-Frisk Legalized Racial Profiling

The NAACP concluded that stronger racial profiling laws were needed to combat the bias that had been allowed for by the low standard of “reasonable suspicion.”¹⁸ However, racial profiling bans, while important, must be backed up by stronger restrictions on police power to conduct stops and searches. Members of the DC government will point out that DC already has a ban on racial profiling on the books and claim to have reformed vague laws often used to harass Black

¹⁰ Washington City Paper, “ACLU-DC Sues D.C. Police Over Stop and Frisk Data. Again.”

<https://washingtoncitypaper.com/article/508811/aclu-dc-sues-d-c-police-over-stop-and-frisk-data-again/>

¹¹ ACLU, Chicago Leads New York City In Use Of Stop-and-frisk By Police, New Study Finds

<https://www.aclu.org/press-releases/chicago-leads-new-york-city-use-stop-and-frisk-police-new-study-find>

¹² NYCLU Stop-and-Frisk data <https://www.nyclu.org/en/stop-and-frisk-data>

¹³ Bailey v. City of Philadelphia, Complaint,

<https://www.clearinghouse.net/chDocs/public/PN-PA-0013-0001.pdf>

¹⁴ US Department of Justice Civil Rights Division, “Investigation Of The Baltimore City Police Department” August 10, 2016

<https://www.justice.gov/crt/file/883296/download>

¹⁵ David Rudovsky and David A. Harris, “Terry Stops-and-Frisks,” 40-41

¹⁶ New York Times, “Why ‘Stop-and-Frisk’ Inflamed Black and Hispanic Neighborhoods,”

<https://www.nytimes.com/2019/11/17/nyregion/bloomberg-stop-and-frisk-new-york.html>

¹⁷ WUSA9, “DC Police Search And Frisk Black People 6 Times More Often During Stops, Data Shows”

¹⁸ NAACP, “Born Suspect”

community members, such as those around loitering (though not really, as “obstructing” or “incommoding” is apparently still an arrestable offense¹⁹), but those reforms will not matter as long as officers are allowed to use vague excuses to hide their biases.

Lawsuits and investigations have emphasized illegal stop-and-frisks—times in which police have failed even to clear the low bar of reasonable suspicion. But even when law enforcement officers have, or claim to have, real reasons to suspect a person is armed or dangerous, these reasons are often wrong—based on false assumptions that actual data doesn’t back up. As Rudovsky and Harris explain, “The data shows that certain factors regularly reported by police, such as observation of a ‘bulge,’ a suspect not being cooperative, hands in pocket, a high crime neighborhood, nervous or furtive movements, and ‘flight’ are poor predictors of whether one is armed and dangerous, yet the courts have regularly credited these explanations in sustaining police frisks.”²⁰

Rudovsky points to the oft-used “clothing bulge” excuse as a specific example. “Bulges’ inevitably turn out to be cell phones or wallets, and the other triggering factors are also very weak indicators of criminal activity. Thus, in audits conducted in 2014–2016, of 220 frisks based on a ‘bulge,’ only one weapon was seized, a hit rate of less than 0.5%.”²¹

Despite this data, the DC MPD’s General Order 304.10 on “Field Contacts, Stops and Protective Pat Downs”²² cites a clothing bulge, as just one of the many vague and unspecified reasons an officer can use as a valid justification for stopping and frisking someone. According to the MPD General Order, reasons considered justifiable grounds to stop a person against their will include, “being in an area known for the type of criminal activity on which the suspicion is based,” or being in “an area during a time of day during which criminal activity of the kind suspected might usually occur (e.g., a late hour when it would be unusual for individuals to be in a certain area).” A person can also be stopped simply for responding to questions with “evasive” or “suspicious” replies or if they are, “excessively tentative or nervous.”

Reasons MPD officers can use to frisk a person’s body—or as MPD euphemistically calls it, a “protective pat down”—include if an individual’s clothes “bulge in a manner suggesting the presence of an object capable of inflicting injury,” or if their, “behavioral characteristics, like demeanor, may suggest the possibility that the individual may be carrying a weapon.” (The order does not explain exactly how one can tell from a person’s “demeanor” that they have a gun hiding in their pocket). The order also allows frisks if again, the person stopped appears “nervous.” Or if they were stopped “in an area known for criminal activity,” or are in an area that

¹⁹ Washington City Paper, “D.C. Law Against Sidewalk-Blocking Gets Constitutional Challenge,” <https://washingtoncitypaper.com/article/325537/dc-law-against-sidewalkblocking-gets-constitutional-challenge/>

²⁰ David Rudovsky and David A. Harris, “Terry Stops-and-Frisks,” 40-41

²¹ David Rudovsky and David A. Harris, “Terry Stops-and-Frisks,” 41

²² DC Metropolitan Police Department, “General Order: Field Contacts, Stops, and Protective Pat Downs,” https://go.mpdconline.com/GO/GO_304_10.pdf

is “so isolated that witnesses to an attack would be unlikely, or occur at a time of day when an attack is more difficult to defend or more likely to occur (e.g., during a period of darkness or during a time of day that is consistent with a serious or violent crime pattern).”

To sum up, according to the MPD a person can be stopped and frisked if they seem nervous, if they are anywhere near where criminal activity has occurred, if they are out late at night, if they are out at another time when there aren't many people around (such as work hours on a weekday), if their clothing has a “bulge,” or for numerous other nebulous and undefined reasons.

Stop-and-Frisk Continues to Empower An Already Racist Police Force

The reasons allowing police to stop a person under the criteria of reasonable suspicion would be alarmingly vague, even when not used by a police force with a record of bias and racial discrimination. In DC, as in many of the cities that heavily use stop-and-frisk, the Metropolitan Police Department has a history and pattern of racism.

Just a small sample of incidents from the past five years:

- In 2016 DC police coordinated with radical right wing groups to convict and imprison people who protested at Donald Trump's inauguration. A doctored video created by Project Veritas was provided to police and federal prosecutors²³ and the Oath Keepers (now known for being a key leader in the 2021 attack on the US Capitol) boasted that they worked with the DC MPD and provided them with video footage of protesters.²⁴
- In 2017 A DC Police officer was found to have posted racist memes to his Instagram account, including a “a picture of an angry celebrity chef Gordon Ramsay with the caption, ‘This chicken is so black the police are screaming at it to stop resisting.’”²⁵
- Another officer was spotted in a courtroom wearing a t-shirt with a symbol connected to the KKK and other white supremacist groups.²⁶
- In July 2019 numerous DC Police officers were seen giving fist bumps to members of the hate group the Proud Boys,²⁷

²³ Salon, “D.C. Police And The Feds Partner With Hard Right To Convict Trump Protesters,” https://www.salon.com/2018/02/16/d-c-police-and-the-feds-partner-with-hard-right-to-convict-trump-protesters_partner/

²⁴ Daily Beast, “Feds Use Right-Wing Militia's Video to Prosecute Trump Protesters,” <https://www.thedailybeast.com/feds-use-right-wing-militias-video-to-prosecute-trump-protesters>

²⁵ Fox 5 DC, “DC police officer's Instagram account taken down after racially insensitive content reported,” <https://www.fox5dc.com/news/dc-police-officers-instagram-account-taken-down-after-racially-insensitive-content-reported>

²⁶ Fox 5 DC, “Attorney: DC police officer's controversial shirt may jeopardize criminal cases,” <https://www.fox5dc.com/news/attorney-dc-police-officers-controversial-shirt-may-jeopardize-criminal-cases>

²⁷ WAMU, “D.C. Police Officers Seem To Offer Support For A Far-Right Group After July 4 Clashes In Front Of White House,” <https://wamu.org/story/19/07/05/d-c-police-officers-seem-to-offer-support-for-a-far-right-group-after-july-4-clashes-in-front-of-white-house/>

- The year before, DC Police, along with Metro Transit Police, gave a small group of white supremacist Unite the Right rally participants a private escort.²⁸
- In 2018 an investigation found that despite the decriminalization of marijuana in DC marijuana arrests continued to go up, with 86 percent of the arrests made of Black DC residents. While arrests went down by 9 percent in all other areas of the city, they had gone up by 97 percent in wards 7 and 8.²⁹
- In October 2020 a Black veteran police officer filed a whistleblower lawsuit accusing the DC Police Department of retaliation after she spoke up about Black men being illegally targeted for arrests. In one incident “A lieutenant had instructed officers to ‘target groups of young men of color’ in predominantly Black neighborhoods in a tactic known as jump-outs.” In another, an “officer in the investigative unit told colleagues to target large groups of minority men ‘in poverty stricken areas’ of the city and search them without cause,” and instructed them not to turn on their body-worn cameras.³⁰

The Limits of Lawsuits: Case Studies

If the above evidence and reasoning by experts was not enough proof of how stop-and-frisk empowers racial profiling, below are case studies that illustrate how the practice has consistently been used as a tool of racist policing while failing at any set goals of finding weapons or contraband. These case studies also shed light on the limitations placed on lawsuits’ attempts to curtail racist police violence and why a full legislative ban of stop-and-frisk is necessary. This is not a problem we can sue our way out of. The bar itself must be raised higher than reasonable suspicion.

Philadelphia

In 2010 ACLU Pennsylvania filed a class action lawsuit alleging that the Philadelphia Police Department engaged in “a pattern of ‘stops, searches, and detaining individuals in the absence of probable cause and profiles individuals based solely on race and/or national origin.” ACLU PA found that of the 253,333 stops made by Philadelphia police in 2009, “over 183,000, or 72.2%, were of African-Americans, who make up 44% of the population of Philadelphia. Only 8.4% of the 253,333 stops led to an arrest.”³¹

²⁸ Vox, “DC Metro criticized for how it handled white nationalists during Unite the Right 2,” <https://www.vox.com/2018/8/12/17681558/unite-the-right-dc-metro-private-train-cars-vienna-foggy-bottom>

²⁹ WUSA9, “Police: 86% Of People Arrested For Marijuana In DC Are Black,” <https://www.wusa9.com/article/news/investigations/police-86-of-people-arrested-for-marijuana-in-dc-are-black/65-581301045>

³⁰ Washington Post, “D.C. Police Officer Sues Department Claiming Retaliation By Superiors After Complaining Officers Illegally Targeted Black Men For Arrests,” https://www.washingtonpost.com/local/public-safety/dcpolice-whistleblower-lawsuit/2020/10/14/e65c891c-0b0b-11eb-9be6-cf25fb429f1a_story.html

³¹ ACLU Pennsylvania, “ACLU-PA And Civil Rights Firm File Class Action Lawsuit Against Philadelphia Police Department For Racial Profiling,” November 4, 2010 <https://www.aclupa.org/news/2010/11/04>

In 2011 the ACLU reached a settlement with the city of Philadelphia instituting reforms to Philadelphia police practices. However the settlement also required plaintiffs to state that stop-and-frisks are “a legitimate police enforcement practice,” (emphasis added)³² stressing that the reforms would only apply to stop-and-frisks that did not meet the low bar of “reasonable suspicion.”

The agreement required the Philadelphia Police Department to “collect data on all stop and frisks” and store it in an electronic database, along with requiring that officers be provided with “necessary training and supervision with respect to stop and frisk practices.”³³ It stipulated that, “Stops and frisks shall not be permissible, without limitation, where the officer has only anonymous Information of criminal conduct, or because the person is only ‘loitering’ or engaged in ‘furtive movements,’ or is acting ‘suspiciously,’ or for the purpose of ‘investigation of person,’ or on the basis of non-articulated “flash information,” or only because the person is in a ‘high crime’ or ‘high drug’ area. These restrictions are not exclusive and the parties agree that stops and frisks shall not be made without the requisite reasonable suspicion.”

Outcomes

Follow up studies since the original lawsuit have found that limited reforms that maintain the legitimacy of stop-and-frisk can be hard to implement in any successful way. The changes required in the settlement, while mild improvements, were not very specific and still allowed stop-and-frisks to continue, though supposedly with more restrictions.

Yearly studies found that Philadelphia police continued to use stop-and-frisk disproportionately on Black residents and to conduct illegal stop-and-frisks that didn’t reach the reasonable suspicion threshold. Seven years after the settlement, the ACLU PA found that in 2018 “In every neighborhood in Philadelphia, Black pedestrians were stopped by police officers out of proportion to their percentage of the local population and that “racial disparities in stops are widest in neighborhoods in which Black Philadelphians make up a lower percentage of the population.”³⁴ It also found that “almost 1 out of every 3 frisks in Philadelphia was legally unfounded.”³⁵

[/aclu-pa-and-civil-rights-firm-file-class-action-lawsuit-against-philadelphia-police-department-for-racial-profiling](#)

³² ACLU Pennsylvania, ACLU-PA Reaches Agreement With City of Philadelphia In Stop-And-Frisk Challenge, June 21, 2011 <https://www.aclupa.org/news/2011/06/21/aclu-pa-reaches-agreement-with-city-of-philadelphia-in-stop-and-frisk-challenge>

³³ ACLU Pennsylvania, Bailey v. City of Philadelphia <https://www.aclupa.org/en/cases/bailey-et-al-v-city-philadelphia-et-al>

³⁴ ACLU Pennsylvania, “Latest Court Filing Shows Race Still Plays a Role in Stops and Frisks by Police in Philadelphia,” November 27, 2018 <https://www.aclupa.org/news/2018/11/27/latest-court-filing-shows-race-still-plays-role-stops-and-fr>

³⁵ Bailey v. City of Philadelphia, “Plaintiffs’ Ninth Report To Court And Monitor On Stop And Frisk Practices,” January-June, 2018 https://aclupa.org/sites/default/files/field_documents/bailey_ninth_report_racial_analysis_11-27-18_.pdf

The ACLU PA seems to have recognized that leaving specific restrictions and limits on stop-and-frisk up to the Philadelphia Police Department was not enough. The Philadelphia Tribune reported that “The ACLU said the courts should intervene more, and issue specific orders regarding internal accountability measures and compliance standards. ‘This time around, when the city commits to making changes, we want those to be mandated changes in a court order,’ said Mary Catherine Roper, deputy legal director at the ACLU of Pennsylvania. ‘And importantly, we want that mandate to include the city starting to address the racial disparity.’”³⁶

Milwaukee

In Milwaukee, researchers found that for both traffic and pedestrian stops, Black residents were 500 percent more likely than white people to be stopped by police.³⁷

The ACLU of Wisconsin found that “Milwaukee police made more than 350,000 unlawful stops between 2010 and 2017,” and sued the city “on behalf of six African-American or Latino plaintiffs who had been stopped – in some cases, multiple times – without reasonable suspicion.”³⁸

An analysis of stop-and-frisk data conducted for ACLU-WI by Dr. David Abrams found that “Black and Latino people are more likely than white people to be subject to traffic stops across Milwaukee,” both in districts “in which the residential population is racially heterogeneous and districts in which the residential population is predominantly white.” Abrams wrote that even after controlling for non-racial and non-ethnic factors that might affect the analysis of stops, “The traffic stop rate for Black drivers in Milwaukee is higher than the traffic stop rate for white drivers by well over 500 percent,” and in addition, “Across Milwaukee, Black people are 500 percent more likely than white people to be the targets of pedestrian stops.”³⁹

The Milwaukee Chief of Police released a statement claiming that the Milwaukee Police Department did not conduct stop-and-frisk at all, while in the next sentence stating that “traffic stops in high crime areas have been proven to reduce the number of non-fatal shootings,

³⁶ Philadelphia Tribune, “Police Stops Of Blacks Concern For Leaders,” Nov 21, 2018 https://www.phillytrib.com/news/aclu-blacks-minorities-still-more-likely-to-be-stopped-frisked/article_98cbc7-c430-5b66-9ec8-96d4b790b11c.html

³⁷ Collins v. City of Milwaukee, Report of David Abrams, Ph.D., February 20, 2018 https://www.aclu.org/sites/default/files/field_document/report_of_david_abrams_02202018.pdf

³⁸ NPR, “Milwaukee Council OKs \$3.4 Million Settlement Of Police Stop-And-Frisk Lawsuit,” July 11, 2018 <https://www.npr.org/2018/07/11/628020991/milwaukee-council-oks-3-4-million-settlement-of-police-stop-and-frisk-lawsuit>

³⁹ Collins v. City of Milwaukee, Report of David Abrams, Ph.D., February 20, 2018 https://www.aclu.org/sites/default/files/field_document/report_of_david_abrams_02202018.pdf

robberies, and motor vehicle thefts.”⁴⁰ (A statement that will sound very similar to anyone who has read claims from former DC Police Chief Peter Newsham on stop-and-frisk.⁴¹)

In 2018 The City of Milwaukee settled with the ACLU of Wisconsin for \$3.4 million. The settlement acknowledged that the Milwaukee Police Department did indeed use the practice of stop-and-frisk and required the MPD to make a series of revisions to its guidelines.

However, while the revisions included requirements that officers “not rely solely on generalized categories” to determine articulable reasonable suspicion or probable cause, including the “appearance or demeanor of a person,” the “hour of the day or night,” or the supposed “inappropriate presence” of a person in a neighborhood, police were still allowed to use these categories if they were combined with one or more other category.⁴² This is extremely similar to the current DC Metropolitan Police Department policies, which have continued to result in huge numbers of stops, the overwhelming majority of which are of Black DC residents.

Outcomes

As part of the settlement, the Crime and Justice Institute was designated as a monitor to observe the Milwaukee PD’s compliance with the limited revisions to its practices. In 2020 the Institute found that the MPD “failed to document a justification for 80% of frisk incidents in the first half of 2019”⁴³ And again a hugely disproportionate number of the frisks conducted were of Black people:

“The report showed a disproportionate amount of police encounters and frisks with black people. About 56% of encounters, and 80% of frisks, involved black people. Latinos encompassed 9% of encounters and 14% of frisks, while white people were involved with 16% of encounters and 6% of frisks. The report noted that a significant percentage of demographic data – between 16% to 21% – was missing when it came to police encounters. Milwaukee’s population is 38% black, 35% white and 20% Hispanic, according to U.S. Census data.”⁴⁴

⁴⁰Statement, Milwaukee Police Chief Edward A. Flynn

https://graphics.jsonline.com/jsi_news/documents/frisk_mpdresponse.pdf

⁴¹ Washington Post LTE, “The D.C. police chief is wrong. Stop and frisk is racist.” March 4, 2019

https://www.washingtonpost.com/opinions/the-dc-police-chief-is-wrong-stop-and-frisk-is-racist/2019/03/04/8da51408-3c3e-11e9-b10b-f05a22e75865_story.html

⁴² Collins v. City of Milwaukee settlement agreement and court order,

https://www.aclu-wi.org/sites/default/files/field_documents/collins_settlement_agreement_executed_by_parties.pdf

⁴³ Milwaukee Journal Sentinel, “8 in 10 Milwaukee Police Stop-and-frisk Incidents Lack Documented Justification, Report On Aclu Lawsuit Says,”

<https://www.jsonline.com/story/news/2020/02/19/80-milwaukee-police-frisk-incidents-unjustified-report-say/4806860002/>

⁴⁴ Milwaukee Journal Sentinel, “8 in 10 Milwaukee Police Stop-and-frisk Incidents Lack Documented Justification”

New York City

Probably the most well known examination of stop-and-frisk, a 1999 study by New York City's Attorney General and subsequent data collection from 2004-2011 led to the state court finding much of the stop-and-frisk program to be unconstitutional, even using the low bar of "reasonable suspicion." From Rudovsky:

"In 1999, the New York Attorney General conducted a study of 175,000 pedestrian stops by the New York City Police Department (NYPD) over a fifteen-month period in 1998-99 and found a highly disproportionate rate of stops of minorities. The Attorney General determined that (1) African-Americans were stopped six times more frequently than whites;¹⁸⁵ (2) in precincts with a white population of 80% or more and where African-Americans constituted 10% or less of the population, stops of African Americans constituted 30% of all stops, more than ten times their percentage of the population;¹⁸⁶ (3) stops of African Americans were less likely to result in arrests than stops of whites;¹⁸⁷ and (4) adjusting for crime rates by race, the differences in stops of minorities compared to stops of whites was statistically significant."⁴⁵

Judge Shira A. Scheindlin, found in her decision in *Floyd v. City of New York* that the New York Police Department used a "policy of indirect racial profiling" which "led to officers' routinely stopping 'blacks and Hispanics who would not have been stopped if they were white.'"⁴⁶

The lawsuit cited data that showed that the NYPD made 4.4 million stops between January 2004 and June 2012. "Over 80% of these 4.4 million stops were of blacks or Hispanics" and "More than half of the time the police subjected the person to a frisk."⁴⁷ This in spite of the fact that they made up only a little more than 50 percent of the NYC population.

In addition to a disproportionate number of stops Judge Scheindlin found that officers "often conducted frisks for weapons, or searched the subjects' pockets for contraband, like drugs, without any legal grounds for doing so." And when stopped, "blacks and Hispanics "were more likely to be subjected to the use of force than whites, despite the fact that whites are more likely to be found with weapons or contraband."⁴⁸

The immediate reforms ordered by Judge Scheindlin were extensive and included prohibitions on stopping a person for being present in a "high crime area" or because they match "a vague or generalized description — such as young black male 18 to 24."⁴⁹

⁴⁵ David Rudovsky and David A. Harris, "Terry Stops-and-Frisks,"

⁴⁶The New York Times, Judge Rejects New York's Stop-and-Frisk Policy August 13, 2013 <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>

⁴⁷ Floyd v. City of New York, August 12, 2013 https://scholar.google.com/scholar_case?case=390056199313197546&hl=en&as_sdt=6&as_vis=1&oi=scholar

⁴⁸ The New York Times, Judge Rejects New York's Stop-and-Frisk Policy

⁴⁹ Floyd v. City of New York, August 12, 2013

Outcomes

Since the lawsuit the number of stops reported by the NYPD has “drastically declined.” In 2017 there were about 98 percent fewer stops reported than in 2011, the year considered to be the “height” of stop-and-frisk. However, the number of stops made by the NYPD are still disproportionately of Black and Brown residents. The NYCLU found that between 2014 and 2017 “four of every five reported stops were of Black or Latino people,” and 66 percent of those reported stops “led to frisks, of which over 93 percent resulted in no weapon being found.”⁵⁰ The NYCLU has also voiced its skepticism of the steep decline in stop-and-frisks, stating that while the lawsuit clearly led to improvements the current numbers are “suspiciously low,” leading them to believe the NYPD is continuing to conduct them but not reporting them.⁵¹

In 2019 the number of stop-and-frisks appeared to spike by 22 percent. Legal Aid Society attorney Corey Stoughton stated that the data, “...confirms what we hear from our clients on a daily basis – despite court rulings that the city’s practices were unlawful, aggressive stop-and-frisk has made a comeback in New York City.”⁵²

⁵⁰ NYCLU, “Stop-and-Frisk in the de Blasio Era,” March 2019 https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf

⁵¹ Gothamist, “NYC Has “A Long Way To Go” To End The Illegal Stop-And-Frisk Era,” <https://gothamist.com/news/nyc-ending-illegal-stop-and-frisk-era>

⁵² AMNY, “Stop-and-Frisk Made A Comeback Across New York In 2019: Report,” <https://www.amny.com/new-york/brooklyn/stop-and-frisk-made-a-comeback-across-new-york-in-2019-report/>