

**Issued by the**  
**UNITED STATES DISTRICT COURT**  
 Southern District of New York

Floyd, et al., Plaintiffs,  
 V.

**SUBPOENA IN A CIVIL CASE**

The City of New York, et al., Defendants.

Case Number:<sup>1</sup> 08 Civ. 1034 (SAS)

TO: James A. Thomson, President and Chief Executive Officer  
 RAND Corporation  
 1776 Main Street  
 Santa Monica, CA 90407

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

The documents specified on the attached Addendum to this Subpoena.

PLACE Law Offices of Carol A. Sobel, 429 Santa Monica Boulevard, Suite 550, Santa Monica, California, 90401	DATE AND TIME 6/2/2008 10:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Andrea Costello, Attorney for Plaintiffs</i>	DATE 5/19/2008
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Andrea Costello, Attorney for Plaintiffs; Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, New York, 10012; Phone (212) 614-6439

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## ADDENDUM

### **A. Definitions and General Instructions for Responding to This Subpoena**

1. All documents produced in response to this Subpoena shall be produced in accordance with the requirements of Rule 45(d) of the Federal Rules of Civil Procedure which is attached hereto.

2. As used in this Subpoena, the term “document” is used in the broadest sense and includes, but is not limited to all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy or otherwise), whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand, including, but not limited to the following items: letters, telegrams, faxes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, opinions or reports of advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, orders (temporary, standing or otherwise), bulletins, manuals, guidebooks, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, Photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, CDs, data tapes or readable computer produced interpretations or transcripts thereof, electronically transmitted messages (E-mail), voice mail messages, inter-office communications, and any other writings, papers and tangible things of whatever description whatsoever, including, but not limited to any information contained on any computer, even if not yet printed out, within

the possession, custody and/or control of the RAND Corporation and any of its employees or agents.

3. As used in this Subpoena, the term “correspondence” refers to any and all written communications, including but not limited to letters, memoranda, handwritten notes, and emails, whether or not such written communications are in draft or final form and whether or not they were actually transmitted between two or more persons.

4. As used in this Subpoena, the term “data” means any information and data, whether stored electronically through a database, other computer program and/or maintained through any documents not stored within or through a computer or other electronic means, which records, reflects and/or logs information.

5. The definitions set forth in Rule 47 of the Local Rules for the United States District Court for the Southern District of New York are incorporated herein by reference.

6. If any document or part thereof called for by this Subpoena has been destroyed, discarded, or otherwise disposed of, the person(s) responding to this Subpoena shall furnish a list setting forth, as to each document or part thereof, the following information: (a) the nature of the document, *e.g.*, letter memorandum, electronic mail, etc.; (b) the name, address, occupation, title and business affiliation of each person who prepared, received, viewed and has or has had possession, custody or control of the document; (c) the date of the document; (d) a description of subject matter of the document; (e) the date of destruction or other disposition; (f) a statement of the reasons for destruction or other disposition; (g) the name, address, occupation, title and business affiliation of each person who authorized destruction or other disposition; (h) the name, address, occupation, title and business affiliation of each person who destroyed or disposed of

the document; and (i) the paragraph(s) of this request which call for the production of the document.

**B. Documents To Be Produced**

1. All documents in the possession and/or control of the RAND Corporation (“RAND”) and its employees and/or agents which relate to the RAND report entitled *Analysis of Racial Disparities in the New York Police Department’s Stop, Question and Frisk Practices* (Copyright RAND Corporation, 2007) (“the Report”), including, but not limited to:

- a. all unpublished drafts of the Report and of the summary of the Report;
- b. all data, databases and data compilations provided to RAND by the New York City Police Department (“NYPD”) and/or the New York City Police Foundation (“NYPF”) concerning the stop, question, and frisk practices of New York City Police Officers;
- c. all data, databases and data compilations used or consulted by employees and/or agents of RAND in drafting and completing the Report;
- d. all statistical analyses of the data referred to in paragraphs 4(b) and 4(c) of this addendum which were performed by employees and/or agents of RAND, and all documents containing or discussing the results of such statistical analyses;
- e. all correspondence between employees of RAND regarding the Report;
- f. all correspondence between employees of RAND and employees and officials of the New York City Police Department and/or the New York City Police Foundation regarding the Report; and

g. all minutes, agendas, notes and/or other recordings of meetings held to discuss the contents and completion of the Report and/or the matters referred to in paragraphs 4(b) through (d) of this addendum.

2. All documents, including, but not limited to contracts, letter agreements, memoranda of understanding, requests for proposal (RFP's), and responses to RFP's, which reflect an agreement between RAND and the NYPD and/or NYPF under which the NYPD and/or NYPF agreed to compensate RAND to analyze the NYPD's stop, question, and frisk practices and data.

3. All documents, including but not limited to receipts, bills, invoices, cancelled checks, and payment stubs, regarding payments made or owed by the NYPD and/or NYPF to RAND and/or Greg Ridgeway for completion of the Report.