

# Police Management and Quotas: Governance in the CompStat Era

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*Police department activity quotas reduce police officer discretion and promote the use of enforcement activity for reasons outside of law enforcement's legitimate goals. States across the country have recognized these issues, as well as activity quotas' negative effects on the criminal justice system and community-police relations, and have passed anti-quota legislation to address these problems. But despite this legislation, critics claim that police departments still employ management devices that similarly reduce police officer discretion and reward police officers for enforcement activity that does not further a legitimate law enforcement goal, with the same negative effects on the criminal justice system and community-police relations. This Note analyzes New York State's anti-quota statute and its effectiveness at combating the evils it attempted to outlaw — reduced police officer discretion, enforcement activity that does not further a legitimate law enforcement goal, decreased community-police relations, and negative impacts on the criminal justice system — using the New York City Police Department's legal, non-quota-based management policies as a case study. These management policies and their effects will be determined in part by interviewing former New York City Police Department uniformed members of the service.\*\**

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\*\* The scope of this Note's analysis of the New York City Police Department ("NYPD")'s culture and management policies covers the period between the mid-1990s and the end of 2013. At the time of publication, 2013 is the most recent year for which data is available concerning NYPD enforcement quantity and quality, and is the last year that this Note's interviewees could adequately comment on the NYPD's culture and management. Additionally, 2014 was a year of change for the NYPD. The death of Eric Garner, the assassinations of Detectives Rafael Ramos and Wenjin Liu, a Staten Island grand jury's decision to present a no true bill regarding Officer Pantaleo's actions in the Eric Garner incident, and the alleged NYPD "slow down" all had a significant effect on the NYPD, both at the leadership and precinct levels. *See generally* David Good & Al Baker,

## I. INTRODUCTION

The New York City Police Department (“NYPD”) is no stranger to quotas or the scandals that follow them. In 1957, the Brooklyn Supreme Court directed Police Commissioner Stephen P. Kennedy to testify as a witness in a malicious prosecution lawsuit filed against the City of New York concerning allegations of a department-wide traffic summons quota.<sup>1</sup> In 1972, a summons quota created by Manhattan’s Twenty-Fourth Precinct Commanding Officer, Deputy Inspector Norman H. Andersson, led his police officers to write 1294 parking tickets in a single day.<sup>2</sup> The New York Times published the scandal on its front page, leading Police Commissioner Patrick V. Murphy to declare, “quotas do not solve problems.”<sup>3</sup>

Quotas made front-page news again during the Knapp Commission investigations into NYPD corruption. The Commission blamed narcotics unit arrest quotas for aiding corruption and preventing officers and detectives from successfully attacking the heroin trade,<sup>4</sup> and linked gambling-unit arrest quotas to corruption.<sup>5</sup> The Commission also created an NYPD slang dictionary to

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*Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>; Christopher Mathias, *Commissioner William Bratton Confirms NYPD Slowdown*, HUFFINGTON POST (Jan. 9, 2015), [http://www.huffingtonpost.com/2015/01/09/nypd-slowdown\\_n\\_6446392.html](http://www.huffingtonpost.com/2015/01/09/nypd-slowdown_n_6446392.html). The applicability of the problems presented in this Note to the NYPD in 2014 and 2015 is unknown. The point of this Note, however, is not to pin down the culture of the NYPD; rather, it is to assess the adequacy of New York’s anti-quota statute using three years of post-effective data. Unlike the dynamic world of policing, that conclusion remains unchanged.

1. *Kennedy Summoned Over Ticket Quotas*, N.Y. TIMES (Oct. 18, 1957), <http://query.nytimes.com/mem/archive/pdf?res=F40B15FE3A5C127A93CAA8178BD95F438585F9>.

2. Eric Pace, *“Quota” Precinct Writes 1,294 Tickets in Day*, N.Y. TIMES (Jan. 20, 1972), <http://query.nytimes.com/mem/archive/pdf?res=F30615FC3A5C1A7493C2AB178AD85F468785F9>.

3. Edward Hudson, *Precinct Rescinds Its Ticket Quotas*, N.Y. TIMES (Jan. 21, 1972), <http://query.nytimes.com/mem/archive/pdf?res=FA0614FA3C59107A93C3AB178AD85F468785F9>.

4. David Burnham, *State Investigator Links Corrupt Police to Heroin*, N.Y. TIMES (Apr. 6, 1971), <http://query.nytimes.com/mem/archive/pdf?res=F50817FF3D5D117B93C4A9178FD85F458785F9> (“Make no mistake about it . . . [t]here is a quota system. This numbers game means that in order to remain in the unit, a detective must fulfill his quota. He has no time to make good cases.”) (internal quotation marks omitted).

5. See David Burnham, *Undercover Agents Were Used in Gathering Payoff Evidence*, N.Y. TIMES (May 3, 1972), <http://query.nytimes.com/mem/archive/pdf?res=F3081EFC3F5F117B93C1A9178ED85F468785F9>.

help corruption investigators interpret police officer testimony that included the word “flake,” defined as “[t]he planting of evidence on a person who is arrested, either to meet an arrest quota or to give leverage to shake down the arrested person.”<sup>6</sup> The Knapp Commission eventually recommended “eliminating any arrest quotas” as part of the changes necessary for the NYPD to end corruption.<sup>7</sup>

More recently, two New York City Transit Police Department districts, one in Manhattan and one in the Bronx, were the scenes of quota allegations in the 1980s. In the Bronx, the District Twelve Commanding Officer, Captain Edward Zarek, was relieved of his command for ignoring a departmental policy forbidding arrest quotas.<sup>8</sup> In Manhattan’s District Four, several officers allegedly made false arrests to fulfill arrest quotas and secure positions on the Commanding Officer’s “A-list,” where they were given the best assignments.<sup>9</sup>

Today, New York State Labor Law Section 215-a makes it illegal for an employer to “transfer or in any other manner penalize or threaten, expressly or impliedly” a police officer “based in whole or in part on such employee’s failure to meet a quota.”<sup>10</sup> The statute defines a quota as “a specific number of . . . tickets or summonses[,] . . . arrests[, or] . . . stops . . . within a specified period of time.”<sup>11</sup> The New York State Legislature passed Section 215-a to ensure that police officers retain discretion and are not forced to take enforcement action arbitrarily.<sup>12</sup>

Some argue that in spite of Section 215-a’s passage, quotas continue to exist in bold-faced contravention of the law;<sup>13</sup> others

6. *A Glossary of Terms Relating to Corruption*, N.Y. TIMES (Oct. 21, 1971), <http://query.nytimes.com/mem/archive/pdf?res=F70914FE3B5C1A7493C3AB178BD95F458785F9>.

7. *Major Recommendations*, N.Y. TIMES (Aug. 7, 1972), <http://query.nytimes.com/mem/archive/pdf?res=F70B17FC3A591A7493C5A91783D85F468785F9>.

8. Mark A. Uhlig, *A Transit Officer is Cited on Quotas*, N.Y. TIMES (Dec. 20, 1987), <http://www.nytimes.com/1987/12/20/nyregion/a-transit-officer-is-cited-on-quotas.html>.

9. Todd S. Purdam, *Transit Scandal: Do Arrest Incentives Motivate the Police or Invite Abuse?*, N.Y. TIMES (Dec. 16, 1987), <http://www.nytimes.com/1987/12/16/nyregion/transit-scandal-do-arrest-incentives-motivate-the-police-or-invite-abuse.html>.

10. N.Y. LAB. LAW § 215-a (McKinney 2009 & Supp. 2015).

11. *Id.*

12. *See infra* Part IV.A.

13. New York City Patrolmen’s Benevolent Association (“PBA”) President Patrick J. Lynch has long held that quotas still exist in the NYPD. *See, e.g.*, Daniel Beekman, *Ivy League Law Professors to Help Implement Stop-and-Frisk Reforms*, N.Y. DAILY NEWS (Sept. 19, 2013), <http://www.nycpba.org/news /nydn/nydn-130919-academics.html>. Presi-

argue that police department supervisors implicitly reduce police officer discretion through other management devices.<sup>14</sup> Explicit quotas are clearly illegal and New York State law is theoretically capable of handling such offenses.<sup>15</sup> The implicit reductions in discretion, however, are not actionable. If a police department supervisor never explicitly states that a police officer is required to perform a specific amount of enforcement activity over a specific period of time under threat of adverse employment action, no legal violation has occurred.<sup>16</sup> Because Section 215-a only covers quotas and the resulting explicit reductions in discretion, modern police departments are able to skirt Section 215-a's prohibitions with relative ease by implicitly reducing police officer discretion, allowing law enforcement agencies to reap the managerial rewards of reduced police officer discretion without facing the legal consequences.

This Note argues that Section 215-a has failed to prohibit what it intended to outlaw. The statute is ineffective as a tool for curbing the erosion of police officer discretion, and does not prevent those who are in supervisory roles from encouraging enforcement action based upon illegitimate law enforcement goals. Using the NYPD's lawful obsession with quantitative performance measurement and this obsession's effects on criminal justice system stakeholders as a case study, this Note suggests that, both before and after Section 215-a's passage, constitutional vio-

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dent Lynch argued that the NYPD's stop-and-frisk related constitutional violations could be solved by "properly staff[ing] and fund[ing] the Police Department and end[ing] illegal quotas." *Id.*

14. See *Floyd v. City of New York*, 959 F. Supp. 2d 540, 602 (S.D.N.Y. 2013) ("Officers may be subject to warnings and more severe adverse consequences if they fail to achieve what their superiors perceive as appropriate enforcement activity numbers. . . . [A]n officer's failure to engage in enough proactive enforcement activities could result in . . . adverse employment action.") (internal quotation marks omitted).

15. See Kareem Fahim, *Police in Brooklyn Used Illegal Ticket Quotas*, *Arbitrator Decides*, N.Y. TIMES (Jan. 20, 2006), <http://www.nytimes.com/2006/01/20/nyregion/20police.html>. Some NYPD police officers continue to claim that explicit quotas exist in their commands. See, e.g., *Schoolcraft v. City of New York*, 10 CIV. 6005 RWS, 2012 WL 2161596 (S.D.N.Y. June 14, 2012); *Matthews v. City of New York*, 957 F. Supp. 2d 442 (S.D.N.Y. 2013); *Whitehead v. City of New York*, 897 F. Supp. 2d 136 (E.D.N.Y. 2012). For an illuminating account of the tribulations police officer whistleblowers face, see *generally* Brief for the Patrolmen's Benevolent Association of the City of New York, Inc. Amicus Curiae Supporting Plaintiff-Appellant Craig Matthews, *Matthews v. City of New York*, 488 F. App'x 532 (2d Cir. 2012) (No. 13-2915-cv), 2013 WL 6827049.

16. *Matarazzo v. Safir*, 689 N.Y.S.2d 494, 495 (N.Y. App. Div. 1999) ("The proceeding [filed by two police officers] should be dismissed for failure to allege the existence of a quota, as defined in Labor Law § 215-a(2), there being no indication of how many tickets petitioners had to write within what period of time.")

lations continued to exist, community–police relations continued to decline, and police officers in New York City had the same reduced discretion and the same management-proscribed inducements to take enforcement action not based on the legitimate goals of law enforcement.

While this Note focuses on New York State law and uses the NYPD as a case study to determine statutory effectiveness, the lessons learned in New York are applicable across the country. Nationwide, police departments are focused on quantitative performance measurement. As of 2004, about a third of police departments with over 100 employees use CompStat or its progeny.<sup>17</sup> The United States Department of Justice’s Community Oriented Policing Services has an entire section of its website dedicated to measuring police performance,<sup>18</sup> and the Commission on Accreditation for Law Enforcement Agencies regularly distributes an article entitled *Measuring the Performance of Law Enforcement Agencies* to police professionals.<sup>19</sup>

There is a strong argument that quantitative performance measurement in modern law enforcement agencies is necessary;<sup>20</sup> at minimum, it is beneficial.<sup>21</sup> This Note does not contest those conclusions. Rather, this Note explores what happens to police

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17. DAVID WEISBURD ET AL., POLICE FOUNDATION REPORTS, THE GROWTH OF COMPSTAT IN AMERICAN POLICING 6 (2004), available at <http://www.policefoundation.org/content/growth-compstat-american-policing>. CompStat is a quantitative police performance measurement program developed by the NYPD and is discussed further in Part V.A., *infra*.

18. *Measuring Police Performance — Why It Matters*, U.S. DEP’T OF JUSTICE, <http://www.cops.usdoj.gov/Default.asp?Item=2481> (last visited Feb. 25, 2015).

19. Edward R. Maguire, *Measuring the Performance of Law Enforcement Agencies*, COMMISSION ON ACCREDITATION FOR LAW ENFORCEMENT AGENCIES UPDATE MAG. (Sept. 2003), available at <http://www.calea.org/calea-update-magazine/issue-83/measuring-performance-law-enforcement-agencies-part-1of2-oart-articl>.

20. OFFICE OF COMMUNITY ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, LAW ENFORCEMENT TECH GUIDE FOR CREATING PERFORMANCE MEASURES THAT WORK 18 (2006), available at <http://www.search.org/files/pdf/PMTechGuide.pdf> (“Measuring performance, constantly assessing and monitoring critical performance metrics, and tailoring proactive response and follow-up are fundamental components of effective management in contemporary law enforcement — indeed, in any organization, public or private, government or industry, large or small.”).

21. ROBERT C. DAVIS ET AL., STRIVING FOR EXCELLENCE: A GUIDEBOOK FOR IMPLEMENTING STANDARDIZED PERFORMANCE MEASURES FOR LAW ENFORCEMENT AGENCIES, at iv (2008), available at [http://www.calea.org/sites/default/files/Rand-CALEAPerformMeasureStudyGuidebook%20\\_0.pdf](http://www.calea.org/sites/default/files/Rand-CALEAPerformMeasureStudyGuidebook%20_0.pdf) (“Police administrators need to measure performance in a variety of areas from use of force to community relations to racial equity in policing that never had been tracked in the past. Having good data on what the police do is important to answering probes from city administrators, civil rights groups, federal prosecutors, and civil lawsuits.”).

officers and other criminal justice system stakeholders when, instead of being used as a necessary management tool to help run a department, quantitative performance measurement runs the department. Hopefully, this Note will serve to help both police departments and legislatures fine-tune their tactics to eliminate improper law enforcement management policies while recognizing the benefits of quantitative performance measurement.

Part II of this Note explores police management and the reasons for the development of law enforcement quotas. Part III discusses quotas' negative effects. Part IV analyzes New York's anti-quota legislation and compares it to other states' anti-quota legislation. Part V describes the NYPD's legal management devices and their effects, using interviews with former NYPD uniformed members of the service. Part VI assesses the effectiveness of New York's anti-quota statute. Part VII offers solutions to fill the current gap in anti-quota legislation.

## II. POLICE MANAGEMENT AND QUOTAS

It is difficult to manage police officers. They have enormous independence<sup>22</sup> and largely operate in low-visibility<sup>23</sup> situations in far-flung neighborhoods with bad reputations. Police department supervisors must somehow ensure that their police officers are taking appropriate law enforcement action and following department procedures. At the most basic level, supervisors must confirm that their officers are doing any work at all. Supervisors can use quotas to solve these problems. Quotas can reduce police officer discretion and ensure that police officers follow their department's standard operating procedures. Quotas can also ensure that police officers work.

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22. See generally SAMUEL WALKER, TAMING THE SYSTEM pt. 2 (1993).

23. See generally Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 543 (1960) ("Police decisions not to invoke the criminal process largely determine the outer limits of law enforcement. . . . [These decisions] are generally of extremely low visibility and consequently are seldom the subject of review.").

## A. DISCRETION

Police officers do not take enforcement action for every witnessed criminal law violation.<sup>24</sup> They often exercise discretion when selecting perpetrators to arrest<sup>25</sup> and complainants to believe.<sup>26</sup> When a police officer responds to an incident and there is probable cause to arrest an individual, the officer can choose from among many possible outcomes.<sup>27</sup> The officer can “unfound” a legitimate criminal complaint, he can stop-and-frisk and then release the individual, he can arrest the individual and charge her with a lower-level offense, he can verbally counsel the individual, or he can fail to respond to the scene entirely.<sup>28</sup> Before the officer even arrives on the scene he can choose how quickly to respond, affecting the probability that the perpetrator will still be there upon the officer’s arrival.<sup>29</sup> Police officers can even choose to purposefully harass a known criminal in lieu of arrest.<sup>30</sup>

Police officers are able to make many informal discretionary decisions while executing their duties.<sup>31</sup> These discretionary decisions can be helpful — for instance, decisions to ignore petty crimes may benefit community–police relations. In fact, the criteria an officer uses when performing discretionary decision-making are often compatible with his police department’s standards.<sup>32</sup> In other circumstances, these largely hidden<sup>33</sup> discretionary decisions can be harmful.<sup>34</sup>

Police department supervisors can decrease an officer’s discretion by forcing the officer to take enforcement action in what would otherwise be discretionary situations. For example, the

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24. See generally KENNETH CULP DAVIS, POLICE DISCRETION 1 (1975) (“[Police Officers] make policy about what law to enforce, how much to enforce it, against whom, and on what occasions. Some law is almost or almost always enforced, some is never or almost never enforced, and some is sometimes enforced and sometimes not.”).

25. *Id.* at 3.

26. WALKER, *supra* note 22, at 24.

27. *Id.* at 23.

28. See *id.* at 23–24.

29. *Id.* at 24.

30. DAVIS, *supra* note 24, at 16–20.

31. WALKER, *supra* note 22, at 10.

32. JEROME SKOLNICK, JUSTICE WITHOUT TRIAL 74 (1966).

33. WALKER, *supra* note 22, at 10.

34. See, e.g., *People ex rel. Churchill v. Greene*, 93 N.Y.S. 720 (N.Y. App. Div. 1905) (“[S]pecifications . . . [against Defendant NYPD Captain alleged], in substance, that he had failed to perform his duty as such acting captain in the Fifteenth Precinct by neglecting and omitting to close and suppress, or making false reports of, upwards of 30 houses of prostitution . . . and had failed to detect violations of the liquor tax law at 11 places . . .”).

Oakland and New York City police departments decreased their officers' arrest discretion by changing their department-wide procedures regarding domestic violence arrests during the 1970s.<sup>35</sup> Prior to this change, police officers across the country largely handled domestic violence incidents based upon informal factors, such as willingness of the victim to sign the criminal complaint,<sup>36</sup> the relationship's level of intimacy,<sup>37</sup> or the arrest's value to the officer's career.<sup>38</sup> To change how its officers handled instances of domestic violence, the Oakland police department restricted its officers' ability to exercise discretion by declaring arrest in domestic violence situations "the most appropriate response," and the New York police department mandated arrest for domestic violence felonies, domestic violence in the presence of the officer, repeat domestic violence, and order of protection violations.<sup>39</sup> Researchers subsequently found that arrest was more successful in deterring repeat domestic violence than separating the parties.<sup>40</sup>

Quotas also restrict discretion. If an officer's quota is high relative to the level of crime accessible to the officer in his precinct, the officer will be forced to take enforcement action for all witnessed violations. If a police department subscribes to a particular criminological theory — broken windows theory,<sup>41</sup> for example — that police department's management could set quotas for certain offenses at a level sufficiently high to take away police

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35. WALKER, *supra* note 22, at 34.

36. DAVIS, *supra* note 24, at 7–12.

37. WALKER, *supra* note 22, at 34. The more intimate the relationship, the less likely an arrest was to be made. *Id.*

38. *Id.*

39. *Id.* at 34–35.

40. *Id.* at 35 (citing Lawrence A. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261–72 (1984)).

41. James Wilson and George Kelling summarized Broken Windows Theory in their 1982 article:

We suggest that "untended" behavior also leads to the breakdown of community controls. A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. . . . Such an area is vulnerable to criminal invasion.

James Q. Wilson & George L. Kelling, *Broken Windows*, THE ATLANTIC MONTHLY (Mar. 1982), [http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/?single\\_page=true](http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/?single_page=true).



officer discretion, ensuring that officers make enough quality-of-life arrests to put the theory into action.

Police department supervisors might also enact quotas in different ways, focusing, for example, only on parking tickets or mandating a certain number of arrests for a certain type of crime. This manipulation gives the supervisor a powerful tool to control the social and criminological policy employed by police officers on the streets, away from supervision. This control allows a department's high-level management to produce goals and policies, and to have those goals and policies carried out in a consistent manner down the chain of command, all the way to the street.<sup>42</sup>

## B. ENSURING POLICE OFFICERS WORK

Quotas are also an easy way to ensure police officers work. During a 1956 American Bar Foundation survey of the Milwaukee Police Department, a researcher spent his entire "ride-along" with on-duty police officers drinking in bars.<sup>43</sup> Deputy Chief Michael Marino established quotas in Brooklyn's Seventy-Fifth Precinct because he believed his officers were doing too little enforcement.<sup>44</sup> Captain Alex Perez allegedly established ticket quotas in Brooklyn's Eighty-First Precinct because some of his officers "don't want to do their job."<sup>45</sup>

If a police officer is held to a specific standard for enforcement activity, under threat of punishment for failure to meet that standard, the officer is incentivized to work. With a recommended police officer to supervisor ratio hovering between 8:1 and

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42. An example of what can happen when police officers and their supervisors differ on policing policy comes from Kenneth Culp Davis: A young man in Chicago fired three shots at a woman on the street and all three missed. When the police arrived and took the youth into custody, the victim refused to sign the criminal complaint. The officers subsequently released the youth, even though an officers' testimony could be used in court in place of a victim's signed criminal complaint. When asked, the department's police officers were almost unanimous in agreeing that the youth should have been released. Of the top-ranking officers in the department, the opinion was two-to-one that the youth should have been arrested. DAVIS, *supra* note 24, at 8–10.

43. WALKER, *supra* note 22, at 9.

44. Robert Gearty, *High-Ranking Cop Testifies He Set Monthly Quotas at Brooklyn Precinct*, N.Y. DAILY NEWS (Mar. 22, 2013), <http://www.nydailynews.com/new-york/nypd-deputy-chief-admits-quotas-stand-article-1.1296395>.

45. Al Baker & Ray Rivera, *Secret Tape Has Police Pressing Ticket Quotas*, N.Y. TIMES (Sept. 9, 2010), <http://www.nytimes.com/2010/09/10/nyregion/10quotas.html?pagewanted=all>.

10:1,<sup>46</sup> it is unrealistic to expect any supervisor to be able to watch all of his officers constantly throughout their tours of duty. When a quota is present, supervisors do not need to motivate their officers to help the community, they do not need to help them break the “us versus them” barrier,<sup>47</sup> and they do not need to explain to their officers why making a seemingly unnecessary arrest is beneficial. The quota takes care of the “how much” question without addressing “why” or “how.”

If a police officer is working, quantifying his contribution is also complicated for supervisors. The Police Executive Research Forum suggests measuring an officer’s performance with the following “valuable dimensions”: (1) reducing criminal victimization; (2) calling offenders to account (conviction and clearance rates); (3) reducing fear and enhancing personal safety; (4) guaranteeing safety in public spaces; (5) using financial resources fairly, efficiently, and effectively; (6) using force and authority fairly, efficiently, and effectively; and (7) satisfying customer demands and achieving legitimacy with those policed.<sup>48</sup> It would be nearly impossible for an overworked front-line supervisor<sup>49</sup> to take all of these dimensions into account when evaluating individual officers monthly, especially when considering nebulous factors such as “reducing fear” and “using financial resources fairly.” Establishing quotas, on the other hand, gives supervisors an easy way to judge their subordinates. It also gives police officers an easy way to prove their worthiness to supervisors.<sup>50</sup>

Quotas are a simple, low-impact way for a police department supervisor to manage his officers’ discretion and willingness to work. These seemingly positive managerial rewards, however, are not the only effect quotas have. Quotas can also have devas-

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46. FED. EMERGENCY MGMT. AGENCY, INTRODUCTION TO THE INCIDENT COMMAND SYSTEM 10 (2010), available at [http://training.fema.gov/EMIWeb/IS/IS100b/SM/ICS100b\\_StudentManual\\_Aug2010.pdf](http://training.fema.gov/EMIWeb/IS/IS100b/SM/ICS100b_StudentManual_Aug2010.pdf).

47. N.Y.C. COMM’N ON HUMAN RIGHTS, BREAKING THE US VERSUS THEM BARRIER, at ii (1993), available at [http://www.nyc.gov/html/cchr/downloads/pdf/publications/selected-reports/breaking\\_the\\_us\\_vs\\_them\\_barrier-a\\_report\\_on\\_police-community\\_relations\\_by\\_the\\_nyc\\_cchr.pdf](http://www.nyc.gov/html/cchr/downloads/pdf/publications/selected-reports/breaking_the_us_vs_them_barrier-a_report_on_police-community_relations_by_the_nyc_cchr.pdf).

48. MARK H. MOORE, DAVID THACHER, ANDREA DODGE & TOBIAS MOORE, POLICE EXECUTIVE RESEARCH FORUM, RECOGNIZING VALUE IN POLICING 132 (2002).

49. The New York City Police Department Sergeant’s Benevolent Association’s motto is “the toughest job in the world.” Ed Mullins, *From the President*, FRONTLINE MAG., June 2010, at 1, 1 (“An NYPD Sergeant — The Toughest Job In the World.”).

50. ARTHUR NIEDERHOFFER, BEHIND THE SHIELD 53 (1967) (“But in the precinct a patrolman is measured by his arrest record.”).

tating effects on criminal justice system stakeholders and the integrity of the criminal justice system itself.

### III. QUOTAS' NEGATIVE EFFECTS ON CRIMINAL JUSTICE SYSTEM STAKEHOLDERS

However effective quotas might be for managing police officers, they often motivate police officers to take enforcement action primarily for reasons unrelated to the traditional goals of law enforcement.<sup>51</sup> When these skewed motivations underlie enforcement action, there are several effects: (1) an increase in misconduct and corruption, (2) a detriment to community–police relations, and (3) a reduction in police officer discretion.

#### A. MISCONDUCT AND CORRUPTION

Constitutional requirements, such as requiring a police officer to have reasonable suspicion before forcibly stopping a citizen,<sup>52</sup> stand in the way of an officer's attempts to meet his quota.<sup>53</sup> Officers make arrests in low-visibility situations, away from their supervisors and the media.<sup>54</sup> And most of these arrests lead to the defendant entering a guilty plea on his first court date.<sup>55</sup> With such a small chance of constitutional critique or confrontation on the streets or in court, there is little reason for an officer to comply with constitutional requirements.<sup>56</sup> Meanwhile, the potential benefits of constitutional violations which increase an officer's enforcement numbers are significant — increased prestige inside the officer's precinct,<sup>57</sup> overtime pay, and the possibil-

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51. MOORE, *supra* note 48, at 132.

52. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968) (“We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous . . .”).

53. Albert T. Quick, *Attitudinal Aspects of Police Compliance With Procedural Due Process*, 6 AM. J. CRIM. L. 25, 31 (1978).

54. *See* Goldstein, *supra* note 23, at 543.

55. M. Chris Fabricant, *Rethinking Criminal Defense Clinics in “Zero-Tolerance” Policing Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE 351, 378 (2012).

56. Josh Bowers, *Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute*, 110 COLUM. L. REV. 1655, 1710 (2010) (“Conventionally, plea bargaining is criticized for insulating criminal charges from trial screens for legal sufficiency. . .”).

57. SKOLNICK, *supra* note 32, at 180–81.

ity of the officer's transfer to a more preferential unit.<sup>58</sup> Because the chance of an authority's negative response to a constitutional violation is low and the benefits of a violation are potentially substantial, the consequences of violating the Constitution, when measured against the benefits derived from taking unconstitutional quota-driven enforcement action, are inadequate to deter officers from engaging in Fourth and Fifth Amendment-related misconduct.

Quotas are also linked to police officer corruption.<sup>59</sup> Quotas have driven police officers to engage in acts of corruption such as false arrest<sup>60</sup> and falsifying documents.<sup>61</sup> Although corruption is perhaps less likely to occur than Fourth or Fifth Amendment violations, New York City history provides evidence that some officers will choose corruption when faced with quotas.<sup>62</sup>

## B. COMMUNITY-POLICE RELATIONS

Quotas impair community-police relations.<sup>63</sup> The community views quota-driven policing as excessive policing,<sup>64</sup> and this stig-

58. NIEDERHOFFER, *supra* note 50, at 72 ("A high arrest record . . . often establish[es] a policeman's reputation for initiative and efficiency. His supervisors recommend him for assignment to the detective division.")

59. Richard Emery, *The Even Sadder New York Police Saga*, N.Y. TIMES (Dec. 12, 1987), <http://www.nytimes.com/1987/12/12/opinion/the-even-sadder-new-york-police-saga.html>.

60. Todd S. Purdum, *Transit Scandal: Do Arrest Incentives Motivate the Police or Invite Abuse?*, N.Y. TIMES, Dec. 16, 1987, at B3 ("The four New York City transit police officers accused of making scores of false or improper arrests worked for a commander who gave the best jobs to his most 'active' officers, those who made the most arrests and issued the most summonses.")

61. See, e.g., *Gerwer v. Kelly*, No. 104101/2012, 2013 WL 4437199, at \*1 (N.Y. Sup. Ct. 2013) ("[Police officer] petitioner . . . record[ed] fake summonses to appear as though they were issued but would not harm innocent people . . .").

62. See, e.g., David Burnham, *Graft Paid to Police Here Said to Run Into Millions*, N.Y. TIMES (Apr. 25, 1970), <http://query.nytimes.com/mem/archive/pdf?res=F10814FF355517768FDDAC0A94DC405B808BF1D3> ("Several high-ranking police officials said in interviews that many narcotic detectives — because they are encouraged to meet a quota of four felony arrests a month and because so little money is available to pay informers — resort to stealing drugs from one addict and giving it to another to buy information.")

63. Comment, *Socio-Legal Aspects of Racially Motivated Police Misconduct*, 1971 DUKE L.J. 751, 763–64, available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2347&context=dlj> ("A closely related technique employed by some large city police bureaus is to assign a quota of stop and frisk reports to police patrolling high crime areas. These quotas result in a mandatory number of police-citizen encounters demeaning the character of the recipient and creating residual anti-police sentiments.")

64. Fabricant, *supra* note 55, at 386; see Sam Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19

ma attached to quota-driven arrests makes them seem illegitimate, arbitrary, and illegal to the community.<sup>65</sup> Even if an arrest is appropriate and firmly grounded in probable cause, the knowledge that quotas exist, and therefore that illegitimate arrests exist, casts an untrusting shadow onto all police activity.

Additionally, quotas encourage officers to make arrests in situations where an arrest would otherwise be unnecessary or ill-advised.<sup>66</sup> This can lead police officers to use force to arrest an angry citizen, when absent a quota the situation could be handled in a less aggressive way. When police officers are forced to handle minor criminal infractions with heavy-handedness, the community feels it is being mistreated; this feeling ultimately makes it more difficult for the police department to accomplish its legitimate goals.<sup>67</sup>

### C. LACK OF POLICE OFFICER DISCRETION

A quota, if too high, forces police officers to take enforcement action because they feel the quota requires it and does not allow police officers to target investigation-intensive, and therefore time-intensive, criminal violations.<sup>68</sup> This can be particularly harmful to narcotics investigators, as low-level narcotics dealers are as easily replaced as they are arrested.<sup>69</sup> While police officers

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GEO. MASON U. CIV. RTS. L.J. 479, 524 n.267 (2009) (“In 1968, the Kerner Commission studying the riots of the 1960s concluded that aggressive law enforcement tactics had an adverse effect on police–community relations.”).

65. Jose Yglesias, *Right on With the Young Lords*, N.Y. TIMES (June 7, 1970), <http://query.nytimes.com/mem/archive/pdf?res=F20E11F83555107A93C5A9178DD85F448785F9> (“A day earlier . . . two police made some obligatory arrests (Harlem residents believe they have a daily quota to fill) and the people on the streets . . . chased the police and freed the men arrested.”).

66. Bowers, *supra* note 56, at 1696–97.

67. James Q. Wilson, *The Police Administrator*, in POLICE IN AMERICA 107, 110 (Jerome H. Skolnick & Thomas C. Gray eds., 1975) (“Those people who are most likely to believe, right or wrongly, that they are being harassed . . . are increasing as a proportion of many cities’ population, and thus it will be more difficult than ever for the police administrator to carry out a crime prevention program based on aggressive patrol.”).

68. Burnham, *supra* note 4; John Born, *Time Efficiency Over Quotas: Program Measures and Balances Public Safety Productivity*, THE POLICE CHIEF, July 2012, at 34, 34–37 (“Quotas might cause officers to write citations for the sake of meeting an established number rather than focus on prevention through targeted enforcement directed at crash-causing violations.”).

69. See Daniel H. Cicchini, Note, *From Urbanization to Globalization: Using the Federal Money Laundering and Civil Asset Forfeiture Statutes in the Twenty-First Century Drug War*, 41 RUTGERS L.J. 741, 751 (2010) (“Incarceration of gang members doubled but gangs kept growing because street-dealers were replaceable since drug dealing in inner

assigned to routine patrol are generally not required to perform investigation-intensive duties, the quality of their arrests is affected nonetheless. If these officers have a quota that disables them from spending time performing preliminary investigations into serious offenses, they too will be encouraged to skip large, meaningful arrests for comparatively smaller, more quota-efficient ones.

Moreover, meeting a numerical goal does not necessarily have the intended effect on the targeted offense.<sup>70</sup> Quotas demand quantity, but are silent on quality.<sup>71</sup> When high quotas demand decreased police officer investment into arrest planning and investigation, more arrests may not answer the problem the arrests are attempting to solve. To address a trespassing condition in a city's housing projects, for example, the trespassers who are the easiest to arrest might not be the trespassers police officers should be arresting to truly address the problem at hand.<sup>72</sup>

The negative effects a quota can have on police officers, the community, and the criminal justice system are huge. Aware of these effects, many state legislatures passed laws prohibiting quotas. New York's attempt at restoring police officer discretion, building community-police relations, and combating police officer misconduct is detailed below.

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city neighborhoods is seen by many, who have little other means of earning income, as an economically powerful trade.”).

70. Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL'Y REV. 1, 42 (2007) (“In short, amassing high statistics are a poor proxy for the substantive policy aims of dampening undocumented migration — there are more complicated questions and issues at play.”).

71. *Id.* at 28 (“The result [of a focus on numbers in law enforcement] is policy that downplays the complexities and long-term character of effective crime control in favor of the immediate gratifications of a more expressive alternative . . . .”) (internal quotation marks omitted).

72. See generally *Davis v. City of New York*, 902 F. Supp. 2d 405 (S.D.N.Y. 2012); Amended Complaint at 1–5, *Davis v. City of New York*, 902 F. Supp. 2d 405 (S.D.N.Y. 2012) (No. 10 Civ. 0699), available at <http://www.naacpldf.org/document/davis-amended-complaint>. The plaintiffs in *Davis v. City of New York* reference allegations of widespread trespass arrests made by the NYPD without probable cause or without much more than the probable cause. *Id.* at 13–30. If these allegations are true, then the NYPD police officers involved addressed the legitimate and serious trespass condition in Housing Authority buildings by arresting people who, despite the presence of probable cause, were not actually contributing to the trespass condition.

#### IV. WHAT TO DO ABOUT QUOTAS? NEW YORK'S ANTI-QUOTA LEGISLATION

This Part explores the history and motivation for New York's anti-quota legislation, and compares New York's statute to similar statutes enacted in other states.

##### A. NEW YORK STATE LABOR LAW SECTION 215-A

New York State passed legislation banning traffic summons quotas in 1978 and amended the statute to include arrests and forcible stops in 2010.<sup>73</sup> Other states also have anti-quota laws.<sup>74</sup> California, for example, passed legislation banning summons and arrest quotas in 1978.<sup>75</sup> And in 2006, Maryland passed its legislation banning arrest and citation quotas.<sup>76</sup> New York and California passed their anti-quota legislation in response to criticism about quotas' negative effects.<sup>77</sup>

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73. N.Y. Bill Jacket, 2010 S.B. 2956, Ch. 460. The same bill came before the Legislature in 2003, and although it passed, Governor Pataki vetoed it. The Governor reasoned, "While I agree with the sponsors that law enforcement decisions should be based on an officer's evaluation of all facts and circumstances rather than on management-imposed quotas, I am constrained to disapprove the bill based on the serious objections raised by the Mayor of the City of New York and the Commissioner of the New York City Police Department. . . . [They] are concerned that the bill could be interpreted to prohibit law enforcement agencies from utilizing performance measures . . . in evaluating whether law enforcement officers are adequately performing their duties."

Veto 129, N.Y. Bill & Veto Jacket, 2003 A.B. 7476A. Governor Pataki pocket-vetoed the same bill in 2004. Veto 309, N.Y. Bill & Veto Jacket, 2004 S.B. 6478.

74. Other anti-quota statutes include: CONN. GEN. STAT. ANN. § 7-282d (West 2008), CONN. GEN. STAT. ANN. § 29-2b (West 2009), FLA. STAT. ANN. § 316.640(1)(a)(2) (West 2014), LA. REV. STAT. ANN. § 40:2401.1 (2014), N.C. GEN. STAT. § 20-187.3(a) (2013), NEB. REV. STAT. § 48-235 (R.S. Supp. 2014), N.J. STAT. ANN. § 40A:14-181.2 (West 2009), 71 PA. STAT. ANN. § 2001 (West 2012), R.I. GEN. LAWS § 31-27-25 (2010), and TEX. TRANSP. CODE ANN. § 720.002 (West 2011).

75. CAL. VEH. CODE § 41602 (West 2014).

76. MD. CODE ANN., PUB. SAFETY § 3-504 (West 2011).

77. See, e.g., Bill Analysis, S.B. 2069, 2001-02 Reg. Sess. (Ca. 2002) ("Quotas are wrong. They coerce employees to make judgements [sic] based on the pressure of needing to meet a number or face discipline. They prevent an employee from being able to exercise individual judgement [sic] based upon a ticket's merit, or lack thereof."); Al Baker, *An Anti-Quota Bill and a TV Officer's Arrest*, N.Y. TIMES CITY ROOM BLOG (July 22, 2010, 10:16 AM), <http://cityroom.blogs.nytimes.com/2010/07/22/an-anti-quota-bill-and-a-tv-officers-arrest/> ("Quotas are bad for the community because they take away an officer's discretion, which is so important to building a relationship with the neighborhood they patrol.") (quoting PBA President Patrick J. Lynch).

The New York State Legislature's justification for passing its anti-quota law in 2010 was clearly set forth in the statute's legislative history:

Tickets, summons[,] and arrests should be utilized by the police officer when he or she feels that the circumstances are appropriate, rather than in order to satisfy arbitrary quota requirements. To establish a quota for an officer to meet a certain number of summonses or arrests is a disservice to his or her trained and professional judgment, and unfair to those who receive such citations.<sup>78</sup>

The battle in Albany during the statute's passage was primarily between management and organized labor. The New York State Department of Labor and the New York City Patrolmen's Benevolent Association ("PBA") supported the bill.<sup>79</sup> The PBA was primarily concerned with (1) police officers feeling pressure to take unconstitutional enforcement action to meet their quota and (2) the risk of police department management using enforcement activity solely for quantitative measurement purposes.<sup>80</sup> Then-New York City Mayor Michael Bloomberg, the New York State Conference of Mayors and Municipal Officials, the Conference of Mayors, and the New York State Police opposed the bill.<sup>81</sup> They opposed the bill primarily because they feared it would make police officer management more difficult.<sup>82</sup> The bill passed through the Legislature with an overwhelming majority — 133 votes in favor and only four opposed in the Assembly, 61 in favor and none opposed in the Senate.<sup>83</sup>

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78. Introducer's Memorandum in Support, N.Y. Bill Jacket, 2010 S.B. 2956, Ch. 460.

79. *Id.*

80. *Id.* ("[The bill] will . . . support . . . police officers so that they will not feel compelled to increase the number of arrests and summons by taking actions inconsistent with the law. . . . This will reduce the pressure to conduct activities solely to increase volume in order to make a precinct's numbers look good.")

81. *Id.*

82. *Id.* Mayor Bloomberg's office argued that "[h]ere, by second-guessing the management of public safety agencies in their ability to measure arrest productivity and stop, question and frisk activity, the Legislature could cause fewer criminal arrests and summonses, more quality of life violations, more criminal activity, and actual injury to innocent victims." *Id.* The New York State Police argued, "flexible performance criteria established to monitor enforcement categories can be a valid indicator of an employee police officer's performance, or lack thereof." *Id.*

83. Floor Votes, N.Y. Bill Jacket, 2010 S.B. 2956, Ch. 460.



## B. ANTI-QUOTA STATUTE CONSTRUCTION

The New York State Legislature's quota definition is fairly common among anti-quota statutes. Maryland,<sup>84</sup> Connecticut,<sup>85</sup> and Pennsylvania<sup>86</sup> are among the states which define a quota similarly, as a policy under which a police officer is forced to perform a specific enforcement quantity over a specific time period. Not all states add a temporal requirement to their quota laws, however. Rhode Island defines a quota solely as management's requirement that an officer perform a specific amount of enforcement activity.<sup>87</sup> Florida prohibits, but does not define, quotas in its statute.<sup>88</sup>

Several other states, such as New Jersey<sup>89</sup> and California,<sup>90</sup> give their police officers additional protections, adding prohibitions against supervisors setting enforcement requirements for police officers based upon other officers' enforcement activity. New Jersey,<sup>91</sup> Maryland,<sup>92</sup> California,<sup>93</sup> and Arkansas<sup>94</sup> prohibit

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84. "[T]he mandating of a finite number of arrests made or citations issued that a law enforcement officer must meet in a specified time period." MD. CODE ANN., PUB. SAFETY § 3-504(a) (West 2011).

85. "[A] specified number of summonses for motor vehicle violations to be issued within a specified period of time." CONN. GEN. STAT. ANN. § 7-282d (West 2008).

86. "No political subdivision or agency . . . shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest . . . [that a police officer] issue a certain number of traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis." 71 PA. STAT. ANN. § 2001 (West 2012).

87. "[A]ny requirement regarding the number of arrests or investigative stops made, or summonses or citations issued, by an officer . . ." R.I. GEN. LAWS § 31-27-25 (2010).

88. FLA. STAT. ANN. § 316.640 (West 2014).

89. "Quota' means any requirement . . . regarding the proportion of the arrests made and citations issued by the law enforcement officer relative to the arrests made and citations issued by another law enforcement officer or group of officers." N.J. STAT. ANN. § 40A:14-181.1 (West 2009).

90. "[A]rrest quota' means any requirement regarding . . . the proportion of those arrests made . . . relative to the arrests made and citations issued by another peace officer or parking enforcement employee, or group of officers or employees." CAL. VEH. CODE § 41600 (West 2014).

91. "The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force." N.J. STAT. ANN. § 40A:14-181.2 (West 2009).

92. "A law enforcement agency may not . . . use the number of arrests made or citations issued by a law enforcement officer as the sole or primary criterion for promotion, demotion, dismissal, or transfer of the officer." MD. CODE ANN., PUB. SAFETY § 3-504(b)(2) (West 2011).

93. "No state or local agency . . . shall use the number of arrests or citations issued by a peace officer or parking enforcement employees as the sole criterion for promotion, de-

police department supervisors from using enforcement activity as the sole criterion in an officer's performance evaluation.

While New York's statute does not address managerial powers,<sup>95</sup> other statutes are cognizant and protective of a police department's need to use enforcement activity as one measure, among others, of an officer's performance. Maryland allows its police departments to "us[e] quantitative data for arrests, citations, and other law enforcement activities as management tools or in evaluating performance" and to "collect[ ], analyz[e], and apply[ ] information concerning the number of arrests and citations in order to ensure that a particular law enforcement officer or group of law enforcement officers does not violate an applicable legal obligation."<sup>96</sup> New Jersey allows arrest and citation numbers to be "considered in evaluating the overall performance of a law enforcement officer."<sup>97</sup> Even though management's right to use numerical data is not included in every statute, it appears to be inferred in some. The Commonwealth Court of Pennsylvania upheld management's right to use quantitative enforcement data in officer evaluations, even though Pennsylvania's statute is silent on the matter.<sup>98</sup>

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motion, dismissal, or the earning of any benefit provided by the agency." CAL. VEH. CODE § 41603 (West 2014).

94. "No state or local agency . . . may use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, or dismissal, or the earning of any benefit provided by the agency." ARK. CODE ANN. § 12-6-303 (1987 & Supp. 2013).

95. The New York state legislature considered addressing management rights in the 2010 version of the bill. The legislature considered adding the following:

Nothing provided in this section shall prohibit an employer or his duly authorized agent from transferring or taking any other job action against such employee who is a police officer for failure to satisfactorily perform his job assignment . . . except that the employment productivity of such police officer shall not be measured by such officer's failure to satisfactorily comply with the requirements of any quota . . . .

N.Y. Bill Jacket, 2010 S.B. 2956, Ch. 460.

96. MD. CODE ANN., PUB. SAFETY § 3-504(c) (West 2011).

97. N.J. STAT. ANN. § 40A:14-181.2 (West 2009).

98. Fraternal Order of Police v. Pennsylvania Labor Relations Bd., 722 A.2d 1118, 1122 (Pa. Commw. Ct. 1998); 71 PA. STAT. ANN. § 2001 (West 2012). Pennsylvania's statute also makes "tickets or citations issued in violation of this act . . . unenforceable, null and void." 71 PA. STAT. ANN. § 2002 (West 2012). See also, e.g., Commonwealth v. Greene, 32 Pa. D. & C.3d 48, 54 (Pa. Com. Pl. 1984).

V. IS NEW YORK'S STATUTE EFFECTIVE? MANAGEMENT  
POLICIES THAT ARE CURRENTLY LEGAL UNDER N.Y. LABOR  
LAW SECTION 215-A

The New York State Legislature placed its hopes in Section 215-a to ensure that law enforcement agencies would not be able to force their officers to take unnecessary enforcement action.<sup>99</sup> This Part first analyzes the NYPD's management policies after Section 215-a's creation, using NYPD internal documents, public records, and interviews. This Part then documents these policies' effects, serving as a case study to evaluate Section 215-a's effectiveness. The effects are separated into four groups: (1) misconduct and corruption; (2) community-police relations; (3) pressure from supervisors; and (4) police officer discretion.

A. THE NYPD'S MANAGEMENT POLICIES

The New York City Police Department's preoccupation with quantifying police officer enforcement activity started with the adoption of CompStat in 1994. CompStat is:

[A] data-saturated environment . . . [where c]rime analysts collect, analyze, and map crime statistics. . . . Top administrators use this information to quiz precinct commanders on the crime in their beats and to hold them responsible for solving the problems. Failure to provide satisfactory responses to these inquiries may lead to stern criticism or removal from command.<sup>100</sup>

CompStat was revolutionary for the NYPD.<sup>101</sup> Before the system was implemented, the NYPD did not know its own crime statis-

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99. B-201 Budget Report on Bills, N.Y. Bill Jacket, 2004 S.B. 6478 (“[Section 215-a] . . . seeks to eliminate pre-determined quota systems to encourage objectivity in issuing summonses and arrests.”).

100. James J. Willis, Stephen D. Mastrofski & David Weisburd, *Making Sense of COMPSTAT: A Theory-Based Analysis of Organizational Change in Three Police Departments*, 41 *LAW & SOC'Y REV.* 147, 148 (2007).

101. Eli B. Silverman & John A. Eterno, *Bratton's Return as New York's Police Commissioner*, N.Y. *TIMES*, Dec. 18, 2013, at A38 (“Mr. Bratton's 1994 introduction of CompStat — developing crime-fighting strategies based on statistical data — has rightly been hailed as a significant policing innovation.”).

tics in real time.<sup>102</sup> CompStat's philosophy was a scientific management approach to policing — an approach “based almost exclusively on counting . . . numbers.”<sup>103</sup> This quantitative analysis of policing has permeated the ranks of the NYPD and some say it defines police officers' and their supervisors' worth to the department.<sup>104</sup>

This focus on numbers, performance, and accountability creates an environment ripe for quota creation. But quotas, as defined in Section 215-a, are not the NYPD's policy.<sup>105</sup> Rather,

[T]he NYPD requires performance goals<sup>106</sup> [that] . . . are specifically expected to be set by a command's managers and to be met within appropriate legal standards, including stop activity. These performance goals are not necessarily numerical in character and are instead goals to be set and

102. John A. Eterno & Eli B. Silverman, *The New York City Police Department's Compstat: Dream or Nightmare?*, 8 INT'L J. POLICE SCI. & MGMT. 218, 220 (2006).

103. *Id.* at 227.

104. John Eterno, *Policing by the Numbers*, N.Y. TIMES, June 17, 2012, at A23 (“Eighteen years after the start of . . . [the] CompStat system of data-driven crime fighting, the Police . . . ha[ve] become a top-down, micromanaged bureaucracy in which precinct commanders are pitted against one another and officers are challenged to match or exceed what they did the previous year, month and week.”); Eterno, *supra* note 102, at 223 (“Captain Costello's primary complaint was . . . what he viewed as the numbingly relentless demand to top his own arrest or summons numbers. Compstat was perceived as a legalistic-style numbers game combined with leadership by fear.”).

105. “The Department has never had a policy of making or setting quotas for police officers. . . . The setting and enforcement of quotas sets unfair standards and could result in an officer taking enforcement action for the purpose of meeting a quota rather than because a violation of the law has occurred.” Memorandum from NYPD Chief of Patrol to Commanding Officers of all NYPD Patrol Boroughs (Oct. 22, 2010), *available at* <http://cityroom.blogs.nytimes.com/2011/01/13/a-quota-by-any-other-name/>. There have been convincing allegations that quotas existed in NYPD precincts post-2010. *See* Stinson v. City of New York, 282 F.R.D. 360, 366 (S.D.N.Y. 2012); Schoolcraft v. City of New York, 10 CIV. 6005 RWS, 2011 WL 1758635 (S.D.N.Y. May 6, 2011); Michael Powell, *No Room for Dissent in a Police Department Consumed by the Numbers*, N.Y. TIMES, May 7, 2012, at A22; Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy's 81st Precinct*, THE VILLAGE VOICE (May 4, 2010), <http://www.villagevoice.com/2010-05-04/news/the-nypd-tapes-inside-bed-stuy-s-81st-precinct/>. However, there is little evidence that the NYPD employs quotas, as defined in New York's statute, as a department-wide policy.

106. Law enforcement is not the first venue where parties disputed whether a numerical system was a “goal” or a “quota.” *See, e.g.,* Regents of Univ. of California v. Bakke, 438 U.S. 265, 288 (1978) (“[T]he parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a ‘goal’ of minority representation in the Medical School. Respondent, echoing the courts below, labels it a racial quota.”).

achieved in relation to current crime conditions in an officer's command.<sup>107</sup>

NYPD supervisors have to ensure that their police officers are working hard without setting quotas. Supervisors "can and must set performance goals,"<sup>108</sup> but they cannot discipline their officers if they fail to take a certain number of enforcement actions. Supervisors have the difficult task of putting pressure on their officers to be "proactive"<sup>109</sup> and to "impact . . . the identified issues"<sup>110</sup> in their command, without crossing over the line into statutorily prohibited actions.

To achieve these goals, the NYPD authorizes supervisors to "set performance goals" to "maximize employee performance" and "gauge[] an officer's activity level."<sup>111</sup> In daily practice, the NYPD's official policy allows supervisors to: (1) count police officers' enforcement encounters; (2) compare those encounters to other similarly situated officers; (3) define crime conditions that officers should be observing and correcting; (4) direct officers to address specific crime conditions or problems; (5) monitor officers' attempts to address those specific conditions; and (6) point out and direct officers to take enforcement action.<sup>112</sup> If crime levels in a command are high enough, nothing in the NYPD's policy prevents a supervisor from continually demanding more activity from an officer to "maximize employee performance."

As of 2011, the NYPD provides its police officers with monthly intelligence reports that detail "current crime conditions, crime patterns and trends, quality of life and traffic conditions."<sup>113</sup> Officers must detail all enforcement activity used to address these conditions on a monthly activity report.<sup>114</sup> If an officer's performance, as detailed on his monthly activity report, "fails to address . . . [these] conditions," his supervisors can "take appropriate steps to improve the police officer's performance."<sup>115</sup> Supervi-

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107. *Floyd v. City of New York*, 283 F.R.D. 153, 164 (S.D.N.Y. 2012).

108. Operations Order No. 52 from Police Commissioner, N.Y.C. Police Dep't, (Oct. 17, 2011), *available at* [http://www.scribd.com/doc/70443250/NYPD-Operations-Order?secret\\_password=2fu6ylqv53aljzxucnot](http://www.scribd.com/doc/70443250/NYPD-Operations-Order?secret_password=2fu6ylqv53aljzxucnot).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

sors can improve police officers' performance by "assigning the police officer to work with a supervisor . . . [who] effectively addresses sector conditions through community interaction, the issuance of summons, . . . arrests, . . . and referring the police officer to Performance Enhancement Training."<sup>116</sup>

Officially, the above-mentioned performance goals and monthly activity sheets are supposed to allow NYPD supervisors to ensure that their police officers are addressing their command's conditions without forcing those police officers to take enforcement activity for reasons outside of law enforcement's legitimate goals. This does not appear to be the reality for NYPD police officers.

To determine the realities of policing under the NYPD's management policies between CompStat's adoption in the mid-1990's and 2013, the author interviewed three recently retired or separated NYPD uniformed members of the service ("UMOS"): one retired detective ("Retired Detective"), one retired police officer ("Retired Police Officer"), and one ex-police officer ("Ex-Police Officer"). The three interviewees worked at various times in their careers in Brooklyn, the Bronx, and Manhattan. The interviewees' experiences span from the mid-1990s to 2013. To protect these former UMOS' identities, no identifying information is used and they are referred to only by their descriptive titles.

NYPD police officers face a management system where, as Retired Detective put it, "stories" are being replaced with "numbers."<sup>117</sup> Before CompStat's inception, a police officer was judged by the stories his peers told about him concerning the quality of his arrests, the dangers he faced, or his courtroom achievements.<sup>118</sup> Post-CompStat, police officers are judged by the "numbers" they bring in — the quantity of their enforcement activity.<sup>119</sup> NYPD supervisors value "numbers, period. . . . [Supervisors] don't care about anything [else]. [Supervisors ask,] what have you done for me lately?"<sup>120</sup> If a police officer's enforcement activity is too low, his supervisors can put pressure on the officer

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116. *Id.*

117. Telephone Interview with Retired NYPD Detective (Feb. 9, 2014).

118. *Id.*

119. *Id.* ("It used to be, 'what's his story?' Now it's, 'what are his numbers?' That's all they care about. CompStat was great, but now they [have] started putting numbers on everything.")

120. *Id.*

by denying preferential assignments or days off or transferring the officer to a different shift.<sup>121</sup>

The post-CompStat NYPD's focus is on numbers. Retired Detective explained that, "the focus [pre-1994] was on good felony arrests. Nowadays, it's just numbers, numbers, numbers."<sup>122</sup> This focus on the quantification of enforcement activity is more than just an aggressive management tactic; it appears to be an obsession that is tied directly to CompStat. Retired Detective characterized this obsession as "start[ing] at the top," explaining that "the [Commanding Officer] goes down to CompStat; he wants [numbers] to look good. The Lieutenant wants [numbers] because he wants to look good at the platoon meeting. The Sergeant wants [numbers] because he wants to look good, [he] wants a better assignment in the command."<sup>123</sup>

While CompStat was revolutionary for the NYPD, its unintended consequence appears to be a department-wide fixation on quantifying enforcement activity. As Ex-Police Officer put it, "[w]hatever [police officers] are doing is not enough. [Supervisors] ask for more and more; too much is not enough."<sup>124</sup> The NYPD's fixation with numbers has, in turn, resulted in several negative effects.

## B. NEGATIVE EFFECTS OF THE NYPD'S COMPSTAT-DRIVEN MANAGEMENT POLICIES

The negative effects of the NYPD's CompStat-driven management policies are detailed below in four groups: (1) misconduct and corruption; (2) community-police relations; (3) pressure from supervisors; and (4) police officer discretion. This Part presents circumstantial evidence that the NYPD's legal management policies have the same negative effects as traditional quotas and that Section 215-a has failed to accomplish its goals.

### 1. *Increased Misconduct by Police Officers*

In *Floyd v. City of New York*, Judge Shira A. Scheindlin found that between 2004 and 2012, "[t]he NYPD's practice of making

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121. *Id.*

122. *Id.*

123. *Id.*

124. Telephone Interview with Ex-NYPD Police Officer (Feb. 16, 2014).

stops that lack individualized reasonable suspicion has been so pervasive and persistent as to become not only a part of the NYPD's standard operating procedure, but a fact of daily life in some New York City neighborhoods."<sup>125</sup> Firsthand accounts from Retired Detective also paint a picture in which constitutional concerns are overshadowed by a fixation with numbers inside the NYPD. Regarding forcible stops, Retired Detective remarked:

When I came on, you never did a 250<sup>126</sup> unless you made a gun arrest. Then, [250 documentation] went from guns to [all] frisks [performed on patrol]. But the cops back then just didn't have time to do them all. There were so many shootings. Then it went to, every time you question someone, you have to do [a 250]. Then it went to, anytime you talk to anyone, you need to fill them out. They just wanted numbers.<sup>127</sup>

The presence of reasonable suspicion was clearly not an issue Retired Detective's supervisors wanted their subordinates to consider when documenting *Terry*<sup>128</sup> stops — any police officer-to-community interaction would suffice. Retired Detective also expressed concerns about the pressure supervisors put on young police officers and that pressure's effect on constitutional policing:

I think there's confusion [among rookies] about [whether probable cause to arrest exists or not]. I just think some of them just don't know. They don't know you're not allowed to lock [a defendant] up [for trespass when you stop the de-

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125. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 660 (S.D.N.Y. 2013).

126. "250" is NYPD slang for a stop-and-frisk form, officially known as a UF-250. The form is used to record forcible stop demographic and personally identifying information, as well as the officer's reason for the stop. *Floyd v. City of New York*, 861 F. Supp. 2d 274, 278, 280 (S.D.N.Y. 2012). Although forms to record forcible stops have existed in the NYPD since at least the early 1990s, see Interview with Retired Detective, *supra* note 117, they were not the subject of public attention until after the Amadou Diallo shooting in 1999. Steven Zeidman, *Whither the Criminal Court: Confronting Stops-and-Frisks*, 76 ALB. L. REV. 1187, 1195 (2013). After the shooting, the New York City Council required the NYPD to submit its completed UF-250 form data to the Council on a quarterly basis. *Id.* at 1200.

127. Interview with Retired Detective, *supra* note 117.

128. See *Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . he is entitled . . . to conduct a carefully limited search of the outer clothing of such persons.").



fendant] outside [the building]. [The officers make the arrest because] Sergeant So-and-So said you can.<sup>129</sup>

Retired Detective's concerns that the NYPD's focus on numbers overshadows constitutional concerns were echoed by Retired Police Officer:

[The constant pressure to bring in more activity] screws with the cops, they[re] looking for [activity], but it may not be there. So they might have to create something. [Police officers are] ordered by [their] superiors to bring in . . . numbers. . . . Sometimes the number is not there, but [supervisors] don't care. That's when we get problems[, such as] . . . cops get[ting] in trouble when they create something that's not there. The cops get brainwashed, they feel they're right, but they're not. The cops go in your pockets, for no reason; you have no reason to go into a pocket. If I just stopped you because you look suspicious, that's wrong. [Police officers] are pressured, and sometimes they go above the law. It's the supervisors who pressure them. That's where these cops get in trouble. . . .<sup>130</sup>

The City of New York is also handling several lawsuits where plaintiffs allege police misconduct through widespread constitutional violations. The plaintiffs in *Stinson v. City of New York* allege that NYPD police officers routinely issue criminal court summonses absent probable cause.<sup>131</sup> The plaintiffs in *Davis v. City of New York* allege that the NYPD and the New York City Housing Authority ("NYCHA") have engaged in enforcement activity that "[has] resulted in a widespread pattern of unlawful stops, questioning, frisks, searches, and arrests of NYCHA residents and their invited guests."<sup>132</sup> Similarly, in *Ligon v. City of New York*, plaintiffs allege that the NYPD has a widespread practice of making unlawful stops on suspicion of trespass outside

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129. Interview with Retired Detective, *supra* note 117.

130. Telephone Interview with Retired NYPD Police Officer (Feb. 16, 2014).

131. *Stinson v. City of New York*, 282 F.R.D. 360, 363 (S.D.N.Y. 2012).

132. *Davis v. City of New York*, 902 F. Supp. 2d 405, 408 (S.D.N.Y. 2012).

buildings in the Bronx that are enrolled in the Trespass Affidavit Program.<sup>133</sup>

## 2. *Harm to Community–Police Relations*

Community–police relations appear to be strained in many parts of New York City. Many young men, usually black or Latino, and usually living in the City’s high-crime areas, do not trust police officers.<sup>134</sup> Some citizens in the City’s older generations mistrust the police as well.<sup>135</sup> And a sobering poll performed by The New York Times found that fifty-nine percent of New Yorkers think the police favor white over black citizens.<sup>136</sup>

Retired Detective’s observations confirm this community distrust:

The 250s [today] are [done] on people who you don’t want stopped. [Rookies will] stop the kid that is coming into the building, [but] he’s not . . . [a] drug dealer. If [the NYPD]

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133. *Ligon v. City of New York*, 925 F. Supp. 2d 478, 484–85 (S.D.N.Y. 2013). The Trespass Affidavit Program allows police officers to patrol inside and around thousands of private residential apartment buildings throughout New York City. *Id.*

134. Nicholas K. Peart, Editorial, *Why Is the N.Y.P.D. After Me?*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html> (“Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer’s gun at my head. For a black man in his 20s like me, it’s just a fact of life in New York.”); Faiza Patel, Editorial, *An Assurance of Constitutional Safeguards*, N.Y. TIMES (July 23, 2013), <http://www.nytimes.com/roomfordebate/2013/04/09/an-inspector-general-for-the-police/an-inspector-general-would-assure-constitutional-safeguards> (“New York City has become safer over the last decade. Yet relations between the police and minority communities have become ever more strained.”). The NYPD’s stop-and-frisk policies have been an especially well documented source of decreasing community–police relations. *See, e.g.*, JENNIFER FRATELLO ET AL., *COMING OF AGE WITH STOP AND FRISK: EXPERIENCES, SELF-PERCEPTIONS, AND PUBLIC SAFETY IMPLICATIONS 2* (2013), available at <http://www.vera.org/sites/default/files/resources/downloads/stop-and-frisk-summary-report-v2.pdf> (“For many young people, stops are a familiar and frequent experience and also perceived to be unjustified and unfair. . . . Young people who have been stopped more often in the past are less willing to report crimes, even when they themselves are the victims.”).

135. Ray Rivera, Al Baker & Janet Roberts, *A Few Blocks, 4 Years, 52,000 Police Stops*, N.Y. TIMES (July 11, 2010), <http://www.nytimes.com/2010/07/12/nyregion/12frisk.html?pagewanted=all> (“Greg Jackson, 58 . . . said the rising tide of stops had left many who wanted a strong police presence here feeling conflicted. ‘Of course I [welcome the police]. Ninety-nine percent of the people in the area do. But they also fear the police because you can get stopped at any time.’”).

136. Michael M. Grynbaum & Marjorie Connelly, *Majority in City See Police as Favoring Whites, Poll Finds*, N.Y. TIMES (Aug. 20, 2012), <http://www.nytimes.com/2012/08/21/nyregion/64-of-new-yorkers-in-poll-say-police-favor-whites.html>.

wasn't a numbers game, [the rookies would acknowledge] that [the] kid is clean, [so] what [are they] going to stop him for? The mentality of the rookies [now] is, I'm going to get [my supervisors] off my tail by giving them a number. All these good kids [in the community] are getting stopped instead of the bad guys. The trust is gone. [Members of] the [community] don't talk to the cops. They don't want to go near them. The parents who would normally be cop-friendly, and talk to you and give you information, are now not because they have a negative perception [of the police]. Now you have good people, the ones you come to, to get information about [crimes committed] in the building — but now her son got stopped last week, and it was a bad interaction. The cop got annoyed, and now Mrs. Flores ain't giving you shit. Normally you could find out what happened with the stabbing because people trust you, but that trust is gone. There was more trust in the cops in 1992. The rookies [today] are not brought out to meet the storeowners [in the community]. They [are] never told to go play ball [with local kids] in the projects. [When I was a rookie,] they wanted us to play basketball with the kids. Today if [police officers] did that, they would get [disciplined].<sup>137</sup>

In 2010, the NYPD issued disciplinary charges against two Bronx police officers for “throwing a football to a seven-year-old.”<sup>138</sup> The officers report tossing the football because “[t]here's a lot of negativity toward police . . . I want kids in the community to look at us in a positive way.”<sup>139</sup> The officers' commanding officer allegedly told the officers, “[w]hat are you doing? Don't you realize you're on overtime?”<sup>140</sup>

Retired Police Officer confirms Retired Detective's observations about community–police relations:

Everything now is making arrests. [The NYPD] got away from community policing. Talking to the people. They got

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137. Interview with Retired Detective, *supra* note 117.

138. Joe Kemp, *Two NYPD Cops Face April Disciplinary Hearing For Playing Football With 7-Year-Old While On Duty*, N.Y. DAILY NEWS (Feb. 21, 2012), <http://www.nydailynews.com/news/crime/nypd-cops-face-april-disciplinary-hearing-playing-football-7-year-old-duty-article-1.1026577>.

139. *Id.* (internal quotation marks omitted).

140. *Id.* (internal quotation marks omitted).

away from that. They don't care what your problem is, all they want is arrests. . . . You don't see the cops how they used to be. You had [the same] cop on the [same] beat, but now you have different [police officers] every day. That is no good. [Members of the community] don't know what's going on. When I was a community officer I knew everybody. I knew everybody. I knew who the bad and good people are. And that's from a person who stays in the same place and learns about the community. . . . Your ears is the community. The community tells you what's going on. If [a police officer] worked there every day they would tell you. There's no community relationship [now]. We used to have a good relationship with all the community. We got no relationship right now.<sup>141</sup>

Ex-Police Officer observed that the constant pressure from NYPD management to take enforcement action “cause[s] bad blood between [police officers] and the community. [Members of] the [community] don't want to be bothered by [police officers] and they're not going to want to help [police officers]. They're already tired and frustrated.”<sup>142</sup>

### 3. *Increased Pressure on Police Officers*

The NYPD's enforcement policies put a tremendous amount of pressure on its police officers to take enforcement action.

In the beginning, [the NYPD's focus on numbers] was fine. But you get to a certain point that . . . you've done everything that you possibly can, [crime is down as low as it can go]. But [your supervisors] say, “we want more.” But you can't get that number down to zero. . . . [The NYPD] just put[s rookies] in a tough position. These new guys come out, all [their supervisors] want are numbers, numbers, numbers.<sup>143</sup>

Ex-Police Officer explained that this pressure is constant: “[i]f it's not one thing, it's another. [My supervisors] came down on me

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141. Interview with Retired NYPD Police Officer, *supra* note 130.

142. Interview with Ex-NYPD Police Officer, *supra* note 124.

143. Interview with Retired Detective, *supra* note 117.

one month. . . . [N]o matter what they're never happy. Pressure no matter what. It's unwanted pressure; it stresses [cops] out."<sup>144</sup>

Ex-Police Officer stated that this constant pressure effectively negates police officer arrest and summons discretion — “[your supervisors] tell you to use discretion, but the reality is that you don't have [discretion] because you need to get numbers. There is that pressure.”<sup>145</sup>

In her *Floyd v. City of New York* decision, Judge Shira A. Scheindlin commented on the pressures NYPD police officers endure.<sup>146</sup> Among other consequences, “[o]fficers may be subject to warnings and more severe adverse consequences if they fail to achieve what their superiors perceive as appropriate enforcement activity numbers. . . . [A]n officer's failure to engage in enough proactive enforcement activities could result in . . . adverse employment action.”<sup>147</sup>

#### a. *Creating a Market for Enforcement Activity*

The pressure the NYPD's obsession with numbers puts on police officers has turned precincts into capital markets. Because the NYPD places so much value on stop-and-frisk forms, summonses, and arrests, police officers have the opportunity to turn that enforcement activity into locally traded currency.<sup>148</sup> Because enforcement activity is valued in precincts, it can be used to purchase other things of value. From the mundane, such as a tour on patrol driving a police car with a working defroster or “lost time” to go home early, to the significant, such as an assignment

144. Interview with Ex-NYPD Police Officer, *supra* note 124.

145. *Id.*

146. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 602 (S.D.N.Y. 2013) (“The foregoing evidence shows that officers are routinely subjected to significant pressure to increase their stop numbers, without corresponding pressure to ensure that stops are constitutionally justified.”).

147. *Id.* (internal quotation marks omitted).

148. Jerome Skolnick wrote about the dangers of detective squads commodifying what their supervisors valued in the 1960s:

There is a more serious problem about clearance rates as a control mechanism. If clearances are valued, then criminality becomes a commodity for exchange. Thus, it is possible that in some cases defendants who confess to large numbers of crimes [and are therefore more valuable] will tend to be shown more leniency in prosecution than those who are in fact less culpable.

JEROME SKOLNICK, *JUSTICE WITHOUT TRIAL* 176 (1966) (explaining that multiple offenders who could boost a detective's clearance rate with multiple clearances would be offered more lenient plea bargains than single-event offenders where detectives could only receive one clearance).

to a plainclothes “anti-crime” unit or a day off to attend your daughter’s birthday party.

Retired Detective explained that, “[m]ainly on the [overnight shift . . . we were concerned about] the money. We had a lot of guys that were working second and third jobs. If you wanted to get approval for a second job, they asked you what your activity looked like.”<sup>149</sup> In this example, police officers were using enforcement activity as equity to buy department approval for their second jobs.

Enforcement activity is also traded with supervisors for overtime. Retired Detective further explained that, “[s]ome [overtime] was ordered, but you could [also] put your name on the list [to request overtime]. Verticals<sup>150</sup> were hot back then. Some [stop-and-frisk forms] and summonses. If you were active, the Captain would pick you for the overtime.”<sup>151</sup> Ex-Police Officer also noted that making arrests enables a police officer to purchase a sense of control over his working environment from his supervisor, remarking that “arrests [are used] . . . if you want to go . . . to a [specialized] unit [with certain days off]. Activity gets you days off, lost time, . . . a tour change; [it helps you] if you want to work with someone, [or] if you don’t want to work with someone.”<sup>152</sup>

Transactions involving enforcement activity are also analogous to the issuance of debt. For example, if a police officer is assigned to a long, cold night on foot patrol, and wants to utilize a police car to stay warm, he can issue debt to his supervisor in the way of promises to bring in stop-and-frisk forms, summonses, or arrests by the end of tour, in exchange for the use of the police car.

When enforcement activity is used as currency, it creates a danger that police officers will take enforcement action for their own personal benefit rather than for one of law enforcement’s legitimate goals. And at its worst, there is the danger that police officers will perform illegal enforcement activity because of that activity’s self-enriching potential.

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149. Interview with Retired Detective, *supra* note 117.

150. A “vertical” is a routine NYPD patrol procedure where NYPD police officers visit the roof, every hallway, and the stairwells of New York City Housing Authority buildings to prevent crime.

151. Interview with Retired Detective, *supra* note 117.

152. Interview with Ex-NYPD Police Officer, *supra* note 124.

#### 4. *Decreased Police Officer Discretion*

NYPD police officers are encouraged to focus more on quantity than on quality, and this focus decreases NYPD police officer discretion. To determine the presence of decreased police officer discretion, this Part analyzes certain indicators of enforcement quality. As discretion goes down, quality should decrease while enforcement volume increases.

When police officers feel constant pressure to perform more activity (i.e., focus on quantity), they target easier-to-obtain, less severe, and therefore more efficient enforcement activity over harder-to-obtain, more severe, and therefore more time-intensive activity.<sup>153</sup> And when legitimate, easy-to-obtain enforcement is not available, officers might feel the need to engage in illegitimate activity not grounded in probable cause or reasonable suspicion.<sup>154</sup> Both of these scenarios — being forced to choose less severe offenses to enforce over more severe and being forced to produce illegitimate enforcement activity when legitimate activity is not available — are instances of low-quality enforcement activity. This Part surveys the available evidence of such low-quality enforcement activity using New York City arrest data from between 2003 and 2013 (the most recent year arrest data was available at the time of publication) from The New York City Criminal Justice Agency.

While it is difficult to show conclusively, there is circumstantial evidence that the NYPD's arrest quality has been declining since 2003 and continued to decline after Section 215-a's 2010 passage, while enforcement quantity has increased substantially since 2003 and remained high post-2010. Citywide, arrests increased 134% between 2003 and 2013.<sup>155</sup> During this same peri-

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153. Rayman, *supra* note 105, at 3 (“From [Adrian Schoolcraft’s] tapes, it’s not hard to imagine an officer desperately driving to the precinct, looking for someone smoking pot on a stoop or double-parking to fill some gap in their productivity.”).

154. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 597–98 (S.D.N.Y. 2013) (“[H]ow hard is a 250. I’m not saying make it up but you can always articulate robbery, burglary, whatever the case may be. That’s paperwork . . . it’s still a number. It keeps the hounds off, I’ve been saying that for months.”) (quoting an NYPD Sergeant speaking to his police officers).

155. In 2003, 139,345 arrests were made in New York City. N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2003, at 11 (2005), available at <http://www.nycja.org/library.php>. The arrest rate increased sharply post-2003, hitting its peak in 2009 with 349,594 arrests. N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2009, at 11 (2010), available at <http://www.nycja.org/library.php>. Between 2009 and 2013, the arrest rate plateaued, decreasing only 6.6% to 326,353 by 2013. N.Y.C. CRIMINAL

od, each borough witnessed a similar increase in total number of arrests.<sup>156</sup> As arrests increased, New York City's district attorneys' offices dismissed higher proportions of those arrests at arraignment. Citywide, in 2003, 17% of arrests were dismissed or adjourned in contemplation of dismissal ("ACD") at arraignment.<sup>157</sup> In 2013, this rate was 20%, up from 18% in 2009.<sup>158</sup> There was a similar pattern in four of the five boroughs during the same time period<sup>159</sup>: Manhattan's dismissal/ACD rate at arraignment increased from 12% to 17%, Brooklyn's rate went from 25% to 25.6%, the Bronx's rate went from 7% to 10%, and Queens' rate went from 25.7% to 27%.<sup>160</sup>

Dismissal/ACD rate at arraignment is an imperfect measurement for arrest quality. More arrests could be dismissed, for example, because more complainants refused to cooperate or because the district attorneys' offices heightened their standards for prosecution. However, there is a relationship between declining to prosecute and an arrest's level of evidence, constitutionality, and the need for further investigation.<sup>161</sup> If NYPD police officers

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JUSTICE AGENCY, ANNUAL REPORT 2013, at 12 (2014), available at <http://www.nycja.org/library.php>. NYPD staffing did not increase significantly between 2003 and 2013. See Philip Messing, *NYPD Faces Loss of 3,000 Cops Hired Under Safe City, Safe Streets Program*, N.Y. POST (Aug. 26, 2013), <http://nypost.com/2013/08/26/nypd-faces-loss-of-3000-cops-hired-under-safe-city-safe-streets-program/> ("The department's strength topped out in 2001 with 40,800 cops.")

156. Compare ANNUAL REPORT 2003, *supra* note 155, at 11, with ANNUAL REPORT 2009, *supra* note 155, at 11, and ANNUAL REPORT 2013 *supra* note 155, at 12.

157. ANNUAL REPORT 2003, *supra* note 155, at 16. An ACD is a procedure under which the charges against defendant can be adjourned for up to six months with the imposition of terms and conditions of conduct upon the defendant. If the defendant does not violate these terms, the petition will be dismissed. John P. Woods, *New York's Juvenile Offender Law: An Overview and Analysis*, 9 FORDHAM URB. L.J. 1, 11 n.68 (1980); 7 N.Y. PRACTICE, PRETRIAL CRIMINAL PROCEDURE § 3:29 (2d ed. 2014).

158. ANNUAL REPORT 2013, *supra* note 155, at 17; ANNUAL REPORT 2009, *supra* note 155, at 16.

159. Compare ANNUAL REPORT 2013, *supra* note 155, at 18, with ANNUAL REPORT 2003, *supra* note 155, at 17.

160. Compare ANNUAL REPORT 2013, *supra* note 155, at 18, with ANNUAL REPORT 2003, *supra* note 155, at 17.

161. New York City-borough assistant district attorneys can decline to prosecute arrests for lack of evidence or unconstitutionality, among other reasons. N.Y. STATE OFFICE OF THE ATTORNEY GEN., A REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT'S STOP-AND-FRISK PRACTICES 18 (Nov. 2013), available at [http://www.ag.ny.gov/pdfs/OAG\\_REPORT\\_ON\\_SQF\\_PRACTICES\\_NOV\\_2013.pdf](http://www.ag.ny.gov/pdfs/OAG_REPORT_ON_SQF_PRACTICES_NOV_2013.pdf) ("[T]he district attorneys noted that they routinely declined to prosecute cases in which the underlying stop was unconstitutional. . . . Manhattan District Attorney Cyrus Vance, Jr., stated that, 'if the stop is unconstitutional, we may have to, and we have dismissed cases, and we do every day.'"); N.Y. COUNTY DIST. ATTORNEY'S OFFICE, CRIMINAL JUSTICE IN NEW YORK COUNTY (n.d.), available at <http://manhattanda.org/sites/default/files/>



are making more arrests that are either unconstitutional or lack sufficient evidence or investigation, this is circumstantial evidence that police officers are being forced to make arrests against their best judgment. In 2003, 24,986 arrests were dismissed or received an ACD at arraignment.<sup>162</sup> By 2009, one year before Section 215-a's passage, that number increased to 68,948.<sup>163</sup> In 2011, one year after Section 215-a's passage, that number continued to increase again to 72,064; and in 2013, three years after Section 215-a's passage, that number decreased slightly to 69,996, but remained above pre-2010 levels.<sup>164</sup> Arrest volume increased between 2003 and 2010 and remained high post-2010; simultaneously, indicators of arrest quality decreased, and continued to decrease post-2010. This evidence of increased quantity and decreased quality is circumstantial evidence of decreased police officer discretion in the NYPD continuing after Section 215-a's passage.

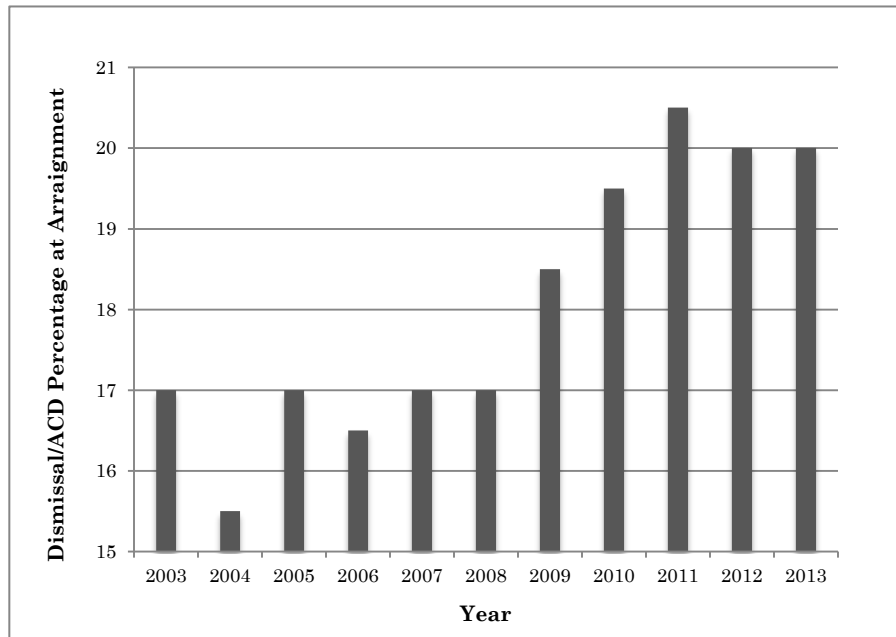
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Criminal%20Justice%20in%20NYC-English.pdf (last visited Apr. 1, 2015) ("In some cases, the prosecutor may decide not to proceed against a defendant, in which case the prosecutor declines to prosecute the case. A prosecutor may decline to prosecute for a number of reasons, for example, if there is insufficient evidence or if further investigation is needed.")

162. ANNUAL REPORT 2003, *supra* note 155, at 16.

163. ANNUAL REPORT 2009, *supra* note 155, at 16.

164. ANNUAL REPORT 2013, *supra* note 155, at 17; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2011, at 16 (2012), *available at* <http://www.nycja.org/library.php>.

Citywide Dismissal/ACD Rate at Arraignment: 2003–13.<sup>165</sup>

Retired Detective gave an illustrative example of decreased discretion: “[My supervisor] wants me to get [activity]. . . [s]o I gotta [sic] stand here [and look for quick numbers], instead of addressing a condition. There’s a bodega owner who has been asking me to address the large group in front of his store, but I can’t [stop and observe the bodega], because I gotta [sic] get my numbers.”<sup>166</sup> Retired Detective is explaining the predicament NYPD

165. See ANNUAL REPORT 2003, *supra* note 155, at 16; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2004, at 16 (2005), *available at* <http://www.nycja.org/library.php>; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2005, at 16 (2006), *available at* <http://www.nycja.org/library.php>; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2006, at 16 (2007), *available at* <http://www.nycja.org/library.php>; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2007, at 16 (2008), *available at* <http://www.nycja.org/library.php>; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2008, at 16 (2009), *available at* <http://www.nycja.org/library.php>; ANNUAL REPORT 2009, *supra* note 155, at 16; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2010, at 16 (2011), *available at* <http://www.nycja.org/library.php>; ANNUAL REPORT 2011, *supra* note 164, at 16; N.Y.C. CRIMINAL JUSTICE AGENCY, ANNUAL REPORT 2012, at 17 (2013), *available at* <http://www.nycja.org/library.php>; ANNUAL REPORT 2013, *supra* note 155, at 17. Percentages are rounded to the nearest 0.5%.

166. Interview with Retired NYPD Detective, *supra* note 117.

police officers face when they are forced to choose between addressing a criminal condition on their beat and producing time-efficient enforcement activity for their supervisor. Because the officer feels pressure to get his numbers, he cannot address the more time-consuming, large, and disorderly group. When NYPD police officers are forced to take enforcement activity not because they feel it is necessary, but because it is easy, police officer discretion is reduced.<sup>167</sup>

This circumstantial evidence of decreasing police officer discretion before and after 2010 suggests that Section 215-a has failed to accomplish its goals. Its passage had no appreciable impact on signals of police officer discretion.

## VI. NEW YORK STATE'S ANTI-QUOTA STATUTE IS NOT EFFECTIVE

On its face, Section 215-a is effective. The NYPD is not telling its police officers they must perform a certain amount of enforcement activity over a certain amount of time; “quotas,” as defined under the statute do not exist. However, the situation that the New York State Legislature chose to outlaw: the “unfair” issuance of “[t]ickets, summons[es] and arrests” because police officers were facing “arbitrary”<sup>168</sup> requirements — as opposed to appropriate issuance because officers felt enforcement to be necessary based upon “professional judgment” and “appropriate” circumstances<sup>169</sup> — exists seemingly unchanged post-2010. Additionally, the negative effects of quotas felt by non-police officer criminal justice stakeholders that the New York State Legislature intended to end — constitutional violations and decreased community–police relations — exist post-2010 just as they did pre-2010.<sup>170</sup> Section 215-a is not effective.

The NYPD does not tell officers they need to perform a certain amount of enforcement activity over a certain amount of time.

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167. Rivera, *supra* note 135 (“A lot of us didn’t want to . . . [give everyone summonses], the officer said. These people have a hard enough time in the situation they’re living in . . . [but] the bosses would get upset and say, well, give us some UF-250s. It’s an easy number.”) (quoting an NYPD police officer) (internal quotation marks omitted).

168. The New York State Legislature had specific numerical requirements in mind when it considered combating arbitrariness, but what could be more arbitrary than a constant push for more enforcement activity, regardless of crime conditions or negative effects on the community?

169. Introducer’s Memorandum in Support, N.Y. Bill Jacket, 2010 S.B. 2956, Ch. 460.

170. Compare Part III, *supra*, with Part V.B., *supra*.

Instead, the NYPD creates a culture inside its precincts where the quantity of enforcement activity is all that matters. This culture, combined with a constant pressure on police officers from supervisors to perform more and more enforcement activity, creates a management device with the same negative effects as quotas. The NYPD simply replaced a demand for “a specific number of”<sup>171</sup> enforcement activities with constant pressure to do more. This exchange allows the NYPD, despite Section 215-a, to reap all the managerial rewards of quotas, without facing the legal consequences.

An NYPD police officer is supposed to take enforcement activity to “enhance quality of life in the City by preserving the public peace, preventing crime, detecting and arresting offenders, suppressing disorder and protecting rights of persons and property.”<sup>172</sup> In reality, however, it appears that NYPD police officers frequently decide to take enforcement activity not to fulfill one of the above goals, but because they are pressured to do so. The community, the criminal justice system, and police officers themselves feel the negative effects of these decisions.

## VII. POSSIBLE SOLUTIONS

N.Y. Labor Law Section 215-a is currently ineffective at proscribing management’s improper reduction of police officer discretion. This Part presents two possible solutions, one statutory and one administrative, to solve this problem.

### A. A STATUTORY SOLUTION

Any statutory solution to improper police management tactics must take into consideration the intricate nature of proper police officer supervision. Supervisors must be able to put some pressure on their officers to perform their jobs — making arrests, issuing summonses, and performing *Terry* stops are legitimate requirements for a police officer. And strict numerical requirements for police officer activity are not intrinsically bad. If a quota were low enough (e.g., two arrests per year), no one would think twice about the morality or legality of the requirement. It

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171. N.Y. LAB. LAW § 215-a (McKinney 2009 & Supp. 2015) (part of the New York State statute’s quota definition).

172. See Operations Order No. 52, *supra* note 108.

would raise legitimate questions regarding a police officer's performance on patrol if he failed to meet a two-arrests-per-year quota. Department-approved quotas specifically targeted to police officers that take mission (narcotics investigator versus traffic enforcement officer), availability (officers who spend an entire tour responding to 9-1-1 calls versus those with more free time), crime conditions (what offenses to set quotas on and why enforcement of those offenses would help the area's general or specific crime conditions), experience (veteran versus rookie), and effect on the community (the effect of any mandated level of enforcement) into consideration could be more helpful than harmful.

It would be impossible for the New York State legislature to determine the appropriate level of activity, or pressure from supervisors to perform activity, that would adequately cover every city in New York, especially considering the State's variation in population density, age distribution, unemployment rate, and number of police officers per square mile. That decision is clearly best left to the local police department; legislatures should not be relied upon to manage police departments.

But if police departments fail to manage themselves adequately, how can legislatures step in to protect citizens and the criminal justice system? Not easily. Police departments can use quotas and quantitative pressure legitimately; any law that outlaws those practices *per se* will inappropriately reduce police manager effectiveness. Unfortunately, laws that control police officer management must be as complicated and nuanced as police management itself. A successful police-management statute must look at a particular management device's effects. If a quota makes police officers work hard but does not negatively affect criminal justice system stakeholders, then that quota should be legal. But if an excessive department-wide focus on quantitative measurement that is not a quota does negatively affect criminal justice system stakeholders, then that focus should be illegal.

Creating a statute that takes statewide effects of an unknown number of future management devices into account will be difficult, and litigating the elements of that statute will be even harder. But if the check on improper police management continues to fall in the legislature's hands, the solution must be as sophisticated as the problem.

## B. AN ADMINISTRATIVE SOLUTION — THE NYPD INSPECTOR GENERAL

In 2013, the New York City Council added Chapter 18E to the New York City Charter to create an inspector general position for the NYPD.<sup>173</sup> The new NYPD Inspector General's responsibilities include "[r]eview[ing] the policies, practices, programs, and operations of the department . . . ; [and m]ak[ing] recommendation[s] to improve the department's policies, practices, programs, and operations, including for the purpose of promoting civil liberties and civil rights. . . ."<sup>174</sup> As an impartial body<sup>175</sup> tasked with reviewing and improving NYPD policies, the Inspector General could perform audits to determine whether the NYPD's policies are negatively affecting criminal justice system stakeholders. Considering that the NYPD has consistently faced quota allegations over at least the last sixty years, a permanent position that performs regular audits to determine the adequacy of the NYPD's policies could be especially impactful.

## VIII. CONCLUSION

As difficult as supervising police officers may be, there is a clear consensus that a line is crossed when police department managers take away police officer discretion to the community's detriment. Different stakeholders come to this conclusion for different reasons. Motorists believe that ticket quotas make police officers into cash-generating machines.<sup>176</sup> Citizens believe their

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173. See New York City Charter, ch. 18E §§ 470–77; J. David Goodman, *City Council Votes to Increase Oversight of New York Police*, N.Y. TIMES (June 27, 2013), [http://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html?\\_r=0](http://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html?_r=0).

174. New York City Charter, ch. 18E § 472.

175. Although the NYPD Internal Affairs Bureau, the Commission to Combat Police Corruption, the Civilian Complaint Review Board, and the District Attorney's offices and United States Attorney's offices in New York City all perform some oversight of the NYPD, before the Inspector General's creation there was no truly "neutral observer . . . charged with monitoring the Department's policies and practices to ensure they comply with applicable rules, much less for effectiveness." FAIZA PATEL & ANDREW SULLIVAN, BRENNAN CTR. FOR JUSTICE, A PROPOSAL FOR AN NYPD INSPECTOR GENERAL 11 (2012), available at <http://www.brennancenter.org/sites/default/files/legacy/Justice/NYPDInspectorGeneral-web.pdf>.

176. "When the summons procedure is utilized in questionable circumstances, suspicions are raised that revenue enhancement and not sound police methodology is the rational [sic]." Veto 309, N.Y. Bill & Veto Jacket, 2004 S.B. 6478.

constitutional rights go out the window.<sup>177</sup> And police officers feel that when their discretion is eroded they end up engaging in enforcement activity for the wrong reasons and are forced to decrease the quality of their arrests, stops, and summonses.<sup>178</sup>

The New York State Legislature passed Section 215-a after a seven-year battle with municipalities and police department managers. The statute, although effective at deterring police departments from establishing quotas, does not adequately protect criminal justice system stakeholders from other attacks on police officer discretion. The statute fails to outlaw CompStat-driven, discretion-reducing management tactics, including the fixated-on-numbers, constant-pressure-to-do-more, enforcement-at-all-costs mentality of many modern police department managers. As long as police departments can easily reduce police officer discretion and skirt Section 215-a by applying constant pressure to engage in more enforcement activity, rather than requiring a specific activity number over a certain time period, the issues that prompted Section 215-a's creation will continue to exist in New York State.

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177. *See, e.g.*, *Floyd v. City of New York*, 813 F. Supp. 2d 417, 449 (S.D.N.Y. 2011).

178. *See, e.g.*, *Schoolcraft v. City of New York*, 10 CIV. 6005 RWS, 2012 WL 2161596, at \*6 (S.D.N.Y. June 14, 2012).