Crime Control, Civil Liberties, and Policy Implementation: An Analysis of the New York City Police Department’s Stop and Frisk Program 1994-2013

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I. Introduction:
Certain objectives and obligations of the United States government are often times at odds and thus require the careful balancing of competing interests. Crime control is one arena in which governmental aspirations and commitments are especially at odds. On one hand, law enforcement agencies are expected to maintain safe, lawful public spaces. Law enforcement is expected to keep crime at sufficiently low levels and investigate potential criminals with vigor. On the other hand, the United States government and its law enforcement agencies are also constitutionally required to uphold individual rights and liberties outlined in the Constitution. Although in theory, law enforcement could nearly eliminate crime altogether by imposing draconian sentences and indiscriminately detaining all potential suspects, these strategies are inconsistent with constitutional principles of due process. Therefore, law enforcement is inherently constrained and consistently engaged in constant clashes with individual and civil rights.

Over the years, the American court system has been the principle entity that determines the legality of various law enforcement strategies. One of the latest chapters in this saga involves stop and frisk, a tactic that law enforcement agencies employ as a means of investigating suspicious figures. In police departments across the country, stop and frisk has emerged as a basic policing tool that is utilized widely. Many police departments swear by the tactic and contend that without it, crime would skyrocket (Kelly 2013, Mac Donald 2013). However, the implementation of stop and frisk has not come without problems. Many critics of stop and frisk argue that police departments employ the tactic without proper consideration of constitutional principles, and as a result, many innocent people are unfairly burdened with intrusive and embarrassing police interactions. These concerns have been amplified by the racial discrepancies in stop and frisk data that exist in many cities (Center for Constitutional Rights 2012). Opponents
of stop and frisk have also questioned the tactic’s effectiveness as a crime reduction tool while its advocates contend that it played a large role in the crime decline of the 1990s.

The outcome of the controversy surrounding stop and frisk possesses considerable implications for both urban police forces and the citizens they oversee. If deemed to be an effective law enforcement tactic, stop and frisk programs in some cities could be replicated in others to facilitate nation-wide drops in crime. However, if stop and frisk is found to be unrelated to diminished crime, police departments can begin to experiment with other strategies. Similarly, if evidence reveals that stop and frisk policies have been implemented fairly, police departments should be allowed to continue them, but if not, significant reform may be necessary. The answers to these questions will provide insight into urban crime as well as police relations with minority communities. As a result, there are numerous stakeholders in the debate, most central of which are policy-makers, police departments, police officers, activists, and minority community members.

This thesis will seek to provide an overview of the relevant arguments that comprise the stop and frisk debate before applying independent research to a more specific research question. It will begin with a historical background section that will provide an overview of *Terry vs. Ohio*, the landmark 1968 Supreme Court case that first authorized stop and frisk, before summarizing the ways in which the tactic’s use has changed over time. The subsequent section is a literature review that summarizes the scholarship that has sought to answer the following two research questions: 1) is stop and frisk an effective law enforcement tactic? 2) has stop and frisk been implemented fairly in respect to constitutional and minority rights? Following the literature review is a brief research design section that introduces a new research question, case studies,
and methodology. The final sections offer an in depth description and analysis of stop and frisk implementation in New York City during two case studies, 1994-2001 and 2001-2013.

II. Historical Background: *Terry vs. Ohio* and its Aftermath

*Terry vs. Ohio*

On October 31st 1963, Martin McFadden, a police detective in Cleveland watched intently from afar as two men paced back and forth across a storefront, periodically glancing inside. McFadden’s suspicion was immediately aroused, as he had been patrolling the area for years but had never before seen these two men. He continued to observe patiently and eventually approached the two men, later identified as John Terry and Richard Clifton, and introduced himself as a police officer. After the two suspects could come up with no satisfying explanation for their peculiar behavior outside of the store, Detective McFadden stealthily patted Terry and Clifton down and removed two pistols from their jackets.

As the case against Terry and Clifton unfolded in court, the defendants contended that Detective McFadden violated their rights by not obtaining probable cause before frisking them. They sought to have the evidence of illegal firearm possession suppressed on these grounds. Probable cause is the rigorous legal standard that allows an officer to seize a suspect and make an arrest; it “consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe a plaintiff guilty” (Maclin 1998, 1284). For example, probable cause can be met when an officer witnesses a crime or when a victim positively IDs a suspect (Ridgeway 2007). Terry and Clifton sued McFadden in the state of Ohio, and the case eventually reached the Supreme Court in 1968, with Chief Justice Earl Warren writing the majority opinion.
In the landmark decision *Terry vs. Ohio*, the Court conceded that McFadden had not obtained probable cause before searching Terry,¹ but stated that when officers “lack sufficient ground to make an arrest,” they can make a stop when they “observe unusual conduct which leads them reasonably to conclude in light of [their] experience that criminal activity may be afoot” (*Terry vs. Ohio* 1968). Thus, in its 8-1 decision, the court carved out an exception to the probable cause standard; police officers can briefly detain civilians for questioning without probable cause if they seem suspicious. For the first time in American history, “the *Terry* decision allowed police to take action without a warrant or probable cause” (Schinner 2009, 868). Warren’s opinion empowered police officers across the country by arming them with a novel tactic: stop and frisk.

However, Warren also set limits to ensure that street stops would not violate the Fourth Amendment rights of those stopped by establishing what later became known as the reasonable suspicion standard.² This standard holds that police are only authorized to stop civilians when they possess “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant an intrusion” (*Terry vs. Ohio* 1968, 21). According to Warren, “anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches” (*Terry vs. Ohio* 1968, 22). Thus, the reasonable

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¹ McFadden did not witness Terry or Clifton committing a crime, only acting suspiciously. A reasonable person observing all the facts on the ground could easily conclude that wrongdoing was or was about to take place.

² The line between the reasonable suspicion and probable cause is somewhat murky, but I believe that legal scholar Kit Kinports does an adequate job distinguishing between the two: “probable cause involves the reasonable belief that a defendant actually is guilty of a crime, whereas reasonable suspicion arises when the police reasonably suspect the defendant may be committing a crime” (Kinports 2009, 654). That being said, Kinports admits that courts have adopted a “we know it when we see it” attitude in determining the difference between the two standards.
suspicion standard is heavily based on the distinction between articulable and inarticulable suspicion: the former is legal while the latter is not.

Warren set similar restrictions for the frisks that sometimes follow stops. For this reason, contrary to popular belief, a substantial percentage of Terry stops are concluded without frisks. In his opinion, Warren emphasized that “even a limited search of the outer clothing for weapons constitutes a severe, though brief intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience” (Terry vs. Ohio 1968, 24). Thus, frisks should only be performed when police officers can reasonably suspect that the person they have stopped is armed and dangerous. If such suspicion is present, according to Warren, “it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm” (Terry vs. Ohio 1968, 24). Warren was sure to make the clear distinction between a preliminary frisk for weapons and an all-out search. A frisk comprises of a brief and limited sweeping over the outer clothing of a suspect. An example of a constitutional frisk can be found in the Terry case: “Officer McFaddon patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had felt weapons” (Terry vs. Ohio 1968, 29-30). Only when a frisk yields the detection of contraband is the officer permitted to conduct a more in-depth and intrusive search of the suspect’s clothing.

As Warren’s opinion in Terry became solidified in lower courts, three distinct legal levels of police intrusion emerged. The first level is a consensual encounter between an officer and civilian. At this level, even without any articulable suspicion of wrongdoing, a police officer may

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3 In New York City, for example, only 54 percent of stops were followed by a frisk in 2012.
ask general questions regarding identification and whereabouts, but the civilian is free to walk away at any time. The second level is a *Terry* stop. Because civilians are no longer free to leave at this level, the Fourth Amendment is triggered and police officers must attain reasonable suspicion before making the stop. The third and final level is a thorough search, which requires probable cause and a warrant in many cases.

*The Evolution of the Reasonable Suspicion Standard*

While the *Terry* case established a seemingly clear standard to dictate stop and frisk behavior, the Supreme Court examined intricacies within the issue several times in the following years. Predictably, all of the subsequent court rulings sought to strike the constitutional balance between crime control and the civil liberties guaranteed by the Fourth Amendment. Although both sides of the argument experienced victories and setbacks alike in the wake of the *Terry* ruling, most agree that, “between 1969 and 2005, the Supreme Court expanded the authority of law enforcement officers and therefore allowed greater leeway for police to stop and search suspected individuals” (Pufong and Kluball, 2009).

This trend began in the 1972 case of *Adams vs. Williams*, the first time the Court revisited the issue of reasonable suspicion after *Terry*. The facts of the case are as follows. A Connecticut police officer received a tip from a trusted informant that Robert Williams was in the possession of drugs. The officer investigated the informant’s claim by conducting a *Terry* stop in which he found both heroin and a loaded gun in Williams’ possession. In court, Williams argued that the stop was unconstitutional because the officer himself witnessed no suspicious behavior. The question taken up in this case was whether or not an officer can possess reasonable suspicion after relying on the observations and claims of another person. The court ruled against Williams,
thus expanding the power of stop and frisk to extend beyond an officer’s observations. Another substantial consequence of the decision in *Adams vs. Williams* was that it extended *Terry* from its original purpose of crime prevention and protection of officers to that of crime detection as well (Harper 1988, 27). After this case, stop and frisk was no longer restricted to imminent, violent offenses, but could be applied to possessory offenses as well.

The next case in which the Supreme Court fleshed out its original decision in *Terry* was *United States vs. Cortez* in 1981. Border Patrol agents stationed in Arizona uncovered a pattern of footprints coming across the Mexican border that led to the same location night after night. The agents deduced that illegal aliens were walking across the border and then being picked up by a vehicle on a remote stretch of road where the footprints ended. They positioned themselves on the road miles before the assumed pick-up point, saw a pickup truck with a camper head towards the pick-up, and pulled it over as it passed them on its way back. The officers discovered illegal aliens in the camper after stopping the truck.

In court, defendants sought to prove the stop unconstitutional, because the officers did not observe any wrongdoing first-hand. Again, the Supreme Court sided with law enforcement and broadened the original *Terry* decision. In an opinion written by Chief Justice Warren Burger, the court ruled that the totality of circumstances, or “the whole picture” must be taken into account when judging whether or not reasonable suspicion had been met (Burger 1981). Given the proximity to the border, the footprints, and the fact that the truck travelled back and forth across the same remote section of highway in the dead of night, the court concluded that

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4 The court later put limits on this new standard. In the 2000 case of *Florida vs. J.L.*, it ruled that anonymous tips that give only the location and appearance of a person (with no note of the crime they might be committing) do not create reasonable suspicion. Though this case limited the precedent set in *Adams vs. Williams*, it did not overturn it. As long as tips come from non-anonymous sources and provide details of a specific crime being committed, reasonable suspicion can still be met.
reasonable suspicion had been reached although no illegal activity had been observed. Burger went on to explain that the assessment of the whole picture is a process that “does not deal with hard certainties, but with probabilities” and that these probabilities should be “weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement” (Burger 1981, 417-418). In so ruling, the Supreme Court instructed lower courts quite directly to defer to the judgment of police in reasonable suspicion cases (Harris 1998, 999). These pronouncements greatly expanded the reasonable suspicion standard. After Cortez, law enforcement officers were permitted to make Terry stops based on their own judgment after assessing probability and surrounding circumstances.

The totality of circumstances idea first developed in Cortez was revisited eight years later in the 1989 case of United States vs. Sokolow. In this case, Andrew Sokolow was stopped in the Honolulu International Airport after DEA agents suspected that he was trafficking drugs. According to the agents, Sokolow appeared nervous, paid for his ticket in cash, checked no baggage, was traveling under a different name, and was headed to Miami, a known drug-trafficking hub. Sokolow contended that none of his actions were suspicious enough to warrant a stop. The court’s new Chief Justice William Reinquist disagreed, basing his reasoning on the totality of circumstances idea established in Cortez. He ruled that, “factors which ordinarily are indicative of innocent behavior can, when taken in totality, be the basis for reasonable suspicion to support a stop” (Sax 1991, 340). This ruling not only reinforced the expansion of Terry, but also sanctioned the use of reasonable suspicion in subjective cases.5

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5 The “subjectification” of reasonable suspicion marks a major departure from the original ruling in Terry vs. Ohio. Warren’s original opinion makes clear that reasonable suspicion is an objective standard (Sax 1991).
A series of cases following Sokolow further broadened Terry by expanding the situations that can contribute to reasonable suspicion given the totality of circumstances. Illinois vs. Wardlow concluded that flight from a high crime area meets reasonable suspicion. Florida vs. Royer found that the perceived nervousness of a suspect contributes to reasonable suspicion while United States vs. Himmelright found that a suspect’s unusually calm demeanor can do the same. United States vs. See ruled that sitting in a car for an extended period of time adds to reasonable suspicion.

All these cases serve as evidence backing up the claim that after 1968, the Supreme Court vastly expanded the situations in which Terry stops could be utilized. In Terry, Warren ruled that “the ‘sole justification’ for the new standard [reasonable suspicion] was to protect the police officer and others in his immediate vicinity” (Harper 1988, 25). However, the subsequent cases show how the reasonable suspicion standard was expanded to include situations that posed no true danger to officers or civilians alike. Thus, reasonable suspicion “has gone from allowing only purely defensive procedures to now permitting aggressive criminal detection,” which ensures that stop and frisk procedures will be utilized with great frequency (Harper 1988, 44).

These aforementioned cases all represent the expansion of the original Terry vs. Ohio ruling at a time when two conservative majorities, one under Burger, the other under Reinquist, sat on the Supreme Court. Indeed, from 1968-2005, thirteen justices were appointed, ten by Republican presidents (Pufong and Kluball, 2009). This time period is also marked by high levels of crime nation-wide, punctuated by the crack epidemic of the 1980s. Indeed, some have argued that public outcry for greater protection against criminals explains why justices felt the need to expand the situations in which the reasonable suspicion standard could be applied (Harper 1988).
Despite these high profile cases, stop and frisk failed to gain widespread media attention prior to the 1990s despite the fact that many urban police departments in the 1960s implemented stop and frisk policies to deter street crime. Departments often asserted that these programs “were vital to effective law enforcement” in the context of increasing crime (Maclin 1998, 1279). Given that the country’s homicide rate jumped 22 percent from 1960-1967, it was not difficult for police departments to sell this idea to a concerned public (Schinner 2009). However, although most police departments across the country applied stop and frisk in some manner, the practice rarely gained explicit mention in department strategy reports. As a result, the tactic received little attention from the media and academia alike.

The spread of stop and frisk during the 1960s and 1970s did generate substantial concern from members of poor, minority communities who were most likely to be subjected to the intrusive tactic. Bayard Rustin from the National Center on Police and Community Relations denounced the practice’s implementation in New York City during this time period and said,

> Whatever its provisions or its purposes, this law is a nefarious example of class legislation, for its effect is to permit the harassment of the poor. No police are going to stop and frisk well-dressed bankers on Wall Street—but they don’t hesitate to stop well-dressed Negro businessmen in Harlem and go through their attaché cases. That kind of brusque police action is reserved for the poor and minorities like Negroes and Puerto Ricans (Maclin 1998, 1280).

Thus, from its inception in 1968, stop and frisk “created resentment and hostility among blacks exposed to it” (Maclin 1998, 1280). Indeed, this unintended outcome was foreseen by Earl Warren, who warned in his opinion that, “in many communities, field interrogations [stop and frisk encounters] are a major source of friction between the police and minority groups” (Terry
vs. Ohio 1968, 17). These concerns may very well have influenced Warren’s choice to contain stop and frisk to a very limited set of circumstances in the original opinion.

Despite the lack of attention from those outside marginalized urban neighborhoods, police departments across the country were aware of the stop and frisk tool and employed the tactic, although it was not usually explicitly called “stop and frisk.”6 For example, former NYPD officer Ernie Naspreto recalls being taught at the police academy about the Terry ruling and its implications for police work in 1982. Although the same reasonable suspicion standard guided police stop and frisk behavior back then, the policy has changed markedly since the 1970s and 1980s. In the early days, no stop activity was ever recorded by police departments and the entire process was much more informal. Thus “although the procedure had been on the books since the beginning of time,” it has morphed into something unrecognizable by old standards (Naspreto 2012).

III. Review of Literature:

Research Questions: 1. Is stop and frisk an effective crime reduction tactic? 2. Has it been implemented fairly in respect to constitutional and minority rights?

I. Stop and frisk has effectively lowered crime

The practice of stop and frisk has become so widespread in urban police departments across the country that William Bratton, former police commissioner in Boston, New York, and Los Angeles said, “if the police are not doing it, they are probably not doing their job” (Toobin 2013, 3). Indeed, many consider stop and frisk tactic as one of the most important tools in a police officer’s arsenal. Many authors believe that there is no coincidence that American cities

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6 Oftentimes stop and frisk procedures were known as field interrogations, aggressive patrols, or Terry stops.
experienced major drops in crime on the heels of implementing aggressive policing tactics like stop and frisk (Cole 1999). However, there is a fair amount of disagreement both in terms of why stop and frisk has been effective and the extent of its successes.

Unfortunately, because a huge part of the stop and frisk debate is dedicated to the policy’s impact on minority rights, the question of whether or not it has been an effective crime reduction tactic has been under-researched. The only study that explicitly poses the question “Does stop and frisk stop crime?” was an unpublished paper by Robert Purtell and Dennis Smith that relied on monthly precinct level data from New York City from 1997 to 2006. After controlling for a large number of variables including the effects of hotspots policing, Purtell and Smith found that stop and frisk helped reduce robbery, burglary, murder, and grand larceny but did not have much effect on rape or assault. Although not uniformly effective across all crime categories, the data nonetheless supported the use of stop and frisk to lower crime (Purtell and Smith 2008). While other researchers have looked into similar questions as the one posed by Purtell and Smith, they do not isolate stop and frisk as a variable and instead combine its effects with other police strategies like 1) firearm reduction, 2) hot spots policing, and 3) order maintenance policing.

**Stop and Frisk has been effective because it removes guns**

When William Bratton was appointed Commissioner of the New York Police Department (NYPD) in 1994, the rate of gun homicides per capita was almost 200 percent greater than it had been in 1985 (Fagan, Kim, and Zimring 1998). Surprisingly, in 1993, the NYPD ranked last among 30 large urban police forces in terms of guns seized per 100,000 people, signaling that more needed to be done (Karmen 2000). The city’s homicide rate was 30.7 per 100,000, suggesting that New York was a dangerous city although its rate remained lower
than cities like Detroit and Dallas (Zimring 2010). Therefore, Bratton began to wage an all-out war against guns in the form of a program dubbed “Guns off the Street” which instructed officers to stop and frisk frequently in the process of enforcing low-level crime in order to detect guns. The idea behind this strategy was derived from James Wilson and George Kelling’s broken windows theory. This theory predicts that oftentimes people engaged in smaller quality of life crimes were also perpetrators of more violent crimes. For example, the enforcement of public intoxication can oftentimes lead to the detection of more serious crimes because nearly 40 percent of violent criminals admit to having consumed alcohol before committing their crimes (Maple and Mitchell 1999).

Many have argued that “Guns off of the Street” was an undeniable success story. Jeffrey Fagan, Franklin Zimring, and June Kim conducted an analysis of homicide trends in New York during the 1990s that produced encouraging results for the NYPD. The researchers separate homicides into gun and non-gun categories and find that while non-gun homicides trend down slowly throughout the entire period, gun homicides dropped sharply after the implementation of “Guns off of the Street.” The authors attribute a significant portion of the decline to a change in police tactics, namely Bratton’s aggressive enforcement strategy targeted at firearms that peaked from 1994-1996 and heavily involved the stop and frisk policy.

Franklin Zimring largely agrees with the aforementioned study and considers the prioritization of gun removal by means of aggressive policing including stop and frisk as a main reason behind New York’s crime decline. Like Fagan et al, he also notes that non-gun homicides dropped much more slowly than gun homicides, which suggests that the emphasis on gun

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7 In 1990, NYC had the fourth highest homicide rate among the country’s ten largest cities. New York’s 30.7/100,000 rate came in right between Chicago (30.3) and Philadelphia (31.7). By comparison, first and second rated San Jose and San Diego boasted rates of only 4.5 and 12.2, respectively (Zimring 2012).
recovery has paid significant dividends (Zimring 2012). In his book *Turnaround*, William Bratton adopts a similar stance and largely credits “Guns off the Street” for the reduction of 389 murders from 1994 to 1995 (Bratton and Knobler 1998). The “Guns off the Street” initiative tasked the NYPD’s Street Crimes Unit with gun removal in high crime areas and instructed it to use stop and frisk liberally in the search for weapons.

**Stop and frisk is effective as a part of hotspots policing**

Hot spots policing, a tactic now used by over 70 percent of American police departments with more than 100 officers, is based on the idea that crime tends to be concentrated in small areas (Purtell and Smith 2007). Thus, by concentrating personnel and resources in these problematic areas, police departments should be able to get a better handle on crime. While still a relatively new practice, hot spots policing has withstood rigorous testing by researchers in Minneapolis, Boston, Seattle, and New York (Braga and Weisburd 2010). As a result, the tactic has been accepted as effective by academics and police departments alike.

Although New York City targeted open-air drug markets and deployed resources after analyzing crime trends under Bratton, it did not officially enact a hot spots policing policy until 2002 under Commissioner Raymond Kelly. Using recent crime data, Kelly identified the most crime-ridden neighborhoods in the city, deemed them “Impact Zones,” and began to station most members of each graduating class from the police academy at these areas (Purtell and Smith 2007). Inside impact zones, officers were instructed to police aggressively and as a result, they relied heavily on the stop and frisk tactic. Indeed researchers David Weisburd, Cody Telep, and Brian Lawton set out to explore the relationship between hot spots policing and the use of stop and frisk in New York City. Their data, derived from correlating stop and frisks with crime
incidents, “strongly supports the proposition that SQFs\textsuperscript{8} are focused on crime hot spots” (Weisburd, Telep, and Lawton, 2013, 17). The researchers go on to argue that the emphasis on stop and frisk allowed the NYPD to reduce crime even in a period of decline in the overall number of police.

Other studies have also advocated for the hot spots strategy and its reliance on stop and frisk. Dennis Smith and Robert Purtell assessed Operation Impact’s ability to reduce crime and produced positive results. According to these researchers, “overall, it appears that the impact-policing strategy was effective against visible crimes against people. There were significant declines in crime rates for murder (24%), rape (104.8%), robbery (21.2%), assault (23.2%), and grand larceny (133%) across all of the Zone-start years” (Purtell and Smith 2007). Like Weisburd et al, Smith and Purtell argue that the implementation of a stop and frisk-heavy hot spots policing system allowed a cash-strapped department to “do more with less.”

As mentioned above, hot spots strategies have by no means been confined to New York, but because New York’s stop and frisk policy is much more robust than other cities in terms of how often it is employed, most of the research tying the two tactics together comes from it. However, Philadelphia is another example of a city that has used both stop and frisk and hot spots policing alongside one another and produced similarly positive results. Jerry Ratcliffe et al studied 200 foot patrolmen during the summer of 2009 in 60 violent crime hot spots across Philadelphia. These officers used the stop and frisk tactic extensively and, according to the researchers, were able to significantly reduce violent crime in the hot spots by 23 percent more than control areas (Ratcliffe et al 2011).

\textsuperscript{8} SQF is a common abbreviation for stop and frisk and stands for “stop, question, and frisk.” Technically, the questioning following the initial stop will inform police officers to whether or not a frisk is necessary.
In contrast to New York and Philadelphia, Cincinnati has employed a hot spots policing example that is not reliant on stop and frisk. After a series of violent race riots that were triggered by police officers killing an innocent black man, the Cincinnati Police Department was sued by the ACLU for racial profiling. Rather than rule on either side, Judge Susan Dlott ordered a mediation process between the police department and the plaintiffs. What emerged from the year-long process was the Cincinnati Collaborative Agreement, a compromise that outlined a new police strategy more compatible with the wants and needs of the community. Rather than revert back to the zero-tolerance model that Cincinnati had implemented based on New York’s policy in the 1990s, Cincinnati adopted a strategy that still embraced hot spots policing, but without extensive use of stop and frisk. John Eck and Jay Rothman found that hot spots policing does not require large numbers of arrests to be effective. Although no studies have analyzed the impact of this approach on crime in Cincinnati, crime is down nine percent since 2009, suggesting that it may present a worthy alternative to the New York and Philadelphia model (Ridgeway 2009).

**As an order maintenance technique**

As the previous sections have stated, the stop and frisk tactic was the primary means by which American cities have implemented order maintenance or broken windows policing. The success of such a policing strategy hinges on the idea that there are connections between petty crime and more serious crime, and thus between petty arrests and more serious arrests. Though this idea has not been thoroughly empirically tested and has been critiqued fairly widely (Fagan 2007; Davies et al 2009), some scholars advocating order maintenance policing have collected evidence that such a relationship exists.
George Kelling and William Sousa set out to measure the impact of order maintenance policing on violent crime in New York City. They used misdemeanor arrest data from 1989-1998 as a representation of order maintenance activity, lagged it by a period, and regressed it against violent crime data at the precinct level. Kelling and Sousa found that broken windows policing that is heavily reliant on stop and frisk is “significantly and consistently linked to declines in violent crime” and that “over 60,000 violent crimes were prevented from 1989 to 1998 because of broken windows policing” (Kelling and Sousa 2001). Hope Corman and Naci Mocan used a similar methodology to assess whether broken windows policing or macroeconomic advances played a bigger role in New York City’s crime decline. They uncovered a robust relationship between misdemeanor arrests and a decrease in felony crime that led them to endorse broken windows and stop and frisk as effective crime reduction tactics (Corman and Mocan 2005). The researchers went on to compare New York with cities that experienced similar crime drops in the 1990s without implementing broken windows policing like Los Angeles, San Diego, and San Francisco. Although these cities also achieved impressive drops in crime, Corman and Mocan estimated that crime rates could have dropped even more if aggressive policing tactics like stop and frisk were employed.

II. Stop and frisk has not effectively lowered crime

During the 1980s and early 1990s, the United States experienced a crime wave. All seven major crime categories spiked throughout this period, but violent crimes such as aggravated assault, rape, and murder rose to especially concerning levels. As a result, violent crime nation-wide in 1991 was 83 percent higher than it had been in 1973 (Levitt 2004). This trend reversed itself starting in 1991 as America experienced a decade-long drop in crime,
leaving the country with its lowest homicide rate in 35 years (Levitt 2004). Some cities in particular enjoyed especially robust crime declines over this period, led by New York, Los Angeles, and Dallas. Overall, the decline in crime during the 1990s was nothing short of remarkable given that no time period in modern American history sustained a comparable drop in crime for a full decade (Levitt 2004).

Due to its uniqueness and intrigue, the crime decline of the 1990s has drawn substantial scholarship. Criminologists, political scientists, and economists alike have put forth several explanations for the crime drop, but no consensus view has emerged, and will probably never be truly reached. For the purpose of my research, explanations that broadly agree that the stop and frisk tactic had little to do with the 1990s crime decline can be split into four main categories: 1) police departments in general had little impact on the decline because it can be attributed to demographic and economic changes; 2) police innovations other than stop and frisk helped reduce crime; 3) stop and frisk is ineffective because it damages police legitimacy; and 4) stop and frisk is ineffective because it does not arrest people frequently enough to justify its negative implications.

**Demographic and macroeconomic trends explain the drop in crime**

Because this school of thought is only tangentially related to my research question, I did not complete a thorough review of all non-police related explanations for why crime fell during the 1990s. Therefore, I will summarize some main themes broadly. The first broad explanation for the crime decline dealt with the favorable economic conditions of the 1990s. During the 1990s, real per capita GDP grew by nearly 30 percent while the unemployment rate fell from 6.8 percent in 1991 to 4.8 percent in 2001 (Levitt, 2004). By the logic of this argument, a declining unemployment rate paired with a rising minimum wage deterred potential criminals.
from illegal activity by making the formal labor market more attractive (Corman and Mocan 2005).

Other authors cite changing demographics as a key reason behind the crime decline of the 1990s. During the 1990s, the elderly, a group that rarely engages in criminal activity, made up a larger segment of the population than it had previously (Fagan, Kim, and Zimring 1998). While this logic appears solid on a national basis, it is easy for some cities to reject it after examining their own demographic trends. For example, New York City actually saw an increase in the group that has proved to be the most prone to crime over time, sixteen to nineteen year olds (Bratton and Knobler 1998). The growth of New York’s minority population during this time period also casts doubt onto the democratic argument because these groups have generally displayed higher levels of crime than whites over time (Zimring 2012).

The final broad societal trend that scholars have used to explain the crime decline of the 1990s is the end of the crack epidemic. Crack cocaine hit American communities hard in the mid-1980s, especially inner city, African American ones. Because crack is extremely profitable to sell and is sold in small volumes to volatile clientele, many have argued that its proliferation helped cause the spate of violence that plagued America during the late 1980s and early 1990s (White 2012). When the use of crack began to decline in the 1990s, so too did the violent struggle for profitable territory amongst drug dealers (Dixon 1999). Although influential, this line of thinking has been countered by some who claim that the same percentage of arrested people test positive for cocaine as during the height of the crack boom, signaling that other factors may be at play because the drug is clearly still prevalent (Bratton and Knobler 1998).

Police innovations other than stop and frisk helped reduce crime.
Police departments across the country were left in a difficult situation during the early 1990s as rising crime rates suggested that they were not doing their job effectively. These departments sought to reinvent themselves in a variety of ways during the 1990s, but two responses in particular gained significant traction across the country: 1) increasing the number of police officers in uniform and 2) introducing Compstat. Scholars have argued that these two changes in police strategy rather than the increase use of stop and frisk have helped spur the crime decline of the 1990s (Zimring 2012; Silverman 1999).

Due to a combination of the 1994 omnibus crime bill and various urban police departments responding to crime concerns, from 1990-1999 the number of police officers per capita increased 14 percent (Levitt 2004). The New York Police Department grew from 26,844 officers in 1990 to 41,791 officers in 1999, a 55 percent increase while Cincinnati also swelled its ranks with young officers in hopes of reducing crime (Lawton, Telep, and Weisburd 2013). Scholars argue that the more manpower a police department has, the more effectively it can deter potential criminals. Though the relationship between police department size and crime remains contested, many scholars argue that more police have led to less crime (Zimring 2012; Karmen, 2000; White 2012; Levitt, 2004).

Another equally important alteration of police strategy was William Bratton’s introduction of Compstat to the NYPD in 1994 and its subsequent spread to other police departments across the country. Compstat is a technological program that maps crime over time. It allows for police departments to see when and where crime is happening so that they can respond accordingly. The “Compstat revolution” ushered in a devolution of power to precinct commanders who were held brutally accountable for crime trends in their respective areas. Commanders who were unaware of crime trends in their districts or incapable of coming up with
innovative strategies to reverse them were quickly relieved of their posts, a lesson that 50 of New York’s 76 precinct commanders found out the hard way during Bratton’s first year (White 2012). Due to its ability to make crime problems in specific locations apparent and the intense accountability measures it produced, scholars often credit Compstat as a revolutionary development in American policing and a main reason why crime fell as fast as it did (Kelling and Sousa 2001; Karmen 2001; Zimring 2010; Lawton, Telep, and Weisburd 2012; Mac Donald 2003; Purtell and Smith 2008).

Stop and frisk harms police-community relations

The third explanation for why stop and frisk did not contribute to the crime decline of the 1990s is that the policy deteriorated police relationships with minority communities. Much of the logic from this argument is derived from Tom Tyler’s views on police legitimacy. Tyler’s basic premise is that police need both public support and cooperation to be effective in creating safe communities. The public support needed hinges on the judgments people have about the legitimacy of the police, which depends on public assessments of how police exercise their authority. Thus, if police are observed misusing their power, the public will view them as illegitimate and they will be unable to garner the support needed to carry out their jobs effectively. When people do not support the police, they are less likely to report crimes, offer tips, and serve as witnesses, all things that are essential to effective policing (Tyler 2004).

Many scholars point to analyses of minority communities to demonstrate that stop and frisk has decreased police legitimacy and thus rendered officers ineffective crime fighters (Fagan and Geller 2010). Because the constitutional standard for reasonable suspicion established in the landmark 1968 case Terry vs. Ohio has since been eroded in cases like Illinois vs. Gates, U.S. vs. Sokolow, and Illinois vs. Wardlow, police officers have been granted with huge amounts of
discretion (Kluball and Pufong 2009). Because police can use details such as a suspect’s placement in a high crime area, clothing, exchanges with suspicious characters, and “furtive movements” as justification for a stop, people in poor, high-crime minority neighborhoods are perpetual targets for the police (Harris 1994). As a result, community members perceive racial discrimination that in turn fosters low trust of police, and according to Tyler’s logic, makes effective policing impossible.

Indeed, a study in Philadelphia found that most youth in three minority neighborhoods are negatively disposed towards the police largely due to past negative encounters with law enforcement, most notably being stopped and frisked while not committing a crime (Carr, Napolitano, and Keating 2007). The study found that less than ten percent of youth interviewed in an African American neighborhood would call the police if they witnessed a crime. Similarly, a study in New York found that youth of color were far more likely to report a negative interaction with a police officer than white youth (Gould and Mastrofski 2004). Finally, a study based in St. Louis found that “aggressive order maintenance manifesting in the form of widespread stop-and-frisks can compromise procedural justice and, therefore, undermine police legitimacy” (Brunson and Gau 2010, 273). According to this group of scholars, stop and frisk programs have made it more difficult for officers to fight crime by eroding the police-community relationships that need to be part of effective crime fighting (La Vigne et al 2010). Thus, stop and frisk has not helped lower crime.

**Low arrest rates from stop and frisk**

One way to judge the efficacy of a law enforcement tactic is to measure how often it generates arrests, and thus removes criminals from the street. What is to be considered an acceptable arrest rate is up for much debate, however. Richard Uviller, a Columbia law professor
believes that a system that generates one arrest for every twenty stops is “well within tolerance” (Mac Donald 2003, 40). However, the Center for Constitutional rights has deemed this hit rate unacceptable and contended that it would be impossible to achieve such a low rate if reasonable suspicion were being achieved in every stop. Some police officers have acknowledged low arrest rates but contend that such rates are reflective of the deterrent value of the policy; if people know there is a high likelihood of being stopped, they will be less likely to commit crimes and carry weapons (Fornango and Rosenfeld 2012). Others are not so comfortable with such a low mark due to the substantial burden placed on innocent people being stopped. In this view, one arrest does not justify nineteen stops of innocent people (Center for Constitutional Rights 2012).

When New York City first embraced stop and frisk in 1994, the tactic was not employed as widely as it has been during the Bloomberg era. As a result of this more careful, targeted approach, 15 percent of stops generated arrests throughout the 1990s, a rate that most people found acceptable (Davies et al 2009). However, the police department under Commissioner Ray Kelly and Mayor Michael Bloomberg rapidly accelerated the use of stop and frisk so much that the stop rate tripled from 2003 to 2010 (Fornango and Rosenfeld 2012, Scheindlin 2013, Center for Constitutional Rights 2012). The increase in stops has not been mirrored by an increase in arrest rate, however, as the rate slipped to 7.8 percent in 2003 all the way down to 4.1 percent in 2006 and has hovered around that level ever since (Davies et al 2009). Philadelphia has followed a similar trajectory. Stops doubled from 2007 to 2008 with the election of Michael Nutter while the arrest rate plummeted to eight percent by 2010 (Harris, 2013, Jones-Brown, 2010). These meager arrest rates have led many to critique the implementation of stop and frisk by contending that the rate would be much higher if the police had reasonable suspicion for each stop (Center for Constitutional Rights 2008). Others have argued that a policy that errs at such a high rate
cannot possibly be an effective crime reduction tool (Fornango and Rosenfeld 2012; Center for Constitutional Rights 2008; Fine, Fox and Stoudt 2012).

III. Stop and Frisk has not been implemented fairly

Because stops have been unconstitutional

The constitutionality of police stops is a serious issue that has been central to the stop and frisk debate for years. Because the “reasonable suspicion” standard first established in Terry vs. Ohio has become more lenient over the years, police officers are granted enough discretion to stop and frisk suspicious characters. Reasonable suspicion is “‘is a reasonable belief on the part of the officer—based on experience, observations, and/or information from others—that criminal activity is afoot sufficient to warrant police intervention” (Spitzer 1999, 18). However, in many cases people contend that this discretion is applied inappropriately and has resulted in a multitude of unconstitutional stops under current law, often of racial minorities. Stops that are the most constitutionally suspicious are those that can be considered “high discretion and low suspicion” (Fagan and Geller 2010, 8). In such questionable stops, no crime or evidence of crime is noted and the officer relies heavily on his or her gut instincts before making the stop.

After the 1999 slaying of Amadou Diallo at the hands of the NYPD, New York faced a class action lawsuit that prompted the city to conduct an in-depth study of the police department’s use of stop and frisk. State Attorney General Eliot Spitzer analyzed over 17,000 stops from 1998 and 1999 and found disturbing results based on the justification given by officers before stopping people. According to Spitzer, 14 percent of stops were clearly unconstitutional, 24 percent of stops did not provide a conclusive answer on constitutionality, and 61 percent were deemed constitutional (Spitzer 1999). Spitzer’s team of legal experts
analyzed UF-250 forms\textsuperscript{9} and separated the various justifications for stops into separate categories; the categories that were deemed constitutional were 1) actual observation of illegal activity, 2) fit description of a crime suspect, 3) weapon observed (including waistband bulge), and 4) “location plus suspicious behavior,”\textsuperscript{10} while those deemed unconstitutional were 1) bulge in pocket, 2) suspicious behavior (unusual conduct), 3) association (loitering), and 4) location (Spitzer, 1999). The unconstitutional stops were also less effective than constitutional stops as they yielded a mere three percent arrest rate compared to 15.4 percent rate in constitutional stops. Spitzer’s report also found that the practice unfairly targeted minority citizens (Spitzer 1999, 147-150), but that issue will be taken up later on.

\textsuperscript{9} Each time an officer conducts a street stop, he must fill out a uf-250 form (pictured below).

\textsuperscript{10} The use of location plus suspicious behavior as an acceptable rationale for making a stop invokes the totality of circumstances idea put forth in United States vs. Cortez and United States vs. Sokolow (see Historical Background section for more information on these cases). Thus, if someone is in a high crime location, the threshold for making a stop is lowered. Some type of suspicious behavior (the grabbing of a waistband for example), would not trigger reasonable suspicion in other areas, but the combination of the behavior plus the high-crime location meets reasonable suspicion.
Scholars have replicated Spitzer’s study in other parts of the country. Jon Gould and Stephen Mastrofski conducted a study that addressed the constitutionality of stops in an unnamed “medium sized American city” during the 1990s. Even though the city stopped pedestrians at a much lower rate than New York (only 115 stops during the three month observation period), results were similar. The researchers found that 30 percent of the 115 stops observed were unconstitutional for not achieving reasonable suspicion and the most frequent breach of constitutional rights came when officers were in search of drugs (Gould and Mastrofski 2004). The study also found the unconstitutional stops were significantly more likely to occur when the suspect was under 30-years old and when the search was merely a pat-down rather than a full search.\(^{11}\) Interestingly, the authors found that the unconstitutional stops were concentrated in a small segment of officers with seven of the 44 officers accounting for 70 percent of the illegal seizures.\(^{12}\)

Several other authors have also argued that stop and frisk practices often violate constitutional rights. Bernard Harcourt estimated that a third of discretionary searches are constitutionally suspect because officers rely on racial stereotypes that lower the suspicion necessary to stop minority males (Harcourt 2004). The ACLU of Pennsylvania conducted a study in the wake of its lawsuit against Philadelphia to assess whether the police department was taking adequate steps to reform its stop and frisk program. The ACLU wanted to see stops numbers decline on the whole but was more concerned with lessening the racial disparity in stops taking place. The results were again disappointing due to the “continued high rates of stops

\(^{11}\) Other variables such as the suspect’s race, socio-economic status, and level of resistance also displayed higher levels of unconstitutional searches. However, these variables were deemed not to be statistically significant by Gould and Mastrofski.

\(^{12}\) It is also fascinating to note that these problematic officers were “otherwise model officers” who had positive opinions of community policing.
and frisks without reasonable suspicion.” According to ACLU researcher David Abrams, although the overall volume of stops decreased from its apex in 2009, officers failed to obtain reasonable suspicion in 45 percent of stops (ACLU 2012).

**In its enforcement of marijuana-related offenses**

The idea behind stop and frisk is closely linked to the broken windows approach that advocates for the strict enforcement of low-level offenses in order to discourage the spread of disorder (Wilson and Kelling 1982). This philosophy was adopted by the NYPD in 1994 and spread to other cities across the country in the following years. Because of the approach’s focus on low-level crime, one might expect to see a rise in marijuana arrests in the wake of its implementation. However, many have argued that the rise in marijuana enforcement violations and arrests has outstripped logic and should be reconsidered.

Eloise Dunlap, Andrew Golub, and Bruce Johnson tracked New York City’s misdemeanor marijuana arrests before and after the introduction of stop and frisk (via order maintenance policing) and found that by 2000, marijuana in public view arrests made up 15 percent of all arrests in the city (Golub et al 2007) and that 90 percent of those arrested were of either black or Hispanic people. Bernard Harcourt and Jens Ludwig built on Golub’s study and found that from 1994-2000, misdemeanor marijuana arrests increased by an astounding 2,670 percent as a result of the police department’s newfound focus on low level offenses through stop and frisk (Harcourt and Ludwig 2007). However, Harcourt and Ludwig took a step forward and analyzed whether this new strategy contributed to the drop in serious crime during the 1990s, as broken windows theory suggested. The authors found that “there is no good evidence that this ‘reefer madness’ policing strategy contributed to the decline in the sorts of serious crimes that are of greatest public concern in New York City” (Harcourt and Ludwig 2007, 167). This
conclusion suggests that the central premise of the department’s marijuana strategy was flawed and the explosion of arrests was largely unnecessary because it did not advance broader goals. Jeffrey Fagan and Amanda Geller later corroborated Harcourt and Lugwig’s work in 2010. This pair studied the impact of marijuana enforcement activity on the likelihood of seizing firearms and found no connection because stops based on the suspicion of marijuana use only produce weapons in a miniscule .5 percent of stops (Fagan and Geller 2010).

Other scholars have made similar points regarding marijuana policy. Richard Curtis was arrested for possessing small marijuana violation while conducting research in New York and found that most of the people arrested alongside him had been picked up for similar offenses and were predominately black or Hispanic (Curtis 2012). Curtis found that the effect of stop and frisk was countless arrests for marijuana use rather than detecting users of harder drugs or dealers of any kind. Researchers in Philadelphia put forth strikingly similar results in terms of the connection between street stops and unnecessary marijuana enforcement (ACLU 2012). While most scholars belonging to this school of thought ultimately felt that the biggest injustice stemmed from the implications a marijuana arrest can have on a person’s ability to secure employment, housing, and loans, others have made the argument that taxpayers have also suffered as a result of the policy. Harry Levine and Deborah Small estimated that New York City spent between $53 and $88 million per year between 1997-2006 arresting, jailing, and arraigning people on small marijuana violations (Levine and Small 2008).

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13 Curtis was conducting ethnographic research on the drug trade in the Bronx. He was spending time in the car of a small-time dealer. When the dealer stopped at a convenience store and went inside, officers approached the car, smelled and subsequently found marijuana in the car with Curtis, and arrested him.
In its treatment of minority citizens

The most wide-ranging and substantial body of stop and frisk criticism comes from those who contend that the policy has unfairly targeted minority citizens. These types of accusations have come from various groups nationwide as over twenty police departments including New York, Los Angeles, Philadelphia, and Cincinnati have been sued for unequal treatment of minorities (Harris 2013). When successful in court, these suits have generally ended with “consent decrees” that require the city in question to collect data on stops to be studied. Unfortunately cities that have not been sued or forced to collect stop and frisk data generally do not collect it nor make it public, so scholarship on stop and frisk has been confined to the few cities in which data is available.\footnote{Courts have mandated police departments to keep records of stop and frisk activity in New York, Philadelphia, Los Angeles, and Cincinnati. Other cities that have some form of data collection (not always publically available) are Baltimore, Miami, New Orleans, Kansas City, Tulsa, Newark, and Fort Worth (Harris, 2013).}

The most common claim made by those arguing that stop and frisk programs have had racially disparate outcomes is that minorities have been overstopped in comparison to their population in the city. For example, many have made the point that in New York, black and Hispanic residents consistently make up almost 90 percent of stops although they only are 55 percent of the city’s population (Toobin 2013; Fine, Fox, and Stoudt 2012; Garth et al 2009; Harris 2013; Center for Constitutional Rights 2008; Greene 1999). Similar claims have been made in Philadelphia and Cincinnati, where similar disparities exist (ACLU 2012; Rothman 2006). Philadelphia’s program has been especially suspect in this regard as over 70 percent of those stopped were black although blacks make up only 44 percent of the city’s population (Harris 2013). However, claims relying only on disparities between stops and racial makeup,
while eye opening, are oftentimes not enough to persuade critics who claim that disparities stem from crime participation rates and location rather than racial bias (Mac Donald 2003).

Therefore, some researchers have conducted deeper statistical studies that control for crime and location among other variables to determine whether minorities have been unjustly targeted. These studies have been more influential and thus are deserving of further discussion. In 1999, Jeffrey Fagan and Garth Davies analyzed the placement of stop and frisks across New York to see if stops were actually based on patterns of neighborhood disorder, as the NYPD claimed. Assuming that the NYPD was carrying out broken windows principles, enforcement should correlate with levels of disorder. However, the researchers found quite the opposite; their evidence suggests “that policing is not about disorderly places but about policing poor people in poor places” (Davies and Fagan 2000, 457). Because excess stops in poor areas cannot be explained by disorder and crime, race seems to be a motivating factor in the patterns of stop and frisk interventions. According to Davies and Fagan, even after controlling for the elevated rates of minority crime participation, minorities are still much more likely to be stopped than whites. Davies and Fagan continued their research on this subject and published a similar paper in 2007 with the help of Amanda Geller and Valarie West. They found that the trend of policing poor, minority areas harder than their crime rates and levels of disorder would predict continued from 2000-2008. The researchers conclude that “race does predict stop rates after controlling for crime and location conditions” and that “the burden of OMP has fallen disproportionately on African Americans, and to a less extent, Latinos” (Davies et al 2009, 333).

Jeffrey Fagan came to similar conclusions after analyzing 175,000 stop and frisks in New York City over a period of 15 months in 2003. Fagan found that “persons of African and Hispanic descent were stopped more frequently than whites, even after controlling for precinct
variability and race-specific estimates of crime participation” (Fagan 2004, 820). Most strikingly, after controlling for crime rates, Fagan found that blacks were more than two times as likely to be stopped for suspected violent crimes as whites. Eliot Spitzer, previously mentioned for his report as New York Attorney General, found similar results after analyzing a sizable sample of stops and frisk during 1998. Spitzer found huge racial disparities in his sample and concluded that “neither the crime rate in any given area, nor the number of police deployed in high-crime areas, nor reports of descriptions of suspects could account for these differences” (Spitzer 1999, 21).

Other studies have used arrest rate data to make the claim that stops of minorities are unjustified and potentially motivated by race. Several studies have produced data that shows lower post-stop arrest rates for minorities than for whites (Fagan 2004; Center for Constitutional Rights 2008). Scholars have gone on to make the argument that lower minority arrest rates signal that the standard of reasonable suspicion for stops was more relaxed in these cases (Fagan 2004; Fagan and Geller 2010; Fornango and Rosenfeld 2012; Harris 1994; Brunson and Gau 2010). If reasonable suspicion was being exercised uniformly throughout the department, arrest rates across races should not show such consistent discrepancies.

IV. Stop and frisk has been implemented fairly

Because civil rights organizations, protestors, and politicians have dominated the discussion regarding stop and frisk programs across the country with their claims of racial bias, it is easy to forget the equally reputable cohort representing the other side of the argument. This group contends that not only has stop and frisk effectively reduced crime, it has done so fairly by respecting the rights of minority communities. Though many scholars in this group offer
concerns and recommend continued monitoring of relations with minority communities, they also see these communities as better off as a result of stop and frisk due to decreased crime rates. Therefore, they largely recommend a continuation of the policy in New York and the replication of it across the country.

**Racial minority groups commit more crimes**

An argument commonly advanced by scholars who contend that stop and frisk has been implemented fairly is that elevated crime participation rates by minorities explain racial disparities in stops and frisks. A large amount of stop and frisk activity stems from officers responding to civilian complaints of criminal activity. Thus, if people are reporting crimes with black or Hispanic perpetrators, it follows that more black and Hispanic people will be stopped and frisked by the police (Skogan and Meares 2004). Manhattan Institute scholar Heather Mac Donald in particular has advanced this argument vigorously. Mac Donald contends that because blacks committed 80 percent of all shootings and 71 percent of all robberies in New York in 1998, the racial disparity in the stop and frisk data is largely justified (Mac Donald 2003). On the other hand, the low stop rates for whites can also be defended by the fact that they only committed five percent of violent crime in 2009, including only 1.4 percent of shootings. According to Mac Donald, “there is nothing illegal about using race as one factor among others in assessing criminal suspiciousness” (Mac Donald 2003, 16).

Some scholars have actually made the argument that some minority groups should be stopped more than they are now given their crime participation rates. Smith and Purtell, the researchers who conducted the aforementioned study on the efficacy of stop and frisk, noted that blacks constitute 68.3 percent of violent crime suspects yet only 51.6 percent of the stops, signaling that they are actually understopped. Similarly, Greg Ridgeway concluded that “black
suspects are substantially understopped relative to their representation in crime-suspect
descriptions” (Ridgeway 2007, 19). Other researchers have poked holes in this claim because
only about 20 percent of stops are based on a suspect description, so in 80 percent of stops, the
suspected-criminal argument doesn’t necessarily hold (Fagan and Geller 2010; Fine, Fox and
Stoudt 2012).

**Police are drawn to high crime areas, not minority residents**

Scholars often argue that discrepancies in stop and frisk activity can be explained by
the increased police presence in high crime areas. Police are drawn to these areas because of
crime, not race; but because minorities are more likely to reside in high-crime areas, their
chances of coming into contact with the police are heightened. Heather Mac Donald insists that
“Compstat is colorblind” and consistently shows that crime is concentrated in minority
neighborhoods suggesting that “arrests reflect crime intelligence, not racism” (Mac Donald 2003,
51). Even in cases where Compstat does not draw police officers to minority neighborhoods, the
law-abiding residents of these neighborhoods often do. When police receive complaints from
neighborhood residents, they are obligated to respond to them. Because of higher crime in
minority neighborhoods, police departments are more likely to receive complaints and deploy
themselves accordingly in these places (Bratton and Knobler 1998).

A common thread in this school of thought is the rejection of census-wide statistics
that “while easy to compute, often exaggerate racial disparities” (Ridgeway 2007, 2). These
statistics, often utilized by media outlets and civil rights groups, indicate the massive racial
inequalities of the stop and frisk outcomes without properly contextualizing them. Although
census-wide statistics suggest the minority citizens are stopped disproportionately compared to
their population, Ridgeway argues that these statistics are misleading. Ridgeway conducted a
comprehensive analysis of 506,491 NYPD stops carried out in 2006 and found that over 90 percent of those stopped were minorities. However, he finds only “small racial differences in the rates of frisk, search, use of force, and arrest,” leading him to ultimately endorse the NYPD practice. How did Ridgeway come to this conclusion of near race neutrality although 90 percent of those stopped were black or Hispanic in a city that is only 46 percent black and Hispanic?

Ridgeway relies on the use of “similarly situated” persons when analyzing the racial impact of stop and frisk rather than census-wide statistics. According to him “differences by race in the rates of frisks and searches may be due to differences in when, where, and why the stops occurred” (Ridgeway 2007, 34). These factors may, independently of race, influence both an officer’s choice to stop and individual and the actions the officer takes post-stop. After controlling for all these variables, Ridgeway concludes that close to 75 percent of the racial disparity can be explained by differences in time, place, and other situational factors. The rest of the disparity can be explained by the overrepresentation of minorities in crime-suspect profiles and arrest rates.

Ridgeway conducted a similar study with traffic stops in Cincinnati from 2005-2008 in order to address plaintiff concerns of continued racial profiling in the years after the Collaborative Agreement was signed. He concluded that the data shows no evidence of a racial bias in the decision to stop motorists (Ridgeway 2009). Although stops of blacks tended to take longer and had a higher likelihood of resulting in a search, Ridgeway attributes this to the location and time of stop rather than race, just as he did in New York. He insists that after looking at similarly situated blacks and whites, discrepancies in stop time and search rate disappear.
Like Ridgeway, Erich Goode also relied on situational variables when analyzing the racial disparities in drug arrests and enforcement. Rather than racism, Goode contends that disparities result from the outdoor markets, violence, and high customer turnover that characterize the areas in which most black drug dealers operate. Because white dealers usually remain behind closed doors away from the observation of police, they are much more difficult to prosecute. Therefore, the huge racial disparities in drug arrests that stem from police stops “cannot be ascribed to racism,” but rather to situational factors (Goode 2002, 43). Likewise, Ronald Weitzer found while researching in Washington DC that because crime rates tend to be higher in both black and white lower class neighborhoods, these people have more interactions with police officers. Weitzer showed that police presence was determined by crime rate rather than race by comparing the two lower class neighborhoods with similar crime rates (one white, one black) and showed similar volumes of police activity in each.

IV. Research Design:

Tentative answer to research questions:

To review, the questions I set out to answer at the outset of my literature review are as follows: 1) Is stop and frisk an effective crime reduction tactic? 2) Has it been implemented fairly in respect to constitutional and minority rights? In regards to the first question, I was especially swayed by several studies, namely “Declining Homicide in NYC: A Tale of Two Trends” (Fagan, Zimring, and Kim 1999) and “Do Police Matter? An Analysis of the Impact of New York City’s Police Reforms” (Kelling and Sousa 2001). The main take-away from the first study is that between 1991 and 1996, New York City’s homicide rate dropped an astounding 51 percent, good for the third largest homicide reduction over a five-year period in American history. The authors make a convincing case showing that this homicide reduction coincided
with and was accelerated by the birth of the NYPD’s stop and frisk program beginning in 1994. Similarly in the second study, Kelling and Sousa found that broken windows policing that is heavily reliant on stop and frisk is “significantly and consistently linked to declines in violent crime” and that “over 60,000 violent crimes were prevented from 1989 to 1998 because of broken windows policing” (Kelling and Sousa 2001, 23).

Determining an answer to the second research question was equally challenging. However, several particularly persuasive studies emerged from the wealth of literature and led me to conclude that in many American cities, stop and frisk programs have not been implemented fairly. Many stops fail to meet the reasonable suspicion standard while others unfairly target racial minorities. Rather than compare stop rates to racial census data, these compelling studies, which included “Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City” (Davies et al 2009) and “An Analysis of the New York City Police Department’s “Stop and Frisk” Policy in the Context of Claims of Racial Bias” (Fagan 2004), compared stop rates with crime participation data. This type of analysis juxtaposed data regarding the people who theoretically should be stopped with the data of people who are actually stopped. Both studies confirmed accusations made by others claiming that racial minorities have been unfairly targeted by police officers enforcing stop and frisk. In sum, my literature review has led me to conclude that although stop and frisk may be an effective way to reduce crime in cities, in many cases it has not been implemented fairly in regard to constitutional and minority rights.

**Hypothesis formulation:**

Despite its unfairness, I will not advocate for doing away with stop and frisk altogether because of the tangible benefits it provides to law enforcement. Therefore, the policy dilemma
facing cities across the country is how to implement the policy in a way that respects minority and constitutional rights. Striking this balance would please all stakeholders; police departments and others with an interest in reducing crime would be able to do so while minority citizens would not feel unjustly targeted. This led me to focus on the following research question: what variables determine the fairness of an urban stop and frisk program?

The adoption of this new research question stemmed from the relative lack of study surrounding it. While a great deal of scholarship exists on both stop and frisk fairness and effectiveness, I have come across very little that directly deals with the new question posed on policy implementation. Selecting this question provides me with an opportunity to add original research to a relatively new topic that impacts the lives of huge numbers of people every day. In response to this revised question, I hypothesize that a fairer stop and frisk program will result from the following three factors: leadership of the mayor and police commissioner, leadership from precinct commanders, and effective training programs. The model can be depicted schematically this way:

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Dependent variable</th>
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<tbody>
<tr>
<td>Police Commissioner and mayoral leadership</td>
<td>Level of fairness</td>
</tr>
<tr>
<td>Precinct command leadership</td>
<td></td>
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<tr>
<td>Training programs</td>
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As the model shows, I have identified what I believe are the three main determinants of whether or not a city’s stop and frisk will be implemented fairly. The first independent variable

15 Oftentimes, the same minority citizens who are unfairly targeted by police officers carrying out stop and frisk are the ones concerned about crime in their neighborhoods. For example, in 1998 in the nearly universally black 48th Precinct, “residents have been begging for more police officers to be assigned” to combat crime (Halbfinger 1998).
centers on the departmental leadership from the police commissioner and the mayor. Key figures such as mayors and police commissioners can have a significant impact on the outcome of the policy, as they relay messages down to precinct commanders who in turn communicate them to the officers on the ground. If these powerful figures adopt a “drop crime by whatever means necessary” approach and understate the importance of police-community relations, then the stop and frisk policy is less likely to be fair. Alternatively, departments that stress the importance of gaining reasonable suspicion before every stop are more likely to achieve a fairer policy that community members will support. The second variable concerns precinct commanders, the direct boss and most visible leadership figure for most young officers. This position merits further study because it acts as a hinge between the departmental strategies developed by police headquarters and the officers on the streets implementing these strategies. The more this commander instills and enforces constitutional principles, the more likely he or she is to produce a fairly implemented stop and frisk program in his or her precinct. The final variable selected involves the police academy training that all recruits attend before becoming officers. If a department clearly articulates the reasonable suspicion standard, the intricacies of racial profiling, the importance of relations with minority communities, and the most effective strategies to cultivate this relationship, it will achieve a fairer policy. If young officers come away from training programs without a comprehensive understanding of the situations in which stop and frisk is acceptable, the policy is more likely to be implemented unfairly. In summary, my model seeks to predict how much each independent variable (departmental leadership, precinct command leadership, and training) impacts the fairness of a police department’s stop and frisk program.
Although I feel that I have identified the three most pertinent independent variables, it is unlikely that they alone are the determinants of stop and frisk fairness. For example, public pressure through mobilization and court rulings may also constitute important antecedent variables. I have limited the number of variables in my model purely for the sake of feasibility.

**Case Selection:**

As alluded to in the historical background section, stop and frisk programs have materialized in most large American cities since the historic *Terry vs. Ohio* ruling in 1968. However, once implemented, these programs have varied significantly. For example, some cities either do not stop and frisk very often, some do not record stop data, and some do not make stop data available to the public. Due to these issues, a majority of cities have not had their stop and frisk programs researched by scholars, thus making them difficult to study. In contrast, other departments have been subject to significant study due to their unique implementation of the policy or heightened media attention. I have identified these cities as more desirable cases because of the previous scholarly work carried out in them.

New York emerges as the most attractive case because it has been studied thoroughly by scholars and the media alike. The stop and frisk program in New York has undergone lawsuits that have led to the divulgence of stop data unavailable in most other cities. Studying one city over time would allow me to control for all of these variables and focus on changes that occurred in my independent variables (departmental leadership, precinct command leadership, and training) over time. These factors have led me to decide that studying New York City over time provides me with the most feasible way to measure my variables.

Although New York City’s stop and frisk program has stayed the same in name over the last twenty or so years, the program’s implementation and effects have varied widely, allowing
for the emergence of two distinct cases. For example, the number of stops taking place in New York City jumped from 139,409 in 1998 to 685,724 in 2011 (New York City Bar Association, 2013). During this same time, marijuana-related arrests stemming from stop and frisk have experienced a similar increase (Geller and Fagan, 2010). Likewise, arrest rates and gun recovery rates in stop and frisk encounters have varied considerably over this same time period. Complaint levels have also changed markedly from 1994-2013. Due to these policy alterations, it makes the most sense to split the data into two distinct cases. The first case will span from 1994 to 2001 and the second from 2002 to 2013. These variations in stop frequency, arrest rate, marijuana enforcement, and complaints represent shifts in my independent variable that I will seek to explain using corresponding shifts in the three dependent variables.

**Measurement of Variables:**

As the concept of fairness is qualitative rather than quantitative, measuring it posed some challenges. I judged fairness on two separate levels, constitutionality and racial makeup. I used various sources of data that span over my entire period (1994-2013) to analyze this dependent variable. These included but were not limited to, number of stops, number of stops in relation to crime rates, racial composition of stops, location of stops, arrest rate of stops, arrest rate by race, stop efficiency, number of guns seized, number of marijuana arrests, and citizen complaints. These measures have all been used by scholars studying the effectiveness and fairness of stop and frisk in the past, which signals that they are the most relevant. Studying trends in all of these variables over time helped paint a clear picture of the overall fairness of NYPD’s stop and frisk program with respect to race and constitutional rights. First establishing changes in this variable over time allowed me to work backwards to see how changes in fairness relate with changes in
my independent variables temporally. While causation ultimately was difficult to prove, I found and extensively analyzed correlations in my data.

Measurement of the NYPD’s training program mostly focused on the six month time period that new recruits spend at the police academy. Measurements included the amount of time and stress put on police-community relations, racial profiling, reasonable suspicion, and conflict management. Most importantly, my research assessed how stop and frisk scenarios have been explained to young officers over time. Studying these training procedures provided me with a clearer picture of how recruits understand stop and frisk when they hit the streets for the first time as officers.

Measuring both precinct command and departmental leadership was a highly qualitative exercise, as its description would suggest. One way to judge leadership is looking at to what degree different precinct commanders supplement department training with training and advice of their own. Some articles I have come across suggest that oftentimes, what officers learn at the police academy conflicts significantly with what they are taught once on the street under the eyes of a precinct commander (Gonnerman, 2013). Determining departmental leadership and culture will need to be measured from both a public and private perspectives. Publicly, what kind of statements are mayors and commissioners making to the media regarding the implementation of stop and frisk? How do these messages contrast to their statements within closed-door meetings with other departmental personnel?

Data collection and analysis methods:

Fortunately, New York City stop and frisk data is readily available in both government and city reports as well as private academic studies. Also, an enormous amount of stop data has been uncovered through the stop and frisk driven court cases of Floyd vs. New York City and
Daniels, et al. v. The City of New York, et al. The slaying of Amadou Diallo by the NYPD Street Crimes Unit in 1999 triggered a detailed report on the department’s stop and frisk practices which has already proved to be a valuable source of data (Spitzer, 1999). Oftentimes, this data is already broken up into racial categories. Crime data by race is also publicly available, which allowed me to see how and if stops reflect change in the racial composition of New York City’s criminals. The Center for Constitutional Rights has become as a major NYPD watchdog and has published stop frequency, arrest rate, and racial makeup of those stopped since the data has been made public in 2000. Another valuable source will be interviews or focus groups with long-time city residents or community leaders that can attest to shifting relations with the police and observed alterations in police tactics in over time.

NYPD training techniques related to stop and frisk have come under much scrutiny, especially during Floyd vs. The City of New York. Links to the training manual were made public as a result of the case and videos of the training are also publically available (Floyd vs. New York, 2013). Judge Shira Scheidlin also gave a detailed assessment of the strengths and weaknesses of NYPD stop and frisk training in her opinion. One challenge was gaining access to similar training materials in earlier years. While Eliot Spitzer’s report offers a Scheidlin-esque assessment of the training regimen in place in the late 1990s, finding primary source documents was difficult (Spitzer, 1999).

Collecting data intended to measure precinct command leadership presented another large challenge. The role of precinct commanders has been largely ignored in the academic literature and government documents alike. Therefore, a majority of my research on this variable came from interviews with ex-officers as well as police reporters and academic experts. In conversations with these people, I inquired about how different commanders’ tactics overlap
with those of the department, what values commanders preach, and how much power commanders have to implement their own strategies. Another source for potential information on precinct commanders are community organizers and leaders, especially those in predominately minority neighborhoods. Some of the literature I have come across suggests that these relationships are an important starting point for commanders attempting to enhance police-community relations.

Finally, gauging departmental leadership also involved the consultation of a wide range of sources. To begin with, New York Times archives provided me with a time-sequenced record of what mayors and police commissioners have said on stop and frisk, and crime reduction while in office. The archive also allowed me to look back into mayoral races to see what types of platforms candidates put forward while campaigning. Interviews again also provided valuable information. I spoke with figures in and outside the department who have had the privilege of attending Compstat meetings in which both crime reduction and community integration strategies are discussed deeply by leadership figures. How have the structure and content of these meetings changed with different commissioners and mayoral administrations? How much pressure is being put on precinct commanders to reduce crime and stop and frisk heavily?

Another way to judge the message coming down from leadership figures in the NYPD are the city-wide strategic plans published by the mayor’s office. These plans outline goals for the entire city, including the police department and can say a lot about what stance different mayors take on stop and frisk.

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16 Link to plan is available here
V. Setting the Stage: New York City Pre-Giuliani

Prior to the mayoral election of Rudolf Giuliani in 1993, the NYPD struggled with both crime control and corruption. As mentioned in the historical background section, the country as a whole was experiencing elevated crime rates, and New York was no different. Violent crime nearly doubled under Mayor Robert Wagner, who served from 1954-1965 (White 2001). Both crime rates and racial animosity continued to mount under Mayor John Lindsay in the late 60s and early 70s. As a result, “in the 1970s, 80s, and early 90s, New York was viewed as one of the world’s most dangerous metropolises,” loaded with subway muggings, junkies, and overall disorder (Rogers 2011).

However, despite these concerning crime trends, “crime control was only a blip on the NYPD radar screen” due to a preoccupation with corruption (Silverman 1999, 42). The department was so riddled with corruption during the 1970s that the city commissioned an outside group to investigate it. After investigation, this group, known as the Knapp Commission, generated criminal indictments against numerous officers, most notably those in the 30th Precinct. It uncovered a dark side of the NYPD in which officers in some locations systematically took bribes and collaborated with criminals. The findings of the Knapp Commission led to dismissal of Police Commissioner Howard Leary in 1971.

Though the department experienced a considerable overhaul under new Commissioner Patrick Murphy in the early 1970s, it was unable to completely rid itself of its corrupt wing over the next twenty years. Thus in 1992, a new commission under former judge Milton Mollen was

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17 The Knapp Commission’s findings earned this precinct its nickname, “The Dirty Thirty.” According to Knapp, corruption ran rampant among the officers in this precinct, especially those involved in drug enforcement.
instructed to investigate and reassess the extent to which corruption continued to permeate the department. The commission “revealed patterns, deeply ingrained in the police culture, of brutality, theft, abuse of authority, and active police criminality” (Fagan and MacDonald 2012, 10). Deeply concerned about the commission’s findings, Police Commissioner Lee Brown intensified efforts to improve recruiting, integrity training, and supervision. While his efforts are widely lauded, some have criticized him for focusing too much on corruption and too little on crime (Levitt 2010).

In 1990, Mayor David Dinkins proclaimed that crime in the city was “an emergency situation that calls for extreme measures” (Roberts 1992). The mayor had a point. From 1985 to 1990, homicides in the city rose by 60 percent, leaving New York City with a homicide rate of 30.7 per 100,000 residents (White 2012). The city was dealing with over 2,200 murders per year, good for over 10 percent of the nation’s total (Rayman 2013). The chart below, courtesy of Kevin Drum, nicely depicts the uptick in violent crime in New York City in the late 1980s and early 1990s.

Figure 1:
Despite this alarming trend, the NYPD limited its use of aggressive tactics like sweeping field interrogations and zero tolerance policing in known drug hot spots that sometimes quelled crime but enflamed tensions with heavily-policed communities. Instead, Dinkins and his Police Commissioner Lee Brown sought to reduce crime by expanding the number of uniformed officers while simultaneously implementing community policing.

Community policing involves officers (oftentimes on foot) patrolling certain neighborhoods while building personal relationships with the neighborhood’s residents. The philosophy inherent in the strategy is that crime is a problem that community residents and police need to combat together. The logic behind this strategy is that officers will begin to uncover the roots of crime problems so that they do not have to be called back to the same locations repeatedly. Although Brown’s community policing program eventually reduced crime slightly, “Dr. Lee Brown’s three years as police commissioner would prove disastrous for the NYPD, just as many felt Dinkins’s four years as mayor proved disastrous for New York City” (Levitt, 2010).

Because community policing emphasizes ongoing dialogue between police and civilians, it relies heavily on patrol by foot rather than by car. This method, while perhaps more conducive to building trust, is highly inefficient (Ratcliffe et al 2011). Each officer on foot can only effectively patrol a small area and his or her response time to crime is much lower than officers in patrol cars. For these reasons and the pressing concerns with crime, Mayor Dinkins opted to dramatically expand the size of the police department. Dinkins succeeded in adding an extra 5,000 officers to the force under his tenure (Zimring 2012), making New York’s police per capita rate well above the national average and twice that of Washington DC’s (Karmen 2000).
Unfortunately for Dinkins, the money required for the expansion of the NYPD could not be found within the city budget. Therefore, his administration was forced to request federal funds from the Clinton administration, a process that proved complex and drawn out. Although Dinkins’s goal of reaching 40,000 officers was finally reached, it was not until 1992, the year before he was up for reelection. The beefed up force helped drop New York City’s crime rate in 1992, but that was forgotten after an egregious murder prompted newspaper headlines to read “Dave, Do Something,” a signal that the city was far from satisfied (Rayman 2013).

Just months after Commissioner Brown completed his implementation of community policing citywide and enjoyed his first crime decline,\(^\text{18}\) he resigned from his post. Though Brown cited personal reasons were behind his departure, many speculated that it had more to do with the intensifying charges being brought forth by the Mollen Commission (Sims 1992). Regardless, Mayor Dinkins was put in a tricky position, forced to appoint a new commissioner in close proximity to an election. He chose safely; Ray Kelly, Deputy Commissioner under Brown, was a well-liked 31-year NYPD veteran. During his brief tenure as Commissioner, Kelly advanced Brown’s community policing project, successfully handled the 1993 World Trade Center Bombing, and “undertook an unprecedented effort to recruit black officers” (Levitt 2010, 35). Kelly’s status was also bolstered by a city-wide murder count that fell below 2000 for the first time since 1989.

The spate of fear and crime that plagued New York City in the early 1990s created the perfect electoral environment for the tough-on-crime ex-prosecutor Rudy Giuliani. Giuliani reassured New Yorkers that they did not have to put up with the crime wave that had struck under Dinkins. He used the low number of arrests generated during the previous few years to

\(^{18}\) Although crime did decline slightly in Brown’s final year, it remained at an extremely high level.
make the point that the NYPD had not been working hard enough to effectively counter crime. As “many citizens regarded the Dinkins administration as unable or unwilling to restrain random and impulsive criminal acts,” Giuliani enjoyed an easy target (Silverman 1999, 73). He trashed community policing as a liberal fantasy that attributed some crime to societal causes. Giuliani’s disenchantment towards community policing ran so deep that he considered retaining Ray Kelly as Police Commissioner until Kelly mentioned that he would contemplate continuing Brown’s community policing platform. Giuliani abruptly ended the interview, dismissed Kelly, and immediately removed him from consideration (Levitt 2010).

Giuliani was counting on his tough-on-crime stance to resonate with some of New York’s liberal voters to thus rob Dinkins of his base. The strategy worked, causing Giuliani to eke out a narrow victory and become New York City’s first Republican mayor since 1945. “The crime rate, it seemed, cost Dinkins his job,” a lesson that Giuliani promised he would not relearn once in office (Raymond 2013, 16). Thus, Giuliani quickly proved that his campaign promises regarding his tough-on-crime stance were far from electoral rhetoric.

VI. Case Study 1: The Giuliani Era, 1994-2001

*William Bratton and the revolution of the NYPD*

Rudolph Giuliani “campaigned for mayor on a promise to fight crime and disorder with a zeal that would reassure worried New Yorkers” (*New York Times* Editorial Board, 1994). Thus, he was intent on finding a police commissioner as passionate about reducing crime as he was and finally settled on William Bratton. Bratton had an impressive record based on a short stint as Police Commissioner in Boston and a successful spell as head of the NYPD’s Subway and Transit department. Bratton was a firm believer in the police’s power to control crime. He was
infuriated by the growing body of social scientists who contended that crime is attributable to structural variables like poverty and inequality because these theories failed to acknowledge the role of the police (Bratton and Knobler 1998).

Unlike Kelly, Bratton vowed to make a clean break with the NYPD of old, which included a substantial gutting of the expensive and inefficient community policing campaign. Consistent with Giuliani’s philosophy, Bratton suggested a complete reengineering of the NYPD based on crime prevention and broken windows policing. He attributed the city’s high crime rates to community policing’s relative abandonment of these central principles. The considerable overlap between Giuliani’s goals and Bratton’s strategies to achieve those goals made him an easy choice for commissioner.

After surveying the department during his first few weeks as commissioner, Bratton contended that the NYPD’s main focus was to avoid criticism from the media, not to prevent crime (Bratton and Knobler 1998). The department’s corruption-filled legacy kept media outlets constantly investigating the NYPD with a critical eye, poised to break the next scandal. Thus, commanders were judged based on their ability to keep their subordinates corruption-free and the media at bay rather than their crime control strategies.

Although Bratton praised the way the NYPD responded to crime, he uncovered major flaws in the way the department went about preventing it. Above all else, Bratton sought to turn the NYPD from a reactive organization to a proactive one. For example, he soon found that huge swaths of the department took weekends off despite the fact that “the bad guys work around the clock” (Maple 1999, 23). Similarly, Bratton was appalled that a majority of shootings took place between 8pm and 4am, a time period when most officers were also off duty. Soon after Bratton took over, NYPD officers were working around the clock.
Bratton also took issue with the longstanding delegation of drug crime to specialized units. While this measure was installed to prevent corruption, it barred most officers from enforcing the city’s drug laws (Maple 1999). Bratton’s team found that 30 to 50 percent of the city’s murders were directly tied to drug trafficking. For the new-style NYPD under Bratton, “drug use was seen as the engine driving serious crime” and it accordingly empowered all officers to battle drugs (White 2012, 10). After significantly altering the department’s deployment strategy, Bratton and his inner circle began implementing the order-maintenance and broken windows strategies that had proved so effective during his time in the city’s subways.

Order maintenance, or broken windows policing relies on the premise that enforcing low level crime and disorder will lead to the creation of a law abiding, orderly atmosphere and the detection of larger-scale criminals. According to the original theory, “disorder and crime are usually inextricably linked” (Kelling and Wilson 1982, 30). If a window is broken and left unrepai red, breaking windows becomes an accepted norm. Soon, other windows will be broken as well, as the community has already shown that window-breaking is an offense that results in few consequences for the perpetrator. As urban decay spreads, neighborhood residents realize that they live in uncontrolled environments where rules go unenforced, and some turn to more serious crime (Kelling and Wilson 1982). As crime and disorder spread, law-abiding residents stop fighting back against deviant behavior and retreat into their homes, only exacerbating the lawless atmosphere. Broken windows policing seeks to get to the root of the problem by first addressing and condemning the original disorder, or in the case of the previous example, the first broken window.

This type of policing relies of the aggressive enforcement of street crime such as graffiti, panhandling, fare beating, public drunkenness, public urination, and marijuana consumption.
This seemingly petty enforcement worked in sync with s NYPD objections in three ways. First, it allowed New York’s law-abiding citizens to reclaim public spaces previously contaminated by chaos and disorder. Second, it gave officers more numerous opportunities to uncover more serious crime. Finally, it acted as an effective deterrent because “stopping people on minor infractions made it riskier for criminals to carry guns in public” (Davies and Fagan 2000, 471).

Bratton enjoyed a great deal of success using broken windows principles while policing in the New York City subways and soon after being named commissioner “made order maintenance policing the NYPD’s primary strategy for reducing fear and fighting serious crime” (Spitzer 1999, 52). This philosophy guided Bratton’s “Reclaiming the Public Spaces of New York” initiative in which precinct commanders were instructed to tackle these petty offenses. “By ordering the police to fight nuisance crimes, the Giuliani administration changed the rules of the street in New York City”; the NYPD’s transition from reactive to proactive had officially begun (Lii 1997). Officers suddenly interacted with the public much more often and the severity of crime needed for an arrest dropped dramatically.

A main effect of Bratton’s broken windows revolution were skyrocketing misdemeanor arrest rates. In 1993, the year before Mr. Giuliani took office, there were 261,329 arrests: 127,883 felony cases and 133,446 misdemeanor cases. In 1994, there were 345,041 arrests: 139,764 felony cases and 205,277 misdemeanor cases (Lii 1997). Some scholars have contended that a strong correlation exists between misdemeanor and felony arrests (Hope and Naci 2005; Karmen 2000; Maple 1999), but this idea is far from proven. One unchallengeable effect of broken windows policing is the increase of citizen-police interaction. Predictably, as arrests rose as a result of broken windows policing, so did complaints. Complaints increased by 50 percent in Bratton’s first year while “the city paid about $70 million in settlements or judgments in claims
alleging improper police actions -- compared with about $48 million in the three previous years” (Lii 1997). While Bratton and company attributed this rise to the increase in enforcement activity, others have criticized NYPD officers for unnecessarily forceful and militaristic conduct during stop and frisk encounters (Traub 2001).

Oftentimes, the crack-down on low-level crime was carried out in hopes of recovering guns. Early in his tenure, Bratton noticed that people with illegal guns ran very little risk of getting caught with them despite the fact that gun homicides constituted nearly 70 percent of the city’s total in 1990, up from 58 percent in 1980 (New York Times Editorial Board, Oct. 21, 1991). According to Jack Maple, before Bratton, “taking guns off the streets didn’t seem to interest the squads at all” (Maple 1999, 25). Given these alarming assertions, it is no surprise that New York City ranked last among America’s thirty largest cities in terms of guns seized per capita (Karmen 2000). Thus, alongside his “Reclaiming the Public Spaces of New York,” Bratton introduced a “Guns off the Street” initiative. Guns off the street was comprised of four main strategies: 1) increasing the enforcement of quality of life crime in high crime areas, 2) increasing traffic stops by officers who specialize in looking for gun-concealing traps in vehicles, 3) training officers in how to spot people carrying guns, and 4) intensifying pursuit of gun traffickers (Maple 1999). Bratton went on to assemble the elite Street Crimes Unit (SCU), a 90-man undercover team tasked with sweeping the city’s most gun-infested neighborhoods. He also pressured precinct commanders, assuring them if they did not treat gun-removal with high priority, he could find other people who would (Crauss 1994).

Though the application of broken windows policing and the emphasis on gun removal were key pieces of the NYPD’s revolution under Bratton, “Compstat’s arrival in 1994 represents the most important crack in the NYPD bedrock” (Silverman 1999, 65). Compstat, short for
Computer Statistical Analysis System, tracks the time and location of all reported crimes across the city and pinpoints the data on a map. Compstat’s visual representation of crime allows police departments to identify crime patterns and deploy resources accordingly. Compstat’s role is difficult to overstate as it has been described as “perhaps the single most important organizational/administrative innovation in policing in the latter half of the 20th century” (Kelling and Sousa 2001, 6).

Bratton was no micromanager and strongly believed in localized solutions to crime. In his mind, those who understood an area most intimately would provide the best remedies to the crime in that area. Therefore, it was not he who was responsible for knowing and responding to crime patterns, but local commanders. New York City is divided into 76 police precincts. Each precinct holds around 235 officers each and is headed by a precinct commander (Gonnerman 2013). Bratton identified these leadership figures as most crucial to precinct-level crime reductions and held them accountable for the performance of their precinct through the use of Compstat. Bratton and his team held Compstat meetings twice a week throughout his tenure. Precinct Commanders were required to attend all meetings, which were held at 7am at police headquarters to ensure that there would be no scheduling conflicts. This greatly altered the level of interaction between precincts and headquarters. Until the Compstat revolution, “a precinct commander would never in his career expect to talk consistently to the chief of the department” (Levitt 2010, 233).

This exposure to departmental leadership allowed some precinct commanders to shine, but doomed those who were not aware of crime patterns in their precincts or unable to come up with innovative strategies to abate ongoing crime. During Bratton’s first year, two thirds of the department’s precinct commanders were fired, which opened up ample positions for young
Compstat stars. Bratton instilled a culture that assured “promotions would be based on performance and promise, not length of service” (Silverman 1999, 88). Given how high the stakes became, Compstat meetings tended to be intense affairs. Retired NYPD Captain Ernie Nasprett admitted that he would have “rather had monthly root canals” than be put on the spot at Compstat meetings (Nasprett 2013).

At each Compstat meeting, Deputy Police Commissioner for Crime Control Strategies Jack Maple and Department Chief Louis Anemone sat behind a desk while each commander presented. The questioning sessions that followed sometimes “became so raw that fistfights erupted” (Levitt 2010, 69). Within the department, Maple and Anemone were “famed—and often feared—for their merciless questioning of precinct commanders and their intolerance of failure” (Cooper 1999). On one occasion, Anemone became so infuriated with the far-flung tales of Tony Simonetti, a commander stationed in Brooklyn, that he flashed an image of Pinocchio on the screen behind him for all to see (Levitt 2010). Despite these hiccups, Bratton reflected on the intention and implementation of Compstat fondly. He summarized the impacts it had on precinct commanders: “we freed them from old restraints, gave them responsibility, held them accountable, and were very pleased with the results” (Bratton and Knobler 1998, 237).

Impacts of Bratton

Though William Bratton’s clashes with Mayor Giuliani forced him out of his role after a little more than two years in April 1996, his impact on the NYPD was enormous. According to the Citizens Crime Commission, “no police commissioner changed the department more since Patrick V. Murphy” (Krauss 1996). In some ways, Bratton fell victim to his own success. His

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19 Patrick Murphy served as NYC Police Commissioner from 1970-1973 in the wake of the Knapp Commission and developed the reputation of a dogged fighter of corruption. The reforms
ostentatious style attracted media attention that Bratton gobbled up at every opportunity. The final straw was a *New Yorker* cover story that pictured and quoted Bratton extensively but gave Giuliani no credit for the NYPD turnaround. In order to bolster his reelection chances, Giuliani needed this credit and forced Bratton out of the department to ensure that it would be his (Levitt 2010).

Media outlets found themselves attracted to the NYPD between 1994 and 1996 for a reason. Many balked when Bratton promised to reduce crime by 10 percent during his first year in office and were astounded when it plummeted by 12 percent. Bratton set an even more ambitious goal of 15 percent for his department in 1995 and again exceeded it with a 17 percent figure. This sustained and substantial plummet was nothing short of miraculous, and the media treated it as such. While it is impossible to know exactly how much of New York City’s crime decline was driven by NYPD innovations under Bratton, the department surely played a key role. Those who dismiss crime drops in New York City for being part of a national trend forget that “although NYC comprised only 3 percent of the U.S. population, its crime drop accounted for one-third of the nation’s” (Levitt 2010, 96). Police departments in cities such as Los Angeles, San Diego, and San Francisco that implemented Compstat and aggressive order maintenance strategies to a lesser extent decreased crime, but at a much lower rate than NYC (Corman and Mocan 2005).

Bratton transformed the NYPD from a passive, reactive organization to one that adopted aggressive and proactive strategies to prevent crime. Officers felt as though they were finally given the freedom to do their jobs. This was a welcome change for some officers who were critical of the Dinkins administration’s treatment of the police department. According to Officer enacted during his tenure were instrumental in dragging the NYPD out of some of its darkest days.
Joe Santiago, an eight-year veteran, “the difference is that the administration of this city is backing us more” (Treaster 1994). Thomas Reppetto, a crime analyst echoed this statement and praised Bratton for boosting the morale of disgruntled officers: "the cops got what they had long sought. They regained the freedom to go out and be cops, to arrest criminals instead of driving past them" (Flynn 2000a).

Compstat identified the troubled locations that were subsequently pounced on with high levels of order maintenance policing and searches for firearms. As many of those locations identified at the outset were violent open-air drug markets, focusing on them pushed drug-selling indoors which reduced the risk of violent conflict over turf. Overall, drug arrests increased by 97 percent during Bratton’s brief time as commissioner (White 2012). Although drugs continued to be sold across the city, Bratton’s strategies significantly diminished the violence associated with this dangerous trade by making it more risky to sell drugs in the streets. These tactics allowed many law-abiding residents to reclaim their neighborhoods that had been overtaken by drug dealers in the late 80s and early 90s.

In sum, “the tipping point in the transformation of the city was the intervention and administrative reforms brought about by former commissioner William J. Bratton” (Fagan and MacDonald 2012, 2). Bratton and his team of hard-charging cops reinvigorated the NYPD through a combination of cultural, strategic, and tactical changes. By the time Bratton stepped down in 1996, the department was virtually unrecognizable from the one he inherited.

*Bratton’s Predecessors: Howard Safir and Bernard Kerik*

With Bratton’s brazenness and defiance still fresh in his mind, Mayor Giuliani picked his next police commissioner thoughtfully. He settled on Howard Safir, a figure who had already proven his loyalty to Giuliani during two years as Fire Commissioner from 1994-1996. The
diminished public presence that characterized Safir’s tenure was foreshadowed early on; his swearing in ceremony, highlighted by a lengthy address from the mayor, “almost ended without a word from the man of the hour” (Krauss 1996). Soon after Safir took the helm, police officials admitted that his chief spokesperson, Marilyn Mode, was primarily responsible for “making sure that Mr. Giuliani receives more credit for the department’s crime-fighting than he did under Mr. Bratton” (Krauss 1996).

Though allegiance to Giuliani was certainly Safir’s main charge, from an NYPD policy standpoint, he displayed similar loyalty to his predecessor, William Bratton. Given the drastic improvements in crime reduction that occurred under Bratton’s watch, Safir’s willingness to stay the course was predictable. Indeed, when Safir said “I find the department in excellent repair” early on, he “quietly signaled that he was more interested in continuity that change” (Krauss 1996). Like Bratton, Safir advocated for broken windows in lieu of community policing, commended Compstat extensively, and continued to stress the importance of strict and aggressive enforcement against drugs and guns. Perhaps most importantly, Safir's philosophy that "the bottom line is crime reduction” continued to resonate throughout the department (Cooper 1998).

Luckily for Safir, the strategies orchestrated by Bratton continued to produce impressive results in terms of lowering crime. Two more consecutive years of decreased crime in 1996 and 1997 preceded a substantial 11 percent drop in 1998 that included the lowest number of homicides since 1964. The 606 murders recorded in 1998 account for a mere third of those from 1990, when the count peaked at 2,262 (Cooper 1998). Safir praised the entire department for its historic feat, but gave individualized credit to specific units. Safir believed “the department’s most effective tactic in reducing crime was getting guns off the street” (Levitt 2010, 147). Thus,
he had glowing praise for the department’s Street Crimes Unit and gave them credit for 40 percent of the city’s gun seizures. Accordingly, Safir more than quadrupled the size of this unit from its original 100 officers all the way to 438 in 1997 (Levitt 2010).

Despite the SCU’s marked successes in the arena of gun removal, their gung-ho approach oftentimes alarmed those in the high-crime areas that they patrolled most heavily. For example, Francisco Gonzalez, the manager of a community board in the Bronx expressed gratitude for the unit’s crime-fighting prowess, but also voiced concerns. According to Gonzalez, “people are being stopped for no reason, thrown against a fence and searched. Sometimes there's vulgar language to people who are just minding their business. What some of the officers are doing is just creating an atmosphere of fear” (Kocieniewski 1999). Others have also raised similar concerns about the SCU’s militaristic gun recovery strategies. Monifa Bandele, an activist in Brooklyn reflected on the 1990s with fear: “the Street Crimes Unit was jumping out on people. It was very terrorizing” (Bergner 2014). According to a Cato Institute report, “the modus operandi of the unit was to quickly swarm on a person, with pistols drawn, all the while barking commands laced with vulgarities” (Lynch 2000, 5).

Despite these concerns, complaint data suggests that most members of the SCU carried out their dangerous mandate without significantly deteriorating relations with community residents. The unit generated 84 complaints in 1997 and just 41 in 1998 and both figures represent a smaller-than-expected share of the department’s total given the SCU’s size (Kocieniewski 1999).20

Expanding the Street Crimes Unit was not the only significant action that Safir undertook during his time as police commissioner. In 1996, he responded to an increasing number of

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20 The SCU made up about two percent of the total department. The complaints the unit generated in 1997 and 1998 were both below two percent of the department’s total.
civilian complaints by unveiling a $15 million Courtesy, Professionalism, and Respect (CPR) campaign to improve officer conduct. After reviewing complaint data, Safir and others in the department found that a sizable portion of complaints stemmed from inappropriate conduct from officers (Krauss 1996c). Officers often treated all people they came into contact with as criminals. Apologies or explanations for intrusion were rare while verbal abuse during brusque, confrontational encounters reigned. Citizens often cited profane language, rude behavior, and general impoliteness in their complaints, all indiscretions that Safir sought to eliminate with CPR.

Safir said early on that “one of my top priorities will be to build bridges of trust and mutual respect in every community in the city” (Krauss 1996b) and that “whatever gains we have achieved in fighting crime are minimized if the price is the trust and respect of the community we serve” (Silverman 1999, 196). CPR funds beefed up conflict resolution training to ensure that officers across the city understood the most effective and respectful ways to deescalate tense situations with civilians. Funding also went towards accountability measures that tracked records of what officers were accumulating complaints. Interviews with training sergeants suggested that CPR programs were in place in almost all city precincts by the late 1990s. Though precinct commanders were granted a fair amount of discretion in how to channel funds, those who were most successful implemented CPR training during roll call, held officers accountable for complaints, and paired problematic young officers with veterans (Davis 2005).

After serving the department for over four years, Safir departed on his own terms and accepted a private sector offer in Atlanta in August 2000. Giuliani chose his close friend Bernard Kerik to fill his shoes for the remaining year and a half of his final mayoral term. Like Safir, “Kerik left the Bratton-era reforms in place and crime continued to fall” (Levitt 2010, 191). For
example, Kerik squeezed an additional $100 million out of the city budget to finance Operation Condor, a program that funds additional quality-of-life sweeps with overtime hours. Each day, the funds allowed 500 additional officers on the lookout for any illicit activity to flood high-crime areas. Like Bratton and Safir, Kerik also continued to rely on Compstat as the department’s primary crime-response tool.

Though he only served as commissioner for a little over a year, Kerik sought to leave a mark on the department by expanding Safir’s CPR program. Kerik was surprisingly candid about the deteriorating police-community relations resulted from Giuliani’s aggressive crime-fighting stance and vowed to improve them (Traub 2001). According to Kerik, Compstat meetings were expanded to quizzes on not just crime patterns, but complaint patterns as well (Herbert 2001). Kerik also spent a great deal of time mending relationships with individuals and community organizations that had sparred with the police in the past. Like Safir, Kerik identified the way that officers approach and interact with civilians as the main barrier blocking better relations and thus focused on this issue. He was especially intent on limiting animosity that resulted from officers failing to explain why a person was stopped during stop-and-frisk encounters. According to Kerik, “it makes it less confrontational if you explain to a person why they were stopped” (Flynn 2001). However, Kerik believed that “improved community relations and quality-of-life enforcement can go hand in hand, arguing that aggressive enforcement improves neighborhoods for residents, and better relations help the police do their job by building trust and understanding between officers and residents” (Rashbaum 2001).

Overall, the period of 1994-2001 marked a period of renaissance for the NYPD. The department no longer busied itself with internal corruption-fighting measures but instead engaged in an all-out assault on crime across New York City. As a result, both felony and
misdemeanor arrests increased by nearly 70 percent while violent crime and property crime declined by 56 and 65 percent respectively (Corman and Mocan 2005). All told, the number of incidents in each of the seven major crime categories\textsuperscript{21} dropped by at least 40 percent under Giuliani’s watch (Flynn 2001).

\textbf{Figure 2:}

![New York City: Number of Index Crimes, 1990 v. 2001](image)

\begin{tabular}{|l|c|c|c|}
\hline
Index Crimes & 1990 & 2001 & \% Decrease$^1$ (Rounded to nearest whole number) \\
\hline
Murder & 2,245 & 642 & 71 \\
Non-negligent Manslaughter & & & \\
Forcible Rape & 3,126 & 1,530 & 51 \\
Robbery & 100,280 & 28,202 & 72 \\
Aggravated Assault & 68,891 & 37,893 & 45 \\
Burglary & 119,937 & 31,563 & 74 \\
Larceny-Theft & 268,620 & 133,938 & 50 \\
Motor Vehicle Theft & 147,123 & 29,989 & 80 \\
Total Index Crimes & 710,222 & 266,587 & 62 \\
\hline
\end{tabular}

(Berry 2001).

Although New York City’s crime drop occurred within the context of a national crime decline, its size far outstripped the national average. William Bratton can surely be credited with spurring the turnaround, but it was sustained by Safir and Kerik’s willingness to stay the course and Giuliani’s ever-present obsession with crime reduction. The next section will turn to a crime-

\textsuperscript{21} The seven major crimes are murder, rape, robbery, assault, burglary, grand larceny, and grand larceny of a motor vehicle.
fighting strategy that emerged as a deeply imbedded aspect of the NYPD’s new model: stop and frisk.

**Stop and Frisk in New York City, 1994-2001**

*Implementation*

As previous sections have suggested, stop and frisk had been employed by the New York City Police Department since the *Terry vs. Ohio* ruling in 1968. However, Bratton’s introduction and subsequent revamping of the department significantly altered the extent to which the tactic was used. According to NYPD expert Heather Mac Donald, stop and frisk has been “at the revolutionary core of New York style policing” since 1994 (Mac Donald 2013). Since Bratton took over the department, “stop and frisk has served as an important tactical resource in promoting the Department’s specific strategic crime-fighting goals” (Spitzer 1999, 59). Under Bratton, stop and frisk quickly became a central tool for officers, especially those enforcing quality of life violations and searching for illegal firearms. Indeed, Bratton and Giuliani “have credited their introduction of aggressive stop-and-frisk police tactics for much of the city's stunning decline in violent crime” (Butterfield 1997). Unfortunately, no quantitative stop data was collected until 1998, so it is impossible to know by exactly how much stop and frisk activity actually increased. What is clear, however, is that “the NYPD resisted mass arrest sweeps or ‘stop and frisk’ strategies sometimes attempted in Los Angeles and other cities” before Bratton and Giuliani came into office (*New York Times* Editorial Board 1991). Thus, the year 1994 marks the beginning of a clear break with New York City’s past experience with stop and frisk.

Stop and frisk under Bratton, Safir, and Kerik primarily took place under two main circumstances: 1) during a search for illegal firearms and 2) during the enforcement of quality of life violations. The department as a whole encouraged all officers to be extremely proactive in
their search for weapons, so some patrol officers were performing stop and frisks quite frequently. Indeed, analysis showed that in 1998, over one third of all stops were based on suspected weapons possession (Davies and Fagan 2000). Although the search for guns using stop and frisk was widespread throughout the department, the Street Crimes Unit merits special attention. The unit, which made up a mere two percent of the force at its peak, was responsible for over 40 percent of guns seized in 1998. Guided by their “We Own the Night,” slogan, SCU officers relentlessly patrolled high-crime areas stopping and frisking those who they believed were armed. Although it was established in 1971, the unit held little prominence until 1994, when officers inside the unit were given the go-ahead to become more aggressive (Kocieniewski 1999). Bratton and Giuliani both made clear that the city’s safety rested in the hands of the SCU, and thus granted the unit unparalleled autonomy to remove guns from the street. This green light translated into an enormous number of stops and frisks; the unit stopped and frisked 18,023 people in 1997 and 27,061 in 1998 (Kocieniewski 1999). In both years, the SCU accounted for a little over 10 percent of the department’s total stop and frisk activity.

Though first empowered by Bratton, departmental support of the SCU actually peaked under Safir, who greatly expanded the unit’s size. In one sense, he was immediately rewarded for this decision as the SCU seized 59 percent more guns than it had in 1996. Safir once said, “I

22 Unfortunately, no data is available prior to 1997. Because the SCU’s mandate is to recover firearms, it frisks 100 percent of the people that it stops. Terry vs. Ohio made clear that in any stop based on the suspicion of a violent crime, frisks are constitutionally justified to protect officer safety. When the reason for the stop is not related to violent behavior, frisks are not always justified. Thus, for most years that the NYPD has recorded data, frisks have only occurred in a little over half of the stops.

23 In another sense, Safir was punished by this expansion. Prior to it, the SCU interviewed each potential candidate for admission to its ranks extensively and combed through his or her files for problematic offenses. The expansion reduced the rigor of the screening process. All four officers who took part in the slaying of Amadou Diallo came to the SCU post-expansion. Though it is
wish I could bottle their [the SCU’s] enthusiasm and make everyone take a drink of it” (Levitt 2010, 147). Throughout the 1990s, the unit was held in extremely high regard. It was selective thus comprised of the best and bravest officers the NYPD had to offer. The unit’s stop and frisk productivity in terms of gun removal was credited for the precipitous drop in shootings from 2,500 in the first half of 1993 to fewer than 1,000 during the first half of 1998 (Kocieniewski 1998).

As mentioned above, from 1994-2001 the NYPD’s multi-pronged strategy included assaults on both high and low level crime. Thus, while stop and frisk was utilized frequently to curtail gun violence, it was also heavily relied upon during the implementation of broken windows, or order maintenance policing. Committing this type of low-level crime precipitated interaction with officers, oftentimes in the form of stop and frisk.

Though broken windows style enforcement did occur to some extent across the entire city, Compstat directed police to concentrate their activity in specific neighborhoods where crime and disorder were high. Once crime was depicted on computerized maps, Precinct Commanders instructed officers on the ground to flood problematic areas with quality of life stop and frisks. Though this process proved to be a potent means of reducing crime, soon after it was implemented, concerns regarding overly aggressive and unwarranted stop and frisk activity began to surface. The next section will provide an overview and assessment of these concerns.

*Stop and Frisk Impacts and Backlash, 1994-2001*

Almost immediately following Bratton’s reengineering of the NYPD, civilian complaints began to flow. After Bratton’s first year as Commissioner, complaints increased by a whopping 56 percent (Berry 2001). Overall, “from 1994 to 1996, the city received 8,316 court claims of impossible to know whether these officers would have been accepted into the more selective SCU, it is interesting to note that all four had a past history of civilian complaints (Levitt 2010).
abuse by officers, compared with 5,983 for the three previous years” (Purdy 1997). Bratton refused to fault his officers for the uptick in complaints, and argued that the “rise in complaints was commensurate with the rise in contact” (Bratton and Knobler 1998, 291). In his eyes, had the department been policing more effectively before his arrival, the city’s civilians would have been most accustomed to most proactive police behavior. He knew full well that complaints were likely to increase and predicted that they would flatten once the public became acclimated to the city’s new style of policing.

However Bratton’s prediction failed to materialize once he left office. Complaints against the police rose another 25 percent under Safir between 1996 and 1998 (Greene 1999). These complaints were concentrated among minority groups; black New Yorkers comprised only 29 percent of the city’s population but 53 percent of its complaints (Greene 1999). Consistent with this finding, increases in complaints came from poorer, predominately minority regions of the city. Complaints rose by 38 percent in Harlem compared to just eight percent in Manhattan (Cole 1999). Safir adopted Bratton’s approach and attributed the rise to civilians still adjusting to the new NYPD: "We need to educate people that the rules have changed -- not the laws, but the rules of police conduct," Safir said (Purdy 1997). Safir’s launching of the “Courtesey, Professionalism, and Respect” initiative however suggested that he harbored deeper concerns over the issue than his predecessor. Though the implementation of CPR seemed to stop the bleeding at the tail end of Safir’s tenure, it failed to incite a meaningful reduction in complaints from 1997-2001 even after it was reinforced by Kerik (as shown in figure 3 below).
Figure 3:

<table>
<thead>
<tr>
<th>Year</th>
<th>Complaints received</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993 (pre Giuliani)</td>
<td>3,580</td>
</tr>
<tr>
<td>1994</td>
<td>4,877</td>
</tr>
<tr>
<td>1995</td>
<td>5,618</td>
</tr>
<tr>
<td>1996</td>
<td>5,550</td>
</tr>
<tr>
<td>1997</td>
<td>4,768</td>
</tr>
<tr>
<td>1998</td>
<td>4,930</td>
</tr>
<tr>
<td>1999</td>
<td>4,903</td>
</tr>
<tr>
<td>2000</td>
<td>4,612</td>
</tr>
</tbody>
</table>

(Berry 2001, 154).

Qualitative measures also indicated that police-community relations were becoming increasingly strained as a result of the Bratton-era reforms, most notably stop and frisk. According to *New York Times* reporter Fox Butterfield, “every one of the dozen young people interviewed knew of someone who had been stopped by the police -- unfairly, they thought -- in recent months” (Butterfield 1997). Jonathan Johnson, a black Brooklyn resident said, “the treatment down here is crazy, with the stop and frisk and harassment. The average person down here has no faith in police officers” (Yardley 1999). Outside experts found that “relations between the City’s minority population and its police force had deteriorated and were getting worse” (Spitzer 1999, 4). “Roadblocks, car stops, stop and frisk encounters, and order
maintenance law enforcement techniques” all contributed to increased tension between the NYPD and minority New Yorkers (Spitzer 1999, 4). Increased stop and frisk activity has built up considerable distrust between police and minority residents, especially those who have been stopped while doing nothing wrong.

The real turning point regarding the city’s perception of stop and frisk occurred on the night of February 4th 1999. On that evening, four members of the aforementioned SCU approached Amadou Diallo\textsuperscript{24} and poured 41 bullets into his body after one officer thought he saw Diallo reaching for a gun. Diallo turned out to be an unarmed 23 year-old street peddler who had recently immigrated from Guinea and possessed no criminal record. This tragic event produced a massive outcry from members of the predominately-minority communities who had been critical of the NYPD’s stop and frisk practices for nearly half a decade. The shooting depreciated what little good will these communities had for the police. Some residents saw Diallo’s killing as a reflection of the racial stereotypes held by the police officers in the city. Others were perhaps even more critical: criminologist Eli Silverman said “it is not racism; it is not insensitive white cops systematically singling out minorities because of their ethnicity and color. What the police are doing is more of what they’ve been doing, and that is the real problem” (Silverman 1999, 188).

The Diallo slaying “would become the defining moment of Safir’s tenure as police commissioner” and provoked a great deal of overdue departmental introspection (Levitt 2010, 175). The tragedy also carried political ramifications for Giuliani as Democratic mayoral candidates running against him used it to highlight the dark side of New York’s crime decline. Giuliani’s response to the incident did little to silence these critics. According to police reporter

\textsuperscript{24} Diallo was originally approached because SCU members thought he fit the description of a known rapist in the area.
Len Levitt, decision that opted to forsake any disciplinary action was wholly inadequate (Levitt 2014). Levitt believed that this response was symbolic of the “cowboy culture” that permeated the department under Giuliani’s watch.

The Diallo catastrophe also sparked the first ever in-depth investigation of the NYPD’s stop and frisk program. Months after the shooting, State Attorney General Elliot Spitzer produced a detailed report after analyzing the approximately 175,000 stops that had been documented during the period of 1998 and the first three months of 1999. The report vindicated those who had been claiming all along the NYPD had been stopping people unconstitutionally. It showed that 83 percent of those stopped were minorities (50 percent black and 33 percent Hispanic) although these groups made up only 25.6 and 23.7 percent of the city’s population respectively. Though the NYPD had refuted similar statistics in the past by claiming the minority groups’ elevated crime rates led to disproportionate stops, Spitzer found that “after accounting for the effect of differing crime rates, blacks were stopped 23% more often than whites and Hispanics were stopped 39% more often than whites, across all crime categories” (Spitzer 1999, x). Thus, the report concluded “that differing crime rates alone cannot fully explain the increased rate of stops of minorities” (Spitzer 1999, ix).

Spitzer also found that just over 15 percent of the total stops ended in an arrest. After breaking down the data further, Spitzer showed that for blacks, only 1 out of every 9.5 stops generated an arrest, while for whites, 1 out of every 7.9 stops did so (Spitzer 1999). The now-infamous Street Crimes Unit fared far worse on these measures than the department as a whole. This unit, that often prided itself on having a “sixth sense” alerting them when criminal activity was afoot, generated arrests in only 1 out of every 16.3 stops of blacks and 1 out of every 14.5 stops of Hispanics. The lower arrest rate for blacks suggests that they were likely subjected to
more unjustified stops than whites. Another aspect of Spitzer’s report was an investigation of the constitutionality of stops. Using methods already described in greater detail in previous sections, Spitzer concluded that 15 percent of the 1997 and 1998 stops were made without reasonable suspicion and therefore unconstitutional. Notably, according to Spitzer’s analysis, 23 percent of stops by the Street Crimes Unit were unconstitutional, a rate well above the city average.25

As academics legitimized Spitzer’s findings with similar analyses,26 the stop and frisk debate began to heat up. Police Commissioner Howard Safir countered Spitzer by calling the findings of the report “critically flawed” on claims that the police only stop people when they fit the description of a crime suspect (Roane 1999). Unsatisfied by Safir’s explanation, the findings of Spitzer’s report led the Center for Constitutional Rights to sue the NYPD in the case Daniels vs. New York. Early in 2001, the case was settled quickly; the NYPD promised to come up with an official policy that would explicitly denounce racial profiling, reduce racial disparities in stops, and begin to keep scrupulous records of all stop and frisk activity.

The buzz surrounding stop and frisk combined with other high-profile NYPD abuses in the cases of Patrick Dorismund, Anthony Baez, and Abner Louima27 produced the least police-

25 A study of stop and frisk in Philadelphia recently found that 43 percent of stops failed to garner reasonable suspicion during the first quarter of 2013 (ACLU of Pennsylvania 2013). However, this study used a different methodology to judge reasonable suspicion than Spitzer, so direct comparisons between the two cities should not be made.

26 After reading the report, Jeffrey Fagan, an expert criminologist and statistician from Columbia University, claimed that “no one can deny that Blacks and Hispanics were feeling the brunt of the NYPD’s stop and frisk tactics and that these disparities are not a simple artifact of differences in crime rates between areas that different groups inhabit” (Fagan and McDonald 2012, 18). Fagan later revisited the topic of reasonable suspicion in the Floyd case and found that from 200402012, only 6 percent of stops failed to meet reasonable suspicion. However, he used a much more conservative system than Spitzer, and the actual tally is probably must higher (Scheindlin 2013).

27 Patrick Dorismund was an unarmed black man killed by an undercover NYPD agent after an altercation on March 16th, 2000. Though the shooting was eventually deemed accidental, it intensified the already strained relationship between the NYPD and the black community.
friendly atmosphere since the days of the Mollen Commission. This atmosphere finally gave a voice to those in heavily-policed minority communities who had witnessed the darker and less publicized side of the 1990s crime decline. No longer was the NYPD the do-no-wrong department that dragged New York City out of decades of lawlessness. Now, both the NYPD and Mayor Giuliani found themselves under a critical microscope with attacks coming from the public and media alike (Levitt 2010). This influx of unfavorable publicity peaked just as Bernard Kerik replaced Safir as commissioner. He backtracked considerably by acknowledging a damaged relationship with minority communities and vowed to enact a culture change based on mutual respect.

Just as it seemed like things could get no worse for the NYPD, September 11th struck. This catastrophe rocked New York but actually rescued the NYPD’s reputation. Stories of police abuse in minority neighborhoods were replaced by ones depicting fearless acts of heroism by New York’s finest. The shell-shocked city once again held their police department in high regard. Thus, the Giuliani era concluded in a blaze of glory marked by high approval rating for both him and his police department.

VII. Case Study: The Bloomberg Era, 2002-2013

Election and Police Commissioner Selection

Republican Michael Bloomberg, a self-made billionaire-turned politician, eked out a slim victory over Democratic candidate Mark Green with 50.3 percent of the popular vote on

Dorismund was the fourth unarmed black man to be killed by the NYPD in the last thirteen months. Anthony Baez, a 29-year old black man, black died in police custody after being arrested for disorderly conduct in 1994. Baez died from asphyxiation after being held in a choke hold by police while he was resisted arrest. In possibly the most heinous abuse by the NYPD during the 1990s, Abner Louima, a Haitian immigrant, was sodomized with a broken broom handle while in policy custody in 1997. Louima was originally arrested for disorderly conduct outside a nightclub. The sodomy took place after he was taken back to the 70th police precinct office in Brooklyn. This sickening incident led to the dismissal of the entire precinct’s leadership and was called “the most politically explosive [attack] in the city’s history” (Levitt 2010, 164).
November 6\textsuperscript{th}, 2001. This victory came after Bloomberg poured $50 million of this own money into the campaign, flooding televisions and other public spaces with advertisements.

Bloomberg’s campaign was also aided by a nasty Democratic primary between Green and Fernando Ferrer that divided the city’s liberal voters.\textsuperscript{28} He was also given a boost by an endorsement from Giuliani, who became an ever more beloved popular political figure after his handling of 9/11. Indeed, one quarter of voters exiting polls admitted that Giuliani’s endorsement impacted their decision to vote for Bloomberg (Nagourney 2001).

Though they were thoroughly eclipsed by the events of September 11\textsuperscript{th}, issues of crime and policing remained salient during the run-up to the election. Bloomberg adopted Giuliani’s tough-on-crime stance with a visceral advertising campaign. The ads invoked New York’s past problems with crime with an ominous voice in the background saying, “remember when crime was out of control?” (Cooper 2001). These types of ads were also used as a platform to attack Green; one said "When Mark Green served in the Dinkins administration, in 1993 alone there were nearly 2,000 murders -- 6 per day” (Cooper 2001). Images of gurneys packed with bodies, menacing mug shots, and yellow crime scene tape flash as the ominous voice warns, “crime is down, but the job is not done” (Cooper 2001). Ads also picture police officers stopping and frisking potential criminals. Indeed Bloomberg remained defiant in the face of stop and frisk critics during the election, never wavering from the stance that the tactic was a key piece of the 1990s crime drop.

During the campaign, Bloomberg toyed with the idea of retaining Kerik, who was viewed as a hero in the wake of 9/11, as commissioner. However, inside sources confirmed that this was

\textsuperscript{28} After Al Sharpton endorsed Ferrer in the primary, several of Green’s aides were accused of making incendiary racial comments while trying to attract white Jewish voters. These actions caused a media firestorm and most likely contributed to the low turnout of minority voters in the general election.
merely a ploy and that Bloomberg had been well aware that Ray Kelly would be his appointee months before he was elected (Levitt 2014). Bloomberg, who unlike Giuliani had no crime-fighting background, emphasized how much he would rely on Kelly’s expertise as mayor. Bloomberg’s statements of this nature were an accurate foreshadowing of how powerful Kelly would soon become. As a man who had already served as commissioner once and boasted 31 years of NYPD experience as of 2001, Kelly was surely a crime-fighting expert. He owned an impressive resume and was an integral player in the NYPD’s expansion in the early 1990s. Overall, Kelly’s selection was met with general approval across the city (Levitt 2010).

The NYPD under Ray Kelly

Most of Kelly’s first months at the department were spent preparing the city for the possibility of another terrorist attack. However, Kelly simultaneously sought to break ties with the past administration and did so by criticizing Giuliani and his police commissioners heavily. “A large reservoir of good will was under construction when I left the Police Department in 1994,” Kelly said. “It was called community policing. But it was quickly abandoned for tough-sounding rhetoric and dubious stop-and-frisk tactics that sowed new seeds of community mistrust” (Flynn 2000b). Initially, it seemed like the department might be changing course and implementing real reform under Kelly.

Kelly followed up on his critique of the department’s aggressive turn with real action by dissolving the now-infamous Street Crimes Unit in early 2002. The 180 officers remaining in the unit were redeployed to other units with similar mandates. Though Kelly claimed that his decision reflected one of the tough choices a shrinking department needed to make, it was

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29 As mentioned in previous sections, Kelly served as commissioner under Mayor David Dinkins from 1992 until Giuliani’s election in 1994.
30 The ranks of the NYPD shrunk from 41,000 to 37,680 in 2002.
really the only logical decision given how much negative publicity the unit generated following the Diallo incident. Kelly also officially banned racial profiling in the department. On this subject, Kelly said "I think this has been the policy all along, but it is important to state it in written form. This has been an area of concern to members of minority communities in the past. There is at least the perception, in some people's minds, that racial profiling goes on, and we want to have a clear statement of what the policy of this department is as far as racial profiling is concerned" (Baker 2002).

Kelly continued to stress improving police-community relations in his early years; he said his main priorities coming into office were “the three C’s: crime, counterterrorism and community relations. If there is a theme, it is that those three things have to be given co-equal status" (Steinhauer 2003). Kelly’s emphasis on community relations seemed to pay off: according to a *New York Times* report, “the administration's relationship with minority groups, appears better than that of the prior administration, even in the wake of two recent controversial cases in which black New Yorkers died as a result of actions by the police. This may stem from the administration's speedy attempts to take responsibility for police errors, and its overall efforts to improve community outreach” (Steinhauer 2003).

Kelly was also achieving great success on another front: crime control. Bloomberg’s campaign promised New Yorker’s that their city would remain safe, but many doubted the department’s ability to reduce crime further, especially as its budget was shrinking and crime nationwide was beginning to increase.31 Defying all odds and doubters, after a somewhat moderate crime decrease in 2002, crime fell by a substantial 7.4 percent in 2003, giving New

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31 From 1991-2000, violent crime across the nation fell by a remarkable 33.2 percent (Weisburd, Telep, and Lawson 2013). While New York’s 60.3 percent decline far outpaced the national rate and signaled that something unique had happened in the city, many expected crime in New York to continue to follow the national trend.
York City the lowest crime rate among US cities with more than 1 million people (Dewan 2003). This most recent crime was made all the more impressive by surging homicide rates in other east coast cities such as Boston and Philadelphia. After the statistics were released, Bloomberg boasted “the public understands that they are safe in this city in ways they have not been in modern memory” (Steinhauer 2003). Kelly was similarly self-applauding: "you have to go back 40 years to have the city as safe as it is now," he said. "That's when Mickey Mantle was in center field, and Bob Wagner was in this building, and Hershey bars cost a nickel” (Baker 2002).

How was the NYPD able to reduce crime under such unfavorable circumstances? The key was innovative deployment of scarcer resources. This theme can be found in a series of different initiatives deployed under Kelly’s watch. Given the sweeping changes that tackled some of the department’s greatest shortcomings and increasing financial constraints, the NYPD under Kelly focused on smaller, more specific problems and sought to mitigate them with narrowly tailored, efficient solutions. Programs such as Operation Impact, Operation Spotlight, and Operation Crew Cut epitomize this approach and will be discussed in some detail in the following paragraphs.

Kelly’s primary strategy to maximize productivity was Operation Impact, first implemented in early 2003. The initiative first identified 61 different crime hot-spots across the city then flooded these areas with fresh graduates from the police academy. These zones varied in size but were usually between ten and thirty blocks. The 1,400 or so young officers were stationed on foot patrols in order to saturate the target areas with police presence. Crime was

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32 Operation Impact selected fresh graduates to undertake this assignment largely due to seniority issues. Placing veteran officers on foot-patrol in undesirable high-crime areas would not have gone over well with the rank and file. Young officers were given these tough assignments because they had to put in their time doing dirty work before graduating to more desirable, prestigious assignments.
tracked on a weekly basis and the young officers were held accountable for the activity in their zones.

The thinking behind Operation Impact was to address crime concerns in specific neighborhoods whose crime seemed immune to the city-wide decline. For example, in the 77th Precinct, shootings increased by 41 percent in 2002 despite the city-wide drop (Polgreen 2003). Robert Napolitano, a precinct commander in Queens was full of praise for the initiative and compared to “pinpoint precision bombing” (Dewan 2003). Operation Impact quickly emerged as key in the department’s fight against crime as officers in impact zones citywide registered 33,438 arrests and 360,308 summonses in 2004 (Purtell and Smith 2007). Early on, the Operation Impact garnered support from locals inside the zones. One storekeeper told reporters, “there are less crazy people hanging around. Less fights on the avenue, less headaches, you know?” (Dewan 2003).

As the years passed and Bloomberg and Kelly continued to lower crime to historic levels, the pair decided to double down on Operation Impact. In 2007, all 1,800 police academy graduates were sent to impact zones primarily located in neighborhoods like Brownsville, Bedford-Stuyvesant, East New York and Crown Heights whose crime rates remained stubbornly elevated compared to the city as a whole (Baker 2007). Instead of these fresh graduates replacing the new one-year veterans as they had been doing, the new policy kept both on in an attempt to increase police presence even more. Kelly defended this reinforcement by saying that “if one program has been the prime reason why crime has gone down in this city, at least in this administration, it has been Operation Impact” (Baker 2007).
Operation Impact was not Kelly’s only newly developed crime-fighting measure. Under Kelly, the NYPD continued to rigorously enforce quality-of-life infractions, but prosecuted them with an added twist, Operation Spotlight. Due to the smaller police force, the NYPD could no longer afford to exist as an apparent presence on every street corner. Therefore, the department identified and cracked down on 9,700 individuals who chronically committed quality of life crimes but rarely served meaningful jail sentences (Rashbaum 2002). In coordination with the city’s District Attorney’s, Operation Spotlight allowed the NYPD to prosecute these offenders in special Criminal Courts where prosecutors would seek strong sentences.

As mentioned above, Operation Spotlight was just a piece of a larger effort to continue the crackdown on low level offenders. Bloomberg made this stance extremely clear from the outset when he declared, “I said it, he [referring to Kelly] said it, and I will say it again: Quality-of-life crimes are something we are not going to back away from” (Nagourney 2001). This continuation was a wise move for Kelly and Bloomberg on two fronts. Crime-fighting wise, broken windows had already proven enormously effective under Giuliani and his three police commissioners. Politically, broken windows strategies retained widespread popularity across all racial groups. The police department channeled this support and continued quality of life policing, but with somewhat less vigor given complaints from some minority communities. Indeed, although misdemeanor arrests remained high compared to pre-Giuliani levels, they dropped by nearly 20 percent in Kelly’s first year in office (White 2004). That being said, in the

33 Kelly shared the mindset popularized by Bratton that crime control must focus on small offenses that damage quality of life.
34 A 2002 poll conducted by the Citizens Crime Commission asked NYC residents about their feelings towards broken windows policing. On a 1-20 scale (20 representing the highest possible score), whites averaged 14.6, African Americans averaged 15.3, and Hispanics averaged 15.2 (Kelling 2002). This is somewhat surprising given that minority groups tend to have generally lower levels of police support.
coming years, over 40 percent of arrests in the city stemmed from quality of life crimes signaling that the NYPD still believed it to be an important part of their work (Schneiderman 2013).

A final initiative that exemplified the department’s handling of more specific crime problems was Operation Crew Cut. Just as the department found most crime quality of life offenders were concentrated within certain areas and segments of the population, in 2010 it found that 30 percent of shootings were executed by “crews” (Parascandola 2014). According to *NY Daily News* police reporter Rocco Parascandola, crews are similar to gangs but are differentiated by looser affiliation and younger members. Though they rarely engage in extensive organized criminal activity, crews oftentimes battle violently for reputation and turf. The NYPD countered them with Operation Crew Cut, an initiative that identifies and studies crews through social media then cracks down on their hang out locations. Once police identified crew members using social media, they stopped them frequently in the street in order to “reinforce the notion that the police are watching” (Goldstein and Goodman 2013). In the year after it was implemented, Operation Crew Cut successfully indicted over 400 crew members for crimes including murder, robbery, assault, weapons possession. After shootings among those aged 13 to 21 dropped by 50 percent in 2013, Kelly said of Operation Crew Cut, “if I had to point to one reason why the murders and the shootings are down, it is this program,” Kelly said (Goldstein and Goodman 2013).

Just as Kelly retained popular Giuliani-era reforms in the cases broken windows policing

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35 This type of strategy raises some questions regarding stops and reasonable suspicion. Unfortunately, the article cited did not provide information on whether police officers were stopping suspected crew members solely based on their online activity or if they simply kept a closer eye on them and stopped them after gaining reasonable suspicion on the street. The former strategy probably would be deemed unconstitutional but the latter would be acceptable if officers observed individualized suspicious behavior before making stops.

36 This statement should not be confused with a nearly identical one Kelly made in 2007 about Operation Impact.
and the intensive pursuit of guns, he did the same by preserving Compstat. Compstat remained the department’s primary accountability tool as both the bi-weekly meetings and the intense, confrontational style associated with them persisted. Given the extensive praise that Compstat garnered during the 1990s, the NYPD’s continued reliance on it should come as no surprise.

Stop and Frisk in New York City 2001-2014

Implementation

Though Kelly initially tried to distance himself from the controversial stop and frisk tactic associated with the Diallo slaying and scathing Spitzer report, its use exploded under his watch. The 139,409 and 104,000 stops recorded in 1998 and 1999 respectively were soon eclipsed once Giuliani left office. In the years that followed, the number of times New Yorkers were stopped and frisked skyrocketed. Stops jumped to 160,851 in 2003 before nearly doubling to 313,523 in 2004. The steady increase persisted throughout the decade until stops peaked at 685,724 in 2011, marking an over 600 percent increase in the volume of stops since Kelly took over in 2002.\(^{37}\)

Figure 4:

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\(^{37}\) In 2002, Kelly’s first year, stops were actually lower than they had been in the later stages of Giuliani’s time in office. Only 97,296 stops were recorded in 2002 compared to 139,409 in 1998.
(chart via Jones-Brown, Gill and Trone 2010, 4). Stops per resident jumped from 12.5 per 1000 in 1999 to over 60 per 1000 in 2006 (Fagan et al 2009). Before analyzing the possible explanations for why this dramatic increase took place, it is first necessary to examine how and under what circumstances stop and frisk was used from 2002 onwards.

The dismembering of the Street Crimes Unit in 2002 provided the NYPD with a substantial new challenge. The department continued to firmly believe that stop and frisk had played a massive role in the crime reductions of the 1990s but had just lost the unit most responsible for its implementation. To partly compensate for the loss of the SCU, the NYPD decided to strengthen the Firearms Investigation Unit in order to keep the pressure on illegal firearms high. However, this unit concentrated on under-cover operations to snatch up gun dealers rather than on the street level stops that the SCU had specialized. Instead of attempting to replicate the SCU with a new unit under a less controversial title, the NYPD decided to disperse its responsibility. Suddenly, stop and frisk was no longer a tool primarily a tool utilized by specialized units tasked with specific tasks; instead, it was used by all officers, especially those stationed in high crime areas.

For example, young officers stationed in aforementioned impact zones soon began utilizing stop and frisk regularly. By the mid to late 2000s, according to an interview with *NY Daily News* police reporter Rocco Parascandola, 30 percent of the NYPD’s stop and frisks were being made by Operation Impact officers. This makes sense given that the tactic has always been implemented more heavily in high-crime areas like the zones established by Operation Impact. However, the NYPD’s reliance on stop and frisk within hot spots intensified even further once Operation Impact provided the department with a constant presence in these areas. According to
a 2013 paper that analyzed stop and frisk frequency at specific intersections and street segments across the city,

there is a tremendous concentration of SQFs at both units. In the case of intersections, just 5% of the intersections produced about 50% of SQFs in 2009 and 56% in 2010. In 2009, 5% of street segments produced almost 82% of the SQFs, and in 2010, this was true for 78% of the SQFs. In 2009 and 2010, about half of the intersections in New York and approximately three quarters of the street segments had no SQFs (Weisburd, Telep, and Lawton 2013, 13).

As many of the intersections and segments mentioned above were located inside impact zones, it is clear that Operation Impact was a major piece of the department’s overall stop and frisk program. In some ways, it acted as a replacement of the SCU.

Impact zones were not the only areas where stop and frisk was on the rise. Neighborhoods perceived to have high rates of social disorder were also subjected to higher levels of stop and frisk as the NYPD intensified quality of life policing. These neighborhoods were characterized by high poverty and unemployment, vacant properties, dilapidated buildings, and elevated crime rates. Research has shown that these types of neighborhoods were subjected to higher stop and frisk activity than their crime rates predict (Fagan et al 2009). Given that close to 40 percent of the NYPD’s arrests stem from quality of life enforcement heavily reliant on stop and frisk, it is clear that this type of policing carried over from the Giuliani era to the Bloomberg era. Examples of such neighborhoods are Brownsville, Central Harlem, East Harlem, Bedford-Stuyvesant, and Mott Haven. An 8-block area in Brownsville alone recorded 52,000 stops between 2006 and 2010, with only one percent of them ending in arrest. (Rivera, Baker and Roberts 2010). Stops reached such a high volume at one point that a football coach in
Brownsville allowed his players to leave practice with their helmets and pads to ensure that police did not mistake them for gang members.

Stop and Frisk Backlash

As the events of September 11th remained seared in the minds of New Yorkers during the following years, so too did the heroic actions of the NYPD. In the grace period that followed the attacks, the NYPD could do no wrong according to public opinion. Commissioner Ray Kelly’s approval rating soared while he paraded around the city making speech after speech about how the department was doing all it could to keep the city’s people safe. Although this good will stemmed from counter-terrorism, it soon extended into crime as a whole. According to Chris Dunn of the New York Civil Liberties Union, “under Commissioner Kelly, the police see everything through a terrorism prism and the public has been more willing to accept aggressive policing in this climate” (Powell 2009). This sentiment was especially true of white, middle class New Yorkers, who had few negative things to say about the police in the early stages of Bloomberg and Kelly’s time in office.

In his earlier years, however Commissioner Kelly and to some extent the police department as a whole enjoyed widespread support that extended across racial lines. Kelly’s support among the black community can be explained partially by the fact that he represented a change from the often-maligned Rudolph Giuliani and his uncharismatic Commissioner Howard Safir. The ex-mayor’s pugnacious crime-fighting campaign was largely unapologetic, as Giuliani rarely recognized or validated the concerns of minority communities. In contrast, Kelly empathized with those who felt victimized by the police with statements like “I can understand if you have done nothing wrong, you can feel a loss of time or a loss of dignity” (Powell 2009). He

38 When Safir left office following the Diallo shooting, only 11 percent of blacks in the city held a positive opinion of him (Powell 2009).
also welcomed debate on contentious topics like stop and frisk in a way that never would have been permitted under Giuliani. Unlike Giuliani’s brash, act-now, ask-questions-later approach, Kelly and Bloomberg were sure to explain why stop and frisk was a necessary tactic that would stay in use. Kelly also separated himself from his predecessors in his handling of tragic, racially-charged events, such as the shooting of Sean Bell in 2006. Whereas Giuliani was slow to respond and lenient in his punishment of officers in similar cases, Kelly spoke out hard against the four officers involved in the shooting and eventually removed them from the department. This response surely helped deescalate both the protests and racial animosity that rocked the city in the days following the shooting. Ray Kelly’s 70 percent approval rating among blacks in 2008 signaled that police-community relations had soared to levels not seen since the pre-Giuliani days (Powell 2009).

Despite his initial success in minority communities, chinks in Kelly’s armor were soon exposed as the NYPD complied with the settlement reached in the Daniels case and began publicly releasing recent stop and frisk data. Part of the reason why criticism of the NYPD’s stop and frisk program was fairly muted was the lack of data regarding the practice from 2002 to 2006 and from anytime before 1997. Citing technical difficulties related to changing software, the NYPD failed to release stop data during this period and given the department’s high standing in the minds of both the general public and political class, they were under little pressure to do so. Finally in early February 2007, the department released stop numbers from the previous year that showed a 500 percent increase since compared the last time data was released in 2002.

39 Sean Bell was a 23-year old black man killed by four plainclothes outside a nightclub on November 25th, 2006. The officers believed that one of Bell’s companions was brandishing a weapon and fired 50 shots into the vehicle into which the men were boarding. Bell’s two friends survived the shooting. All three men were later found to be unarmed.

40 This high standing stemmed from both the aftermath of 9/11 and the city’s steadily decreasing crime rate.
Clearly, Kelly’s contention “that tough policing does not necessarily depend on harsh stop-and-frisk tactics” put forth early in his tenure quickly evaporated (While 2004). The backlash was swift and immediate and eventually forced the NYPD to release data from the missing years (2003-2005). Although Commissioner Kelly defended his department by assuring skeptics that, “officers are stopping those they reasonably suspect of committing a crime, based on descriptions and circumstances and not on personal bias,” Jeffrey Fagan cast doubt on the statement by saying “it is an astonishing fact that stop rates went up by 500 percent when crime rates were flat” (Baker and Vasquez 2007).

From 2007 onwards, the NYPD’s stop and frisk program found itself under the City Council’s microscope and the department was pressed to release data every quarter. As mentioned in the previous section, each year stop totals climbed to never-before-seen levels. Each time statistics were released, the NYPD was forced to shoulder a new influx of criticism, especially from those representing the heavily-policed minority communities. Noel Leader, a co-founder of 100 Blacks in Law Enforcement Who Care, said of the 2007 statistics: “these numbers substantiate what we’ve been saying for years. The New York Police Department under Raymond Kelly is actively committing some of the grossest forms of racial profiling in the history of the New York Police Department” (Lee 2007). The media also began to penetrate the neighborhoods where stop and frisk was occurring most frequently to talk to residents who had long lists of interaction with the NYPD. Mikel Jamison, a Brooklyn resident, criticized the police for failing to distinguish criminals from law abiding civilians while Anthony James, also from Brooklyn, offered a more biting critique. He said, “If they [the police] catch you in here alone they’re going to stop you. And they’ll play mind games with you too. Ten minutes after searching you, they’ll come back, just staring” (Lee 2007). Similar themes surfaced when
reporters interviewed black male students at York College in Queens. Of the 23 students interviewed, 22 reported being stopped by police at some point over the last two years, often more than a half-dozen times (Powell 2009).

Stop numbers alone were not the only reason behind the growing opposition to the tactic. The complaints associated with it also had a role to play. From 2002-2006, complaints to the Civilian Complaint review board jumped by 66 percent while complaints stemming from stop and frisk encounters “increased by roughly three to four times” (Cardwell 2007). By 2005, over 30 percent of the NYPD’s total complaints arose from stop and frisk encounters (Eterno and Silverman 2012). This was a much higher rate than ever occurred under Giuliani that most likely stemmed from the overall increase in stop and frisk activity. Most stop and frisk complaints originated from residents who were stopped and treated rudely by police when they had not committed a crime.

After data was released each quarter, the NYPD would face questions regarding their rising use of stop and frisk. Each time, members of the department would defend their actions using the same rationale; stop and frisk was crucial to the city’s fight against guns and the disproportionate stopping of minority citizens was a reflection of crime-suspect data. Given limited political power of the poor minority citizens complaining about stop and frisk, their grievances failed to translate into a larger push for reform for most of Bloomberg’s time in office. Although nearly 75 percent of black New Yorkers disapproved of stop and frisk, their critical response was unorganized and sporadic (Buntin 2013). The media response tended to be contained to the days immediately following release of data and without continued publicity, minority communities found it difficult to transmit their message to larger swaths of the population.
This all changed in 2011 and 2012 following the release of data that showed that the NYPD had stopped over 685,000 people during the past year. All of a sudden, opposition coalesced as, according to ex-officer Ernie Naspretto, “the public justifiably got sick of it [stop and frisk]” (interview March 6, 2013). Grassroots organizations banded together to win the support of local politicians while the media, perhaps alarmed by the most recent rise, began to dig deeper to bring stop and frisk to the forefront. Meanwhile, academics began producing a wide-body of literature criticizing the practice and its impacts on minority communities. The ever-opportunistic Center for Constitutional Rights seized upon this momentum and sued the NYPD over its stop and frisk practices again in *Floyd et al. vs. the City of New York*. Overall, the public condemnation of stop and frisk allowed it to emerge as a salient political topic towards the end of Bloomberg’s tenure.

The anti-stop and frisk movement won a huge victory in August 2013 when the *Floyd* case was decided by Judge Shira Scheindlin. Scheindlin substantiated the complaints of many New Yorkers who felt harmed by stop and frisk as she claimed that it had violated both Fourth and Fourteenth Amendment rights. Though Scheindlin stopped short of disallowing stop and frisk altogether, she ordered substantial reforms including the use of a federal monitor to oversee the NYPD. Some of her findings will be expounded upon in the next section.

**VIII. Analysis of Variables: Departmental Leadership, Precinct Command, and Training**

Although New York City’s stop and frisk program has been an integral piece of the NYPD’s crime-fighting strategy since 1994, the tactic’s implementation varied significantly over the 20-year period of study. This variance in implementation led to significant shifts in some key variables used to predict fairness including the arrest rate, number of stops, number of complaints, and gun recovery rate. An in depth comparison of these indicators over the two case
studies (1994-2001 and 2001-2013) allows me to conclude that the NYPD’s stop and frisk program, while flawed in both cases, was more unfair during the second case study than the first.

Arrest rate measures how often a stop and frisk ends in the detection and arrest of a person involved in criminal activity. Higher arrest rates signal that police officers are garnering reasonable suspicion before engaging in an invasive stop. Lower arrest rates suggest that police officers are more frequently stopping innocent people, which in turn indicates that the reasonable suspicion standard has not been met prior to many stops. Stopping an innocent person, while defensible in some scenarios, is inherently unfair because “each stop is a demeaning and humiliating experience” (Scheindlin 2013, 4). Therefore, the lower the arrest rate, the more unfair the policy.

As mentioned above, NYC’s stop and frisk arrest rate varied significantly over the 20 years in question. Unfortunately due to the lack of adequate data collection, arrest rates are not available from 1994 to 1997. However, Eliot Spitzer’s report studies stop data from 1998 and 1999 and finds that the arrest rate for both years was 15 percent. Thus, 85 percent of stops uncovered no serious criminal activity. Although this 85 percent figure appears fairly high, it is important to remember that many stops are proactive in nature and thus not designed to end in an arrest, but rather to deter a potential criminal. For example, if an officer observes someone casing a location for a burglary and stops him, he may have engaged in a productive stop without generating an arrest. However, in the subsequent case study (2002-2013), arrest rates plummeted.

41 Inherent in this line of reasoning is the presumption that meeting the reasonable suspicion standard will lead to a higher arrest rate.
42 The lack of an arrest does not mean that police officers found no evidence of wrongdoing during the stop. Some stops end in summonses, which are tickets for minor offenses like littering or drinking in public. People that receive summonses are required to go to court to pay a fine, but oftentimes judges dismiss them altogether because due to the pettiness of the offense (Staples 2012).
From 2003 on, the NYPD’s arrest rate never climbed above 8 percent and bottomed out at a lowly 4.1 percent clip in 2006 (Center for Constitutional Rights 2012). Thus, between 92 and 96 percent of stops during this time period were of apparently innocent people. These low rates raise serious questions about the levels of suspicion and evidence needed to trigger a stop. Even at its peak arrest rate in 2003, stops were only half as productive as the first case study. Given these stark figures, it is not difficult to conclude that in terms of arrest rate, the NYPD’s stop and frisk program was fairer in the first case study than the second.

Because a chief task of stop and frisk is to remove illegal guns from the street, another variable to analyze is the rate at which guns were recovered following stop and frisk encounters. Like arrest rate, a higher rate of gun recovery suggests a fairer policy. Because guns are rare and not all stops transpire from suspicion regarding firearm possession, it follows that even acceptable gun recovery rates can be somewhat low. Again just as in the previous case of arrest rate, official data from 1994 to 1997 is sparse. In 1998, guns were seized in 1.64 percent of total stops (Spitzer 1999). Unfortunately this is the only year in which data is available. As the second case came after the NYPD court-ordered to keep better records, more data emerged. This data shows that the NYPD’s gun recovery rate dropped consistently over the period in question. The rate was .39 percent in 2003, .15 percent in 2008, and .0013 percent in 2011 (White 2012). The much lower rates in this case study compared to the first again suggests that stop and frisk became less fair with time.

The next variable worthy of examination is the number of stops. However, looking at pure volume does not necessarily give an accurate depiction of fairness. A huge number of stops

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43 Arrest rates in New York during Bloomberg and Kelly’s time in office were lower than those in some cities, but similar to others. In the second half of 2013, Newark’s stop and frisk arrest rate was 25 percent (Goldstein 2014b), but in Philadelphia during the first half of 2013, the arrest rate was merely 4.14 percent (ACLU of Philadelphia 2013).
may well be defensible in the case of high crime rates or high arrest rates. Therefore, the number of stops occurring must be considered in the context of these two other variables. After completing this exercise, the first case study again produced a fairer version of stop and frisk. As has been well documented, the sheer volume of stop and frisk encounters jumped from 139,409 in 1998 to 685,724 in 2011. What makes this dramatic jump all the more shocking is that it occurred in the midst of an equally dramatic crime decline (shown in the figure below). Indeed, crime in New York City has dropped every year since 1994, good for a 77.75 percent decrease in total crime (Eterno and Silverman 2012). Lower crime means that fewer crime suspects are roaming the streets. In 2002, when crime was falling at a faster rate, there was approximately one stop per every violent crime, but by 2009, there were eight stops per every violent crime (Eterno and Silverman 2009)\textsuperscript{44}.

**Figure 5:**

![Graph showing NYPD stop and frisks compared to NYC murders and manslaughters](image)

(Jones-Brown, Jaspreet, and Trone 2010).

\textsuperscript{44} In 2002, there were 97,296 stops and 95,030 violent crimes. In 2009, there were 576,394 stops and 75,176 violent crimes.
Therefore, the fact that the NYPD greatly increased the number of stops amidst this low-crime environment defies logic to some extent, especially when the reasonable suspicion standard is considered. Given that arrest rates also plummeted with time, the higher stop counts mean that more and more innocent people were being stopped each year. This fact, combined with the lower crime rate argument, confirm that as far as this variable is concerned, the NYPD’s stop and frisk policy grew more unfair over time.

A final variable that solidifies the case for degenerating stop and frisk fairness over time is complaint levels. Complaints are reported by citizens to the Civilian Complaint Review Board, which then notifies the proper NYPD official based on the type of complaint and the officer accused. Unsurprisingly, a higher level of complaints signals a more unfair policy. It should be noted that the complaint data reviewed below does not represent all complaints made against the NYPD, only those that directly resulted from stop and frisk encounters. Again, data was harder to come by in the earlier case study, but the Civilian Complaint Review Board produced a report that showed that 1,346 stop and frisk complaints were made between the beginning of 1998 and March 31, 1999, a 28 month period (Civilian Complaint Review Board 2001). This amounts to a little less than 577 complaints per year.

Complaint numbers skyrocketed in the second case study. In 2003, 1,128 complaints resulted from stop and frisk encounters but by 2007, this figure had more than doubled to 2,556 (Baker and Vasquez 2007). Thus, from 1998 to 2007, stop and frisk complaints rose by over 340 percent. Over this same period, stop and frisk complaints increased from 20 to 33 percent of the NYPD’s total complaint load (Baker and Vasquez 2007). Every year since 2005, stop and frisk complaints have constituted over 30 percent of the total, signaling 2006 was far from an aberration (Eterno and Silverman 2012). Given the increasing volume of complaints over time,
complaints emerge as the final\textsuperscript{45} variable that suggests that the NYPD’s stop and frisk program became more unfair as time progressed.

Now that the case has been made for higher levels of fairness during the first case study, a new question must be tackled. What accounts for the change in fairness? Each of the three variables presented earlier (Departmental leadership, precinct command leadership, and training) will now be analyzed in hopes of answering this question.

\textit{Departmental Leadership}

Without a doubt, crime reduction was a priority that was vigorously pursued by leadership figures in both cases. Although Giuliani’s prosecutorial background allowed crime concerns to play a larger role in his agenda, Bloomberg’s campaigns show that he was equally passionate on the subject. While both of these figures surely impacted the culture of their respective police departments, they had little direct impact on NYPD strategy development and implementation. They may have set the tone by making crime reduction a central theme of their election campaigns, but once in office, the reigns belonged to the police commissioner. While interviews with ex-NYPD officers traced changes in stop and frisk implementation back to commissioners, none implicated mayors (Naspretto 2014, Ader 2014, Eterno 2014). In both case studies Giuliani and Bloomberg stood by attentively, monitoring and reacting to crime rate fluctuations, choosing if and how to defend the department when critical allegations arose, and receiving strategic updates from NYPD officials. While both figures, especially Giuliani, were certainly poised to exert more control if unsatisfied with the department’s performance, because

\textsuperscript{45}One variable that went conspicuously unanalyzed in this section is the race of those stopped. The reason for the omission was that the variable showed little fluctuation over time and therefore did not add much to the overall argument of the section. Minorities made up 83 percent of those stopped in the late 1990s. Though this figure increased slightly during some years within the second case study (87 percent in 2004, 2009, 2011, and 2012, 86 percent in 2005), the rise was not dramatic enough to prove real variance between the two case studies.
crime dropped every year during the period of study, this was rarely an issue. Therefore, examination of the departmental leadership variable will be much more focused on the police commissioner than the mayor.

Much of the forthcoming analysis is centered around top-down pressure to produce lower crime statistics through increasing arrests, summonses and stop and frisks. Pressure can be an effective tool for ensuring accountability, but if applied too heavily, could manifest into unofficial quota systems, which are technically unconstitutional (Scheindlin 2013). Police departments are forced to toe a fine line to ensure both proactive policing and respect for Fourth Amendment rights. How much pressure were subordinate officers under and how much did this change over time?

Without a doubt, there was an uptick in pressure once William Bratton ascended to the Commissioner post in 1994. Bratton’s initial review of the NYPD found that “nobody ever got in trouble because crime numbers on their watch went up,” (Maple 1999, 33). He also found that in crime-ridden Queens, 28 percent of officers had not registered an arrest for the first six months of 1994 (Silverman 1999). Bratton’s development and implementation of Compstat altered this system dramatically as commanders soon found themselves thrust in front of the ruthless Jack Maple and Louie Anemone to explain crime trends in their precincts. This system represented a night and day change from the early 1990s years of rampant crime and limited accountability.

Commanders attending Compstat meetings were not the only figures in the department who felt a surge of pressure once the Giuliani administration began. Officers of the elite Street Crimes Unit claimed to be under similar pressure to produce results. In interviews with New York Times reporter David Kocieniewski in 1998 and 1999, “some street crimes officers said they felt pressured by the department's emphasis on crime statistics, and that they are forced to
adhere to an unwritten quota system that demands that each officer seize at least one gun a month” (Kocieniewski 1999). One officer provided evidence of this quota system in a later interview: “if it's the 25th of the month and you haven't got your gun yet? Things can get a little desperate” (Kocieniewski, 1999). This evidence of pressure in the form of quotas is especially problematic for the department and sheds light into why Eliot Spitzer found that 15 percent of stops from this time period were unconstitutional. If officers are under intense pressure to locate guns, they will start conducting widespread searches for them. The reasonable suspicion standard becomes less and less important as officers become more and more desperate to meet quotas.

Survey data from ex-NYPD employees supports anecdotal evidence that pressure to increase stops and frisk activity was ramped up after Compstat was introduced in 1994. The question posed in the survey is as follows: “With respect to the following criteria and based on your personal experience, how much pressure was there from management/supervisors to increase stop and frisk reports?” (Scheindlin 2013, 68). Only nine percent of officers who worked exclusively in the pre-Compstat era (before 1994) reported pressure to increase stop and frisk activity. This figure jumped to 19 percent of those who worked at the department under Bratton, Safir, and Kerik from 1994 to 2001 (Scheindlin 2013). This statistically significant increase in pressure confirms the proposition that top-down departmental pressure contributed to the unconstitutional stop and frisk practices by officers on the ground.

While Compstat-driven pressure from high-level NYPD officials was certainly present during the first case study, it increased markedly from the years 2002 to 2013. This intensified pressure is responsible for the massive influx of invasive stop and frisk activity during a period

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46 This survey was conducted by John Eterno and Eli Silverman in 2012. It was sent out to 4,069 retired NYPD personnel of all ranks and 48 percent replied. The results of the survey were used in Judge Shira Scheindlin’s opinion in the *Floyd* case.
of declining crime rates. In response to the same survey question posed in the previous paragraph, 35 percent of all respondents who retired after 2002 reported pressure to increase stop and frisk activity, up from 19 percent of those who retired from 1994-2001 (Scheindlin 2013). Results from the same survey also show that respect for constitutional principles dropped from 2002 to 2013. 45 percent of officers that worked prior to Compstat and 47 percent of those who worked from 1994-2001 reported that there was “high pressure to obey legal standards and constitutional rules” (Scheindlin 2013, 70). These results suggest that increased top down pressure does not guarantee undermining of constitutional rights. However, only 36 percent of officers who retired from 2002-2013 reported a similar pressure to obey constitutional guidelines. While this 11 percent change may not seem drastic, Dr. Eli Silverman testified that it represented a modest, but statistically significant decline (Scheindlin 2013).

Anecdotal evidence confirming the results of the survey and abounds. Pedro Serrano, a patrol officer in the 40th Precinct in the Bronx began wearing a concealed microphone in 2009 after he was punished with low evaluation scores for not stopping and frisking enough. His recordings provide illuminating evidence of the pressure put on officers. Serrano’s recordings show a sergeant during roll call telling officers that “we’re looking for 5 [uf250s]. Go crazy in there” (Gonnerman 2013). One officer, who wished to remain anonymous but agreed with Serrano’s crusade said, “we can’t just stop everybody. And that’s what they’re teaching the new guys to do: Just stop everybody…just to get the numbers. That’s it. Doesn’t matter: Just get the numbers (Gonnerman 2013). Serrano concisely summed up why pressuring cops to produce numbers is so problematic: “It’s not good to tell cops: ‘Make sure you find it.’ Because if they

47 Judge Scheindlin later confirmed this officer’s assertions. After reviewing numerous monthly activity reports, she concluded that “many officers are evaluated almost exclusively based on the number of stops, arrests, and summonses they carry out (Scheindlin 2013, 80).
don’t find it, what’s left? If the bad guy is not there, who is left? The good people. And you got to hammer them (Gonnerman 2013).

Serrano was not alone in recording what he perceived to be illegal quotas. Adrian Schoolcraft, who was also punished for low stop and frisk activity, began recording secretly in 2008 on his own accord. After analyzing over two years of recorded material, reporter Raymond Graham concluded that “the pressure to produce arrests, summonses, and stop and frisks was hammered home in nearly every roll call” (Raymond 2013, 43). Schoolcraft was instructed to generate certain numbers of uf250s, summonses, and arrests each month and was punished for not meeting quotas. Schoolcraft’s recordings “contained numerous statements from police bosses ordering cops to simply stop people for no reason. The recordings demonstrated that it was actually the pressure from Compstat that was driving the sharp increase in stops and frisks” (Raymond 2013, 92). One recording of a sergeant during roll call was especially incriminating: “Anybody walking around, shake them up, stop them, 250 them, no matter what the explanation is. If they’re walking, it doesn’t matter” (Raymond 2013, 92). In Schoolcraft’s opinion however, the sergeant was not to blame for these instructions because they were coming down from more senior leadership figures. Stop and frisk expert Jeffrey Fagan echoed Schoolcraft in an interview. When asked about the source of pressure, Fagan absolved free sergeants and patrol officers from blame: “the officers hate SQF, but sergeants need it to show effectiveness and have to motivate their officers by any means necessary to meet the incessant demand for ever greater numbers” (Fagan 2014). Adhyl Polanco, another whistle-blowing officer said that “‘We’d make up bulls*** reasons to justify the stop, when, most of the time, we had no reason to justify the stop. We were told to say they ‘fit the description.’ But that just means you were Spanish or black” (Raymond 2013, 90).
Given that Compstat, the tool most often cited for rising levels of pressure, was implemented in 1994, what accounts for the heightened pressure from 2002 onwards? There is considerable evidence suggesting that one specific decision made by Commissioner Kelly early in his tenure is to blame. According to an interview with ex-NYPD captain Ernie Naspretto, soon after he took over the department, Kelly began “using SQF as a measure of a command’s ‘activity’ in the Compstat meetings” (Naspretto 2014). Although this crucial change failed to garner much media attention, Naspretto’s claim was confirmed via interview by two other trustworthy sources. Police reporter Rocco Parascandola told me that “SQF started to be used as a measurement to see how commanders are fighting crime” under Kelly (Parascandola 2014) while Jennifer Gonnerman agreed that “at some point [under Kelly] Compstat meetings started keeping more specific stop and frisk numbers and the tool became a productivity metric” (Gonnerman 2014). Prior to this decision, stop and frisk frequencies never were brought up in Compstat meetings. Under Kelly’s new system, commanders soon found that they could minimize criticism at Compstat meetings by displaying high numbers of UF250s (Parascandola 2014). Thus, even if crime had increased in their precinct, they could not be blamed for a lack of effort. In Kelly’s eyes, rising stop and frisk levels demonstrated a good-faith effort to address crime concerns regardless of whether the increases were logical or not. Thus, the decision to use stop and frisk activity as a productivity metric marks a major change between the Giuliani and Bloomberg eras helps explain the marked increase in stops and resultant diminished level of fairness in the latter case.

Another Kelly-era reform that contributed to the degradation of fairness from 2002-2013 was Operation Impact. Although this initiative almost certainly contributed to New York’s historically low crime rates, it did so at a steep price. As mentioned earlier, Operation Impact
officers employed stop and frisk liberally, accounting for over 30 percent of the department’s
total. The problem with delegating such an important and sensitive task to young officers is
inexperience. Although some impact zone officers spent time with seasoned veterans, many were
thrust onto the streets without any meaningful observational period (Dewan 2003). As a result,
“they don’t know the players [in their zone]. They don’t know the black kid with his pants low is
actually a good kid” (Parascandola 2014). After speaking with Operation Impact officers, John
Eterno uncovered another problem with the program that relates back to the first concern
regarding pressure. According to one officer, “the Constitution has been thrown out the window
when it comes to stops” (Eterno 2013). Eterno added that “he [the officer] is given strict daily
quotas and asked at the end of his tour about his numbers. An officer who fails to meet the
required number for the day is berated (sometimes in front of peers), not allowed time off, and
given unpalatable work assignments” (Eterno 2012).

The high level and questionable nature of stops in impact zones surely contributed to both the festering distrust in high-crime minority
neighborhoods and the overall decline in stop and frisk fairness over time.49

The final top-down flaw that contributed to an increasingly unfair stop and frisk program
under Kelly was his cavalier stance towards racial profiling. The cavernous racial disparities in
New York’s stop and frisk program are well documented and may have been exacerbated by
Kelly himself. State Senator Eric Adams testified that when questioned on racial disparities in

48 Eterno’s finding is corroborated by the stories of Pedro Serrano and Adrian Schoolcraft. Both
were punished and designated to off-the-street duties after failing to display “adequate” levels of
stop and frisk activity.
49 Bill de Blasio’s new Police Commissioner William Bratton shares my concerns regarding the
use of young officers inside impact zones. One of Bratton’s first orders of business as he stepped
to the helm of the NYPD was the substantial reform of Operation Impact. Though the program
will remain in place, Bratton announced that rookie cops will first be assigned to precincts before
embarking on tough impact zone assignments. He also stressed how important it is to make sure
young officers are teamed with veterans.
stop and frisk during a closed-door meeting, Kelly responded that he instructed the department to focus on young black and Hispanic males “because he wanted to instill fear in them, every time they leave their home, they could be stopped by the police”\textsuperscript{50} (Scheidlin 2013, 87-88). If this statement is at all similar to the message Kelly relayed to those in charge of overseeing stop and frisk activity on the streets, the policy’s unfair outcomes in regards to race should come as no surprise.

There is more evidence that suggests Kelly’s lack of concern for racially biased stop and frisk activity. After exhaustive fact finding, Judge Shira Scheindlin also found that,

The NYPD maintains two different policies related to racial profiling in the practice of stop and frisk: a written policy that prohibits racial profiling and requires reasonable suspicion for a stop—and another, unwritten policy that encourages officers to focus their reasonable-suspicion-based stops on “the right people, the right time, the right location” (Scheindlin 2013, 82).

It is no secret that the “right people” identified by the NYPD are young black and Hispanic males. In 2011, black and Hispanic man ages 14 to 24 made up 41.6 percent of all stops despite only making up 4.7 percent of the city’s total population (Baker 2012). Once put into practice, the NYPD’s unwritten policy contributes to the unfair, racially disparate outcomes of stop and frisk under Kelly. Race acts as a contributing factor to reasonable suspicion and understates the need for officers to garner \textit{individualized} suspicion outside of race. Instructing officers to target “the right people” ensures that similarly situated whites may never be subjected to the stop and frisk encounters that minority New Yorkers deal with on a daily basis. Kelly’s breakdown of

\textsuperscript{50} Senator Adams testified that he was “amazed that Commissioner Kelly was comfortable enough to say that” (Scheidlin 2013, 88). His testimony was deemed credible, largely because the NYPD offered no rebuttal that suggested these comments were never made.
leadership on this issue stems both from his adoption of the unwritten policy and his failure to arouse meaningful discussion among officials and managers to discuss racial profiling at Compstat meetings.

All told, departmental leadership emerges as an influential variable that greatly impacts the way stop and frisk in New York City is implemented. The changes in fairness directly correlate with a change in leadership. This argument is strengthened by the fact that the changes in fairness can be traced back to policy changes brought about by new leadership figures such as Operation Impact and the decision to use stop and frisk as a productivity measure. Given the breadth of a Police Commissioner’s power to change policy from the top down, this finding should not be altogether surprising.

Precinct Command Leadership

If not for William Bratton’s rise to Police Commissioner in 1994, the role of the Precinct Commander in the NYPD would not have merited further study. Prior to Bratton, “the precinct commander position—the important middle level manager—served as a “sunset post” for officers on their way to retirement” (White 2012, 8). During these earlier years, precinct commanders rarely scrutinized crime reduction strategies and tended to replicate broader departmental strategies regardless of whether or not they made sense inside their precinct. Bratton realized how important the command position was to the success of the department given its hinge-like position between department heads, the community and officers on the ground and altered the NYPD’s structure accordingly. Suddenly precinct commanders determined their

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51 Community outreach was and is an integral part of the Precinct Commander’s job description. Each month or so, commanders are expected to appear in front of the citizens of their precinct to deliver crime data and listen to concerns.
own tactics and found themselves accountable for the results of their tactical changes at Compstat meetings.

Under Bratton and his Giuliani-era predecessors, precinct commanders continued to enjoy this “accountable autonomy.” Indeed, “when Compstat first began, commanders were given full and complete discretion to determine what was necessary for their respective areas” (Eterno and Silverman 2012, 225). They were challenged to develop innovative solutions to crime problems that were narrowly tailored to their precinct. Bratton, Safir, and Kerik fully acknowledged that precinct commanders possessed a better understanding of their precincts than those at One Police Plaza and therefore gave them the reigns until persistent problems arose.

The power and discretion granted to precinct commanders is epitomized by the study of the 42nd and 44th precincts in the late 1990s. Both precincts were located in the Bronx, comprised mostly of racial minorities, and able to boast the illusive combination of lower crime and lower complaint levels in 1997 and 1998. Effective leadership from precinct commanders ushered in this rare mixture. Arrest totals from these precincts confirm that they continued to enforce street laws vigorously, dispelling the argument that lower complaints stemmed from less aggressive enforcement. Rather, they were a function of “the commanding officers in the 42nd and 44th precincts taking a strong interest in managing community perceptions of the police” (Davis and Gelabert 1999, 15). The freedom granted to these commanding officers allowed them to budget time for extra Courtesy, Professionalism, and Respect training, as well as hold meetings with officers each time they incurred a civilian complaint. These two cases display the thrust behind the Bratton-era reforms; precinct commanders, while expected to coordinate loosely with broader

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52 One Police Plaza is the headquarters of the NYPD located in downtown Manhattan. This building is where precinct commanders would report to Compstat meetings.
department strategies, were granted considerable discretion to run their precincts the way they saw fit.

According to many sources, the role of the Precinct Commander was significantly altered under Commissioner Ray Kelly. While the intense pressure to drop crime at Compstat meetings persisted, the discretion and independence that defined the job description from 1994-2001 evaporated. When asked in an interview how much autonomy precinct commanders possessed during both case studies, ex-NYPD captain Ernie Naspretto responded candidly: “in my humble opinion under Kelly--ZERO. Under Bratton first time around (94 -95) and once again now, [post-Bloomberg] substantial autonomy” (Naspretto 2014). Cliff Ader, who served as a detective under both Bratton and Kelly, echoed Naspretto’s claim. He attributed the decrease in autonomy to leadership styles: “Bratton’s a manager, not a micromanager. He does things the exact same way I would do things. Kelly is a micromanager. He ruled with an iron fist” (Ader 2014). Reporter Len Levitt had a similar take on Kelly’s handling of the precinct commander position. Levitt said, “the biggest difference under Kelly has been the role of the precinct commander. This role has diminished under Kelly because he basically took the functions of the precinct commander for himself” (Levitt 2014).

John Eterno and Eli Silverman summed up nicely how Kelly’s micromanagement of precinct commanders related to the unnecessary explosion of stop and frisk numbers.

When Compstat first began, commanders were given full and complete discretion to determine what was necessary for their respective areas. Today, however, the system has been reduced into iron control for headquarters. Officers are required to conduct forcible stops, summonses, and arrests to be reflected in the Compstat figures. Field commanders
no longer have much discretion to determine their own actions (Eterno and Silverman 2012, 225).

Stops skyrocketed as discretion disappeared. Under Kelly, strategic decisions were made by headquarters rather than those with a more intimate understanding of local issues. Each precinct was instructed to battle crime the exact same way: with heavy doses of stop and frisk. When stop and frisk numbers went down, precinct commanders were berated at Compstat meetings. The NYPD under Kelly essentially tied the hands of those in the best position to develop innovative crime reduction tools that were in line with community viewpoints.

Like departmental leadership, precinct command leadership also changed considerably from case study to case study. Considerable discretion was replaced with strict mandates to increase stop and frisk from 2002 to 2013. Evidence suggests that changes in precinct command leadership contributed to the decrease in stop and frisk fairness. As pressure from above grew, hapless commanders were forced to increase stop and frisk in their precincts regardless of whether or not they believed such an increase was wise or necessary. Attempts by precinct commanders to increase stop and frisk activity often times came at the expense of civil rights and liberties as officers were instructed to stop and frisk indiscriminately.

Training

When asked, “what is the best way to improve stop and frisk implantation?” most experts reply with some variation of, “the NYPD needs to start training young officers better.” Indeed, “officer training is widely recognized as a critical element in developing effective policing” (Berry 2001, Fratello, Rengifo and Trone 2013). Despite this widely held belief and the noticeable changes in the NYPD’s leadership over the 20-year period in question, the ways in
which the department handled stop and frisk training at the police academy experienced little variation.

Indeed, according to an interview with retired NYPD captain Ernie Naspretto, “the instruction has remained constant and correct literally over the past 40 years” (Naspretto 2014). Another ex-NYPD officer, Cliff Ader, echoed these statements. According to Ader, “we were all well trained. Training is not the answer”53 (Ader 2014). The breakdown of the seven months spent at the police academy included six months of classroom instruction followed by one month of field experience in both cases (1994-2001 and 2002-2013). During the classroom sessions, recruits learn the legal standards governing stop and frisk in four 90-minute lessons as part of a wider discussion on the Fourth Amendment. These lessons cover basic legal rules surrounding stop and frisk as well as the “basic factors” which can and cannot create reasonable suspicion (Spitzer 1999, 61). During the month of field experience, officers are thrust into simulated street situations where they must make decisions on when to use stop and frisk.

The general consensus on the NYPD’s stop and frisk training is that while it is imperfect, it would be unwise to attribute the unfair results of the policy to its shortcomings. Eliot Spitzer found that “every officer interviewed by the OAG could identify the basic legal standards: “reasonable suspicion” v. “mere suspicion,” and “common law inquiry” v. “Terry stop,“” (Spitzer 1999, 69) while even Judge Shira Scheindlin’s largely critical opinion in the Floyd case concluded that “the NYPD’s efforts to train its recruits have been largely adequate” (Scheindlin 2013, 99). A report by the US Commission on Civil Rights corroborated these findings in 2001

53 These remarks came in an interview with Mr. Ader conducted March 7th, 2014. The question posed was whether increased training could improve stop and frisk implementation. This is what Mr. Ader alludes to when he mentions “the answer” in his response.
as they found that “most of these training materials capably instruct officers on the appropriate legal standards for conducting stop and frisk” (Berry 2001, 16).

However, these general concessions to the NYPD’s training methods were coupled with critiques. Scheidlin took issue with the way recruits were taught about using “furtive movements” as a justification for a stop. According to the NYPD’s training manual, “if an officer observes strange, suspicious, or evasive behavior, he or she may have reasonable suspicion” (Scheindlin 2013, 101). Scheidlin contends that this vague instruction has helped produce a huge volume of unconstitutional stops. The US Commission on Civil Rights report from 2001 shows that Scheidlin’s concerns were not necessarily new. This report confirmed that stop and frisk training “failed to instill respect for adherence to constitutional procedures. The training underemphasizes important law enforcement objectives in favor of officer safety and ease” (Berry 2001, 18). These persisting problems signal an imperfect training program that could be improved by more vigorous instruction regarding the reasonable suspicion standard.

Clearly, the NYPD’s stop and frisk training program has proved resistant to change despite similar flaws being identified in both case studies. Because this independent variable (training) has experienced little change over time while the dependent variable (fairness) exhibited large fluctuations, it is reasonable to conclude that training has limited influence on stop and frisk fairness. While this proposition may sound counterintuitive, valuable testimony from past and present police officers sheds light onto why it is far from dubious.

The point of training officers is to prepare them for situations that they will encounter while policing in the city. Thus, the value of training evaporates as the gap between training and

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54 Scheindlin’s findings show that stops were 18 percent more likely to end in arrest in “furtive movements” was not checked. However, 60 percent of uf-250s from 2004-2009 checked it off (Scheindlin 2013, 34). Similar results were found in the case of the “high crime area” checkbox.
real life situations widens. According to Pedro Serrano, an officer in the crime-ridden 40th Precinct in the Bronx, “the minute you got out of training—different world. Ninety percent of the stuff they taught you did not exist” (Gonnerman 2013). According to an interview with New York Magazine police reporter Jennifer Gonnerman, “everybody says that it’s one thing in the academy and another on the street” (Gonnerman 2014). Shira Scheindlin reached a similar conclusion in her Floyd opinion. According to her, “the gravest problems in the NYPD’s stop and frisk practices stem not from inadequate training, but from a divergence between the NYPD’s written training materials and the ‘operational policy’ carried out in the streets” (Scheindlin 2013, 100). Other officers have echoed these ideas and contend that the real training occurs once they are partnered with older, more experienced officers. During this time, they quickly find that many of the police academy scenarios either do not exist or are dealt with completely differently on the streets. For these reasons, it is difficult to consider training an important factor influencing the fairness of stop and frisk implementation. Unless the NYPD can somehow find a way to better replicate real-world situations in the classroom, instituting changes in training will have little impact on stop and frisk implementation.

**IX: Conclusion: Summary of Findings and Next Steps for the NYPD**

As New York City has helped prove over the last twenty years, stop and frisk can be an effective crime reduction tool. Given its power to deter potential criminals, remove illegal weapons from the street, and enforce quality of life violations, it is not surprising that stop and frisk has been adopted by police departments across the country. In New York specifically, stop and frisk allowed the NYPD to reduce crime to historically low levels even while the size of the police force was shrinking (Lawton, Telep, and Weisburd 2013).
In New York, however, historic crime reduction spurred by stop and frisk was coupled with widespread violations of civil rights, especially in minority communities. Although the NYPD claims that racial disparities in stop totals reflect crime rates, several studies by reputable authors have found that minorities, especially African Americans, are overstopped even after controlling for their elevated crime participation rates (Scheindlin 2013, Spitzer 1999, Fagan 2004, Davies et al 2009). Many of the stops that occurred in New York from 1994 to 2013 rested on shaky constitutional grounds. As pressure from superiors mounted, officers on the ground were incentivized to make stops regardless of whether or not they had reasonable suspicion to do so.

New York’s stop and frisk program was consistently effective but consistently unfair from 1994 to 2013. Unfairness spiked during the second case study as arrest and crime rates dropped while stops and complaints escalated. Analysis of departmental leadership, precinct command leadership, and training during both case studies suggests that changes in the first two variables contributed to rising levels of unfairness. Thus, while New York City never implemented a fair stop and frisk program, the one it had during the first case study was preferable to the version developed from 2002 to 2013 under Commissioner Kelly.

New York City’s stop and frisk program became so unfair and unpopular, it emerged as perhaps the most salient campaign issue in the 2013 mayoral election. All Democratic candidates denounced the policy and promised to reform it substantially if elected. Bill de Blasio, the eventual winner, was especially vocal in his criticism of stop and frisk and made the issue a centerpiece of his campaign. In an especially memorable campaign advertisement, De Blasio’s bi-racial teenage son Dante speaks out against stop and frisk for unfairly targeting his peers.
After his election, de Blasio appointed familiar face William Bratton to head the NYPD for a second time. Given the evidence presented earlier showing how crucial departmental leadership is to stop and frisk implementation, Bratton’s decisions will have a huge impact on the future of stop and frisk. After being forced out of New York by Giuliani in 1996, Bratton built on his already impressive resume in his time as Los Angeles police commissioner from 2002 to 2009. After bringing Compstat to LA, Bratton reduced crime during every year of his tenure. Interestingly enough, Bratton’s strategic approach in LA contrasted considerably with the aggressive style he employed in New York from 1994 to 1996. After adopting substantial reform from 2002-2005, the LAPD under Bratton “entered a new era marked by collaboration between the LAPD and the community, built on a platform of accountability, transparency, and positive performance in maintaining safety and order” (Fagan and Macdonald 2012, 45). By the time Bratton moved on in 2009, 76 and 68 percent of black and Hispanic residents expressed strong approval of the LAPD, much higher rates during those received during his time in New York (Fagan and Macdonald 2012).

Bratton’s performance in Los Angeles confirms that he has moved away from the aggressive and controversial strategies employed during his brief stint in New York City. That being said, Bratton has assuaged concerns of those worried about crime by proclaiming that stop and frisk will remain an important part of the NYPD arsenal. Indeed, Bratton called stop and frisk “a very basic tool in this Police Department” but also promised a changed policy because “it will be done at all times constitutionally, it will be done at all times respectfully, it will be done at all times compassionately” (Goldstein 2014a). That will most likely mean a considerable reduction in the number of stops occurring, especially in Impact Zones, where Bratton plans to replace young officers with more seasoned ones. Bratton will be weary of the close eye kept on
Evidence suggests that the NYPD is already well on its way to transforming stop and frisk into a fairer policy. Once the widespread opposition to stop and frisk coalesced to form a vocal movement in late 2012, the NYPD began to respond to the mounting public pressure. Stops fell modestly from their peak of 685,724 in 2011 to 532,911 in 2012 and then dramatically to 191,588 in 2013. This tally is the lowest recorded since 2003 when the NYPD stopped only conducted 160,851 stops. It is important to note that despite this considerable drop in stops, crime has not spiked. Though not enough time has passed to confirm that this is not an aberration, if this trend persists, the massive stop totals from previous years will seem even more unnecessary. Interestingly, the drop occurred after Kelly confirmed that the department had embarked on a widespread retraining of officers that reinforced under what circumstances stops should be performed (Dunn 2014). In contrast to the findings in the previous section, this data suggests that training may actually be a useful variable that helps explain stop and frisk fairness.

Bratton has promised to continue to reform the policy along similar lines. Given that stops have now returned to more acceptable levels, Bratton should now focus his attention in reforming the ways that stops are carried out by reinforcing the CPR principles of the late-Giuliani years. Many stop and frisk experts contend that if stops are conducted in a more polite manner, they will not produce such animosity between police and communities. Ex-NYPD detective Cliff Ader has experienced firsthand the wrong way to execute stop and frisks. According to Ader, “the problem comes when the first thing police say is “get your f****** hands out of your pocket, get your f****** hands on the wall”” (Ader 2014). If the officers on the street were instructed to place greater emphasis on the way that they engage people, the
public backlash surrounding stop and frisk would dissipate. Ader’s 20 years as a homicide
detective taught him that, “people are OK with slight intrusion, especially if they see that it’s
being done for a reason” (Ader 2014). Stop and frisk expert Franklin Zimring mimicked Ader’s
thinking and suggested that, “the real problem is testosterone. In New York City, stops and frisks
became ceremonies of dominance” that demeaned innocent civilians unnecessarily (Bergner
2014).

If Bratton continues to build on the reforms implemented late in Kelly’s time in office
while also emphasizing courtesy and politeness in stop and frisk encounters, the policy’s worst
days could be in the past. Moderate levels of stop and frisk are not necessarily at odds with
positive police-community relations. Problems arise when stop levels rise inordinately,
minorities are targeted unfairly, the reasonable suspicion standard is ignored, and police are
impolite and overly aggressive. New York City surely has a long road ahead given its
paramilitary culture that instills the very behavior that is so poisonous to police-community
relations. However, with William Bratton back at the helm, the NYPD is better positioned to
confront its ugly past with stop and frisk and move forward.

55 Zimring’s academic research has emerged as a rallying point for those who contend the stop
and frisk is a crucial crime reduction tactic. Zimring argued that, “stopping people you don’t
trust is an essential ingredient to policing. It is part of owning and governing the territory you’re
patrolling” (Bergner 2014).


