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Corruption by Card:

How Police Association Cards Allow Law
Enforcement to Cloak Self-Dealing as
Discretion

INTRODUCTION

Law enforcement abuse their discretion by providing favorable treatment to individuals that demonstrate a relationship to the law enforcement community. Private organizations affiliated with law enforcement have capitalized on this by creating association cards which are distributed by members to friends, family members, and others. Card holders present the card during encounters with law enforcement to signal that they have a relationship with law enforcement, with the expectation that they will receive favorable treatment. Though the cards have no formal authority behind them, strong norms in the law enforcement community punish officers that fail to honor them. Because the cards are distributed and honored on the basis of an individual's official position and are used in a non-transparent way, the practice raises ethical and legal questions about whether it is corrupt. This paper explores the nature of the card system, its ethical and legal implications, and ways to end it, with a focus on New York State.¹

THE CARD SYSTEM

The card system has existed for decades in different forms.² Though it has been abandoned by some organizations in the wake of scandals or legislation,³ it continues to be used by organizations associated with major law enforcement entities, such as the New York Police Department (NYPD).⁴ The system itself generally works as follows. Private organizations and unions, comprised of current and former law enforcement, provide their members with association cards each year.⁵ The front of each card bears the name of the association, the year, and a prominent image of a badge.⁶ The back of each card indicates the organizational hierarchy,⁷ the name and contact information of the issuer, and the intended recipient of the card.⁸ Interestingly, cards may also include language indicating that the organization remains the exclusive owner of the card and that the card may be taken at any time by law enforcement.

Organization members then distribute or sell the cards to friends, family members, and other individuals.⁹ These cardholders then present the cards during encounters with law enforcement with the expectation that they will receive a more favorable outcome. The law enforcement officer may inquire as to the identity of the officer that provided the card and may, at the time of the encounter or a later time, contact that officer to verify the card. Typically, the cardholder retains the card for use again in the future.

The effect of a card is a point of contention. Officially, the cards have no authority and officers are under no obligation to honor them. For example, the NYPD maintains that they do not recognize the card as “carrying any privileges,” and that the card should “have no influence on an officer’s discretion in enforcing the law” because “officers are expected to do their jobs without favoritism.”¹⁰

In practice, cards provide the holder with preferential treatment by law enforcement.¹¹ The card system “sets up different sets of [unwritten] rules” where strong informal norms encourage officers to reduce offenses committed by cardholders, or overlook the offense entirely.¹² Though the system is ultimately driven by the officers themselves, affiliate organizations help perpetuate these norms, maintaining a policy that cards should influence the officer’s discretion.¹³ For example, the New York City Patrolmen’s Benevolent Association (PBA), the largest NYPD officer union, claims that cardholders deserve “extra courtesies” out of recognition of the service of the issuing officer, that

the risks officers take “make them different from other people,” and that other officers should treat the cardholder more favorably as a result.¹⁴

Unsurprisingly, there are no statistics or records about the number of cards in circulation, how often they are used, or how they have affected encounters with law enforcement.¹⁵ The effect also cannot be estimated by reviewing guidelines about card use because there are none.¹⁶ However, the culture surrounding the card system suggests that the cards have a substantial effect. When asked the effect of associate cards, officers and affiliate organizations “clam up faster than a felony suspect who wants his attorney.”¹⁷ Inquiries at all levels of authority and even with promises of anonymity receive refusals to answer or no answer at all.¹⁸

Though this silence is suggestive, how non-compliant officers are treated by other officers and affiliate organizations is even more telling. For example, last year an NYPD Officer was given a daily summons quota¹⁹ that forced him to issue summons to drivers that were using PBA cards but nonetheless had broken the law.²⁰ In response, the PBA representative in his precinct and other officers harassed him for months. Further, the PBA representative refused to provide the officer with PBA cards, while his fellow officers said they were going to give ticketed motorists the officers personal information so that they could confront him off-duty.²¹ He also had firecrackers thrown at him by fellow officers in his precinct locker room.²² Though those officers claimed it was a prank, the non-compliant officer didn't know them.

All of the above suggests that cards are effective, even if their impact cannot be specifically determined. This aligns with the anecdotal experience of many cardholders that they believe using a card reduced or mitigated the negative impact of their offense.

It is important to note, though, that the system is not universal nor guaranteed to work. Whether a card works may depend on a few different factors that vary by whether you are using the card in the jurisdiction of the issuing officer or not. If you are, three factors matter. First, what the holder did matters, and even the affiliate organizations maintain that officers should not be affected by the card where a serious offense is involved.²³ Second, cards are best used with officers that are members of the affiliate organization that issued the card, for example using a sheriff's card with a sheriff. Third, a card may not work if the holder cannot explain how they obtained the card or their relationship to the issuing officer.

If you use the card outside the jurisdiction of the issuing officer, cards may still be effective but can depend on personal and professional relationships between units of law enforcement: proximity to the department the issuing officer belongs to, whether there is a feud between the law enforcement departments, whether the officer you are dealing with hasn't had their cards honored by the issuing department, whether the encounter officer knows the issuing officer, and whether the jurisdiction you are in even participates in the card system.²⁴

CREATING THE ENVIRONMENT: DISCRETION AND TRANSPARENCY

To understand why the card system works, it is necessary to explore the environment that it operates within. Two factors create this environment: significant discretion and low transparency.

The Role of Discretion

First, as a general matter, police officers²⁵ are entrusted with significant discretion as to how they enforce the law.²⁶ This reflects a practical, policy, and societal judgment. As a practical matter, extending discretion to officers is efficient; it allows them to “filter” offenses and use their limited resources to address offenses that pose a greater threat. As a policy matter, requiring officers to handle all offenses in the same way may impact how they investigate an offense so that they may still control the outcome, undermining the investigation in the process.²⁷ Finally, as a societal matter, we extend discretion to officers as a check on the system, a way for us to prohibit types of conduct but make a contextualized judgment based on the person, the conduct, and the basis for the prohibited conduct.²⁸ It is through this discretion that officers extend more favorable treatment to cardholders.

The Role of Transparency

Second, police officers operate with relatively low transparency insofar as association cards are involved. The day-to-day schedule of police officers, the details of their activities, the outcomes of their encounters with individuals, and the reasoning for those outcomes are generally not available to the public.²⁹ Further, each of the parties involved in an encounter, the police and the individual, lack an incentive to report or disclose the use of a card. For the police officers, they are indirect beneficiaries of the card system and because the cards are not illegal, have no reason to document their use. For the cardholder who receives a favorable outcome, they have an interest in continuing the system. For the cardholder who does not obtain a favorable outcome or who cannot tell if the card made a difference, complaints may go to the officer they obtained it from but not the general public.³⁰ Thus, unless the officer fails to carry out the order of a superior, fails to address a visible and serious offense, or publicly admits that a card affected their decision making, cards are able to be used without visibility.

PLACING THE PRACTICE: CERTAINLY QUESTIONABLE BUT CORRUPT?

With an understanding of the card system and the environment in which it operates, we turn to the question of whether it is a corrupt practice. Corruption can take many different forms and involves “the abuse of entrusted power for [direct or indirect] private gain.”³¹ There is no dispute that favorable treatment is a private gain. Instead, the argument centers on whether the card system is an abuse of entrusted power.

The Case Against Corruption

Affiliate organizations argue that there is no abuse of power because the discretion of the enforcing officer always governs.³² In deciding how to handle a situation, an officer is allowed to take various things into account, including whether they believe the offender is an otherwise law-abiding citizen or does not deserve a penalty for the offense at hand. They may also argue that the card system does not abuse that entrusted power because it is simply an expression that the holder has a relationship with law enforcement, which could happen anyway through speech, and the officer is under no obligation to take it into account. Further, that the cards are only intended to be used by those individuals favored by law enforcement is not self-dealing because the cards are received and issued in the private capacity of the officer, and any effect on the discretion of other officers is not because of the official position of the issuing officer, but out of recognition for their work and the sacrifices their friends and family make.

The Case for Corruption

The self-interested arguments of proponents of the card system are as unsatisfying as they are indefensible. As the New York Court of Appeals has held, that an officer has discretion over the performance of a duty does not render that performance immune from an abuse.³³ Accordingly, the card system constitutes an abuse of power in two ways: first as an improper basis for the exercise of discretion, and second as a failure to exercise a duty to obtain a benefit.

A. An Improper Basis for Discretion

As affiliate organizations themselves suggest,³⁴ the card system conveys that the holder has a relationship with a law enforcement officer, and by nature of the official position of that officer, deserves preferential treatment.

Though the affiliate organizations may try to argue that the card just means that the holder is a generally law-abiding citizen, how the system actually works undermines that. The card isn't given to just any law-abiding individual, nor is it conditional on following the law at all. Instead, it's a nepotistic system where the cards are given to the friends, family members, and connections of law enforcement. Affiliate organizations may also try to argue that the cards are not corrupt because they are issued, distributed, and honored in a private capacity, but what renders them corrupt is that law enforcement are systematically looking the other way on violations of the law because of the position of another officer, regardless of the private element. Further, such an argument falls apart when we consider the verification process and how non-compliant officers are treated.

With regards to the verification process, when an officer verifies the identity of the card issuer, they are not checking whether the officer is part of the affiliate organization or whether the holder is otherwise a law-abiding citizen. They are asking about the issuer's official position. Additionally, if the system is entirely private, why are non-compliant officers ostracized on the job, by both fellow officers and representatives of the organization that runs the system?

B. Use of Official Position for a Benefit

Beyond the point that the card is an improper basis for influencing discretion, the card system is also corrupt and an abuse of power because law enforcement officers are using their official positions to obtain a benefit. A benefit is "any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary."³⁵ Thus, officers act with intent to obtain a benefit when they distribute the cards and when they honor the cards, as they act to perpetuate the system.

Finally, the fact that a person may just say that they know a police officer, instead of using a card, does not mean the card is not corrupt. As the discussion above makes clear, a relationship to law enforcement is an improper basis for affecting discretion, and allowing the same idea to be expressed one way doesn't mean other ways of expressing that idea are not corrupt. For example, money is now a recognized form of speech, but we still maintain laws against bribery. Because we have established that the card system is corrupt, we turn to potential solutions to the problem.

SOLVING THE PROBLEM: PROSECUTION, LEGISLATION, AND REGULATION AS SOLUTIONS

Where the card system remains in use, it is deeply entrenched. Determining why it remains in place is not critical to its removal. Whether it continues because a majority of officers favor the system, or just because strong informal norms ensure general compliance, either way means that a gradual internal deconstruction of the system is doubtful.³⁶ Accordingly, the most viable solutions are those that punish the system, criminalize the system, or otherwise prohibit it. For reasons I make clear below, I propose a solution that draws upon elements of all three options.

Prosecution as an Option

The first option to address the card system would be to prosecute the participants: the individual that uses the card, the officer that distributes or sells the card, the officer that honors the card, and the organization that issues the card. Yet, just because a participant acts corruptly does not mean they broke the law. To consider the viability of prosecution then, we must consider which participants the law can reach.³⁷

Under New York law, five relevant criminal provisions to the card system are § 195.00 Official Misconduct, § 200.00 Bribery, § 205.50 Hindering Prosecution, § 210.00 Perjury, and § 190.25 Criminal Impersonation.³⁸ However, prosecution under any of these provisions may be difficult. First, perjury is not viable because there is no oath or sworn testimony involved. Second, criminal impersonation is also not viable because the cardholder is the only party that comes close to making an impersonation, but they are not subject to the statute because they are not impersonating a specific person or pretending to be a public servant.³⁹

The remaining three statutes, official misconduct, bribery, and hindering prosecution however, could be charged with the right facts. The officers that distribute and honor the card could be charged with official misconduct⁴⁰, the cardholder could be charged with bribery⁴¹, and the affiliate organization could be charged with hindering prosecution.⁴² Though the acts of the participants may satisfy the relevant statutory elements, such a prosecution would be the first of its kind and the caselaw would need to be developed.⁴³

A. Developing the Law: Charging Official Misconduct

The most viable place to start as a matter of law, evidence, and public opinion, would be to bring a charge of official misconduct against an officer that sells an association card and then falsely verifies the identity of the holder. Relevant here, under New York law, a public official is guilty of official misconduct when “with intent to obtain a benefit . . . [a public official] commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized.”⁴⁴

It should be noted that Official Misconduct is not intended to serve as a catchall for improper acts by public servants and therefore excludes acts that are the “product of inadvertence, incompetence, blunder, neglect or dereliction of duty, or any other act, no matter how egregious, that might more properly be considered in a disciplinary rather than a criminal forum.”⁴⁵ In order to sort between those matters suitable for criminal prosecution and civil resolution, Official Misconduct requires the prosecution to show that the defendant acted with intent to obtain a benefit, and acted with knowledge that their act was an unauthorized exercise of their official function.⁴⁶ Thus, the presence of two mens rea elements represents an “exacting standard”

intended to criminalize “flagrant and intentional abuse of authority by those empowered to enforce the law rather than good faith but honest errors in fulfilling one’s official duties.”⁴⁷ However, the presence of the knowledge and intent mens rea requirements “were not meant to limit in any substantive way the types of conduct that would be culpable.”⁴⁸

a. Public Official and Intent to Obtain a Benefit

With that in mind we turn to the elements of the crime. First, a police officer is clearly a public official.⁴⁹ Second, the officer clearly acted to obtain the benefit of favorable treatment for the cardholder or the money received from the sale. A benefit for the purpose of official misconduct is “any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.”⁵⁰ Courts have taken the legislature at its word when it said “any gain or advantage,” and courts have held that a benefit “includes more than financial gain and can encompass political or other types of advantage.”⁵¹

b. An Act in Relation to Their Office

Third, the officer acted in relation to their office whether the act is defined as (1) the sale of the card, (2) the sale and verification of the card, or (3) the verification alone. To constitute official misconduct, the act involved must be related to the office and position of the defendant.⁵² An act is related to the office of the public official when it involves “his or her real or apparent authority.”⁵³ Apparent authority, also known as colorable authority, exists where the defendant has “some official relation” to the act, even “though the act itself may be technically beyond his official powers or duties.”⁵⁴ Whether an act is related to the office of the defendant is not an exacting standard and has not required the prosecution to show the type of facts required for vicarious liability in a civil suit.⁵⁵ Further, that a public official was not working at the time of the allegedly corrupt act has not precluded that act from being related to their office for a charge of official misconduct.⁵⁶ However, it is not enough for the act to only be abstractly related to the real or colorable authority of the defendant. Instead, the authority of the defendant should have an actual role.⁵⁷

Where the act is alleged to involve the sale of the PBA card, a defendant may argue that the sale of the act is “not made possible or in any way furthered” by their official position; that the defendant received the card in their capacity as a private citizen, as private property; and that therefore the sale of the card did not involve the actual or colorable authority of their office.⁵⁸

This defense may be resolved by arguing that the defendant obtained the PBA card by nature of their official position, and so too, the sale involved their colorable authority because it identified a police officer in their official capacity, potentially affecting whether the sale took place, as well as the price of the sale. The defendant may try to undermine this counter-argument by saying that under such a theory anything issued to a public official by nature of their office could not be sold without incurring an official misconduct charge, even a free pancake coupon. The key difference though is that the value of a coupon, memorabilia, etc., does not draw upon the continued relationship between the item and the public official.

Facts supporting, a more feasible theory would be that the act in question is either the sale of the card and subsequent verifications or the verifications alone. Where the defendant is contacted to verify the card, they are affirming not only their relationship to the card holder but also the fact that they are a police officer. The defendant is not asked and does not affirm merely that they are a member of the PBA, and by affirming that they are a police officer the defendant uses their “position as a police officer and [their] attendant special relationship” with other police officers.⁵⁹

c. Knowingly Committing an Unauthorized Exercise of Official Functions

Fourth, for an act to constitute official misconduct, it must be an “unauthorized exercise” of the defendant’s “official functions” that the defendant commits “knowing that such act is unauthorized.”⁶⁰ There is no bright line rule as to what qualifies as an unauthorized exercise of official functions, rather, it is “based on consideration of all the surrounding circumstances.”⁶¹ Evidence of the circumstances “may include, among other things, the manner in which the act was undertaken, the governing guidelines, rules, and protocols, as well as the actor’s motive.”⁶² Thus, “the same act may be authorized in some cases, but unauthorized in others.”⁶³ However, a “corrupt motive or purpose” alone does not render an act unauthorized.⁶⁴

That an act has not violated a specific “rule, regulation or policy governing the official’s position” has not precluded prosecution.⁶⁵ In such a situation, the question becomes whether “the conduct at issue [is] such that a public officer should know that it constitutes an unauthorized exercise of his official functions[?]”⁶⁶

Here, because the cards in theory have no formal authority and because the NYPD Patrol Guide does not address their use, any prosecution would have to argue that the officer should have known that the sale and/or verification of the card was unauthorized. The best option would be to argue that the officer should have known that it was unauthorized because all acts involve the defendant in their capacity as a public servant or to argue that for an individual with employment in law enforcement, further, as a police officer, there are regulations as to their ability to associate with individuals engaged in criminal activity, accepting money, and other acts that may affect their decisions.

d. The Viability of Prosecution

As the analysis above reveals, prosecution may be a viable option, but it would be the first case of its kind⁶⁷. Barring otherwise significant criminal conduct, prosecutors may decline to bring such cases because of the effect on their relationship with police officers. Further, the judge and the jury in any case would have a number of factual and legal questions, based on which they could stop a prosecution out of doubt about the criminal nature of the acts, concerns about notice to the defendants that such acts were criminal, or hesitations about applying existing criminal laws to the situation. These problems could be alleviated through legislative action.

B. Legislation as an Option

Legislation is a second option for bringing an end to the card system. Legislation directly addressing the use of association cards would give everyone notice, provide a clear basis for prosecution, and signal to officers

and private actors that such a system is not acceptable. Such legislation is not without precedent. The State of California has made it a misdemeanor for any person to sell or give to another person “a membership card, badge, or other device where it can be reasonably inferred by the recipient that display of the device will have the result that the law will be enforced less rigorously as to such person than would otherwise be the case.”⁶⁸ Whether the statute is effective is separate question, though, given that since its passage in 1963 no criminal prosecutions appear to be based on it.

Passing such legislation may prove difficult though. Currently there are no signs that sufficient political willpower or constituent interest exists to justify the legislature tackling the issue. Affiliate organizations would strongly oppose any such legislation, and politicians are particularly wary of being branded as opposed to any public safety group. Additionally, as the type of individuals that typically receive association cards, legislators have a vested interest in the status quo. For these reasons, any legislation would need to come on the heels of a scandal involving the card system and be properly designed and marketed to preclude affiliate organizations from blocking its passage. Thus, though legislation is certainly an option, it is not one that may be easily achieved.

C. Regulation as an Option

Regulation is the third option for addressing the card system. Law enforcement agencies could internally pass regulations similar to the legislation discussed above and punishing violations through disciplinary measures instead of criminal provisions. They could also merely prohibit verification of the cards. Either approach though would probably fail as law enforcement agencies are even more subject to capture by affiliate organizations than legislatures. Though immune from claims that they are undermining law enforcement, agency heads lack a sufficient incentive to do so, would face significant internal strife, and would open themselves up to replacement by opportunistic superiors.

D. Proposed Solution: Draw from Each

Each of the options identified above pose their own challenges. For this reason, I propose that a hybrid approach be adopted. Charges, as outlined above, should be brought where other serious crimes are alleged, to help protect the prosecution against criticism by police officers and concerns of judges and juries. At the same time, legislation could be proposed, while law enforcement agencies offer regulations as a more palatable alternative. Should any single measure work, then the government’s ability to combat such corruption will be served. If any should fail, the others serve as a backup.

ENOUGH OF AN ISSUE: WEIGHING SOLUTIONS AGAINST THE PROBLEM

Given the range of other corrupt activities that need attention, one may ask whether the card system is worth addressing. After all, cards seem to only affect relatively minor legal offenses while potential solutions could harm critical relationships between prosecutors and police or require a large amount of political capital to pass legislative or regulatory measures. These are valid concerns, but they should only inform how this issue is prioritized not whether it is addressed at all.

As with other instances of corruption, the lack of transparency means that the scope, depth, and effect of the problem is not always apparent. We have no data as to how many cardholders violate the law without punishment, how many

do so repeatedly, or the details of those offenses. Further, though the cards are anecdotally understood as allowing holders to get out of minor offenses, such as speeding tickets, we have no way of knowing if officers are giving people a break on more serious offenses, such as drunk driving. Even where the nature of the offense at hand is not egregious, cardholders may be receiving less thorough assessments, and thus avoiding the detection of more serious offenses. Furthermore, in the view of the de Blasio administration's Vision Zero initiative, increased vigilance for relatively minor and non-violent offenses will mean a reduction in actual threats to public safety. For projects with aggregate goals, gaps in systemic enforcement mean that habitual offenders may unnoticed and unpunished until a serious violation occurs.

All of this does not even account for the potential secondary effects on public safety. The effect of cards is no secret, and even if we assumed that all friends and family members that receive the card are law-abiding citizens, the cards also are regularly sold to the highest bidder.⁶⁹ It would be a cost-effective measure for criminals and other corrupt actors to invest in some cards to minimize the attention they receive during encounters with law enforcement. Though anyone can say they know a police officer, the card system institutionalizes an assertion of that relationship, avoids scrutiny through unwritten rules, and informally punishes those public officials who don't comply, and using the card doesn't by itself subject the holder to any penalties; a dream system if you're a criminal. Yet, the card system should be addressed even if it merely allows individuals to receive a warning instead of a ticket for speeding. If we assume that each member of the PBA receives at least ten cards a year that means that there may be a minimum of 240,000 up to date cards in circulation.⁷⁰ Though there is no guarantee that everyone will make use of their card, even a 25% use rate means that 60,000 people are benefitting from the official position of their friends and family. Aside from the public safety concerns discussed above, this type of systemic low-level corruption may pose a greater threat to the public perception of law enforcement. Corruption on any scale undermines public trust, erodes the effectiveness of our institutions, and privilege those that benefit from it.

CONCLUSION

The card system is a corrupt form of self-dealing by public officials, who use the discretion entrusted to them to cloak their abuse of power. This type of self-dealing by government officials undermines public trust by facilitating nepotism, hinders public safety by allowing violators to escape punishment, and exposes less-connected communities to fines and punishment that others avoid.⁷¹ The system is also representative of the deeper cultural concern about law enforcement officers being above the law. As a matter of principle, equality, and utility, the card system should be ended. The solutions proposed by this paper provide different ways to achieve that goal and improve the government's ability to combat corruption. Though each faces considerable obstacles, none are insurmountable, but their implementation must be handled with care and in the wake of events that support their adoption. Should any succeed, this longstanding corrupt practice can be brought to a close.

About:

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What is CAPI?

The Center for the Advancement of Public Integrity is a nonprofit resource center dedicated to improving the capacity of public offices, practitioners, policymakers, and engaged citizens to deter and combat corruption. Established as partnership between the New York City Department of Investigation and Columbia Law School in 2013, CAPI is unique in its city-level focus and emphasis on *practical* lessons and tools.

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ENDNOTES

- ¹ This is because of the robust use of the card system in New York City and the relative familiarity of the author with New York State law.
- ² Roger M. Grace, *'Courtesy Cards' Shield Bearer From Traffic Tickets*, METROPOLITAN NEWS-ENTERPRISE (Oct. 27, 2015), www.metnews.com/articles/2015/perspectives102715.htm (tracing the card system back to at least 1923).
- ³ Allison Steele, *Police Say Don't Confuse Courtesy Cards with a Free Pass*, PHILA. INQUIRER (June 7, 2010), www.philly.com/philly/news/local/20100607_Police_say_don_t_confuse_courtesy_cards_with_a_free_pass.html (noting that officers in Philadelphia don't necessarily honor the cards and that departments like the police in Toledo, Ohio, ended the system in 1990 after a scandal about breaks on tickets).
- ⁴ Patrolmen's Benevolent Association of the City of New York, *Who We Are*, New York City Patrolmen's Benevolent Association, <https://www.nycpba.org/about-the-pba/who-we-are/> (identifying the NYC PBA as representing approximately 24,000 members of the NYPD) (last visited 4/23/18 at 10:35 AM).
- ⁵ *Police Union Cards Used to Get Cop Relatives Out of Minor Jams Are Selling on eBay Causing Fury Among City Officials*, Daily Mail (Jan. 6, 2013), www.dailymail.co.uk/news/article-2258257/Police-union-cards-used-cop-relatives-minor-jams-selling-eBay-causing-fury-city-officials.html; There is no source tracking the total number of such cards in distribution, but the NYC PBA has recently been reported as reducing the number of cards provided per year to active members from thirty to twenty and for retired members from twenty to ten. Leon Wolf, *NYPD Cops to Get Fewer 'Get Out of Jail Free' Cards to Give to Family and Friends- and They're Upset*, THE BLAZE (Jan. 22, 2018), <https://www.theblaze.com/news/2018/01/22/nypd-cops-to-get-fewer-get-out-of-jail-free-cards-to-give-family-and-friends-and-theyre-upset>.
- ⁶ The badges that appear on association cards generally bear the name or initials of the organization but closely track the shape and coloration of the actual law enforcement authority the private organization is affiliated with.
- ⁷ Note that the PBA card not only identifies the organizational hierarchy but also the assignment of the organization members within the actual NYPD. For example, indicating that Patrick J. Lynch, the President, is assigned to the 90th precinct.
- ⁸ Corey Kilgannon, *A Perk for Friends of the Police, Now on eBay*, N.Y. TIMES (Jan. 11, 2006) <https://www.nytimes.com/2006/01/11/nyregion/a-perk-for-friends-of-the-police-now-on-ebay.html>.
- ⁹ The cards can be used as a way to extend thanks or to generate favor with a connection, such as a prosecutor, reporter, or a politician.
- ¹⁰ Kilgannon, *supra* note 7.
- ¹¹ *Id.*
- ¹² Steele, *supra* note 2.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ This may be an interesting project for a general survey, insofar as one could get a sample population.
- ¹⁶ Or at least none available to the public, or that exist in written form. There are members only parts of the PBA and similar organizations websites. Though I doubt they'd write this out.
- ¹⁷ Kevin Manahan, *PBA Cards: Do They Work, and Should They?*, NEW JERSEY (May 20, 2012), www.nj.com/njvoices/index.ssf/2012/05/pba_cards_do_they_work_and_sho.html.
- ¹⁸ *Id.*
- ¹⁹ Thomas Tracy, *NYPD Officer Claims Cops Tossed Firecracker Over Ticket Quota*, N.Y. Daily News (Mar. 9, 2018), www.nydailynews.com/new-york/nyc-crime/nypd-officer-claims-cops-tossed-firecracker-ticket-quota-article-1.3864103.
- ²⁰ *Id.*
- ²¹ *Id.*
- ²² *Id.*
- ²³ Kilgannon, *supra* note 7. Again, though we have no data to show that a serious offense like driving while intoxicated might not be reduced to a traffic infraction and so on. There is a question as to whether the use of body cameras and car cameras might change the practice, but again the card is easy to slip along with your license, and even then, unless footage is always made public, the reviewing entity shares a vested interest with the police officer.
- ²⁴ Manahan, *supra* note 16; Steele, *supra* note 2.
- ²⁵ As a note, I use police officers and law enforcement interchangeable. The use of "police officers," or "officer" should be read to mean all types of law enforcement, including prosecutors.
- ²⁶ Steve McCartney & Rick Parent, *Ethics in Law Enforcement 8.1 Police Subculture* (British Columbia Ministry of Advanced Education 2012), available at <https://opentextbc.ca/ethicsinlawenforcement/chapter/7-1-the-ethics-surrounding-discretion/>.
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ Exceptions to this can be where an officer uses force, is alleged to engage in profiling, or other conduct that generates specific attention.

³⁰ This may be, in part, because such an argument is admitting guilt in a way, as you are not arguing that the ticket or arrest was without basis but that you shouldn't have received it nonetheless.

³¹ TRANSPARENCY INTERNATIONAL, *What is Corruption?*, <https://www.transparency.org/what-is-corruption#define> (last visited 4/23/18 at 2:02 PM).

³² Kilgannon, *supra* note 7.

³³ *People v. Flanagan*, 28 N.Y.3d 644, 660-63 (2017).

³⁴ Kilgannon, *supra* note 7.

³⁵ *Flanagan*, 28 N.Y.3d 656 (quoting N.Y. PENAL LAW § 10.00[17]).

³⁶ This is even more doubtful when one considers that affiliate organizations use cards as a system of public relations with other officers, politicians, and judges. Though again it is true that such a person may get the same treatment by bringing up who they are, doing so runs the risk of it being recorded otherwise becoming known that they affirmatively tried to use their role as a public officer to get favorable treatment. Instead, the card system lets them do the same thing without saying a word, which would open them up to quotations, comment, and publication.

³⁷ I consider this question under New York law in part due to my own familiarity but more importantly because it would govern the robust PBA card system. Charging theories under federal law are outside the scope of this paper, and their exclusion should not be interpreted as a statement on their viability.

³⁸ N.Y. PENAL LAW § 195.00; N.Y. PENAL LAW § 200.00; N.Y. PENAL LAW § 205.50; N.Y. PENAL LAW § 210.00; N.Y. PENAL LAW § 190.25 (MCKINNEYS 2018). I note that other criminal provisions may be relevant, this is not intended to be a comprehensive assessment of all potential charging theories.

³⁹ N.Y. PENAL LAW § 210.00; N.Y. PENAL LAW § 190.25.

⁴⁰ How the officer that distributes the card is explored below. An officer that honors the card would also be chargeable under official misconduct on a nonfeasance theory, that they failed to perform their duty in order to obtain a benefit for their own friends that they gave cards to.

⁴¹ The cardholder would be charged with bribery where they paid to obtain the card, as their payment affects a matter within the discretion of a public official.

⁴² The affiliate organization would be charged with hindering prosecution because they actively take steps that impede the charging of offenses against individuals that violate the law. This is the least practical approach though, at least where the affiliate organization is the police union, though a separate private organization is more viable.

⁴³ My research was unable to identify any such prior prosecutions.

⁴⁴ N.Y. PENAL LAW § 195.00(1).

⁴⁵ *People v. Feerick*, 93 N.Y.2d 446, 448 (1999).

⁴⁶ *Id.*

⁴⁷ *Flanagan*, 28 N.Y.3d 656 (quoting *Feerick*, 93 N.Y.2d at 448 (internal quotations omitted)).

⁴⁸ *Id.* (internal quotations omitted).

⁴⁹ A public servant “means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.” N.Y. PENAL LAW § 10.00(15) (MCKINNEYS 2018).

⁵⁰ *Flanagan*, 28 N.Y.3d at 656.

⁵¹ *Feerick*, 93 N.Y.2d at 447; *see also*, *Flanagan*, 28 N.Y.3d 656 (affirming a conviction for official misconduct where the benefit was avoidance of the arrest of an individual under investigation).

⁵² *People v. Moreno*, 953 N.Y.S.2d 202, 203 (N.Y. Sup. Ct., App. Div. 1st Dept., 2012).

⁵³ *Id.* (quoting *People v. Rossi*, 415 N.Y.S.2d 21 (N.Y. Sup. Ct., App. Div., 1st Dept., 1979)).

⁵⁴ *People v. Charles*, 61 N.Y.2d 321, 326 (1984) (citing *People v. Lafaro*, 250 N.Y. 336, 342 (1929)).

⁵⁵ *See*, *N.X. v. Cabrini Medical Center*, 97 N.Y.2d 247 (2002) (denying vicarious liability where a medical resident sexually assaulted a patient while dressed in the scrubs and bearing identification of the hospital on the grounds that the act was outside the scope of employment); *compare*, *People v. Arcila*, 152 A.d.3d 783 (N.Y. App. Div., 2nd Dept., 2017) (reversing dismissal of an indictment for official misconduct, and recognizing that an off-duty police officer who touched the breast and thigh of the complainant while displaying a police badge and threatening to give the complainant a ticket was legally sufficient to support a charge of official misconduct).

⁵⁶ *People v. Gray*, 172 Misc.2d 14, 14-17 (N.Y. Sup. Ct., Kings. Co., 1997) (denying a motion to dismiss charges of official misconduct where an off-duty police officer having a dispute with a store owner summoned police to the store, told the officer she was a police officer and wanted the owner arrested, and later told the owner she would use position as a police officer and attendant special relationship with the prosecutors to drop the case in exchange for \$5,000, because even though the officer was off-duty, her actions were within her colorable authority).

⁵⁷ People v. Castaneda, 40 Misc.3d 1207(A), 2013 WL 3466226 (N.Y. Co. CT., Monroe Co., 2013) (dismissing a charge of official misconduct against a mayor, who had been charged for renting out property that didn't comply with relevant housing code and zoning ordinances, and afterwards failing to enforce or prosecute those violations as required by her position as mayor and under state law, because there was "no allegation of fact that the defendant relied on or used her public position to advance her alleged misdeed.").

⁵⁸ Castaneda, 40 Misc.3d 1207(A).

⁵⁹ See Gray, 172 Misc.2d 17, 23-24.

⁶⁰ N.Y. PENAL LAW § 195.00.

⁶¹ Flanagan, 28 N.Y.3d 657.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ People v. Barnes, 117 A.D.3d 1207-1208 (N.Y. Sup. Ct., App. Div., 3rd Dept., 2014).

⁶⁶ People v. Malki, 56 Misc.3d 961, 2017 (N.Y. Crim. Ct., Bronx. Co., 2017).

⁶⁷ A caselaw survey of legal databases did not reveal any precedent for this kind of prosecution. However, it is possible that such prosecution has occurred.

⁶⁸ CAL. PENAL CODE § 146d (West 2018).

⁶⁹ Kilgannon, *supra* note 7.

⁷⁰ New York City Patrolmen's Benevolent Association, *supra* note 4; Daily Mail, *supra* note 5; The Blaze, *supra* note 5.

⁷¹ For example, as of 2016, about fifty-percent of the NYPD was Caucasian, whereas only fifteen-percent of the force was African-American. Tom O'Connor, *NYPD Welcomes Largest, Most Diverse Class of Cadets Ever*, N.Y. POST (June 10, 2016), <https://nypost.com/2016/06/10/nypd-welcomes-largest-most-diverse-class-of-cadets-ever/>.