The City of New York
Department of Investigation

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Testimony of Susan J. Pogoda
Deputy Commissioner, New York City Department of Investigation

City Council Committee on Oversight and Investigations

May 5, 2014

Good afternoon Chair Gentile, and members of the Committee on Oversight and Investigations. My name is Susan Pogoda, Deputy Commissioner for Agency Operations and Chief of Staff for the New York City Department of Investigation. I am joined by Michael Siller, DOI First Deputy General Counsel. Thank you for the opportunity to testify here today regarding City Council Proposed Intro 119-a. As you know, Intro 119-a requires DOI, in consultation with the office of the Corporation Counsel, to submit quarterly reports to the City Council, the Comptroller and the Civilian Complaint Review Board containing information regarding all civil actions filed against the NYPD and/or individual police officers during the preceding quarter in which the Law Department appeared or agreed to represent any of the parties.

As you also know, the information about civil litigation that Intro 119-a mandates DOI to report on is not information that DOI generates, collects or maintains in the ordinary course. Rather, to the extent such information exists, it is maintained by the Law Department. So from

that standpoint, the burden of complying with the law here really is on the Law Department and we defer to them on that issue.

To the extent that the purpose behind Intro 119-a is to ensure that the DOI Inspector General for the NYPD has the kind of information regarding NYPD-related litigation specified in the legislation, DOI already has the power, under Chapter 34 of the City Charter and our executive authority, to require the Law Department to produce such information. The NYPD Inspector General, Philip Eure, is scheduled to begin on May 27 and at that point, he can evaluate, in consultation with Commissioner Peters, what type of information of this nature is necessary to fulfill his mandate.

I'm happy to answer any questions the members of the Committee may have.

Thank you.

FOR THE RECORD

CIVILIAN COMPLAINT REVIEW BOARD
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NYC CIVILIAN COMPLAINT REVIEW BOARD
TESTIMONY ON MONDAY, MAY 5, 2014, BEFORE THE
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Thank you Chairman Gentile, and members of the Committee, for this opportunity to present testimony today. The legislation discussed today is a great step by Mayor de Blasio and this City Council in increasing transparency in police oversight and we are excited to be included in the process. The Civilian Complaint Review Board is the only completely independent civilian oversight agency, and the largest one of its kind in the nation. Thanks to the City Council legislation and funding, we have enhanced the quality of our investigations and developed the Administrative Prosecution Unit, so that the CCRB handles investigations, mediations, Board recommendations, and prosecutions of police misconduct impartially and thoroughly for the benefit of all New Yorkers.

The CCRB fully supports this legislation and is prepared to assist the various governmental oversight agencies in fulfilling the purpose and goal of the law. Through our civilian complaints, we are able to track those cases where civil litigation is proceeding and we routinely provide investigative documents to Corporation Counsel to assist him in the department's litigation. We also notify Corporation Counsel when the CCRB Board substantiates allegations of police misconduct and recommends charges and specifications against the police officer, so that Corporation Counsel can determine whether he will represent the officer in civil litigation. Further, we work with the Comptroller's Office to receive notification of notices of claim filed in CCRB investigations and obtain relevant 50-h testimony.

By providing the CCRB with quarterly reports on civil actions filed against the police department, we can cross reference those actions against complaints filed within

the agency. We can also provide, within legal guidelines, statistical information with regard to past complaints against police officers and the outcomes of those complaints.

The CCRB investigates an average of approximately 5,700 complaints per year. During the course of investigation, we note whether civil litigation has been filed, by acknowledging whether a notice of claim was filed with the Comptroller's Office. Those cases in which civil litigation has been filed are not eligible for our mediation program, and therefore proceed through the investigative process. In submitting an investigative closing report to the Board, the investigator will include all documents relating to the civil litigation, including the notice of claim, pleadings, a transcript of the 50h hearing, motion practice, deposition transcripts, settlement agreement, and trial transcripts.

By instituting quarterly reports to the City Council, Comptroller's Office and CCRB, we will have greater access among the various agencies to the status of civil litigation involving New York City police officers. A review of the CCRB logs show that the CCRB receives approximately 3,000 requests per year for our investigative cases files from the Law Department. Further, with the progression of the Administrative Prosecution Unit, there will be more interplay between Corporation Counsel's litigation and the CCRB's administrative prosecution of police misconduct cases.

Information about the civil actions filed against individual police officers could also be relevant to the Board's work in the area of policy recommendation and other relevant studies. Currently, we have not been able to demonstrate a correlation between the filing of a lawsuit and the Board's determination of police of misconduct. However, with greater access to data from the Comptroller's Office and Corporation Counsel, the CCRB can use its statistical findings to demonstrate, when present, patterns of police misconduct and litigation within certain precincts, and with regard to

specific allegations of police misconduct, that would assist in developing better training and education for NYPD officers.

In conclusion, we thank Mayor de Blasio and the City Council for focusing strong efforts on improving civilian oversight of police misconduct. We look forward to working with the new Inspector General to provide reports and recommendations to assist in oversight of police misconduct, and are prepared to discuss it further at the Chairman's request.

TESTIMONY

Before

The Council of the City of New York

Sponsored by:

Committee on Health and the Committee on Oversight and Investigations

Proposed Int. No. 119-A - In relation to requiring the inspector general of the New York city police department to submit quarterly reports to the city council, comptroller and civilian complaint review board detailing the number and disposition of civil actions filed against the New York city police department.

May 5, 2014

City Hall
New York, New York

Submitted by:

The Legal Aid Society
199 Water Street
New York, NY 10038

Presented by:

William Gibney, Director Criminal Practice Special Litigation Unit

Good morning. I am William Gibney, Director of The Legal Aid Society Criminal Practice Special Litigation Unit. I submit this testimony on behalf of The Legal Aid Society. I thank the Committee on Oversight and Investigations for inviting our comments on Proposed Introduction Number 119-A which would require the reporting of statistical information regarding civil actions filed against the Police Department. We appreciate your attention to this important issue.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. From offices in all five boroughs in New York City, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City: the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life – housing, health care, food and subsistence income or self sufficiency; and the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as troubled young people facing charges of misconduct.

During the last year, our Criminal Practice handled some 220,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. Through our criminal defense work we are often among the first people to speak with people following an arrest by the police. Because of the breath of The Legal Aid Society's representation in

the criminal justice system, we are uniquely positioned to address the need for greater oversight of civil litigation filed against the NYPD

Proposed Int. No. 119-A

The Legal Aid Society strongly endorses the adoption of proposed legislation 119-A. The bill would require the Inspector General of the New York City Police Department to submit quarterly reports to the City Council, the Comptroller and the Civilian Complaint Review Board regarding the number of pending actions against the NYPD, the number of claims in each action, the nature of each claim, the length of time the action is pending, the resolution of each claim, the method of disposition of the action, the court in which it was filed, the identity of the police officer involved, whether the officer was on duty at the time of the incident, whether the officer is the subject of prior claims or allegations of misconduct, and the disposition of such prior claims.

A report such as the one required under this legislation, which would allow the City Council, the Police Department and City managers to identify trends regarding claims against the City following interactions with the police, is a useful and necessary fiscal and management tool. It would help the City assess trends regarding the overall cost of operating an organization as large and complex as the NYPD. The information the report provides could be readily applied in a wide variety of situations at various levels throughout the NYPD. Since individual damage claims are in some measure a reflection of the NYPD's relationship to the community, the report could provide one measure of the effectiveness of NYPD's management in achieving its goal of improving

its relationship with communities across our City. It could help managers evaluate risk as to whether a new program or an existing practice, e.g., police vehicle pursuit, is working well or whether it is unnecessarily costing the City in terms of money paid in damages claims and relationships with the impacted communities. It could help determine whether certain precincts or certain officers need closer supervision or retraining.

Given the recent history of increased claims against the NYPD, we believe that this report is especially necessary and important. Had the proposed reports been generated over our recent past, the public information they would have provided could have assisted in saving millions of dollars in unnecessary public expenditures.

No public report currently exists that provides the full range of information as would be required under the proposed bill. However, claims reports issued by the New York City Comptroller offer a partial view of the information and illustrate how more detailed information could be useful. The Office of the City of New York Office of the Comptroller Claims Report Fiscal Year 2012 provides the most recent indication of the current state of affairs regarding claims against the City and the NYPD.[1] In each of the past 5 years the NYPD had more new claims filed against it than any other City agency.[2] In 2012, the NYPD had more than twice the number of new claims filed against it (9,570) than any other City agency.[3] A disturbing trend in this 5 year summary is that, unlike any other agency, the claims against the NYPD continued to

[1] John C. Liu, New York City Comptroller, *City of New York Office of the Comptroller Claims Report Fiscal Year 2012,* June 4, 2013
[2] *Id* at 37
[3] *Id.*

rise in each of the past 5 years covered in the report.[4] Over the course of the past 5 years the number of claims against the NYPD rose 52%.[5]

The claims against the NYPD are expensive. In 2012, such claims cost the city $151.9 million.[6] Over the past 5 years settlements and judgments cost $721 million.[7] In 2010, for the first time, claims against the NYPD were more costly than claims against the Health and Hospitals Corporation.[8] The disparity between HHC and the NYPD continues to this date. As a measure of contrast, in 2002 the NYPD accounted for 15%[9] of the total claims costs against the City while in 2012 it accounted for 31%[10] of those claims.

The Comptrollers' reports tell only a part of the story about the costs to our City. They do not account for the considerable expenses to the courts caused by the flood of civil litigation or to the City to defend that litigation. They do not account for the costs to or the loss of confidence in the criminal justice system. They cannot account for the price that was paid for bad policing within our communities or to the future our youth. We will continue to pay those costs.

Given what we know from the information currently available, it is apparent that a management tool that provides stakeholders with critical information regarding claims and associated costs is a useful and very timely idea. Access to the key information is

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[4] *Id.*
[5] *Id.* at 5
[6] *Id.* at 38
[7] *Id.*
[8] *Id.*
[9] William C. Thompson Jr., New York City Comptroller, *City of New York Office of the Comptroller, Claims Report 2001 – 2002*, July 2003, p. 44
[10] *Claims Report Fiscal Year 2012, supra* at 43

an essential first step towards a more informed policy discussion as to the means to provide incentives for better policing.

I thank you for the opportunity to testify and am available if you have any questions.

Cynthia H. Conti-Cook
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475 Atlantic Avenue, 3rd Floor
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718-852-3710

May 5, 2014

RE: Testimony to the Oversight and Investigations Committee regarding Int. No. 119-A – a local law to amend the New York City charter, in relation to requiring the inspector general of the New York City Police Department to submit quarterly reports to the City Council, Comptroller and Civilian Complaint Review Board detailing the number and disposition of civil actions filed against the New York City Police Department.

- Detective Peter Valentin of Bronx Narcotics – sued 28 times – costing the City $884,000 in settlements.
- Detective Vincent Orsini of Staten Island Narcotics – sued 21 times – costing the City $1,087,502 in settlements.
- Sgt. Fritz Glemaud of Brooklyn North Narcotics – sued 21 times – costing $420,002 in settlements.
- Detective Warren Rohan of Brooklyn Narcotics – sued 20 times – costing $241,960 in settlements.
- Lt. Daniel Sbarra and his team of Brooklyn North Narcotics detectives – sued a combined 58 times – costing a combined $1,536,051 in settlements with 9 lawsuits still pending.

These numbers come from a series of Daily News articles[1] exposing data that the City and Corporation Counsel have long been sitting on and essentially turning a blind eye towards. As a civil rights attorney in Brooklyn for the past seven years, I brought several of these cases against Sbarra and his team. But this handful of officers is essentially the tip of the information iceberg. With the exception of the rare case that settles for more than $250,000, the NYPD does not

[1] See attached: (1) "Exclusive: NYPD's most sued cop, probed over raids, taken off streets," April 11, 2014, http://www.nydailynews.com/new-york/nyc-crime/exclusive-nypd-most-sued-streets-article-1.1752941; (2) "Meet the NYPD officers with the most lawsuits over the past decade" February 16, 2014, http://www.nydailynews.com/new-york/meet-nypd-4-sued-officers-decade-article-1.1616033; (3) "Detective is NYPD's most-sued cop, with 28 lawsuits filed against him since 2006,"http://www.nydailynews.com/new-york/lawsuits-nypd-double-decade-costing-taxpayers-1b-article-1.1615919; (4) "Brooklyn NYPD Lieutenant sued over lurid tactics moved to Queens desk duty," July 17, 2013, http://www.nydailynews.com/new-york/lurid-brooklyn-nypd-lieutenant-moved-queens-desk-duty-article-1.1400625; (5) "Repeated Charges of illegal searches, violence, racial profiling, racial slurs, and intimidation against Lt. Daniel Sbarra and his team have cost the City more than $1.5 million in settlements" May 19, 2013, http://www.nydailynews.com/new-york/brooklyn/lt-daniel-sbarra-team-finest-article-1.1348075.

review lawsuits for trends, problem officers, or potential policy issues.[2] The previous Corporation Counsel repeatedly cited civil rights lawsuits' meritless nature as justification for not grappling with personnel or policy issues raised during litigation. While the allegations in civil rights lawsuits certainly contain untested facts, they have nevertheless proven useful to police departments willing to study litigation rather than ignore it.

UCLA Professor Joanna Schwartz extensively examined a handful of cities, including Los Angeles, Seattle, Portland, Denver and Chicago, and how their police departments have used information from civil rights litigation to identify problem officers, units, practices and precincts.[3] Civil rights litigation, she argues, fills two huge gaps of information for police departments: (1) unreported incidents and (2) incomplete or biased internal investigations. "Departments' attention to the lessons they can learn about their own conduct from lawsuits – what could be called introspection through litigation – is an underexplored yet promising avenue by which lawsuits can lead to organizational performance improvements." Therefore, she argues, it is most beneficial for departments to digest litigation data rather than discard it.

To be clear, the argument is not that police officers should be automatically disciplined every time they are sued. Allegations, evidence, and testimony developed through civil rights litigation serve to supplement police departments' personnel and policy evaluations, not to substitute them. Prof. Schwartz highlights how data learned from litigation in other jurisdictions has prompted counseling, additional force training and other personalized interventions. This serves the original purpose of the civil rights statute: to deter government actors from violating constitutional rights. If the government does not understand the extent of its actors' constitutional violations, how can it or they be deterred?

This bill is a great beginning. However, the data collected from litigation should not be limited to the type of claims in the lawsuit; the precinct, rank, number of years on the job. I would expand the type of data to be collected from litigation to include information taken from lawsuit allegations plus evidence and testimony revealed during litigation, including: (1) the address where the incident occurred; (2) the race of the plaintiff and police officer(s); (3) whether the officers were in uniform or plainclothes; (4) what (if any) weapons were used; (5) whether allegations involved flaking, planting evidence or perjury; (6) whether the police worked overtime to process the arrest; (7) whether it involved NYCHA housing; and more.

The more "introspection through litigation" that is done, the more information the Council Members, the police department, Corporation Counsel and the Comptroller's office has to harness the surmounting costs of civil rights litigation in New York City.

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[2] The Daily News reports that "[sources] said the department only gives cases resulting in payouts of at least $250,000 a mandatory review". See article (5) in the above footnote.

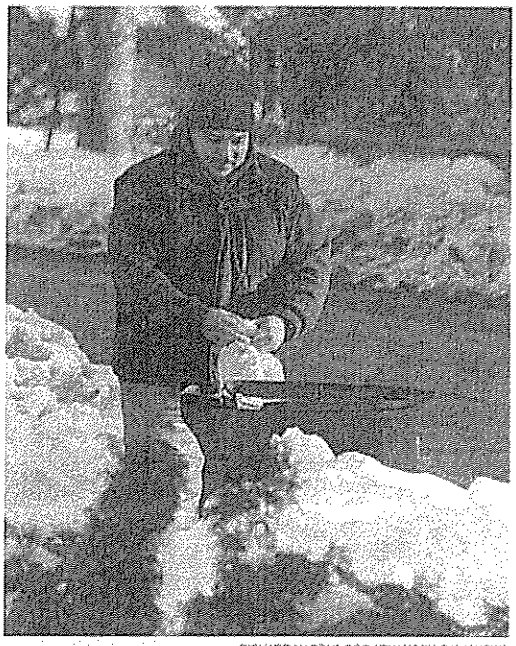
[3] See attached: Joanna Scwhartz, "What Police Learn from Lawsuits" 33 Cardozo L. Rev. 841, (2012)

NYC CRIME

EXCLUSIVE: NYPD's most-sued cop, probed over improper raids, taken off the streets

Detective Peter Valentin of Bronx Narcotics was found to have been sued at least 28 times since 2006 and cost the city $884,000 in legal settlements. He could face departmental charges for producing trumped up information to secure a warrant, sources told the Daily News.

BY ROCCO PARASCANDOLA / NEW YORK DAILY NEWS POLICE BUREAU CHIEF / Friday, April 11, 2014, 2:30 AM



RICHARD HARBUS FOR NEW YORK DAILY NEWS

Bronx Narcotics Detective Peter Valentin caught taking out the garbage. Valentin has been placed on modified duty during Internal Affairs probe.

The NYPD's most-sued cop has been yanked off the streets after an undercover police probe — and now dozens of convictions and pending investigations are in jeopardy, the Daily News has learned.

Detective Peter Valentin of Bronx Narcotics — sued at least 28 times since 2006 — was part of a team targeted by the NYPD's Internal Affairs Bureau last summer for taking part in raids of dubious merit, police sources told The News.

Valentin and his cohorts have been placed on modified duty and could face departmental charges accusing them of trumping up "information" from an IAB undercover to get a drug warrant, sources said.

The March 27 decision to put Valentin and three colleagues in desk jobs in different boroughs could endanger several investigations and give defense attorneys grounds to appeal prior convictions, police sources said.

In February, The News revealed the city paid out at least $884,000 to settle lawsuits in which Valentin is named.

Valentin has been accused of taking part in several dicey raids. In one case, a nursing mother spent a week on Rikers Island because Valentin ignored her claim that the powder in her home was actually crushed egg shells used in a Santeria ritual. The drug tests were negative.

A tip to Internal Affairs last summer started a probe into Valentin and his cohorts. The Narcotics Bureau was headed at the time by Assistant Chief Joseph Reznick, recently tapped by Police Commissioner Bill Bratton to run Internal Affairs.

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EXCLUSIVE: Detective is NYPD's most-sued cop with 26 lawsuits

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EDITOR'S PICKS

Suspect arrested in murder of Menachem Stark
Detectives have arrested a suspect in connection with the mysterious murder of a Brooklyn landlord, a

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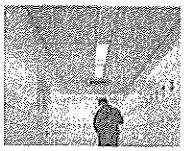
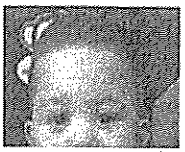


Bronx boy, 4, may have died from eating rat poison
Little Juan Sanchez died Monday, a day after possibly swallowing poison an exterminator left in the



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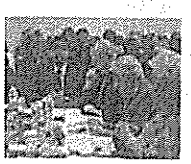
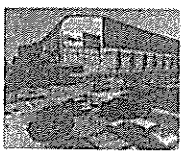
Public school students in New York State failed to boost their scores



New crossing guard for dangerous Queens intersection
The NYPD will finally reinstate a crossing guard at an unsafe Rego Park intersection near an



FROM AROUND THE WEB

Inside The Home Of Hollywood's Most Enduring Couple
(Lonny Magazine)

SUSAN WATTS/NEW YORK DAILY NEWS

Joseph Reznick (right), former head of the NYPD Narcotics Bureau, was appointed by Police Commissioner Bill Bratton (left) to head the Internal Affairs Bureau.

As part of its investigation, IAB used an undercover who was signed up as an informant by the unwitting narcotics cops, sources said. Valentin and his colleagues then took part in a raid based on a search warrant obtained from interviews with the informant, who had tipped the cops to drugs in a particular apartment.

The informant "bought" the drugs, but the targeted cops became suspicious because they never saw anyone else enter or leave the apartment while they kept it under surveillance, sources said. When they finally executed the warrant, they discovered an empty apartment — leading them to conclude Internal Affairs was investigating them, sources said. But by then, the damage was done, sources said.

In addition to the probe linked to the undercover, sources said the officers may have discussed getting other warrants by falsely claiming the informant told them about drugs in other locations. Investigators are also looking at numerous drug cases in which other informants were used.

The NYPD placed Valentin, Detectives Alberto Pizzaro and Danixon Cabrera and their supervisor, Lt. Joseph Kourakos, on modified duty.

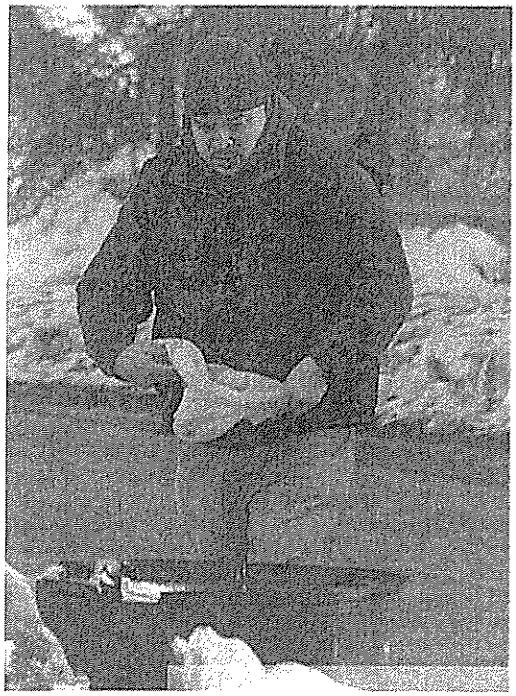
Sources close to the cops downplayed the alleged wrongdoing as paperwork errors. The NYPD declined comment.

rparascandola@nydailynews.com

Meet the NYPD officers with the most lawsuits over the past decade

A Daily News review of lawsuits against the NYPD show 55 officers in the 34,000-person department have been sued 10 or more times over the past decade, costing taxpayers over $6 million. Here's a look at the four most-sued officers — with Detective Peter Valentin leading with 28 suits since 2006.

BY RYAN SIT , BARRY PADDOCK , DAREH GREGORIAN , JOHN MARZULLI / NEW YORK DAILY NEWS /
Sunday, February 16, 2014, 2:30 AM



RICHARD HARBUS FOR NEW YORK DAILY NEWS
Detective Peter Valentin, 36, has been sued 28 times since 2006.

DETECTIVE PETER VALENTIN

Bronx North Narcotics

Sued 28 times, $884,004 in payouts

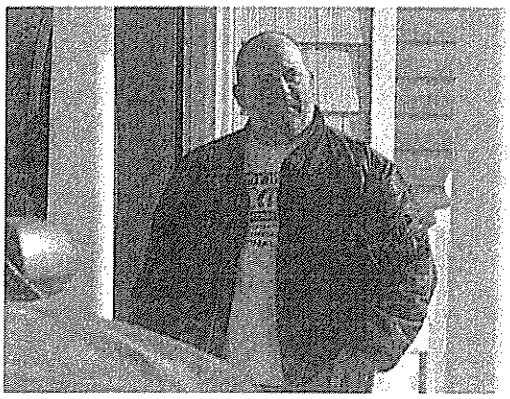
Valentin, 36, joined the NYPD July 1, 2002, and was slapped with his first lawsuit in 2006.

Promoted to detective in May 2008, he's been sued and charged with dozens of false arrests, including four incidents where parents were busted in front of their kids — only to have the charges against them later dropped.

Illuminada Valdivieso, 54, says she was wrongfully arrested in front of her 10-year-old daughter when Valentin and other officers raided her home, and then humiliated her by repeatedly calling her J.Lo after she changed in front of cops.

"They were making fun of her," the daughter, now 13, told the Daily News.

RELATED: EXCLUSIVE: LAWSUITS AGAINST NYPD DOUBLE OVER DECADE, COSTING $1B



DETECTIVE VINCENT ORSINI

Staten Island Narcotics

Sued 21 times, $1,087,502 in payouts

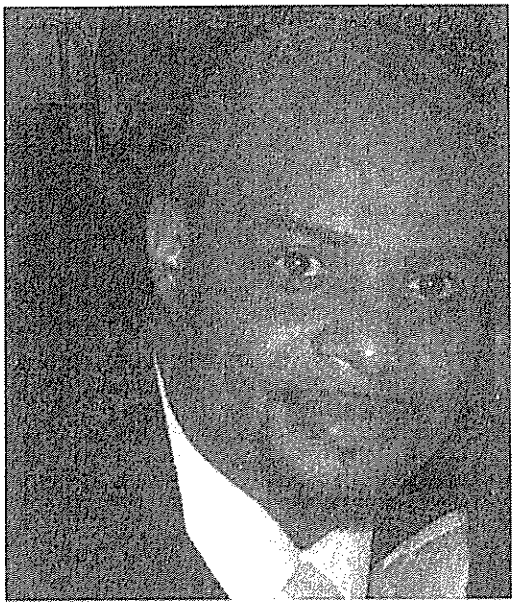
Orsini, 44, joined the NYPD on April 30, 1995, and was promoted to detective second grade on Oct. 30, 2006. He's been sued numerous times for false arrest, including a 2009 incident when he and his crew

RICHARD HARBUS FOR NEW YORK DAILY NEWS

Detective Vincent Orsini, 44, who joined the NYPD in 1995, has been sued numerous times for false arrest.

cut through the basement apartment of Darphil George and his family en route to execute a search warrant on the first floor. The family of immigrants, who'd never been in trouble before, says they were arrested without cause.

"The officers said they found cocaine in the apartment upstairs. These people didn't live upstairs," said their lawyer, Brett Klein. Orsini denied any wrongdoing. The case settled for $230,000. When asked about the suits, Orsini told The News, "I'm not gonna go into it, but you can sue anybody."



MYEVENT.COM

Sgt. Fritz Glemaud, 43, was promoted in August, after being named in 21 lawsuits.

SGT. FRITZ GLEMAUD

Brooklyn North Narcotics

Sued 21 times, $420,002 in payouts

Glemaud, 43, joined the NYPD June 30, 1995, and has worked in undercover narcotics, vice and street crime units for much of his career. He was promoted to sergeant in charge of a detective squad in August, after being named in 21 lawsuits.

In one, he was accused of leading a 2011 raid that ended with Francisco Rivera's dog being shot. Charges against Rivera, his wife and son were dismissed. In another case, Glemaud and other officers allegedly jumped Lyndon Bissette on a Clinton Hill sidewalk, claiming the man was holding drugs. The suit says Bissette fought back thinking the plainclothes cops, who refused to identify themselves, were thugs. Once the cops realized they had the wrong guy, the suit says they cuffed him for resisting arrest. All charges were dropped, the suit says. Bissette, who got a $35,000 settlement, said his injuries cost him his truck driving job .

Glemaud — who never responded to requests for comment by The News — denied wrongdoing in both cases.

DAVID WEXLER FOR NEW YORK DAILY NEWS

Detective Warren Rohan, 43, is named as a defendant in two pending cases involving suspects who died in custody.

DETECTIVE WARREN ROHAN

Brooklyn Narcotics

Sued 20 times, $241,960 in payouts

Rohan, 43, who joined the NYPD in 2000 and was promoted to detective in February of 2008, is named as a defendant in two pending cases involving suspects who died in custody, and two cases where parents temporarily lost custody of kids after they were wrongly swept up in drug raids.

Loren Hall lost custody of her 13-year-old child for two months as a result of a search warrant that led to her July 2007 arrest, her lawsuit

claims.

Court papers said the endangering the welfare of a minor and marijuana possession charges were later dismissed, and they received $60,000 from the city.

Rohan and his partner were working plainclothes on June 25, 2011, when they jumped out of an unmarked car and arrested Jose Luis Lopez on Bergen St. in Bed-Stuy on charges of possessing a controlled substance which, according to the federal lawsuit, was medicine lawfully prescribed to the plaintiff.

Lopez received a $24,000 settlement after spending two days in jail.

Rohan, who declined to comment when approached by The News, was not accused of directly participating in either of the deaths.

EXCLUSIVE: Detective is NYPD's most-sued cop, with 28 lawsuits filed against him since 2006 (SEE INTERACTIVE GRAPHIC)

The number of claims against the department doubled over the past decade to a record high of 9,570 filed in 2012. A Daily News review of lawsuits reveals that 55 officers in the 34,000-person department have been sued 10 or more times during that time period. Read the suits and see the settlements of NYPD's 12 most sued with our interactive graphic.

BY BARRY PADDOCK , ROCCO PARASCANDOLA , JOHN MARZULLI , DAREH GREGORIAN /
NEW YORK DAILY NEWS / Sunday, February 16, 2014, 2:30 AM

A A A

RICHARD HARBUS FOR NEW YORK DAILY NEWS; MYEVENT.COM; DAVID WEXLER FOR NEW YORK DAILY NEWS

Detective Peter Valentin (top) and (from left) Detective Vincent Orsini, Sgt. Fritz Glemaud and Detective Warren Rohan are among the 55 NYPD cops who have been sued at least 10 times over the past decade.

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BX man in NYPD snowball suit: Cop terrified us with gun

They're the NYPD's most-sued cops, and Peter Valentin's their king.

Valentin, a hard-charging Bronx narcotics detective whose online handle is "PistolPete," has been sued a stunning 28 times since 2006 on allegations of running slash-and-burn raids that left dozens of lives in ruins while resulting in few criminal convictions.

The city has paid out $884,000 to settle cases naming the stocky, 36-year-old detective, but he doesn't seem too concerned.

"I'm not aware of that," he scoffed at a Daily News reporter when told of his claim to shame. "Once it goes to court, I don't follow it."

The Bloomberg administration routinely dismissed the relevance of civil suits against the NYPD, even as the number of claims against the department doubled over the past decade to a record high of 9,570 filed in 2012. The suits cost taxpayers more than $1 billion dollars during that time period.

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EDITOR'SPICKS

They "had a 'see no evil, hear no evil' attitude," said former city Controller John Liu, whose repeated calls for analyzing lawsuits were ignored.

A months-long News review of lawsuits against the NYPD over the past decade shows that 55 officers on the 34,000-person department have been sued 10 or more times during that time period, costing taxpayers more than $6 million.

5.
6.
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8.
James R. Rivera
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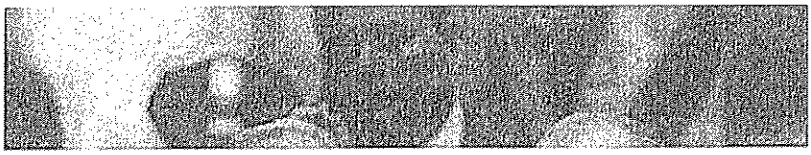
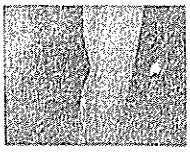
Many on the force are quick to point out lawsuits do not necessarily indicate wrongdoing by an officer.

While the "average citizen may find it unsettling, the more active an officer is the higher the likelihood of being involved in some type of litigation. It is neither indicative of wrongdoing nor stereotypical," said Michael Palladino, president of the Detectives Endowment Association.



PICTURED: Train derails near Queens subway station, 19 hurt: officials
A Manhattan-bound F train derailed in an underground stretch in Queens on Friday



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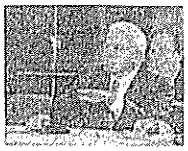

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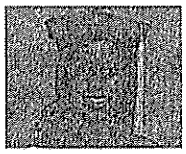

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EDITOR'S PICKS

Cars crushed in Brooklyn wall collapse
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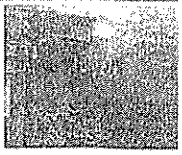


Brothers sentenced to 25 years for Hamilton Heights slaying
Keith Stokes, 50, and Ralph Stokes, 52, were convicted of murdering Charles

CRAIG WARGA/NEW YORK DAILY NEWS

While the Bloomberg administration dismissed the relevance of civil suits against the NYPD, the number of claims doubled over the past decade, hitting a record high in 2012. Here, Bloomberg and then-Police Commissioner Ray Kelly in March 2013.

He criticized the city for being quick to settle these cases, saying the practice "creates an incentive for plaintiffs and their attorneys to file them in the first place knowing it could be an easy payday."

Most of the suits allege false arrest, including scores of cases where people had criminal charges against them thrown out, but still ended up with injuries, losing or almost losing their jobs, pets, kids or homes.

"Where there's smoke, there's fire, and there's a lot of fire here," said lawyer Nell Wollerstein.

But change is coming.

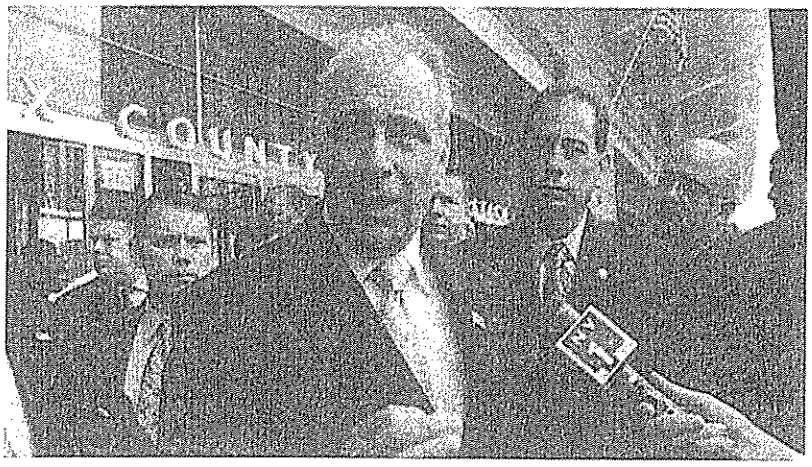
NYPD spokesman Stephen Davis said former top cop Raymond Kelly established a Civil Lawsuit Monitoring Program and a separate Risk Assessment Unit in September — after a series of Daily News investigations showed the NYPD was turning a blind eye to potentially problem officers.

The monitoring program looks at the number of lawsuits filed against an officer, the nature of the lawsuits, and an officer's specific role in the incident, so they "can differentiate the guy with the battering ram at the door and the guy who's up the block," Davis said.

The risk assessment unit looks at patterns and trends in the lawsuits that could warrant further review.

Davis said both programs are in their early stages, and that Police Commissioner Bill Bratton is "taking a hard look" at ways to improve them.

Meanwhile, City Controller Scott Stringer said he's launching a program called ClaimStat, "a data-driven claims review that will identify patterns and practices across city agencies that lead to claims and work with agencies to find solutions that save taxpayers money."



Romo. The 48-year-old's bound corpse was found in his apartment in Jan. 2013.

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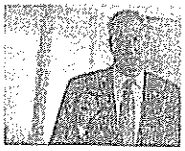

Vigil set for slain Bronx girl killed 18 years ago

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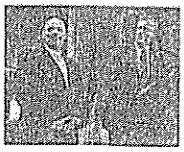
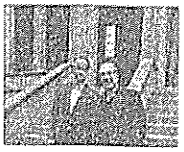


Buy the house — and get the rehab permits!

Here comes the residential real estate equivalent of putting the cherry on top of the sundae before the ice cream is even scooped.



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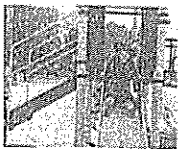
The tentative agreement between the city and the teachers union resolves

Bronx teen convicted of killing two

Yenfri Ramirez, 16, of the Bronx, faces 25 years to life in prison for the slayings of Edwin Liz, 17, and Allan Matos, 22, said District



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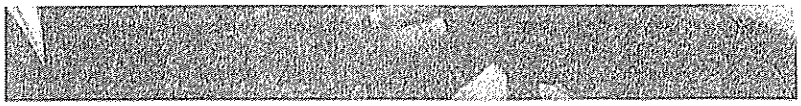


MARIELA LOMBARD FOR NEW YORK DAILY NEWS

Michael Palladino, president of the Detectives Endowment Association (center), says a high number of lawsuits against an officer is not 'indicative of wrongdoing.'

"We must find innovative ways to reduce claims citywide and my office is laser-focused on making that a reality," Stringer said.

The lawsuits reviewed by The News revealed a raft of troubling allegations.

During one early morning raid in May 2011 at an apartment building in the Longwood section of the Bronx, 14 people in five apartments were hauled off to jail, one pooch was wounded by gunfire, and another dog shot dead, records show. Valentin was the arresting officer and signed many of the field tests for the narcotics allegedly obtained during the controlled buys and raid.

Lawyers for the residents called the raids suspect, noting that the warrants were based on 10 controlled buys all from the same confidential informant — who in one day allegedly bought crack and PCP from four separate apartments.

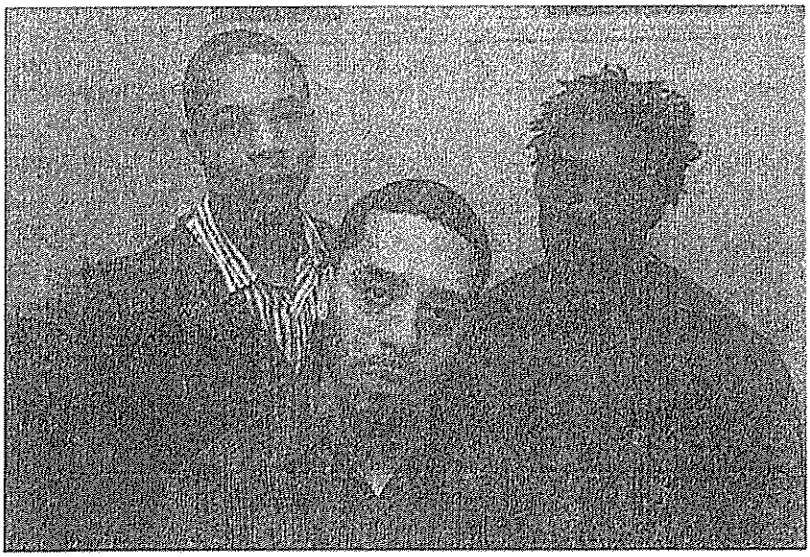
The only criminal charge from the raid that stuck was a guilty plea for possession of a small amount of marijuana.

But the scorched earth approach to sweeping up tenants cost the city $202,500 in settlements.

One nursing mother spent a week on Rikers Island because Valentin claimed white powder seized from her apartment — which she had explained was from crushed egg shells used in a Santeria ritual — had field tested positive as cocaine. "You can touch it and see it's not crack cocaine," said the mom, Jemilah el-Shabazz.

She was released after an NYPD lab test came back negative.

"That was the worst week of my life," said el-Shabazz, who got a $10,000 settlement for the ordeal. "They had everybody under siege and they didn't find anything."



MICHAEL SCHWARTZ FOR NEW YORK DAILY NEWS

(From left) Tyrone Shields, Gary Castillo and Marcel Grant are suing Bronx narcotics cops over their false arrests. One of the cops is Peter Valentin, who has been sued 28 times since 2006.

The Ramos family, whose dog was shot and "seriously injured" during the raid, got a $130,000 settlement from the city.

Three of the Ramoses were brought in on charges they had a scale and grinder with marijuana residue on it, and an imitation pistol, which their attorney said was a gun-shaped lighter. All charges were dropped after they spent a night in

jail.

An elderly woman who answered the door declined to speak to The News, saying, "They're all traumatized. They're seeing a psychiatrist right now."

The woman whose pit bull was killed did not sue the city. She told The News she was on dialysis, in-and-out of the hospital, and didn't think she could produce the necessary paperwork proving she was actively caring for the dog.

"The dog's body was wrapped in a shower curtain in a hallway," said Rosa Ortiz. "It was terrible. We all loved her. We had her since she was a tiny puppy."

Valentin denied any wrongdoing in court papers.

Palladino said narcotics cops in particular are on the front lines every day — which also puts them in the line of fire for lawsuits.

The vast majority of the city's most-sued officers are narcotics cops, but they're still a small percentage of the more than 1,500 narcotics cops across the five boroughs.

The News' investigation was centered around the results of a Freedom of Information Law request for a list of lawsuits filed against officers who have been sued 10 or more times over the past decade. The city Law Department provided the names of 51 officers and 463 cases. A News search found an additional 146 cases against the officers, and four other officers who should have been included in the response — calling into question the city's ability to track these cases.

CHRISTIE M. FARRIELLA FOR NEW YORK DAILY NEWS

Illuminada Valdivieso says Detective Peter Valentin wrongfully arrested her in front of her daughter, now 13, and humiliated her by referring to her as J.Lo.

A spokeswoman for the Law Department acknowledged that its database "has not always identified all of the defendants named in a lawsuit, especially if they were added after the initial complaint was filed." But, she added, the NYPD is notified about every officer who's sued, and "that information is entered into the officer's personnel file along with information about IAB and CCRB investigations."

A source said the information that's entered into the files is far from complete — it only lists the caption of the lawsuit and doesn't detail what allegations were made against the officer and what the result of the suit was.

Former Corporation Counsel Michael Cardozo has called the settlements "business decisions" that don't reflect guilt, but Liu said there didn't seem to be "any interest in looking at the data to glean lessons."

The News' probe last year showed two frequently sued officers — Lt. Daniel Sbarra and Sgt. Fritz Glemaud — were promoted by Kelly despite a mountain of

troubling allegations against them.

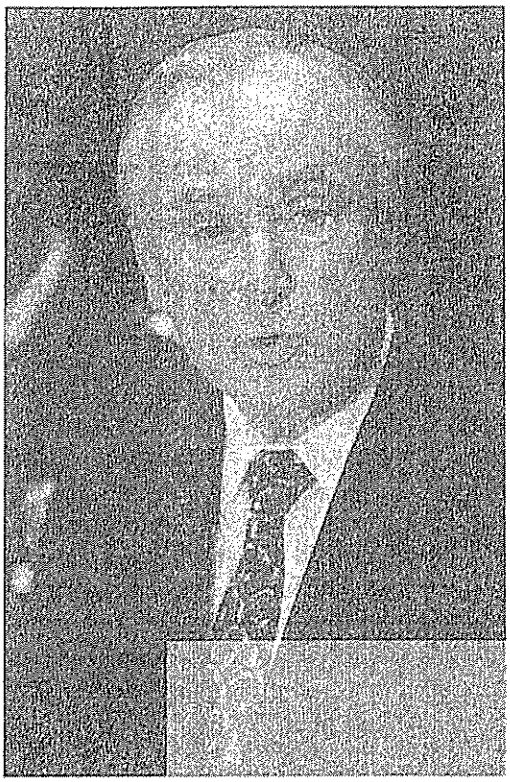
Glemaud, who was promoted to sergeant supervisor detective squad in August, is the city's second most-sued officer. His 21 suits tie him with Staten Island Narcotics Detective Vincent Orsini, who's been accused of making several bad arrests. He shares Valentin's disinterest in the lawsuits.

"I'm not gonna go into it, but you can sue anybody," Orsini told The News.

The most recent suit naming Valentin is from November — and accuses him of roughing up a former All-City basketball star in retaliation for an earlier lawsuit.

"I'm going to f--- you up," Tyrone Shields, 23, quoted Valentin as saying during the chilling July 2013 encounter, where Valentin allegedly referred to himself as "the King of the Bronx."

Shields had filed a notice of claim — the first step in a lawsuit — against Valentin a few months earlier, accusing him and other Bronx narcotics detectives of busting down his door to search for drugs.



DAVID HANDSCHUH/NEW YORK DAILY NEWS

Police Commissioner Bill Bratton is looking at ways to improve a monitoring program and risk assessment unit to identify potentially problem officers.

The officers had a warrant, but it was for a different apartment, court papers say.

The Bronx district attorney's office refused to prosecute Shields and his other friends, who were also swept up in the July arrest, finding there was "no probable cause" for cuffing them in the first place. That suit is pending, and the Law Department declined comment on the case.

Joanna Schwartz, a professor at UCLA Law School, said that while allegations contained in lawsuits are an "imperfect" source of information, they can often reveal problem officers and defects in police training.

She said when an officer is sued 10 or more times, it signals a "problem" that deserves a closer look.

"Research shows that only 1 to 2 percent of people who feel they've been mistreated by police file suit," she said.

Mayor de Blasio called for more scrutiny of police suits during his campaign, and an inspector general for the NYPD is expected to be named in the coming weeks.

Bratton, meanwhile, has experience in using data from civil rights cases as an investigative tool.

While commissioner of the LAPD between 2002 and 2009, Bratton instituted a program to monitor incoming lawsuits that allowed the department to target problem crews for additional training. The program was a success.

In 2001, the LAPD was sued was 828 times, and the city paid out $58 million. In 2012, the department was sued just 223 times, and paid out $20 million in settlements.

"The department was in a better place when he left than when he arrived," said

UCLA professor Schwartz.

With Ryan Sit and Sarah Ryley

dgregorian@nydailynews.com

COMMENTS (67) [Discussion Guidelines]

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SORT

FRANK NBEANZ 12
75 days ago

Sometimes the job goes to their head.Most people who become cops get this I'm better than you attitude sooner or later.That's why many dislike cops because of their attitude.

Like REPLY SHARE

MIRIAM 2
75 days ago

All I see in NYC is snobbery everywhere by the liberal elite. If there is any group that looks down on anyone is them, cops are rubes in this game and being used like pawns

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SHARE1

Brooklyn NYPD lieutenant sued over lurid tactics moved to Queens desk duty

Daniel Sbarra, who has been sued more than 15 times over allegations of illegal searches, excessive force and racial slurs, was moved off the street and behind a desk in northern Queens since The News exposed the harsh cop.

BY ROCCO PARASCANDOLA , ERIK BADIA , DAREH GREGORIAN / NEW YORK DAILY NEWS /

Published: Wednesday, July 17, 2013, 2:30 AM / Updated: Wednesday, July 17, 2013, 2:30 AM

A A A

DAVID WEXLER FOR NEW YORK DAILY NEWS

NYPD Lt. Daniel Sbarra, seen taking out the trash at his home in Greenwald, Long Island, has been moved from lieutenant of Brooklyn North Narcotics to desk duty at Queens North Narcotics.

RELATED STORIES

Lt. Daniel Sbarra and his team far from the Finest

Police commissioner brushes off lawsuits

Boobs: NYPD cops pose for photo with nude woman

He's off the streets.

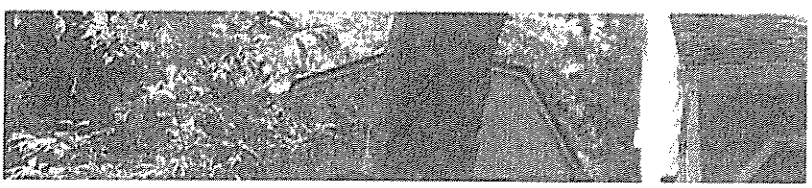
A brutish NYPD lieutenant sued at least 15 times over allegations he performed illegal searches, used excessive force and hurled racial slurs is now on desk duty, the Daily News has learned.

Daniel Sbarra's transfer came less than a month after The News' shocking exposé of his time as sergeant of a hard-driving Brooklyn North Narcotics team.

"He's off the streets — no more search warrants, no more lawsuits," a police source said of Sbarra, who has also been the subject of 30 civilian complaints — among the highest number on the entire force — and numerous Internal Affairs Bureau investigations.

Yet despite his rough-and-tumble record, Police Commissioner Raymond Kelly promoted Sbarra to lieutenant in August 2011.

Sbarra, 37, was reassigned from Queens North Narcotics to a desk job in the Organized Crime Control Bureau at 1 Police Plaza on June 20, the source said.



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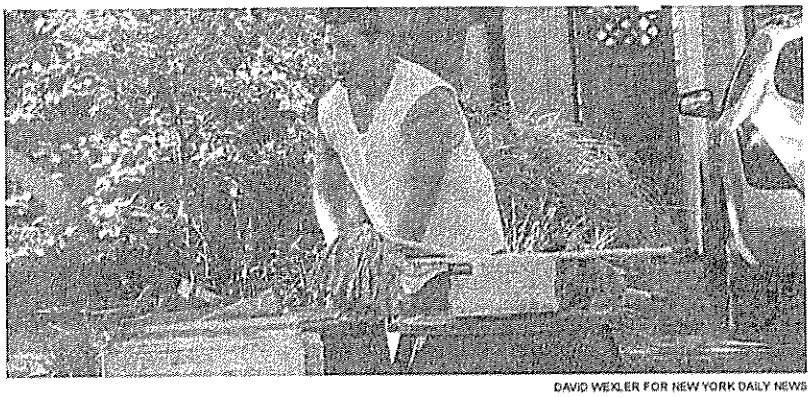


DAVID WEXLER FOR NEW YORK DAILY NEWS

Daniel Sbarra has been the subject of numerous lawsuits citing his poor behavior, illegal searches and racist name-calling.

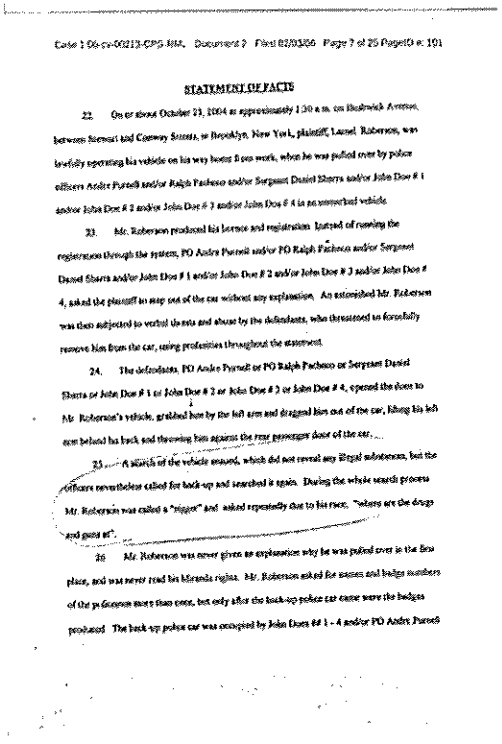
He'll still get his full $102,000-a-year salary, but is expected to make less overtime, which totaled $40,000 in fiscal 2011. Sources said the move was in response to The News' investigation, which found members of Sbarra's team were named in 58 suits between 2006 and 2012, the bulk of which the city settled at a cost of $1.5 million.

Sbarra's settlements totaled close to $500,000.

The first lawsuit was filed in 2006 by Lamel Roberson, a black motorist who claimed Sbarra and his partner repeatedly called him a "n----r" and illegally searched him during a traffic stop in Brooklyn, while hiding their own identities by putting tape over their badge numbers. The suit was settled for $19,500, including $1,000 out of Sbarra's pocket. But Kelly dismissed departmental charges that substantiated Roberson's claim.

In another suit, settled for $50,000, Rafael Cruz said Sbarra and his men smashed his face against a glass window in a stationhouse and ripped out a handful of dreadlocks.

"He should have been fired," Cruz said Tuesday.



Case 1:06-cv-00213-CPS-RML Document 2 Filed 02/03/06 Page 7 of 25 PageID #: 191

STATEMENT OF FACTS

22. On or about October 23, 2004 at approximately 1:30 a.m. on Hedwick Avenue, between Stewart and Conway Streets, in Brooklyn, New York, plaintiff, Lamel Roberson, was lawfully operating his vehicle on his way home from work, when he was pulled over by police officers Andre Purnell and/or Ralph Pacheco and/or Sergeant Daniel Sbarra and/or John Doe # 1 and/or John Doe # 2 and/or John Doe # 3 and/or John Doe # 4 in an unmarked vehicle.

23. Mr. Roberson produced his license and registration. Instead of running the registration through the system, PO Andre Purnell and/or PO Ralph Pacheco and/or Sergeant Daniel Sbarra and/or John Doe # 1 and/or John Doe # 2 and/or John Doe # 3 and/or John Doe # 4, asked the plaintiff to step out of the car without any explanation. An astonished Mr. Roberson was then subjected to verbal threats and abuse by the defendants, who threatened to forcefully remove him from the car, using profanities throughout the statement.

24. The defendants, PO Andre Purnell or PO Ralph Pacheco or Sergeant Daniel Sbarra or John Doe # 1 or John Doe # 2 or John Doe # 3 or John Doe # 4, opened the door to Mr. Roberson's vehicle, grabbed him by the left arm and dragged him out of the car, lifting his left arm behind his back and throwing him against the rear passenger door of the car. ...

25. A search of the vehicle ensued, which did not reveal any illegal substances, but the officers nevertheless called for back-up and searched it again. During the whole search process Mr. Roberson was called a "nigger" and asked repeatedly due to his race, "where are the drugs and guns at".

26. Mr. Roberson was never given an explanation why he was pulled over in the first place, and was never read his Miranda rights. Mr. Roberson asked for names and badge numbers of the policemen more than once, but only after the back-up police car came were the badges produced. The back-up police car was occupied by John Does # 1 - 4 and/or PO Andre Purnell

Lamel Robertson, a black motorist, filed a lawsuit claiming NYPD Lt. Daniel Sbarra and his partner repeatedly called him a 'n---a.'

Cruz's lawyer Cynthia Conti-Cook said the transfer shows the NYPD is trying to hide the problem instead of addressing it.

"It's not the solution we're looking for," she said.

Louis Turco, the head of the Lieutenants Benevolent Association, called Sbarra "a highly effective" cop "who excels in any position the department puts him in."

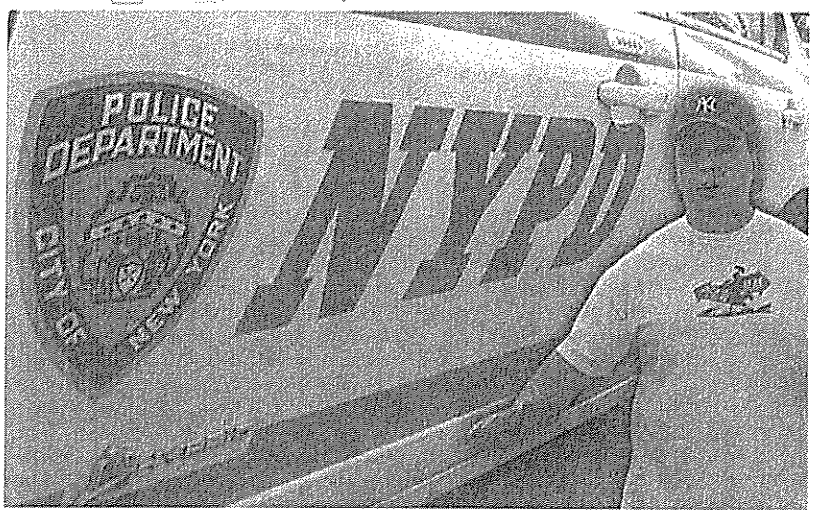
Approached by a reporter at his Long Island home Tuesday morning, Sbarra said, "I don't know anybody by that name."

BROOKLYN

Repeated charges of illegal searches, violence, racial profiling, racial slurs and intimidation against Lt. Daniel Sbarra and his team have cost the city more than $1.5 million in settlements

Victims say Sbarra is a 'ticking time bomb' as the Brooklyn North Narcotics lieutenant is involved in 15 lawsuits. The NYPD says charges are meritless and that narcs are often targets

BY ROCCO PARASCANDOLA , JOHN MARZULLI , BARRY PADDOCK , DAREH GREGORIAN /
NEW YORK DAILY NEWS / Published: Sunday, May 19, 2013, 12:01 AM / Updated: Sunday, May 19, 2013, 12:01 AM A A A



NEW YORK DAILY NEWS PHOTO ILLUSTRATION

NYPD veteran Daniel Sbarra donned his dress blues on Aug. 2, 2011, and headed to One Police Plaza — where Commissioner Raymond Kelly, a promotion and a pay raise awaited.

Kelly shook his hand. And targets of Sbarra's crude and costly police tactics were left shaking their heads.

The Brooklyn North Narcotics sergeant with 15 years on the job made lieutenant despite years of on-the-job conduct some say raises serious questions about whether he should still have his badge.

RELATED: OTHER CITIES SAVE MONEY BY TRACKING LAWSUITS AGAINST POLICE

A Daily News investigation of Sbarra and his team of cops exposed repeated charges of illegal searches, unprovoked violence, racial profiling, racial slurs and intimidation that cost the city more than $1.5 million in settlements.

RELATED: FORMER NYPD INSPECTOR DEFENDS UNIT'S ACTIONS

The figure could rise: Nine of the nearly 60 lawsuits filed against the accused rogue cops are still pending.

Sbarra is involved in at least 15 of the suits — others involving his team reference various John and Jane Doe officers, whose names typically don't

EDITOR'S PICKS

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Detectives have arrested a suspect in connection with the mysterious murder of a Brooklyn landlord, a

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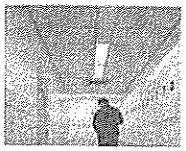

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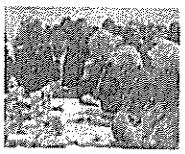
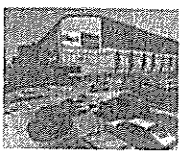
Little Juan Sanchez died Monday, a day after possibly swallowing poison an exterminator left in the

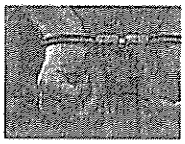
Public school students fail to raise scores in Regents exams
Public school students in New York State failed to boost their scores.



New crossing guard for dangerous Queens intersection
The NYPD will finally reinstate a crossing guard at an unsafe Rego Park intersection near an



FROM AROUND THE WEB



10 U.S. States Most Plagued By Hate Crimes
(The Richest)

come to light when there are quick settlements. He's been the target of five to 10 Internal Affairs investigations, the lieutenant acknowledged in a deposition. And he's racked up a staggering 30 civilian complaints, among the most on the force.

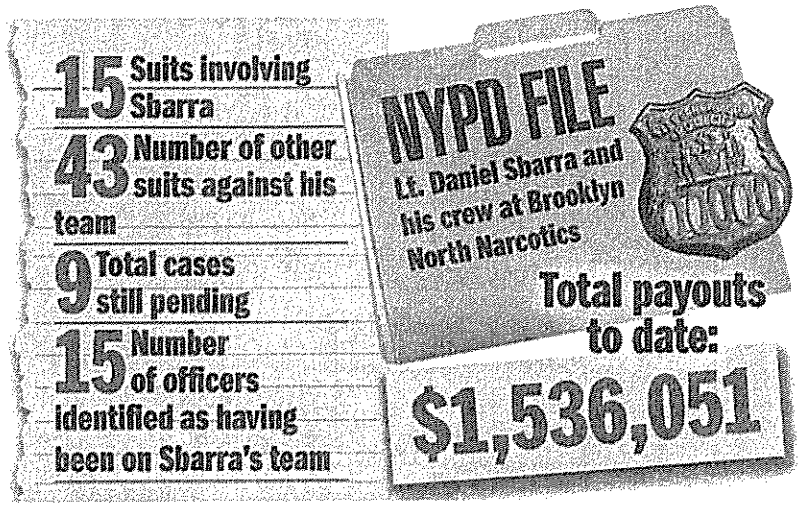
City settlements involving the 37-year-old married father total nearly $500,000.

Just four months before his promotion, court papers say, Sbarra lost 20 days of vacation after an Internal Affairs probe into an unauthorized search of an ex-Marine's apartment. His union head said Sbarra pleaded guilty to the department charges because he couldn't get promoted until the case was closed out.

Critics say Sbarra's promotion, despite his stunning string of lawsuits and civilian complaints, is indicative of how the NYPD turns a blind eye to the mountains of litigation filed against it every year, and its nonchalant attitude toward police misconduct.

"While his case is extensive, it's also emblematic of the department's lack of aggressive oversight of officers engaged in abusive conduct," said Robert Gangi, director of the Police Reform Organizing Project for the Urban Justice Center.

Gangi said while some criminals and dealers certainly know how to game the system, "when an officer has been sued 15 times, and when there are 30 (Civilian Complaint Review Board) complaints . . . Where there's this much smoke, there's fire."



The News found Sbarra's NYPD record, dating back to 2004, was more jailhouse than precinct house. He cut his teeth in the Bronx before working some of Brooklyn's toughest neighborhoods, including Bedford-Stuyvesant and Bushwick.

"There's a reason Brooklyn North Narcotics are called the 'Body Snatchers,'" said civil rights lawyer Paul Hale, whose client recently won a $75,000 settlement, saying he was twice wrongfully arrested by Sbarra's team. "They don't care if you're innocent or guilty. They just want to make arrests at any cost."

In Sbarra's case, court documents revealed an assortment of jaw-dropping charges. Among the allegations:

- He and a second cop, with black tape over their badge numbers, called a young Brooklyn barbershop owner a "n-----" during a traffic stop in Bushwick. Settlement: $19,500, including $1,000 Sbarra had to pay out of his own pocket after the city, in a rare move, refused to represent him. Sbarra was found guilty of departmental charges related to the incident, but "Police Commissioner Raymond Kelly dismissed all charges," Sbarra said in a 2012 deposition.

- He strip-searched a black city paralegal, pulling the man's underwear down with his boot, at

Bedford-Stuyvesant's 81st Precinct stationhouse. The suspect was charged with marijuana possession; his lawyer later suggested the drugs were planted. Settlement: $30,000.

- His officers brutally beat a Brooklyn man, yanking out a handful of dreadlocks and bashing his head into a window at the 81st Precinct stationhouse, as the man's 11-year-old son watched in horror. The little boy was recovering from leukemia. Settlement: $50,000.

-He insisted Hale's client, who already lost a tooth in an arrest a year earlier, swallowed drugs on a Bushwick street. The Brooklyn man was left handcuffed to a bed at Woodhull Hospital for seven hours before being released because no drugs were found. Sbarra never followed up on the case with the hospital, even though he is required to by law. Settlement: $75,000.

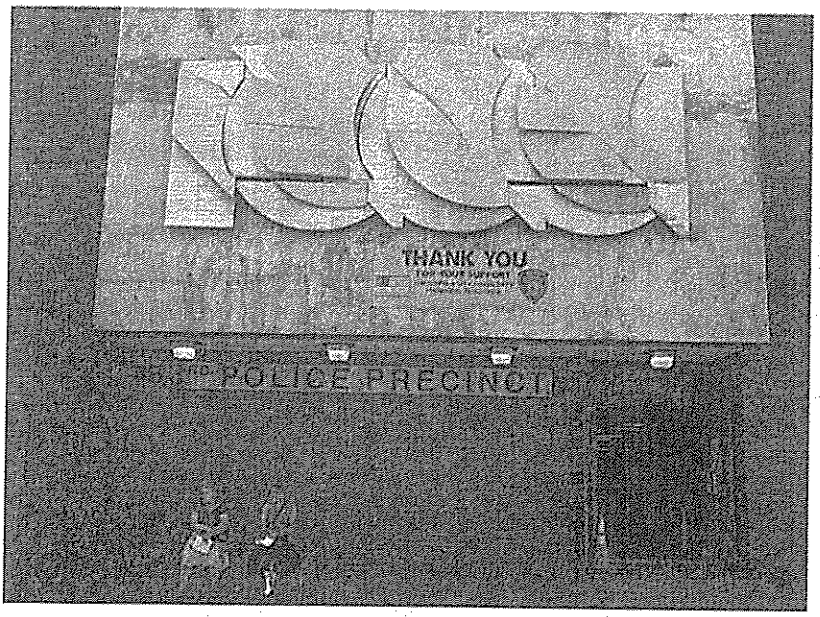
"He's like a ticking time bomb," said city employee Tanya Reeves, who was arrested then released without charges in 2010 after Sbarra ordered his officers to break down her Bed-Stuy apartment door with a battering ram.

Sbarra declined comment when approached by The News at his home last week.

Despite the piles of allegations and the pricey payouts, the $102,000-a-year lieutenant said in a 2012 deposition he was never disciplined for his then-12 lawsuits, and was promoted four months after he was docked 20 vacation days due to an Internal Affairs investigation.

An NYPD spokesman declined to answer detailed questions about several topics: whether there were concerns about the dozens of suits against Sbarra and his officers; why the Police Department doesn't systematically track and analyze lawsuits involving claims of excessive force; and why Sbarra and his cops were not disciplined after repeated claims of misconduct.

The NYPD's top spokesman, Deputy Commissioner Paul Browne, referred questions regarding lawsuits to the city Law Department, which issued a statement.



GARY HE

Sbarra has worked tough neighborhoods like the 83rd in Bushwick and the 81st in Bed-Stuy.

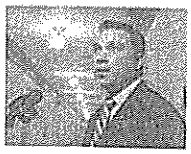
"Being named in a lawsuit or settlement is not an accurate barometer for evaluating an officer's conduct," the statement said. "For example, an officer who works in high-impact roles, such as narcotics or emergency services, is more likely to be sued in his or her line of duty than an officer in a less confrontational role.

"Therefore, these officers should not be punished for being named in a meritless lawsuit that was initiated because of their particular assignments."

during a swank fund-raiser at Cipriani, a source told the Daily News Tuesday.

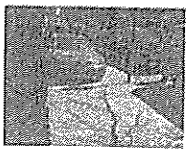
Republicans shut off support to Grimm

WASHINGTON - A day after his indictment, Rep. Michael Grimm returned to Congress Tuesday — but fellow Republicans did not



Employee of Brooklyn landlord demands rent by parking his car in front of building

A frustrated Hasidic man working for a Williamsburg landlord parked his car in

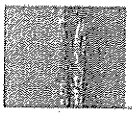


SAT, JUN 28
PREMIER EVENT
Rugged Maniac 5K Mud Run

BROOKLYN EVENTS

WEDNESDAY, APRIL 30

4:30 PM
The Exorcist



5:00 PM
Brooklyn College Brass Ensemble

7:00 PM
Wett Wednesdays

7:30 PM
The World is Round

< ADD EVENTS VIEW FULL CALENDAR >

The Law Department issued a followup statement late Friday saying the NYPD does track lawsuits, but refused to elaborate.

Sources said the department only gives cases resulting in payouts of at least $250,000 a mandatory review.

All NYPD settlements come without any admission of wrongdoing by the officers, the department or the city.

Sbarra joined the NYPD in 1997, starting in the crime-plagued 40th Precinct, which includes the Mott Haven neighborhood of the Bronx. He was promoted to sergeant six years later and transferred to Brooklyn North Narcotics.

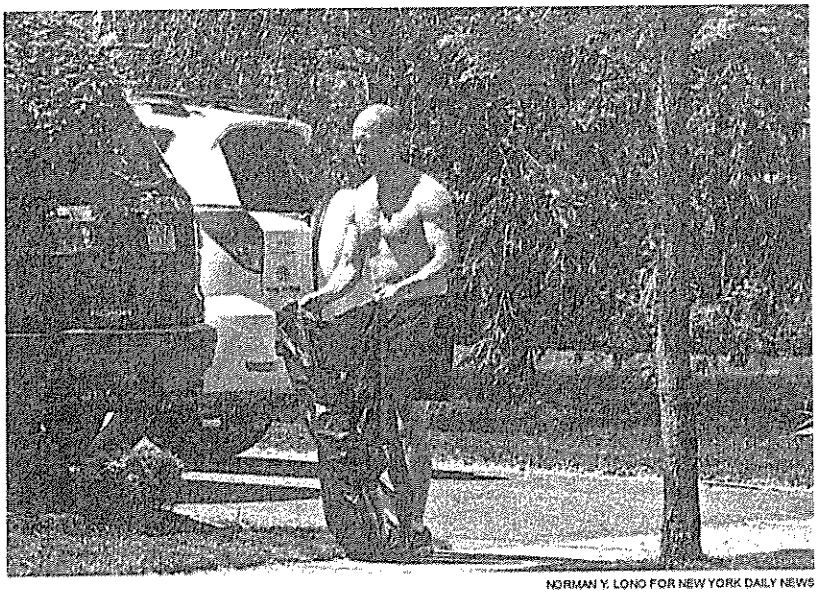
The News identified nearly five dozen suits filed against Sbarra and 15 members of his team between 2006 and 2011. They were accused of everything from racial profiling to warrantless searches to busting law-abiding citizens on phony charges.Yet when asked in the 2012 deposition how many times he had disciplined officers under him, Sbarra said only twice — because his boss ordered him to.

"That was the only time I've ever written a command discipline in my nine-year career as supervisor," he said.

But the plaintiffs did suffer: Many spent hours or days behind bars before they were released without charges, were injured, or suffered property damage.

One desperate man was ready to sign a plea deal and take a six-month sentence — which would have put him in jail during the birth of his first child — believing his case was hopeless. Records show the case was later dropped because a detective under Sbarra's command gave false information to a grand jury.

Kennie Williams, 28, was on the second floor of his uncle's Bed-Stuy brownstone in 2010 when, he says, a group of gun-waving officers dragged him to the basement. Williams was then charged with two other men found in the building basement surrounded by cocaine, marijuana and scales. Detective Robert Livingston testified that Williams was found in the basement, not the second floor. Williams became lost in the legal system and said his repeated court appearances cost him his job as a Meals on Wheels driver.



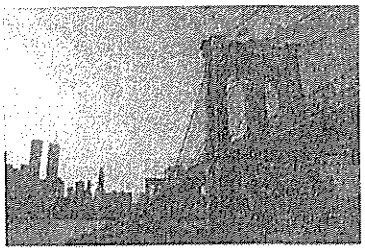
NORMAN Y. LONO FOR NEW YORK DAILY NEWS

Tattoed Detective Robert Livingston, who worked with Daniel Sbarra, takes out trash at his Farmingdale home.

He thought about copping a plea: "I was frightened. I was gonna take it, but my lawyer said, 'Don't do it.' "

It was good advice. Eighteen months later, the case was thrown out because an assistant district attorney at the Brooklyn DA's office said Livingston's "memory became imprecise" about where Williams was arrested, court documents show.

DAILY NEWS PIX BROOKLYN



From Coney Island to the Brooklyn Bridge, the Daily News has decades of classic photos of Brooklyn.

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NEW YORKVIDEO

Frank Viola speaks exclusively to Daily News after heart surgery

Williams sued and won a $60,000 settlement.

Speaking outside his house earlier this month, Livingston initially called Williams' defense attorney a liar for putting on record the detective "testified falsely to the grand jury" — insisting, "I never testified to anything in court."

When The News showed him a partial transcript of his Feb. 2008 grand jury testimony, he copped to it, then declined to comment further. But he did say he was not disciplined in the case.
Cases that didn't stick were commonplace in Brooklyn North Narcotics.

The Brooklyn DA's office declined to prosecute more than 1,000 of their arrests in both 2010 and 2011 — about 10% of the borough's total declined prosecutions.

One reason for the high numbers was a "significant amount" of incomplete desk appearance ticket packages submitted by officers, said a source in the district attorney's office. The problem was "addressed" in 2012, and declined prosecutions dropped to 457.

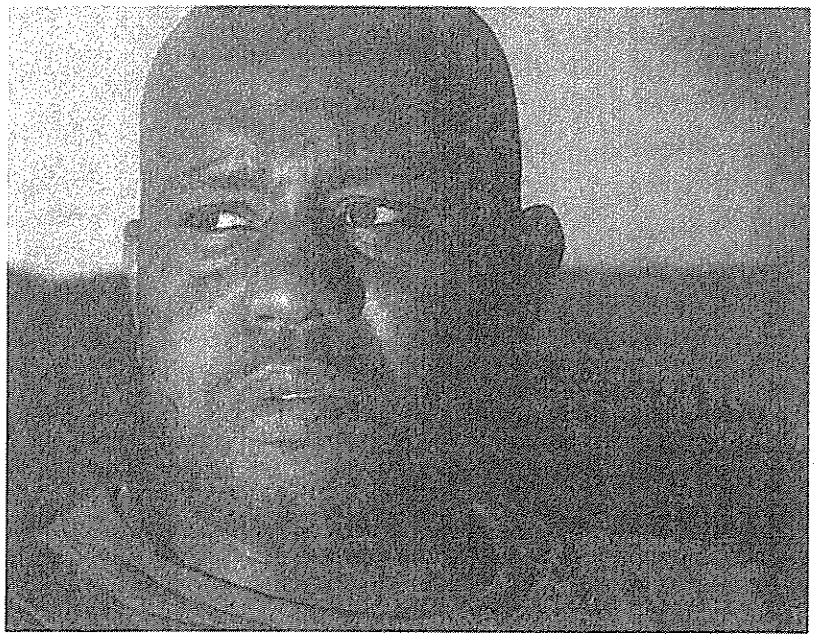
Livingston brushed off lawsuits and misconduct charges as part of the job.

"You have to understand that in narcotics every stop somebody makes a complaint — it's part of the job," Livingston said.

When asked about Sbarra, Livingston defended his old boss.

"It doesn't necessarily mean he was violating anybody, it's part of the job," he said. "You make dozens of stops a day, rather than a patrol cop that makes a few. It's a different line of work."

Sbarra claimed in a deposition that he was never once summoned by police brass or any superior officer to discuss his litany of legal woes.



DEBBIE EGAN-CHIN/NEW YORK DAILY NEWS

Kennie Williams nearly copped a plea deal that would've put him in jail for six months. He later sued and won a $60,000 settlement.

Even if the lawsuits result in big payouts, they aren't necessarily noted in an officer's personnel file, where record keeping is "spotty," according to police sources.

The department only subjects cases that cost the city more than $250,000 to a mandatory review — roughly 75 of the thousands of complaints filed against the NYPD every year. And many of those big-ticket payouts stem from traffic accidents, not civil rights abuses.

But attorneys say even a settlement in the low five-figures signifies a solid case.

Meanwhile, the number of lawsuits filed against the NYPD skyrocketed 73% in the 10-year stretch ending in fiscal year 2011. There were 8,882 suits filed in those 12 months, with settlements and awards totaling nearly a billion dollars over a decade.

Lamel Roberson — who filed the first lawsuit naming Sbarra in 2006 — claimed the stocky sergeant and one of his men wore black tape over their badge numbers during a 2004 traffic stop.

Roberson said he was dragged out of his vehicle and pressed against the passenger side door, his arm twisted painfully behind his back, as officers searched his car and repeatedly called him a "n-----." Roberson was eventually freed without even a summons.

City paralegal Mark Labrew says he was on his way home from work in 2006 when Sbarra and another officer stopped him. Labrew, who is black, said he asked the pair for their names and badge numbers — and they threw him against a gate and frisked him.

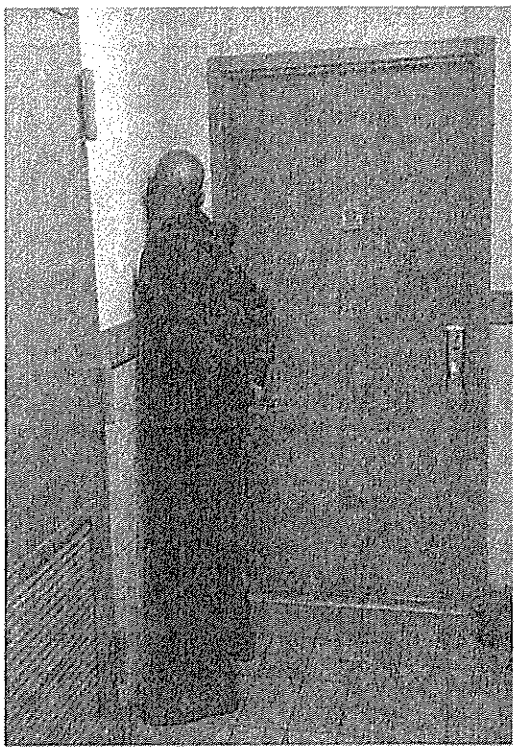
Labrew was taken to the 81st Precinct stationhouse, where Labrew says cops started calling him names like "f------ animal" and "retarded monkey." Sbarra strip-searched him, pulling Labrew's underwear down with his boot, according to court records.

Labrew's lawsuit settled for $30,000.

Brooklynite John Spears, 44, says he twice had his civil rights violated by Sbarra's team.
In 2009, Detective Frank Galati and two other officers who worked under Sbarra jumped out of a van and threw him to the ground, knocking out a tooth, his suit claimed. They charged him with tampering with evidence and resisting arrest after a strip search came up empty. The criminal charges were dismissed three months later.

One year later, Spears was walking home with some groceries after work at a VA hospital when Galati stopped him again.

"We're going to get you this time," the detective promised, according to court documents. "Where are the drugs?"



"I saw him swallow it," Sbarra said, the court papers show.

Spears was taken to Woodhull Hospital and handcuffed to a bed for seven hours while waiting to get an X-ray of his stomach. No drugs were found, and he was released without charges roughly 15 hours later.

There was Robert Stephens, 56, who recalls heading to a corner bodega in 2010 when five plainclothes officers jumped him.

"Where's it at?" he remembered them howling.

The ex-Marine told The News he was carrying his apartment keys but no ID, so he brought the officers to his home. Instead of using his keys, Sbarra ordered his men to smash their way inside with a battering ram. The cops ransacked the

MARK BONIFACIO/NEW YORK DAILY NEWS

Robert Stephens shows how he was handcuffed as police broke down door to his Brooklyn home.

apartment, held Stephens overnight, and released him without charges.
But this time Internal Affairs began looking at the case, and Sbarra pleaded guilty to a number of departmental charges, including having performed the unauthorized search that cost Sbarra 20 vacation days.

Lou Turco, head of the Lieutenants Benevolent Association, wouldn't discuss the case, but said Sbarra entered the plea because it was standing in the way of his promotion.
Rafael Cruz was pushing a grocery-filled shopping cart in 2009 when he received a text saying his

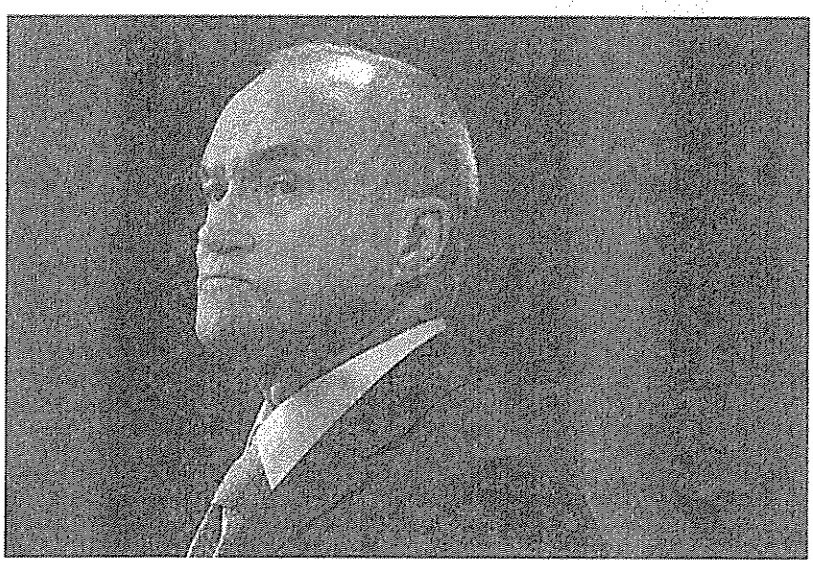
11-year-old son Eli was at the 81st Precinct stationhouse.

Eli was sitting in a car with his uncle when the man was arrested.
Cruz rushed to the precinct, upset and desperate to see his son — a recovering leukemia patient. Instead, he ran into Sbarra.

"You're gonna have to f------ wait," the sergeant said, according to Cruz. "When I'm ready I'll let you know."

When Cruz demanded to see his son, he said a group of officers descended upon him — punching and kicking the outmanned victim, and then shoving his wife into a wall. The officers ripped out a handful of his dreadlocks and smashed his head into a window, Cruz said. As the dad was led away in cuffs, he saw Eli in another room, crying.

Cruz, 34, who once served seven years in prison on an assault charge, faced charges including criminal mischief — for breaking the window with his head. He collected a $50,000 settlement from a lawsuit. But the money didn't erase the hard feelings.



JOHN MOORE/GETTY IMAGES

Police Commissioner Raymond Kelly shook Sbarra's hand when the sergeant was promoted to lieutenant during ceremony at One Police Plaza in 2011.

Earlier this year, Cruz said Eli was mugged on his way home from school — and had to be coaxed by his dad into speaking to a detective about the attack.

The Civilian Complaint Review Board is a place where citizens can speak freely about problem officers and their misbehavior — though in 2012 only 15% of fully investigated complaints were substantiated.

Sbarra has been named in 30 CCRB complaints, said Turco. Twenty-eight came as a sergeant and four were substantiated. The four substantiated complaints went to the NYPD's trial commissioner. He beat one, he was found guilty of procedural infractions in two, and the trial commissioner found him guilty in

Roberson's complaint, but Kelly overturned the verdict.

Only 54 members of the NYPD's 35,000-person force have received more than 21 complaints; whereas 91% of the force has received fewer than five complaints, according to information provided by the CCRB.

Turco insisted Sbarra was a good cop who ran a good crew.

"He's a very proactive police officer," said Turco. "The reason crime is down in this city is because of guys like this."

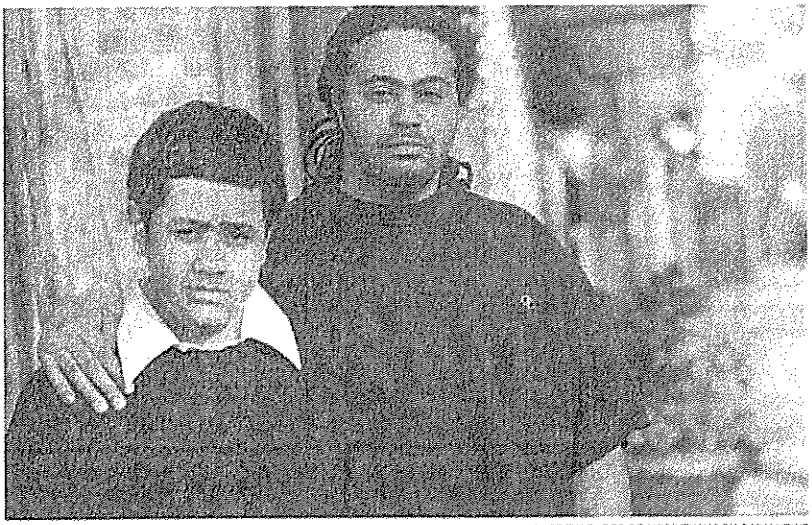
Sbarra and his team were involved in over 5,000 arrests and executed 350 search warrants, Turco said.

Lawsuits are another way civilians can register complaints of alleged police misconduct, but for decades, the NYPD has resisted calls to analyze its litigation in order to identify problem officers and behavior.

Some law firms have begun tracking the officers themselves.

Cynthia Conti-Cook said her firm, Stoll, Glickman & Bellina, has been keeping tabs on repeat offenders for years, and there was one name that kept coming up time and again — Daniel Sbarra.

Yet he repeatedly emerged unscathed, his career arc unaffected by the allegations.



ANDREW THEODORAKIS/NEW YORK DAILY NEWS

Rafael Cruz with his son Eli. Cruz says when he demanded to see his boy at the 81st Precinct house, a group of officers punched and kicked him then shoved his wife against a wall.

"There are no ramifications," said Conti-Cook, a civil rights lawyer. "The officers' understanding of being sued is that it has no impact on their career or their promotional potential."

With Joseph Stepansky

dgregorian@nydailynews.com

ILLEGAL SEARCH AND MISSING JACKET

Ex-Marine Robert Stephens, 56, said he was heading to a corner bodega in 2010 when five plainclothes officers jumped him.

They threw him against the wall yelling, "Where's it at?" he said.
Stephens was carrying his keys but no ID, so he said he brought the officers to his Bed-Stuy apartment. But instead of letting him use his keys, Stephens said Sbarra ordered his men to smash the door with a battering ram.

"They wouldn't let us in the apartment while they searched it. I kept asking if they had a warrant," said daughter Jacqualine Stephens, 20.

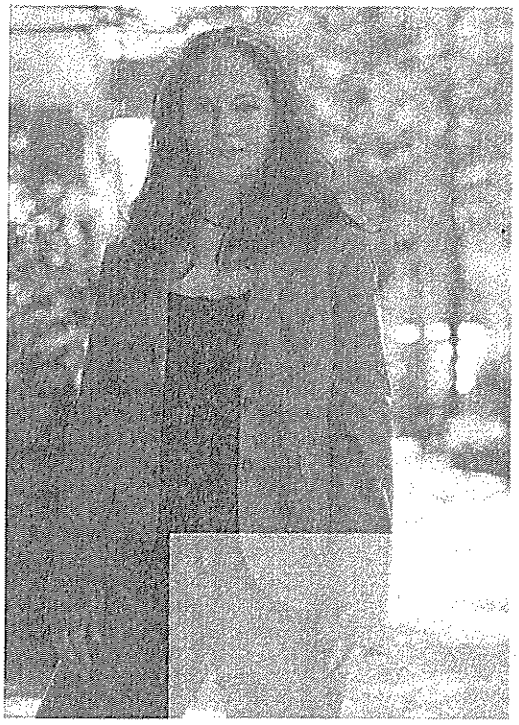
The cops ransacked the apartment and took a North Face jacket with the family's $1,000 tax refund in the pocket, held Stephens overnight, and released him without charges.

Stephens said he got his money back - but not his jacket. Robert sued the city and received a $12,500 settlement. But Jacqualine filed a complaint with the Civilian Complaint Review Board and Internal Affairs caught onto the case.

Sbarra pleaded guilty to having performed the unauthorized search, retaliatory arrest and two other charges, and was docked 20 vacation days — then was promoted to lieutenant four months later.

"Right now I don't have any trust in the New York City police," said Robert.

BASHED IN HER DOOR, BUSTED HER HUSBAND



JOE MARINO/NEW YORK DAILY NEWS

Cynthia Conti Cook is an attorney representing Rafael Cruz.

City employee Tanya Reeves says she saw Sbarra and another officer lurking around in her yard on Cornelia St. in Bed-Stuy when she was on her way to the store.

They told her they were looking for "Black." Reeves told them there was no "Black" who lived there.
Reeves husband, Roger, who is black, looked out the second floor window, and she said one of the officers yelled, "That's him! He just robbed someone!"

Reeves told them that was her husband, and he hadn't done any such thing.
She said Sbarra told her to let them into her apartment - but she refused and told them they'd need a warrant

"So you want to play tough?" she quoted one of the officers as saying. They handcuffed her, and used a battering ram to break down her door.

They found drugs inside, and charged Reeves' husband with possession and her with obstruction.

The case was eventually dismissed and she got a $35,000 settlement.

DROPS 'N' BOMB ON B'KLYN DRIVER

Lamel Roberson , 29, said he was driving home from his barbershop in 2004 when Sbarra and Officer Ralph Pacheco pulled him over on Bushwick Ave. between Stewart and Conway Sts.

Roberson said he showed his license and registration, but instead of running it through the system, the officers, wearing black tape over their badge numbers, dragged him out of his vehicle.

Roberson said he was pressed against the passenger side door, his arm twisted painfully behind his back, as the officers searched his car and repeatedly called him a "n-----," asking, "Where are the drugs and guns at?"

Nothing illegal turned up, but Sbarra and Pacheco nonetheless called for back up.

Roberson got an $18,500 settlement for his lawsuit — with the city making the exceptionally rare move of declining to represent Sbarra and forcing him to pay $1,000 out of his own pocket.

But Roberson told The News, "It can't make up for the disrespect they did to me."

STRIP SEARCH, VERBAL ABUSE

City paralegal Mark Labrew says he was on his way home from work in 2006 when Sbarra and another officer "profiled" and "demeaned" him. Labrew, who is black, said he asked the pair for their names and badge numbers — and they threw him against a gate and frisked him.

Labrew was taken to the 81st Precinct stationhouse in Bed-Stuy, where he said Officer John Kealy — whom he previously sued four years ago for wrongful arrest — spotted him.

Kealy was caught lying under oath in that arrest, which ended with Kealy getting disciplined and Labrew getting a $125,000 settlement. Labrew says after Kealy spoke to Sbarra, cops started calling him names like "f------ animal" and "retarded monkey."

Sbarra strip-searched him, pulling Labrew's underwear down with his boot, according to court documents.

Labrew was charged with marijuana possession and eventually given an adjournment in contemplation of dismissal, a plea deal that means charges are dismissed if the defendant stays out of trouble for a short period of time.

His lawsuit settled for $30,000.

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Cardozo Law Review
February, 2012

Article

*841 WHAT POLICE LEARN FROM LAWSUITS

Joanna C. Schwartz [FNa1]

Abstract

This Article asks what can be learned from the vast amount of information generated by modern civil litigation. One answer lies in the practices of a small but growing number of law enforcement agencies that pay careful attention to suits brought against them and their officers. These departments gather information from initial complaints, discovery, and case resolutions and use that information to identify personnel and policy weaknesses. Lawsuit data has proven valuable to these departments' performance-improvement efforts: suits have alerted departments to incidents of misconduct, and the information developed during the course of discovery and trial has been found to be more comprehensive than that generated through internal channels. Although information generated by litigation has filled gaps in internal reporting systems, it is also, undeniably, flawed. The adversarial process produces biased and sometimes irrelevant information about a relatively small number of misconduct allegations, and the slow pace of litigation means that a case may not be resolved until several years after the underlying event. Departments in this Study mitigate these flaws by gathering information from each stage of the litigation process, reviewing data in context with other available information, and using independent auditors to consider what the data may show. Department practices take advantage of the strengths--while minimizing the weaknesses--of lawsuit data and thereby suggest a promising way to learn from litigation.

*842 Table of Contents

Introduction

Contemporary civil litigation produces massive amounts of highly imperfect information. The complaint that initiates each lawsuit [FN1] describes why the plaintiff believes she has been wronged and the people and events that caused those legal violations. [FN2] Assuming the plaintiff *843 prevails against any motion to dismiss, the pretrial litigation process is dominated by the production and exchange of information. [FN3] In federal court and the majority of states that follow the Federal Rules of Civil Procedure, [FN4] parties must disclose witnesses and documents that support their claims and defenses. [FN5] Each side can demand any document from the opposing party-- emails, bills, memos, medical records, diaries, personnel manuals, and the like--that "appears reasonably calculated to lead to the discovery of admissible evidence." [FN6] Each side can demand written answers to interrogatories and requests for admission. [FN7] Each side can depose witnesses, subject to minimal objections or limitations on the scope of questioning. [FN8] And attorneys, if they are zealously representing their clients, use these discovery tools to squeeze all of the plausibly relevant information they can from the opposing side's file cabinets, computer hard drives, and witnesses' memories. Although the vast majority of cases are resolved through settlement or motion practice, [FN9] trial can produce yet more information, as attorneys introduce evidence and question witnesses about the merits of legal claims.

*844 We know little about the ways that complex organizations process the dizzying amount of data generated by litigation. Lauren Edelman and Charles Weisselberg have studied how legal rules are disseminated in companies' personnel offices and police department station houses, respectively. [FN10] Margo Schlanger recently studied the ways that claims management systems, developed in response to the threat of litigation, can be used to improve organizational behavior in hospitals, retailers, and prisons. [FN11] But we know almost nothing about how complex organizations gather and analyze information from lawsuits that have been filed against them and their employees. [FN12]

My research of law enforcement uses of litigation data aims to fill this gap. In a previous study, I found that few police departments learn from lawsuits brought against them. [FN13] Officials may pay attention to lawsuits that lead to large judgments or political repercussions. But most departments ignore lawsuits that do not inspire front-page newspaper stories, candlelight vigils, or angry meetings with the mayor. The city attorney will defend these suits, any settlement or judgment will be paid out of the city's coffer, and the department will not keep track of which officers were named, what claims were alleged, what evidence was amassed, what resolution was reached, or what amount was paid. [FN14]

This Article examines the practices of a small group of police departments that do consistently gather and analyze information from lawsuits filed against them and their officers. [FN15] I have studied five departments--the Los Angeles Sheriff's Department (LASD) and police departments in Seattle, Portland, Denver, and Chicago--that gather and analyze legal claims, information generated during discovery, and litigation outcomes. [FN16] These departments use lawsuit data--with other information--to identify problem officers, units, and practices. They explore personnel, training, and policy issues that may have led to the *845 claims. And they craft interventions aimed at remedying those underlying problems.

For these departments, lawsuits are a valuable source of information about police-misconduct allegations. Departments that do not gather lawsuit data rely on civilian complaints and use-of-force reports to alert them to possible misconduct. In the litigation-attentive departments in my Study, lawsuits have notified officials of misconduct allegations that did not surface through these other reporting systems. For example, the Los Angeles Sheriff's Department's review of lawsuit claims revealed clusters of improper vehicle pursuits, illegal searches, and warrantless home entries. [FN17] These vehicle pursuits, searches, and home entries did not appear in officers' use-of-force reports because the events--while potentially serious constitutional violations--did not involve the application of force as defined by department policies and so did not trigger reporting requirements. [FN18] The civilians involved in these lawsuits could have chosen to file civilian complaints but did not; people rarely file civilian complaints and may be particularly unlikely to do so if they are planning to sue. [FN19]

Even when a civilian complaint or use-of-force report is filed, the litigation process can unearth details that did not surface during the internal investigation. When, for example, a man died of blunt force chest trauma two hours after being taken into Portland police custody, a critical question was how much force the involved deputies had used to bring him to the ground. [FN20] The night of the man's death, the involved officer and deputy were videotaped at the Portland jail describing their confrontation. [FN21] The audio portion of the tape was very scratchy, but Portland's internal affairs investigators did nothing to improve the sound. [FN22] Only during litigation did plaintiff's counsel enhance the audio, at which point the involved officer's statements were found to contradict his statement to internal affairs. [FN23]

Although lawsuits have filled critical gaps in police department internal reporting systems, lawsuits are themselves flawed sources of information. Aggrieved parties rarely file lawsuits and, when they do, plaintiffs win and lose for reasons--and are compensated at amounts--divorced from the merits of their claims. Cases drag on for years and are often brought against individual bad actors instead of the institutional *846 players best positioned to address systemic harms. This Article does not contest these critiques. Instead, it shows that departments mitigate lawsuits' flaws by gathering information from each stage of the litigation process, reviewing data in context with other available information, and using independent investigators and auditors to consider what the data may show.

This Article not only describes how a group of police departments processes information from lawsuits; it also enriches our understanding of the relationship between lawsuits and performance improvement. Courts and scholars expect that negative litigation outcomes deter misbehavior. [FN24] Scholars who think about the deterrent effects of lawsuits against the police disagree about whether police officials will be deterred by lawsuits' financial, political, administrative, or emotional effects. [FN25] But all expect that it is lawsuits' punitive nature that inspires performance improvement.

Although high-profile cases and large damages awards may inspire behavior change, my research reveals that deterrence does not function as expected when it comes to run-of-the-mill damages actions. My prior study showed that most departments collect so little information about lawsuits brought against them that they cannot weigh the costs and benefits of future misconduct as deterrence theory assumes. [FN26] This Article shows that when departments pay attention to lawsuits they do so in ways also distinct from prevailing theories of deterrence. Departments mine lawsuits for data about misconduct allegations and the details of those allegations. Lawsuits promote performance improvement not because they have political or financial ramifications, but because the information generated by litigation offers valuable insights about police practices. These five departments have found original, productive, and promising ways to learn from litigation.

*847 The remainder of the Article proceeds as follows. In Part I, I describe my Study and findings. In Part II, I show that lawsuits offer departments otherwise unavailable information about the occurrence of alleged misconduct and details of those events. In Part III, I examine the weaknesses of lawsuit data and show how departments mitigate these flaws. And, in Part IV, I show how department practices complicate and enhance our understanding of the role of lawsuits in

performance-improvement efforts.

I. Study

A. Overview

Most police departments ignore lawsuits, but a small but growing number of departments have begun to review lawsuit claims and evidence for possible lessons. [FN27] Some began doing so as conditions of settlement in cases alleging department-wide failures brought by the U.S. Department of Justice (DOJ), state attorneys general, and individuals. [FN28] Other cities have hired independent investigators or auditors who analyze litigation data as part of their efforts to improve police accountability. [FN29] Technological problems, human error, and intentional efforts to obfuscate can frustrate data collection and analysis. [FN30] But when departments with policies to gather information from lawsuits overcome these implementation problems, lawsuits inform training and policy decisions that, in turn, appear to improve performance and decrease misconduct. [FN31]

In this Study, I focus on five departments--in Los Angeles County, Portland, Denver, Seattle, and Chicago--that systematically integrate information from lawsuits into decisions aimed at improving officer and department performance. These departments are in no way typical; I make no claims that their practices are representative of departments more generally. Indeed, I contend that these departments are outliers. These five departments review litigation data most extensively as a matter of policy [FN32] and most consistently as a matter of practice. [FN33]

*848 Each of these five departments has an independent investigator or auditor that evaluates department policies and practices, and reviews lawsuit data for possible lessons. I read reports by these reviewers about the inner workings of their departments. [FN34] I then used those reports as a backdrop for semistructured interviews with past and current auditors and investigators, their staff members, and department officials. [FN35]

*849 B. Departments

Following are descriptions of the five departments in this Study, listed in the order in which they instituted policies to gather and analyze litigation data.

Los Angeles County. The Los Angeles Sheriff's Department (LASD) is the largest sheriff's department and the fourth largest law enforcement agency in the country. Its nearly 8300 sworn personnel patrol over 3000 square miles of Los Angeles County and run the country's largest jail system. [FN36] Although the LASD has among the most extensive systems of accountability, and pays the most attention to the lessons that lawsuits might offer, it did not establish these policies on its own initiative. Instead, in 1991, following a series of high-profile events and costly legal settlements and judgments, the Los Angeles County Board of Supervisors ordered an independent investigation of the department under the leadership of retired Superior Court Judge James Kolts (the Kolts Commission). [FN37]

In July 1992, the Kolts Commission issued a report with recommendations aimed at improving reporting and review of lawsuits and other misconduct allegations, and making more effective policy, training, and disciplinary decisions. [FN38] Following the Kolts Commission's recommendations, the LASD created three new entities to identify and manage information and to audit internal practices. First, the Board of Supervisors appointed Merrick Bobb to succeed Judge Kolts as Special Counsel to the Board, and charged him with overseeing the implementation of the Kolts Commission's

recommendations. [FN39] Bobb reviews department policies and practices, reviews the department's litigation trends and costs, reviews closed litigation files for policy implications, and provides semiannual reports to the Board about the LASD. [FN40] Bobb's original contract was for three years, but the contract has been *850 successively renewed and he has been reporting to the Board ever since. His reports, which are regularly more than one hundred pages long, may be the most extensive and detailed analyses available of a police department's efforts at creating systems of accountability.

Second, following the Kolts Commission's recommendations, the LASD created a risk management bureau, the first law enforcement bureau in the country dedicated to reducing preventable accidents and liability costs. [FN41] The bureau directs administrative investigations of claims when they are filed, identifies trends across claims, and reviews closed-case files for possible lessons. The bureau also maintains an early intervention system that tracks information, including lawsuits, in an effort to identify problem officers. Third, at the recommendation of the Sheriff's Department, the Board of Supervisors created the Office of Independent Review (OIR), a civilian body separate from the department's internal affairs division that is charged with overseeing and participating in the LASD's internal investigations. [FN42]

Seattle. Seattle has a population of 560,000 with 1240 sworn officers. [FN43] In 1999, after a high-profile scandal, [FN44] a civilian panel was appointed to study the police department's internal investigation processes. Based on the panel's recommendations, the department appointed a civilian director of the internal affairs unit, called the Office of Professional Accountability (OPA). [FN45] The OPA director reviews civilian complaints and lawsuits and investigates the most serious claims. [FN46] The OPA director additionally tracks lawsuit data in an early intervention system, reviews suits for trends across cases, and reviews closed-case files. [FN47] The department has two additional forms of oversight: an auditor who reviews complaints and OPA investigations and a citizen panel that reviews closed OPA investigations. [FN48]

*851 Portland. Portland has a population of approximately 537,000 and a police force of 1050. [FN49] In 2001, the Portland City Council approved the creation of an independent auditor, the Independent Police Review Division (IPR), to receive civilian complaints, refer complaints to internal affairs for investigation, review internal affairs' investigations, and conduct independent and joint investigations. [FN50]

In 2004, IPR director Richard Rosenthal recommended that IPR begin reviewing and investigating lawsuits in the same manner that it reviewed civilian complaints. [FN51] The mayor opposed the proposal, arguing that internal investigations would be "a violation of . . . fiduciary responsibility" to the city's taxpayers because the findings of the investigations might lead to higher payouts. [FN52] The chief of police argued it was the job of the city attorney, not the police auditor, to investigate lawsuits. [FN53] The Portland City Council agreed with Rosenthal and allowed him to investigate lawsuit claims. [FN54] Portland's auditor reviews legal claims when filed, identifies those claims that have not previously been brought as civilian complaints, and internally investigates the most serious claims. [FN55] The auditor looks for trends across claims and reviews closed-case files after the litigation is complete. [FN56] Portland additionally has a tort review board--comprised of officials from the city attorney's office, the police department, and the police commissioner's office--that reviews claims when they are first filed and receives updates about pending claims. [FN57]

Denver. Denver has a population of 566,000 and a police force of 1405. [FN58] Denver's City Council created the Office of the Independent Monitor (OIM) in 2004 and, in 2005, Richard Rosenthal left his post as *852 Portland's auditor to become Denver's OIM Director. [FN59] The OIM, an entity independent of internal affairs, oversees internal affairs investigations and makes personnel recommendations to the chief of police. [FN60] When Richard Rosenthal joined Denver's OIM, he began reviewing all tort claims and investigating the underlying allegations when appropriate. Rosenthal additionally reviews claims for trends. [FN61]

Chicago. Chicago has a population of 2.8 million and employs over 13,000 uniformed officers. [FN62] In 2007, after a series of scandals, [FN63] Chicago created an independent investigative agency, the Independent Police Review Authority (IPRA), to investigate police-misconduct allegations. [FN64] The civilian appointed to head the division, Ilana Rosenzweig, was previously an attorney at LASD's OIR. [FN65] Rosenzweig investigates claims of misconduct asserted in lawsuits and reviews closed litigation files to determine whether internal investigations should be reopened. [FN66]

C. Policies

The LASD and the police departments in Seattle, Portland, Denver, and Chicago gather information from lawsuits brought against them and their officers at each stage of the litigation process. Departments use this data to understand individual incidents of alleged misconduct and to identify trends across cases that suggest widespread personnel and policy failings. I describe those policies here. In Part II I will consider the extent to which lawsuit data adds value to department performance-improvement efforts and in Part III I will describe how these departments minimize the data's flaws.

***853** 1. Trend Analysis

All five departments review legal claims in the aggregate to identify trends that suggest problem units and types of behavior. [FN67] Departments' trend analyses vary in their depth and rigor. Some departments maintain a computerized database of lawsuits and perform sophisticated analyses of the data; [FN68] others identify trends by "trying to pay attention." [FN69] In each department, officials periodically review the legal claims pending against the department and its officers and consider whether a cluster of similar cases merit closer scrutiny and, possibly, intervention. [FN70]

By reviewing lawsuits as a group, departments can identify problems that would not have been apparent had they reviewed each case individually. As the director of the LASD's risk management bureau explained:

> There's times when [the station] thinks it's a single incident but when we get it we know that we've had two or three or whatever number there are . . . . An example of that is one that we have from our jails where inmates would go to the doctor and for some medical reason the doctors would hand them a note to have a bottom bunk in the jail. They would then go to an outlying custody facility and . . . [t]he outlying custody facility had no access to those records ***854** and so when the inmate got there they would say "get on the top bunk," you know, "that's where you're assigned," and you know something would happen, they would fall and get hurt. Well, each unit, from two or three units we got claims individually. They couldn't see the problem but by having it centralized in our operation we were able to say "we're seeing a pattern here, a problem across all the units and it's a communication issue," and had our custody division work on that . . . . [Y]ou know a station sees a tree . . . . I get the benefit of the forest. [FN71]

In addition to the claims brought by inmates who had fallen off their top bunks, the LASD has found clusters of claims relating to the transporting and searching of inmates, [FN72] vehicle pursuits, [FN73] and deputies' failure to go to the correct address in response to a call. [FN74]

Once the LASD has identified a trend, officials can diagnose and correct the underlying problem. LASD's auditor recommended policy changes to address the problems transporting and searching inmates, [FN75] and enhanced supervision to improve vehicle pursuits and accuracy when responding to calls. [FN76]

The Portland police department has also found troubling trends in their claims review and successfully identified and corrected the underlying problems. For example, Portland's tort review board came across several claims of excessive force that involved blows to the head. [FN77] Closer review of the cases revealed that the allegations were primarily

made regarding officers on the night shift at one Portland police station. Following retraining and closer supervision, allegations of head strikes in that station declined. When the Portland auditor observed a cluster of claims suggesting that officers did not understand their authority to enter a home without a warrant, the city attorney's office made a training video on this issue, and it "nearly disappeared as a problem." [FN78]

Just as clusters of initial filings suggest troublesome practices, settlement and judgment trends can identify underperforming stations in the department. The LASD's special counsel semiannually reviews trends in department settlements and judgments. [FN79] In one review, the ***855** special counsel found that two of the LASD's twenty-three stations [FN80]--Century and Lenox--were responsible for approximately seventy percent of the police-misconduct litigation and sixty percent of the settlement dollars paid over a six-month period. [FN81] He then investigated Century station, which the special counsel considered to be "LASD's most troubled station." [FN82] The special counsel's team

> spent several weeks stretched over five months at the station, reviewing documents, interviewing station management, speaking with deputies, learning about the community, and gathering facts. [The team] also rode along with deputies on patrol and "flew along" with a helicopter crew that provides air support to LASD patrol operations. [The team] engaged a police officer, who had worked in the two south Los Angeles Police Department stations adjoining Century, to work with three [members of the team] and help [them] interpret what [they] saw. [FN83]

The special counsel found that the station--one of the most active in the department--had too many rookies, used inexperienced deputies as trainers, had too few senior administrators, and had too few African-American and Spanish-speaking deputies. [FN84] The special counsel recommended that the station employ fewer rookies at any given time, encourage training officers to stay in their positions so that they could become more experienced, encourage senior personnel to remain at Century station, decrease the sergeant-to-patrol-deputy ratio, and increase staff diversity. [FN85] The special counsel also recommended additional training and policy changes to reduce shootings by Century station***856** deputies. [FN86] When special counsel reviewed Century station two years later, he found that the number of shootings at the station had dropped dramatically, even as the crime statistics and arrests remained stable. [FN87]

2. Investigations of Claims

The five departments in this Study view each lawsuit as a "civilian complaint plus a demand for money." [FN88] In other words, departments review and investigate misconduct claims in a lawsuit the same way they would if the claims were alleged in a civilian complaint. Parties sometimes refuse to participate in an internal investigation while a lawsuit is pending. [FN89] As a matter of policy, however, the internal investigation is meant to proceed simultaneously with, but independent of, the litigation. [FN90]

When a lawsuit is filed, department officials compare the allegations in the complaint with incidents reported through civilian complaints, use-of-force reports, and other reporting systems. [FN91] If the incident was not previously brought to the attention of department officials, [FN92] officials will decide what type of review should be conducted. [FN93] As with civilian complaints, internal affairs investigates the ***857** most serious allegations and department supervisors review the less serious claims. [FN94] If an internal investigation substantiates the allegations in the lawsuit, the departments discipline, retrain, or terminate the involved officers.

3. Early Intervention Systems

Two of the departments in this Study--the LASD and the Seattle police department [FN95]--enter lawsuit claims information into their early intervention systems, which are computerized [FN96] systems that track various pieces of information in an effort to identify at-risk officers and improve their performance before officers engage in significant mis-

conduct. [FN97] Once an officer accumulates a certain number of incidents, a supervisor decides whether some sort of intervention is necessary based on the totality of the circumstances. [FN98] Following intervention, the department monitors the officer's performance, paying particular attention to the types of incidents that initially triggered intervention. [FN99]

Early intervention systems can fail or stall at each stage of development and implementation. Departments can take years to design their early intervention systems, and then, once designed, software and hardware malfunctions can further delay systems' operability. [FN100] Even when an early intervention system is in place, officials may input inaccurate *858 and incomplete information into the systems, misuse their systems when extracting information, and make biased decisions about the need for intervention and the type of intervention required. [FN101]

Although we do not know the incremental value of lawsuit data to early intervention systems, there is evidence that functioning early intervention systems can reduce misconduct. [FN102] A study of the LASD's system found officers' shootings, uses of force, and civilian complaints declined after intervention. [FN103] After their two-year monitoring period ended, their performance improvements continued. [FN104] Anecdotal evidence from other departments supports the notion that early intervention systems help identify problem behaviors and improve officer performance. [FN105]

4. Reviews of Closed-Case Files

Four of the departments in this Study--Chicago, Seattle, Portland, and the LASD--compare information in closed litigation files with information in closed internal affairs investigation files. Through this comparison, departments double-check the accuracy and completeness of their internal investigations. In Chicago, an investigator can reopen an internal investigation closed without a finding of wrongdoing if the litigation file identifies new witnesses or previously unavailable testimony or evidence. [FN106]

Kathryn Olson, the director of Seattle's OPA, uses closed litigation files to reveal inadequacies in internal investigations. By comparing closed-litigation files and internal-investigation files, Olson has identified weaknesses in interviewing techniques and evidence-gathering efforts. [FN107] Olson looks particularly closely at cases where there was a large payout in the court case but an internal investigation exonerated the officer. In some cases, OPA will conclude that the officers' conduct was "lawful but awful": the officer harmed the plaintiff, justifying the *859 litigation payout, but he did not violate department policy, justifying internal affairs' decision to exonerate the officer. [FN108] OPA may, instead, find an unwarranted disconnect between the results of the lawsuit and the internal investigation, suggesting that the exoneration was improper. Similarly, Portland reviews closed cases to see "whether the bureau or the independent review board missed anything." [FN109]

The LASD reviews closed litigation files not only to audit internal investigations, [FN110] but also to evaluate department training and policies. The LASD's special counsel conducts "biopsies" of closed lawsuits "to assess how new training plays out on the street, or to determine whether new training is needed." [FN111] The Los Angeles County Board of Supervisors-- responsible for paying settlements and judgments on behalf of the department-- separately requires the LASD to submit a corrective-action plan for each case ending in a settlement or judgment of more than $20,000. The plan must set out any policy or training issues raised by the case and steps the department will take to reduce the likelihood of future similar incidents. [FN112]

5. The Effect of Lawsuit Data on Behavior

It is difficult to measure the effects of litigation data on behavior in these departments. Departments are engaged in a variety of efforts aimed at reducing misconduct, only some of which involve lawsuits. [FN113] And when departments

do use litigation data, they view that data in *860 connection with multiple other pieces of information. [FN114] Moreover, departments cannot always weigh complete information, and cannot always evaluate the information in sound ways. [FN115] Although independent outsiders identify and help correct these implementation problems, they too have been criticized for insufficiently rigorous review. [FN116] And the officials I interviewed may have offered inflated assessments of the merits of their own review. For all of these reasons, it is difficult to pinpoint the role of lawsuits in department decisions.

It is also difficult to measure the effect of department decisions on line officer behavior. There is no national data about how much misconduct exists in individual police departments, and no agreed-upon metric to compare the quality of departments. [FN117] Departments in this Study continue to employ officers that engage in high-profile incidents of apparent police misconduct. [FN118] One could conclude, based on these continuing instances of misconduct, that department policies are having little effect. On the other hand, departments might be even more dysfunctional without policies to review lawsuits and other data and outsiders to oversee department practices.

One way to evaluate the impact of department policies would be to compare the costs of suits against the department before and after implementation of relevant policies. By this metric, the LASD's efforts appear to be having a positive effect. During the first five years of the LASD's special counsel's tenure, the county's litigation costs decreased by $30 million. [FN119] And there is no evidence that officers' crime fighting *861 efforts were chilled during this period. [FN120] But an auditor might be having a positive effect even if litigation costs did not drop so precipitously. As Denver's auditor explained, even if his work led to higher payouts in the short run, "[i]t would be part of an overall risk-management strategy that would reduce liability in the long run." [FN121]

Another way to evaluate the impact of lawsuits on department practices is to examine the role of lawsuits in individual decisions. This Study has revealed several instances in which departments have used lawsuit data to inform personnel and policy decisions, and those decisions improved behavior in a variety of ways. The litigation process revealed evidence proving an officer had lied during his interview with internal affairs. [FN122] Trends in claims have caused department officials to realize that officers did not understand the scope of their legal authority, and resulting interventions have ended the problem. [FN123] Trends in payouts have also caused a department to identify a troubled station for further investigation and review; the subsequent recommendations improved the station's performance. [FN124] Although I cannot quantify the power of the information gathered from lawsuits on behavior, my close examination of these decisions allows me to be reasonably certain that lawsuit data has helped identify problems and craft interventions in these instances. [FN125]

*862 II. Considering the Value of Lawsuit Data to Performance-Improvement Efforts

I have thus far shown that these five departments view lawsuits as sources of information about police department practices. I now offer reason to believe that these suits offer valuable and otherwise unavailable information to law enforcement agencies seeking to improve performance. Police departments primarily learn of possible misconduct through civilian complaints and use-of-force reports. [FN126] Yet, for a variety of reasons, misconduct incidents may not appear in these reports. And, even when incidents do surface, internal investigations may be incomplete or biased. Lawsuits are flawed sources of information, as well. [FN127] But in departments that pay attention to lawsuits, suits have filled some gaps in internal information systems. Lawsuits have alerted police officials to misconduct allegations unreported through internal systems, and the evidence developed during litigation has been found to be more detailed than that generated in internal investigations.

A. Identifying Misconduct Allegations

1. Civilian Complaints v. Lawsuits

Although almost every police department has a policy to accept and investigate civilian complaints against police personnel, [FN128] there are four reasons to believe that misconduct allegations fall through the cracks of police department civilian complaint processes. First, a very small percentage of aggrieved people file civilian complaints. A Bureau of Justice Statistics (BJS) survey estimated that police used or threatened force against 664,500 people nationwide in 2002. [FN129] Of the people *863 surveyed who had been involved in a police use of force, approximately 75.4% believed the force was excessive and approximately 87.3% believed officers had acted improperly. [FN130] Yet fewer than thirteen percent of the people who believed they were mistreated filed a civilian complaint. [FN131] Accordingly, the civilian complaint process did not capture approximately 508,421 allegations of improper force and related misbehavior in a single year. Another approximately 3.95 million people believed that police acted improperly in contacts that did not involve the use of force. [FN132] Given the low filing rates for civilian complaints alleging excessive force, it seems likely that a significant percentage of these 3.95 million people did not file civilian complaints, either.

Lawsuits also under-represent the universe of misconduct allegations. The same 2002 BJS survey found that people who believed the police mistreated them sued infrequently--approximately one percent of the time. [FN133] People harmed by the police may choose not to sue for any number of reasons, including "ignorance of their rights, poverty, fear of police reprisals, or the burdens of incarceration." [FN134] But the same *864 people who decide not to file civilian complaints may choose instead to file lawsuits. Plaintiffs' attorneys have been known to discourage their clients from filing civilian complaints for fear that information in the internal investigation will be used against them in litigation. [FN135]

Portland and the LASD have compared lawsuit and civilian complaint filings, and both have found that many lawsuit claims had not previously been filed as civilian complaints. In 2004, Portland's police auditor found that two-thirds of claims in lawsuits brought against the department and its officers were not separately brought as civilian complaints. [FN136] When the Kolts Commission reviewed 124 excessive-force lawsuits that had resulted in judgments or settlements against the LASD, it found that plaintiffs in fewer than half of the cases had filed civilian complaints. [FN137] Even as Portland and the LASD have improved their civilian-complaint collection and review processes, both departments continue to learn about misconduct allegations through lawsuits. [FN138]

*865 Second, civilian complaints capture misconduct allegations only when complainants describe their claims completely and clearly. People registering a civilian complaint generally do so orally (over the phone or in person at the station) or by filling out a form. [FN139] The informality of these methods of communication may dilute complainants' allegations. Lawyers, not always known for the clarity of their prose, may nevertheless better articulate all dimensions of the alleged violations. As the director of Seattle's OPA explained:

> [S]omeone comes in and says "this happened to me"--and it gets treated as a use of force [UOF] complaint. But when a lawsuit is filed, a number of allegations may be raised that might be different from a simple [UOF]. People will talk in terms of being a victim of biased policing. But unless they are able to articulate it expressly--I'm African American, he's white--it's not going to come into the civilian complaint. [FN140]

Well-drafted legal complaints will include every involved party, every relevant fact, and each plausible cause of action. This level of detail can help police officials understand the full scope of the allegations. As the LASD's risk manager explained, "By the time [a complaint] gets actually to be a government claim, it's at least pretty well defined into what areas it captures, and I think we're able to sort through those a little better." [FN141]

Third, departments may discourage people from filing complaints. The DOJ has investigated civilian complaint processes in over two dozen law enforcement agencies and found fault with each of the departments' systems for receiving complaints of officer misconduct. [FN142] The DOJ found some departments were not doing enough to solicit complaints: their forms were unclear or written only in English, or the department did not disseminate information about the complaint process. [FN143] In other departments, officers discouraged or hassled civilians*866 attempting to file complaints, or refused to accept complaints altogether. [FN144]

The Christopher Commission, convened to investigate the Los Angeles Police Department (LAPD) in 1991, found that one-third of *867 people who filed civilian complaints were harassed or intimidated in the process. [FN145] Twelve years later--after the LAPD had again been reviewed by an independent commission, had been investigated by the DOJ for civil rights violations, had entered into a Memorandum of Agreement with the DOJ, and had been placed under the supervision of a court-appointed monitor--the monitor found that department officials continued to harass and intimidate people who tried to file civilian complaints. [FN146]

Fourth, officials may mislabel or misfile civilian complaints so that they are not investigated. Police departments generally have two levels of review: higher-ranked officers within the precinct review less serious allegations, and the internal affairs division investigates more serious allegations. [FN147] The Christopher Commission that investigated the LAPD found that "complaints of officer misconduct made by the public were often noted in daily activity logs rather than recorded in the official Personnel Complaint Form 1.81 that triggers a formal complaint investigation and IAD review." [FN148] DOJ investigations have revealed the same tactics used in other departments: officers improperly classify misconduct claims so that they will not be investigated by internal affairs. [FN149]

*868 A plaintiff filing a lawsuit against the police does not face the same hurdles as a person trying to file a civilian complaint. To be sure, suing the police has its own challenges. Plaintiffs' attorneys in civil rights cases are generally paid on contingency, out of the proceeds won by the plaintiff. [FN150] As a result, a plaintiff may have trouble finding an attorney to take her case if the recoverable damages are low or there is a small likelihood of prevailing. [FN151] Once a case is filed, it may be dismissed for failure to state a plausible claim in the complaint or on qualified-immunity grounds. [FN152] But there is very little chance that a court clerk will harass or discourage a person attempting to file a lawsuit. And a lawsuit alleging police misconduct will not be mislabeled as a securities matter or improperly sent to probate.

2. Use-of-Force Reports v. Lawsuits

Incidents of possible misconduct can also come to a department's attention through officers' use-of-force reports. [FN153] Yet there are three reasons to believe that these reports will not capture all instances of alleged police misconduct. First, despite their name, use-of-force reporting policies do not require officers to document many types of uses of force. A national survey of use-of-force reporting requirements found that almost twenty percent of the departments did not require officers to submit a report after striking a civilian with a flashlight, approximately forty percent of the departments did not require an officer to submit a report after their police dog attacked a civilian, and over seventy percent of the departments did not require an officer to submit a report after using handcuffs. [FN154] In its investigations of law enforcement agencies, *869 the DOJ similarly found that departments had ambiguous reporting requirements or required officers only to document the most serious uses of force. [FN155]

Second, use-of-force reporting systems do not capture claims related to verbal abuse, sexual harassment, improper searches, and other incidents that do not involve force. In the LASD, which has rigorous internal use-of-force reporting systems, the auditor noted that several types of allegations tend to be identified only through legal claims, including "Fourth Amendment allegations, allegations of inappropriate entry, bad warrant or things that happen in the warrant, al-

legations that money was taken, . . . discourtesy, [and] cases in which there may be constitutional violations or violations of policy but they don't result in *870 injury." [FN156] If a lawsuit does not involve a use of force, department officials likely will not learn about the incident through internal reporting channels. Fittingly, many of the trends identified through lawsuits by the departments in this Study concern incidents that would not prompt use-of-force reports: falls from upper bunks; vehicle pursuits; improper searches of inmates; responses to the wrong address; and warrantless home entries. [FN157]

Third, officers do not always follow use-of-force reporting policies. An investigation of use-of-force reports in Philadelphia found that descriptions of incidents "were routinely sparse, vague, inaccurate, or incomprehensible." [FN158] Descriptions of injuries similarly lacked detail: "A 'head injury' could refer to a scratch, sutures, a concussion, or a broken skull." [FN159] The Kolts Commission, which examined the LASD, found that uses of force described in deputies' arrest reports "almost always [were] at wide variance with the allegations made by the plaintiff in a lawsuit" such that "a deputy's report alone could not have alerted a supervisor to a problem." [FN160] Even after several years of oversight, the auditor for the LASD continued to find widespread underreporting. [FN161] A well-crafted complaint is unlikely to suffer from similar vagueness or lack of detail.

B. Details of the Incidents

Even when a police department already knows about a misconduct allegation, lawsuits can reveal critical details about the event. Police department internal affairs divisions investigate serious uses of force and allegations of misconduct. Yet internal affairs investigations have long been found to be inadequate and incomplete. [FN162] Indeed, no outside reviewer has "found the operations of internal affairs divisions in any of the major U.S. cities satisfactory." [FN163]

The DOJ found fault with internal investigation procedures in each of the over two dozen departments it investigated. The DOJ found that many departments had no standard procedures for documenting or investigating*871 complaints. [FN164] When departments did investigate misconduct allegations, many did not follow the types of standard investigative procedures they would use to solve crimes: investigators did not look for witnesses, collect evidence, interview police personnel, or reconcile inconsistent statements. [FN165]

A study of the Chicago Police Department's internal affairs division found that the investigations were consistently shoddy and incomplete, "violat [ing] virtually every canon of professional investigation." [FN166] The officer accused of misconduct was interviewed in less than fifteen percent of the cases. When the officer was interviewed--often months after the incident-- the "questioning" was in the form of a brief questionnaire that the officer had seven to ten days to complete in writing. It was "not uncommon" to find a complaint unsubstantiated even though several officers submitted virtually verbatim questionnaire responses. [FN167] Investigators rarely interviewed civilians and witnesses in *872 person. And while the investigators ran background checks on the complainants and witnesses who corroborated allegations of misconduct, the investigators did not review complaint histories of the police officers involved.

Approximately twenty percent of large police departments have some form of civilian review, and a quarter of these departments' civilian review boards have independent investigatory authority. [FN168] There has been little examination of the quality of these investigations. Because the investigators are independent, there should be less bias and capture. These boards can, however, suffer from a lack of funding, leadership, and political will. [FN169]

Attorneys engaged in police-misconduct litigation will rarely be accused of foot-dragging when investigating their cases. Whether motivated by their ethical obligations or the promise of a percentage of any recovery, plaintiffs' civil rights attorneys have strong incentives to uncover all evidence that might support their client's claims. They will depose

the involved officers under oath, seek out additional witnesses, and request documents about the incident and the officers. Attorneys representing the defendants will protect their client's interests by digging for evidence that rebuts plaintiffs' claims and supports their clients.

Those who have examined evidence developed during litigation and internal investigations have found litigation files to be far more comprehensive. The director of Seattle's OPA believes that litigation produces valuable information: "Just by function of depositions and someone else taking a new look at it, chances of getting new information [through the litigation process] are likely." [FN170] The special counsel for the LASD, Merrick Bobb, regularly compares closed litigation files with closed internal-investigation files and finds that litigation files offer "the fullest record" of claims of police misconduct. [FN171] When misconduct allegations are investigated internally, he has found, "inertia weighs heavily on the side of disposing of a matter quickly and moving on; otherwise, time and resources and effort will have to be expended." [FN172] Even after a lawsuit is filed, those representing government *873 defendants have little reason to identify or explore evidence of policy and personnel failures, particularly given that such evidence would likely be discoverable. [FN173] In contrast, plaintiffs have a "strong incentive . . . to dig deeply and generate more detailed and critical information" supporting their cases. [FN174] "If information exists, litigation is the likeliest vehicle to ferret it out." [FN175]

Richard Rosenthal--the police auditor in Denver and former auditor in Portland--has compared files of unsubstantiated internal investigations with closed litigation files for the same case and found that the outcome of the internal investigations might well have been different had investigators accessed the information uncovered during litigation. [FN176]

In one notable Portland case, a man named James Chasse died of blunt-force chest trauma after two transit division officers forced him to the ground. [FN177] His family brought suit against the involved officers. [FN178] An outside expert reviewed the internal investigation of the incident and found that internal affairs' investigation had neglected several critical leads. Internal affairs did not interview all of the officers who had reported to the scene, did not interview nurses who had observed Chasse at the jail, and did little to investigate allegations that officers had been "laughing and joking at the scene." [FN179]

The "most glaring deficiency" of the internal investigation was the failure to enhance a video taken the night of Chasse's death in which the involved officer and deputy were describing and reenacting their confrontation with Chasse. [FN180] Although the audio portion of the recording was "mostly unintelligible," Portland's internal affairs investigators did nothing to improve the sound. [FN181] Only during litigation did plaintiff's counsel improve the audio, at which point it became clear that the officer said he "tackled" Chasse, contradicting his statement to internal affairs that he had pushed Chasse to the ground. [FN182] As the expert's report *874 concluded, "[P]laintiffs' attorney was the driving force behind [the Portland Police Bureau's] ultimate recognition of the importance of the video as evidence." [FN183]

Given what we know about law enforcement agencies' civilian-complaint and use-of-force reporting protocols and internal investigations, it should be no surprise that information about police misconduct falls through the cracks. Although lawsuit data also has its flaws, suits have revealed valuable information about the incidence and details of police-misconduct allegations. The gaps in civilian complaints, use-of-force reports, and internal investigations appear to be filled, at least in part, by information revealed during litigation.

III. Mitigating the Weaknesses of Lawsuits

I have, thus far, described the practices of a group of police departments that pay close attention to lawsuit data and shown that suits offer information unavailable through other sources. I do not, however, intend to idealize the informa-

tion generated by damages actions. Many people never sue and lawsuit payouts can distort the extent of a defendant's responsibility. Lawsuits are resolved long after the underlying incident occurred and are generally focused on individual bad actors instead of the policy makers that could affect organizational change. And litigation may inhibit the type of information exchange necessary to understand and correct problem behavior.

Some departments have used these imperfections in litigation data to justify their decision to ignore lawsuits. [FN184] Yet these information *875 flaws are not fatal. Departments in this Study compensate for the imperfections in lawsuits--and the imperfections in civilian complaints and use-of-force reports--by reviewing data from each source in context with other available information and using independent auditors to consider what the data may show.

A. The Inaccuracies of Claims and Evidence

The adversarial nature of litigation may produce biased and skewed information. Most people who believe their rights have been violated never sue. [FN185] And those cases that plaintiffs' attorneys choose to take are not necessarily the strongest on the merits. Lawyers retained on contingency receive a portion of plaintiff's award and, therefore, will be attracted to high-damages cases-- even when there is middling evidence of liability. [FN186] Lawyers may also decline to take a case with strong evidence of liability but low recoverable damages; the plaintiff may be unemployed, incarcerated, or unsympathetic, or the claims may be too difficult to prove. [FN187]

*876 Once a plaintiff retains a lawyer or decides to proceed pro se, she will present her very strongest case in her complaint. [FN188] A savvy defense attorney will deny her contentions to the hilt. During discovery, both sides will use interrogatories, requests for admission, document requests, and depositions to generate a great deal of information. The nature of discovery practice means that at least some of the information generated will be irrelevant, prejudicial, and inadmissible. [FN189] Not every discovery request or deposition question, even when asked in good faith, will uncover valuable evidence. And each witness may tell a version of the facts influenced by faulty memory or a preference for one side. [FN190]

The information generated by litigation will be further distorted if the parties do not have comparably resourced and capable counsel. Scholars have recognized that unequally matched counsel make it more difficult for neutral fact-finders to reach a just verdict. [FN191] Unequal litigators*877 also affect the quality of the information generated by litigation. The lion's share of evidence may support plaintiff's claim not because the claim is meritorious, but because defense counsel overlooked critical areas of inquiry in his document requests and deposition questions.

Departments that pay attention to litigation data do not assume the data to be accurate or complete. Instead, they view the data skeptically, supporting or rebutting allegations with other available information. When departments investigate lawsuit claims, their investigations are parallel to and independent of the litigation discovery process. [FN192] Only after the internal investigation is complete do investigators review the litigation file to determine whether any additional information was uncovered in discovery. In this way, departments cross-check the quality and thoroughness of the internal-investigation and litigation discovery processes. Similarly, when a department is looking for problem officers, units, and practices, a single meritless legal claim or an isolated civilian complaint will have little impact; the department will intervene only if it sees a cluster of incidents within a limited period of time. [FN193]

Departments also look beyond lawsuit data when crafting solutions to the problems they identify. When a cluster of incidents trigger early intervention, officials consider not only the officer's job performance but also his personal situation and family circumstances before deciding what course of action might prevent future problems. [FN194] Two case studies described by police-practices expert Samuel Walker illustrate the personalized nature of these interventions.

> In one large police department, a police officer was flagged by the [early intervention] system because of a high number of use of force incidents. The counseling session with the officer revealed that she had a great fear of being struck in the face, and as a consequence was not properly taking control of encounters with citizens. After losing control over the person or persons, she would then have to use force to reassert control. Her supervisor referred her to the training unit, where she was instructed in tactics that would allow her to protect herself while maintaining control of encounters with the potential for conflict. As a result, her use of force incidents declined dramatically.
>
> *878 In another large department, a patrol officer was identified by the [early intervention] system because of a series of use of force incidents. During the intervention session the officer's supervisor discovered that he was having severe personal financial problems. The supervisors recommended professional financial consulting, the officer followed this advice, and his performance improved significantly. [FN195]

As these descriptions show, a supervisor's expansive view of officers' problems may lead him to conclude that an officer needs training in self-defense tactics or financial counseling instead of discipline to reduce his uses of force.

Departments demonstrate similar circumspection when reviewing trends across cases. When the LASD's special counsel found one station was responsible for a disproportionate number of shootings and lawsuits, he spent several weeks at the station reviewing records, speaking with personnel, riding along with officers, and considering several possible reasons for the concentration of payouts. [FN196] Ultimately, many of his recommendations did not address the particular behaviors that prompted the lawsuits, but instead addressed hiring, management, and training decisions at the station. [FN197]

Although departments' holistic review of information from multiple data sources mitigates the flaws of available data, it raises the costs of information gathering and analysis. [FN198] Reviewers bear the responsibility of separating the wheat from the chaff, the "good" from the "bad" information. Given cognitive limitations and heuristics, and the effects of information overload, we should expect analytical errors. [FN199] Officials may have trouble deciding what information is relevant. [FN200] Although the *879 astute supervisor described by Walker thought to ask the officer with multiple uses of force about his financial situation, [FN201] finances might seem irrelevant to another competent supervisor trying to understand an officer's use-of-force statistics.

Officials may also assess available information in a biased manner. [FN202] When supervisors use early intervention systems to design appropriate interventions, for example, they are instructed to look to the particular characteristics of the officer and the problems he faces. [FN203] Supervisors have broad authority to decide whether an officer should be counseled informally in the supervisor's office or reassigned to another station. The supervisor's personal dislike of that officer, or, conversely, his desire to protect one of his own may impact his decision about what course to take.

Departments attempt to limit error and bias by having both department personnel and external auditors evaluate available information. [FN204] Department personnel may run the early intervention system, for example, but the department's auditor will periodically review the department's collection and analysis of early-intervention-system data and the effectiveness of intervention decisions. With this dual review, departments reap the benefits of internal and external perspectives. Departments preserve the input of police officials, who have a deep understanding of the department and staff but may be biased by their relationship with the involved officers and stations. [FN205] Departments also *880 benefit from the insights of external auditors, who know less about the inner workings of the department but may be more objective. [FN206]

B. The Inaccuracies of Litigation Outcomes

Like claims and facts developed during litigation, litigation outcomes can be inaccurate. Plaintiffs with strong claims may lose at trial or have their case dismissed by the court. [FN207] Plaintiffs with weak claims may prevail. The amount awarded to a prevailing plaintiff can have little to do with the merits of the claim or the severity of the defendant's misconduct. Juries may award damages based on the severity of the plaintiff's injury [FN208] and characteristics of the plaintiff including how much she earns, where she lives, and whether she has dependents. [FN209] Jury verdicts may be skewed by negative public sentiment about a party to the litigation. [FN210] the depth of the defendants' pockets, [FN211] and trial *881 participants' courtroom demeanor. [FN212] Settlement awards may also be inaccurate reflections of defendants' misconduct. Even if a defendant is not at fault, he may nonetheless settle the claim for nuisance value to avoid the costs and risks of trial. [FN213] In other cases, settlement awards may be reached for amounts below the cost of the anticipated verdict. [FN214]

A department interested in reducing the costs of litigation should collect and assess litigation data regardless of the accuracy of the outcomes. After all, to reduce the costs of suits, one must understand what types of cases are brought and how all payouts--not just payouts in meritorious cases-- can be reduced.

The imperfections of lawsuit outcomes do, however, warp the deterrent signal of damages actions. [FN215] Deterrence theory imagines that threatened or actual penalties will discourage future misbehavior so long as the costs of harm avoidance are lower than the costs of liability. And, generally speaking-- though not always--the costs of liability are viewed in terms of the dollars spent to satisfy settlements and judgments. [FN216] So, the logic goes, the higher the expected or exacted damages, the greater the care that will be taken to prevent those sorts of injuries in the future. The lower the damages, the lower the care.

In order for tort law appropriately to incentivize actors, defendants' liability exposure must be equivalent to the value of the harms they cause. Only with this type of equity can lawsuits carry the properly calibrated deterrent signal:

> *882 If injurers pay less than for the harm they cause, underdeterrence may result--that is, precautions may be inadequate, product prices may be too low, and risk-producing activities may be excessive. Conversely, if injurers are made to pay more than for the harm they cause, wasteful precautions may be taken, product prices may be inappropriately high, and risky but socially beneficial activities may be undesirably curtailed. [FN217]

Given what we know about litigation outcomes, litigation payouts are highly unlikely to equal the nature and severity of underlying harms. And the deterrent signal is further skewed in police-misconduct cases, where officers are almost certain to be indemnified and judgments against departments come from city budgets, not police coffers. [FN218]

The departments in this Study minimize concerns about the imperfections of litigation outcomes by not focusing exclusively--or primarily--on payouts. Departments do track litigation payouts, and may pay particular attention to cases with high settlements and judgments. [FN219] But departments also pay attention to allegations of misconduct in claims and lawsuits when they are first filed, and the information developed during the course of litigation. Departments enter lawsuit allegations into early intervention systems used to track problem officers. [FN220] Departments identify trends by looking at clusters of legal claims. [FN221] Departments investigate lawsuit claims when they are filed. [FN222] And departments review the evidence developed during the course of litigation for personnel, policy, and training implications. [FN223]

Because departments review lawsuits at the time they are filed, claims that are dismissed can still be the basis for personnel action. And because these departments are not guided solely by the size of payouts, a case settled for a small amount can still inspire policy change. A lawsuit will be included in a department's early intervention system and trend analysis whether the case was dismissed or went to trial, whether it settled for $5000 or $500,000. Departments have, in

fact, made policy changes even when the underlying claim settled for an insignificant *883 amount. In one instance, a deputy from the K-9 unit of the LASD took his dog to a park for a walk and the dog bit a man. The department paid the man's medical costs and an additional small settlement. Even though the bite was accidental and the settlement was small, the K-9 unit reviewed and changed its policies department-wide to prevent future similar events. [FN224] Conversely, lawsuits resulting in large judgments or settlements will not necessarily lead to personnel or policy changes if the department concludes that none are merited. [FN225]

C. The Slow Pace of Litigation

Some contend that lawsuits should play no role in performance-improvement efforts because litigation travels at such a slow pace. [FN226] Given generous statute-of-limitations periods and extensive pretrial litigation practices, a settlement or judgment may not be entered until several years after the underlying incident.

Officials in the departments in this Study recognize that lawsuits are a "'trailing' rather than a leading indicator" that "may not be concluded until several years after the conduct that gave rise to the lawsuit." [FN227] However, departments do not wait until cases are resolved to evaluate the claims for possible lessons. Instead, departments track and analyze lawsuits from the time that the suits are filed. [FN228] As the Portland police department's safety and risk officer reported: "We're watching *884 these claims from Day One. We don't want to wait until after a large settlement." [FN229] By paying attention to lawsuits when they are first filed, departments lessen the inevitable delays of litigation, although they of course cannot eliminate some of the delay, including delays in filing.

Moreover, closed litigation files can be a source of valuable information even though the underlying events have occurred years before. Lawsuits have revealed information about misconduct allegations that did not arise during the internal investigation of the same incident. It was the plaintiff's attorney--not internal investigators--who enhanced the audio portion of a videotape taken of the involved Portland transit division officers on the night of James Chasse's death. [FN230] By comparing closed litigation files with internal investigations, reviewers have identified weaknesses, flaws, biases, and gaps in internal-investigation processes and ways that those internal processes can be improved. [FN231] Given the documented inadequacies of internal investigations and the vigorous nature of discovery, it should be no surprise that litigation files--when reviewed--have supplemented departments' knowledge and understanding of incidents and department practices despite the passage of time.

D. The Individualistic Focus of Litigation

A fourth critique of lawsuits' role in performance improvement--raised by scholars, not police executives--is that damages actions are generally focused on individual bad actors instead of systemic causes of harm. Organizational-theory literature posits that organizational culture influences the behavior of individuals in that organization. [FN232] And those who study the police have long observed that police organizational culture influences the actions of individual officers. [FN233] Scholars including Barbara Armacost, David Rudovsky, and Peter Schuck argue that lawsuits brought against individual officers focus too narrowly on officer *885 error. [FN234] They recommend bringing suits against the department to incentivize change at the organizational level. [FN235]

Although these scholars correctly suggest that lawsuits are overly focused on individual behavior, litigation analysis nevertheless can uncover organizational problems. Departments address concerns about the individualistic nature of damages actions by reviewing individual cases for large-scale lessons. As a result, a single case brought against the LASD's K-9 unit and settled for a modest sum can nonetheless lead to institution-wide policy reforms. [FN236] Departments also

mitigate the individualistic focus of litigation by consolidating information from individual suits. Take, for example, the cluster of claims against the LASD by inmates who fell off their top bunks. [FN237] A supervisor reviewing a single claim might see a simple fall. By reviewing claims in the aggregate, LASD's risk manager could see that the department was improperly maintaining and communicating medical information--an organization-wide problem--even though the suits were focused on individual officers and events.

E. The Blaming Culture Created by Litigation

Some level criticism not at lawsuits themselves, but instead at the defensive culture created by the threat of being sued. In multiple industries, including aviation, manufacturing, nuclear power, and medical care, information about past performance is gathered and analyzed as a way of identifying the types of problems that lead to accidents. [FN238] Reporting systems collect information about accidents and near misses, and officials analyze the data to identify system-wide problems that could cause future harms. And when accidents do occur, in-depth reviews are conducted to understand the root causes of error. The departments in this Study--much like airlines, hospitals, and nuclear power plants--review information from a variety of sources to identify weaknesses*886 and possible ways to improve. Police department early intervention systems--like near-miss reporting systems--gather information from multiple sources as a way of identifying problem officers, units, and practices. Police department closed-claims reviews--like root-cause analyses--sift through all available information about an incident as a way of diagnosing what went wrong.

Although lawsuits play an important role in police department policies, scholars generally view suits to be counterproductive to error-reducing efforts. The concern, most frequently articulated in the health care context, is that safety improvements require "an organizational culture of openness to discovery and discussion of problems" that will be stifled by the threat of discipline and liability. [FN239] Some police experts similarly fear that the threat of lawsuits and internal discipline will hamper law enforcement self-review. [FN240]

My research supports the concern that litigation--and other sanctions--can undermine efforts to understand error. The threat of litigation, discipline, and other negative repercussions may have caused government personnel-- including, at times, personnel in the five departments in this Study--to hide or misrepresent the kinds of information crucial to performance-improvement efforts. [FN241] Department officials have written reports that omit information harmful to their officers. [FN242] City attorneys have refused to disclose information about pending claims. [FN243] And internal affairs bureaus have suspended investigations while lawsuits are pending for fear that internal findings will compromise the defense of the case. [FN244] Indeed, the internal investigation of James Chasse's death was delayed by twenty-two months because the lawyer representing the county deputy did not allow department investigators to interview the deputy or others involved until they were *887 deposed in the lawsuit. [FN245] The attorney was afraid that statements made in the internal investigation could compromise the defense of the civil case. [FN246]

Although the fear of litigation can inhibit data collection, the departments in this Study show that lawsuits are also an important source of information about error. Suits have revealed incidents of misconduct, and evidence generated during litigation has offered critical details about those misconduct allegations. How have departments learned from lawsuits even as lawsuits inhibit disclosure of error and open dialogue? Key to these departments' success appears to be the independent personnel who review department practices. [FN247] In each of these departments, auditors or investigators have unfettered access to department documents and personnel. This access has allowed them to learn that officials were not complying with their obligations to disclose or investigate. [FN248] Reviewers are also able to evaluate, in subsequent reports, whether those problems have been remedied. Although auditors and investigators do not eliminate problems in the collection and analysis of data, they have been able to point out and assist in the correction of data-collection

problems that would have gone unidentified but for the outside review. [FN249]

IV. Reconsidering Lawsuits' Role in Organizational Performance Improvement

Lawsuits are widely expected to compensate and deter; this Article shows lawsuits can also inform. In the departments in this Study, lawsuits reveal allegations of misconduct that officials investigate and consider with other data for possible trends. The evidence developed in discovery and trial offers a detailed picture of underlying events that can help identify personnel and policy failures. Closed-case files, compared with internal investigations, reveal weaknesses in internal procedures. And trends in settlements and judgments, like initial-claim trends, highlight units that officials should more carefully review. Viewed in isolation or in conjunction with other data, lawsuits offer insights about the incidence and causes of individual and organizational failings. And armed with these insights, departments find ways to improve.

This view of litigation--as a source of information that can be used to identify and reduce harm and error--parts company with prevailing *888 understandings of lawsuits' roles in organizational performance improvement.

In the standard story, lawsuits' financial costs are expected to deter misbehavior. [FN250] Others contend that police officials will be deterred by lawsuits only when the suits jeopardize political capital, bureaucratic and administrative needs, or crime-control efforts. [FN251] But all expect that it is lawsuits' punitive effects that inspire performance improvement.

High-profile and costly cases can, most certainly, effect change in law enforcement. Indeed, several of the departments in this Study began reviewing lawsuit data as a response to significant political and financial pressures. [FN252] But these departments do not limit their attention to cases that garner high payouts or press attention. Instead, they gather information about legal claims, evidence, and dispositions of all cases, even those without financial and political ramifications.

Deterrence theory also imagines that officials deciding which course of action to take weigh the costs of litigation against the benefits of the underlying conduct. [FN253] But the policies in place in the departments in this Study do not facilitate this sort of weighing. Departments would not, for example, track lawsuits alleging chokeholds and then decide whether to retrain their officers about the impropriety of chokeholds based on the costs of these suits. [FN254] Instead, departments in this Study would use lawsuits, with other data, to identify chokeholds as *889 behavior that triggered a concentration of suits, civilian complaints, or use-of-force reports. The department then would conduct an investigation and identify ways to address the underlying policy, training, or personnel problems. And when a department looks for trends in payouts, officials do not weigh those judgments and settlements against the costs of potential policy changes. Instead, the concentration of settlements and judgments is treated as an indication of an underlying problem that is then investigated and analyzed.

In differentiating department practices from deterrence models, I do not mean to suggest that these departments never engage in cost-benefit analyses. Indeed, department officials likely weigh the costs and benefits of their actions at multiple points during information-gathering, analysis, and decision-making. When LASD's Century station was identified as having a high concentration of payouts, department officials likely considered the bureaucratic and administrative costs of focusing public attention on that station when deciding what course of action to pursue. [FN255] When Portland's auditor identified a number of incidents suggesting that officers did not understand their authority to enter a home without a warrant, department officials likely weighed the financial costs of various interventions before deciding to make a training video that clarified officers' legal obligations. [FN256] This type of cost-benefit analysis is far more nuanced and complex than is suggested by formal models of deterrence. And lawsuits' role in this cost-benefit analysis is not just as a

"cost," but also as one of many sources of information.

Others have recognized that information generated during litigation can--when publicly disclosed--serve a regulatory function. Scholars, including Wendy Wagner and Timothy Lytton, argue that lawsuits can unearth what Wagner calls "stubborn information"--damaging information closely held by wrongdoers that regulators do not have the resources, motivation, or authority to uncover. [FN257] Wagner's and Lytton's careful studies of lawsuits challenging the gun industry, clergy sexual abuse, tobacco, and breast implant manufacturers confirm that lawsuits can unearth valuable information that supplements incomplete regulatory efforts. [FN258] Similarly, scholars have observed that when police-misconduct lawsuits publicly reveal damaging information, negative publicity and political pressure can cause police departments to change *890 their behavior. [FN259] In each organizational setting, public disclosure of litigation data has produced external pressures to improve.

This Article shows that litigation can also generate valuable information previously unavailable to the very entity that is sued. Police department officials in this Study rely on lawsuits to surface allegations of misconduct that fall through the cracks of internal data-collection efforts. And even when department officials already know about an incident that is the subject of a lawsuit, they review the closed-litigation file because the adversarial process may have revealed information that did not surface during the department's internal investigation. Lawsuits have notified departments about incidents of misconduct and their root causes, helped officials design effective interventions to prevent future similar incidents, and highlighted weaknesses in civilian-complaint, use-of-force reporting, and internal-investigation protocols.

Current conceptions of the relationship between lawsuits and organizational change overlook the possibility that lawsuits can inform defendants about their own behavior. Yet, for the departments in this Study, lawsuits play just this role; suits have revealed valuable information about department employees, units, and practices. Departments' attention to the lessons they can learn about their own conduct from lawsuits--what could be called introspection through litigation--is an underexplored yet promising avenue by which lawsuits can lead to organizational performance improvements.

Although lawsuits have proven to be a valuable source of information about organizational performance, departments that gather and analyze lawsuit data recognize that the information is flawed. [FN260] Information produced internally--through civilian complaints and use-of-force reports--is flawed as well. [FN261] The approach of the departments in this Study is not to ignore information because of its imperfections, but instead to review data from multiple sources with the hopes that imperfections will be minimized by a holistic approach. The LASD's policies "consciously were fashioned to create multiple, new, and even redundant sources of information." [FN262]

> The same force incident that gave rise to a citizen's complaint might also give rise to a claim, a lawsuit, an [internal affairs] rollout, a determination by a Commander's Panel on use of force, an administrative inquiry, and possibly even a criminal investigation. Each of the foregoing would give the Department an independent opportunity to bring facts about a particular incident to light, albeit at different *891 times and at different stages of various proceedings and from different perspectives. [FN263]

By collecting information generated through multiple avenues, at different times, and from different perspectives, officials can account for imperfections in the data and thereby better understand department practices. As Kathryn Olson, the director of Seattle's OPA, described, lawsuits--like civilian complaints, use-of-force reports, and other internally generated data--are a "foggy lens through which to view agency improvement." [FN264] The departments in this Study have shown that several foggy lenses, viewed together, can reveal a clearer picture of institutional performance.

Conclusion

Despite widespread reluctance to pay attention to litigation data, law enforcement agencies can--and do--learn from lawsuits. Department practices take advantage of information in lawsuits that is unavailable through other sources. And although lawsuit data has significant flaws, practices in these departments minimize decision-makers' reliance on those aspects of the data most prone to error. In illuminating police department practices and recognizing lawsuits' role in and value to performance-improvement efforts, this Article ventures into largely uncharted territory. More study could refine thoughts about how organizations can best learn from litigation and the ideal role of litigation data in organizational decision-making. So I end with a familiar call for further research.

First, more can be done to understand the value of lawsuit data to police departments. I have shown that lawsuits--despite their flaws--may fill gaps in civilian-complaint and use-of-force reporting systems. Further research could quantify the degree of overlap between these information sources by evaluating the types of information departments receive through civilian complaints, use-of-force reports, notices of claim, and lawsuits. Research could also compare the comprehensiveness of internal investigations and lawsuit files. Further information about the uniqueness (or redundancy) of lawsuit data would assist those thinking seriously about the role that lawsuits should play in early intervention systems, trend analyses, internal investigations, and policy reviews.

*892 More can also be learned about the relationship between the merits of civil rights lawsuits and their dispositions. Scholars have studied the volume of civil rights cases and the frequency with which plaintiffs prevail in court and cases settle. [FN265] Some scholars have also reviewed civil rights case descriptions and files, concluding that assertions of widespread frivolous claims are overblown. [FN266] But there have been no studies of the frequency with which victims of civil rights violations bring lawsuits, [FN267] the merits of civil rights cases that are brought, [FN268] or any correlation among findings of liability, damages awarded, and actual harms suffered by plaintiffs. [FN269] Medical malpractice cases and other types of tort claims have been scrutinized to determine the frequency with which wrongfully injured people sue, the frequency with which *893 meritorious and frivolous claims succeed, and the amount of damages awarded. [FN270] This same research can be conducted regarding civil rights claims.

Studying the accuracy of police-misconduct lawsuits could further inform the ways that police departments should use litigation data. Currently, law enforcement agencies' evaluations of litigation data accommodate critiques that lawsuits both overestimate and underestimate the universe of harms. If, however, studies showed that outcomes in these cases closely tracked objective evaluations of liability and harm, settlements could be considered more conclusive evidence of wrongdoing. And, of course, the opposite conclusion could be reached if study revealed little correlation between outcomes and the merits of the underlying claims.

Research can also tackle these same questions as they apply to other types of organizations. Although lawsuit data appear to fill significant gaps in the information available to police departments, the value of lawsuit data in other institutional settings will likely depend on the visibility of the error, the organization's decision-making structure, and the quality and availability of alternative sources of information. Further study can reveal the ways that other types of organizations actually gather and analyze information from lawsuits and broaden our understanding of the relationship between litigation and performance improvement.

Finally, research could explore how substantive, procedural, and evidentiary rules could be structured to encourage organizations to pay attention to lawsuits. Some reforms would ease the punitive effects of litigation and encourage freer discussion of error. For example, steps have been taken to protect quality improvement efforts from disclosure in health care and aviation. [FN271] Perhaps similar efforts should be made to *894 protect law enforcement quality-improvement efforts, as well. Other possible reforms might make proactive accountability efforts a defense to liability. Employers can successfully defend against hostile-work-environment claims if they can show they have "exercised reasonable care to

prevent and correct promptly any sexually harassing behavior." [FN272] The federal sentencing guidelines allow courts to reduce fines on corporations with effective compliance and ethics programs. [FN273] Evidence of systems to gather and analyze lawsuits and other data for lessons could similarly be a defense to law enforcement liability. [FN274] Reimagining existing rules to prioritize the generation of information will likely result in perceived gains and losses for all sides. If reimagined correctly, however, such changes could lead to overall reductions in claims and improvements in care.

This Article is one important step toward a better understanding of the relationship between lawsuits and organizational behavior. The policies used by the five law enforcement agencies in this Study are promising and provocative ways to learn from lawsuits. And we, in turn, should learn more from and about them.

[FNa1]. Acting Professor of Law, UCLA School of Law. For helpful conversations and comments I thank Janet Alexander, Tom Baker, Asli Bâli, Merrick Bobb, Devon Carbado, Ann Carlson, Sharon Dolovich, Ingrid Eagly, Allison Hoffman, Jerry Kang, Sung Hui Kim, Jerry López, Jon Michaels, Hiroshi Motomura, Seana Shiffrin, Bill Simon, David Sklansky, Eugene Volokh, Steve Yeazell, and Noah Zatz. This Article benefited from excellent research assistance from Daniel Matusov, Madeline Morrison, Douglas Souza, and CT Turney, and excellent editorial assistance from J. David Pollock, Todd Grabarsky, and the editorial board of the Cardozo Law Review. Thanks also to participants in the June 2011 Stanford/Yale Junior Faculty Forum, the October 2010 Southern California Junior Faculty Workshop, and law faculty workshops at Tulane Law School and Lewis & Clark School of Law for insightful comments on earlier drafts. Thanks, finally, to those law enforcement officials and auditors who shared their insights and experiences.

[FN1]. Although each lawsuit produces a large amount of information, most aggrieved people never sue. For a discussion of low filing rates' impact on the usefulness of lawsuit data to performance-improvement efforts, see infra note 185 and accompanying text.

[FN2]. Although Rule 8 of the Federal Rules of Civil Procedure (FRCP) requires only a "short and plain" statement of facts and claims, the Supreme Court's recent decisions in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), which require plaintiffs to present a "plausible" claim for relief in the complaint, lead prudent plaintiffs' attorneys to submit detailed initial pleadings. For a description of pleading's evolving standards, see Kevin M. Clermont & Stephen C. Yeazell, Inventing Tests, Destabilizing Systems, 95 Iowa L. Rev. 821 (2010); and Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure, 60 Duke L.J. 1 (2010). For a discussion of the effects of Twombly and Iqbal on pleading practice, see Elizabeth M. Schneider, The Changing Shape of Federal Civil Pretrial Practice: The Disparate Impact on Civil Rights and Employment Discrimination Cases, 158 U. Pa. L. Rev. 517, 527-37 (2010).

[FN3]. Thomas E. Willging et al., An Empirical Study of Discovery and Disclosure Practice Under the 1993 Federal Rule Amendments, 39 B.C. L. Rev. 525, 543-44 (1998) (finding that eighty-five percent of attorneys surveyed reported engaging in some form of discovery in a recent closed case). For a discussion of the changing focus in civil litigation from trial to pretrial litigation over the past century, see Kevin M. Clermont, Litigation Realities Redux, 84 Notre Dame L. Rev. 1919 (2009); and Stephen C. Yeazell, The Misunderstood Consequences of Modern Civil Process, 1994 Wis. L. Rev. 631 (1994).

[FN4]. See John B. Oakley, A Fresh Look at the Federal Rules in State Courts, 30 Nev. L.J. 354, 356-58 (2003) (finding that thirty-three states have adopted the federal rules or very similar rules). Over the past fifteen years, states have increasingly experimented with their own procedural rules, particularly those governing discovery. See Glenn S. Koppel, Toward a New Federalism in State Civil Justice: Developing a Uniform Code of State Civil Procedure Through a Collaborative Rule-Making Process, 58 Vand. L. Rev. 1167 (2005).

[FN5]. Fed. R. Civ. P. 26(a). State procedural rules generally require each side to disclose additional information. For a description of mandatory-disclosure provisions across the country, see Koppel, supra note 4, at 1226-34; and Seymour Moskowitz, Rediscovering Discovery: State Procedural Rules and the Level Playing Field, 54 Rutgers L. Rev. 595, 640-41 (2002) (describing state mandatory-disclosure provisions).

[FN6]. Fed. R. Civ. P. 26(b)(1), 34.

[FN7]. Fed. R. Civ. P. 33, 36. For a survey of various state procedural requirements for interrogatories and requests for admission, see Koppel, supra note 4, at 1216-21.

[FN8]. Fed. R. Civ. P. 30.

[FN9]. See Clermont, supra note 3, at 1955-56 (finding that, of the federal cases terminated in 2005, 67.7% were settled, 20.7% were adjudicated by motion, and just 1.3% were adjudicated at trial--the remaining 10.3% were generally transferred or remanded).

[FN10]. For representative work by Lauren Edelman and her colleagues regarding the dissemination of legal rules though personnel offices, see, for example, Lauren B. Edelman et al., Diversity Rhetoric and the Managerialization of Law, 106 Am. J. Soc. 1589 (2001); and Lauren B. Edelman & Mark C. Suchman, When the "Haves" Hold Court: Speculations on the Organizational Internalization of Law, 33 Law & Soc'y Rev. 941 (1999). For work regarding the dissemination of legal rules in police departments, see Charles Weisselberg, In the Stationhouse After Dickerson, 99 Mich. L. Rev. 1121 (2001).

[FN11]. See Margo Schlanger, Operationalizing Deterrence: Claims Management (In Hospitals, a Large Retailer, and Jails and Prisons), 2 J. Tort L. 1 (2008); see also Gary T. Schwartz, Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?, 42 UCLA L. Rev. 377 (1994) (studying the effects of threat of litigation in several contexts).

[FN12]. Apart from my research, see George Eads & Peter Reuter, Designing Safer Products: Corporate Responses to Product Liability Law and Regulation 105-06 (1983).

[FN13]. See Joanna C. Schwartz, Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking, 57 UCLA L. Rev. 1023, 1037-40 (2010).

[FN14]. Id. (describing these findings).

[FN15]. See infra Part I.A for a description of the data and methodology of this Study.

[FN16]. For further description of department practices, see infra Part I.C.

[FN17]. See infra note 156 and accompanying text.

[FN18]. See infra note 157 and accompanying text.

[FN19]. See infra notes 136-41 and accompanying text.

[FN20]. See Michael Gennaco et al., OIR Group, Report to the City of Portland Concerning the In-Custody Death of

James Chasse 1, 9 (2010) [hereinafter Chasse Report], available at www.portlandonline.com/auditor/index.cfm?a=310291&c=54263.

[FN21]. See id. at 27.

[FN22]. See id.

[FN23]. See id. at 27-28.

[FN24]. For foundational descriptions of this theory, see Guido Calabresi, The Costs of Accidents: A Legal and Economic Analysis (1970); William M. Landes & Richard A. Posner, The Economic Structure of Tort Law (1987); A. Mitchell Polinsky. An Introduction to Law and Economics (2d ed. 1989); and Steven Shavell. Economic Analysis of Accident Law (1987). For a description of the history of the economic theory of tort law, see William M. Landes & Richard A. Posner, The Positive Economic Theory of Tort Law, 15 Ga. L. Rev. 851, 852-57 (1981).

[FN25]. See. e.g., Peter H. Schuck, Suing Government: Citizen Remedies for Official Wrongs (1983) (arguing that government officials respond to political. bureaucratic. and administrative incentives); Richard H. Fallon, Jr. & Daniel J. Meltzer, New Law, Non-Retroactivity, and Constitutional Remedies, 104 Harv. L. Rev. 1731 (1991) (arguing that government officials respond to financial incentives): Myriam E. Gilles, In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies, 35 Ga. L. Rev. 845 (2001) (arguing that government officials respond to negative publicity): Daryl J. Levinson, Making Government Pay: Markets. Politics. and the Allocation of Constitutional Costs. 67 U. Chi. L. Rev. 345 (2000) (arguing that government officials respond to political incentives).

[FN26]. See Schwartz, supra note 13.

[FN27]. See generally id. (describing these findings).

[FN28]. See id. at 1057-58.

[FN29]. See id.

[FN30]. See id. at 1060-64.

[FN31]. See id. at 1068-71.

[FN32]. Although there has been no national study of the extent to which police departments use litigation data. experts estimate that the number is quite small. Two-thirds of large police departments do not have early intervention systems that track information about officers. See id. at 1059. And even departments with early intervention systems may not necessarily track civil claims. See id. Even fewer departments appear to use lawsuit data for other purposes. In 2007, the Police Assessment Resource Center, which regularly evaluates police departments' practices. commended a small department for "being among the vanguard of departments nationwide that routinely conduct an Internal Affairs investigation when the municipality receives a claim or lawsuit that alleges wrongdoing by a member of its police department." Richard Jerome, Police Assessment Res. Ctr., Promoting Police Accountability and Community Relations in Farmington: Strengthening the Citizen Police Advisory Committee 76 (2007). Beyond those departments that have been subject to consent decrees, or have a police auditor, most departments do not seem to engage in this analysis. See Correspondence from Oren Root, Deputy Dir., Police Assessment Res. Ctr., to author (Dec. 17, 2008) (on file with author). And only a very small number of jurisdictions--a subset of the two dozen or so departments with police auditors or under court supervision--appear to review closed-litigation files or the results of cases for any purpose. See id.

[FN33]. Twenty of the twenty-six departments in my prior study had policies to integrate information from lawsuits into their personnel and policy decisions. See Schwartz, supra note 13, at 1052-56; id. at 1057-58 (explaining why a disproportionately large number of departments in my study had these types of policies). Reports about these twenty departments revealed several recurring impediments that have delayed, compromised, and defeated efforts to gather. analyze. store, and communicate information from lawsuits. For descriptions of these implementation problems. see id. at 1060-66. The five departments in this Study have also struggled to follow their own policies. See id. Yet I also found evidence that these five departments' policies are, relatively speaking. in working order: these departments input information into relevant systems. analyze that information, and craft interventions based on their analysis. See id.

[FN34]. Merrick Bobb, the Special Counsel to the Board of Supervisors, has written twenty-nine semiannual reports about the Los Angeles Sheriff's Department (LASD), which are available at www.parc.info; additionally, nine annual reports have been written about the LASD by the Office of Independent Review and are available at www.laoir.com. The Seattle Office of Professional Accountability has published twelve semiannual reports, available at http:// www.seattle.gov/police/OPA/publications.htm. Chicago's Independent Police Review Authority publishes annual and quarterly reports, available at http:// www.iprachicago.org/resources.html. The Denver Office of the Independent Monitor publishes quarterly and annual reports available at http:// www.denvergov.org. And Portland's Independent Police Review Division publishes annual and quarterly reports in addition to reports dedicated to particular issues, available at http://www.portlandonline.com/auditor/index.cfm?c=27068.

[FN35]. See Telephone Interview with Mary-Beth Baptista, Dir., Portland Indep. Police Review (Dec. 3. 2010); Telephone Interview with Merrick Bobb, Founding Dir., Police Assessment Res. Ctr., and Special Counsel. L.A. Sheriff's Dep't, and Oren Root. Deputy Dir., Police Assessment Res. Ctr. (Oct. 24. 2007): Telephone Interview with John Fowler. Assoc. Dir., Seattle Office of Prof'l Accountability (Oct. 16, 2008): Telephone Interview with Craig Futterman, Univ. of Chi. Law Sch. (Sept. 15, 2008); Interview with Michael Gennaco, Chief Attorney, L.A. Sheriff's Dep't Office of Indep. Review, in L.A., Cal. (Sept. 18, 2010); Telephone Interview with Shaun Mathers. Captain. L.A. Sheriff's Dep't Risk Mgmt. Unit (Sept. 27, 2010); Telephone Interview with Kathryn Olson. Dir., Seattle Office of Prof'l Accountability (Aug. 30. 2010): Telephone Interview with Richard Rosenthal, Indep. Monitor, City & Cnty. of Denver & former Police Auditor, City of Portland (Sept. 18, 2008); Telephone Interview with Ilana Rosenzweig, Chief Admin'r, Chi. Indep. Police Review Auth. (Sept. 15. 2008); Telephone Interview with David Woboril, Senior Deputy City Attorney. Portland City Attorney's Office (Sept. 12, 2011).

[FN36]. See Brian A. Reaves. Bureau of Justice Statistics, U.S. Dep't of Justice. Census of State and Local Law Enforcement Agencies. 2004, at 5 (2007) [hereinafter BJS Law Enforcement Census].

[FN37]. See James G. Kolts et al., The Los Angeles County Sheriff's Department 1 (1992) [hereinafter Kolts Commission Report] (asserting that the Kolts Commission inquiry was prompted by "[a]n increase over the past years in the number of officer-involved shootings," "[f]our controversial shootings of minorities by LASD deputies in August 1991." and the fact that "Los Angeles County...paid $32 million in claims arising from the operation of the LASD over the last four years"). Merrick Bobb served as General Counsel to the Kolts Commission. Id.

[FN38]. Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't. 1st Semiannual Report 35 (1993) [hereinafter LASD 1st Semiannual Report].

[FN39]. Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't. 14th Semiannual Report 55-56 (2001) [hereinafter LASD 14th Semiannual Report].

[FN40]. Id.

[FN41]. See Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 3rd Semiannual Report 12, 14 (1994) [hereinafter LASD 3rd Semiannual Report].

[FN42]. See Michael J. Gennaco et al., Office of Indep. Review, Cnty. of L.A., First Report, at i-ii (2002) [hereinafter OIR First Report], available at http://www.inoir.com/report1.pdf.

[FN43]. Police Assessment Res. Ctr., Review of National Police Oversight Models for the Eugene Police Commission 19 (2005) [hereinafter National Police Oversight Models].

[FN44]. See Jim Brunner, New System in Place for Policing the Police, Seattle Times, May 7, 2002, at A1 (describing the scandal, in which a homicide detective stole $10,000 from the home of a dead man, and at least eighteen police officials knew of the incident but no internal investigation ever took place).

[FN45]. See id.

[FN46]. See National Police Oversight Models, supra note 43, at 19.

[FN47]. See Telephone Interview with John Fowler, supra note 35.

[FN48]. See National Police Oversight Models, supra note 43, at 19; Brunner, supra note 44.

[FN49]. See BJS Law Enforcement Census, supra note 36, at 10.

[FN50]. See Indep. Police Review Div., Office of the City Auditor, The City of Portland's Handling of Tort Claims Alleging Police Misconduct: A Need for Consistent Referrals to the Internal Affairs Division 7 (2004) [hereinafter Portland Tort Claims Report].

[FN51]. Prior to 2004, the Portland Police Bureau "generally did not review or investigate tort and civil rights claims for disciplinary action unless the complaining party also filed a citizen complaint." Id. at 3. Portland actually had a city ordinance preventing internal investigations while a lawsuit was pending. See id.

[FN52]. Letter from Vera Katz, Mayor, Portland, Or., to Gary Blackmer, City Auditor, Portland, Or. (Aug. 26, 2004) (on file with author).

[FN53]. See Letter from Chief Derrick Foxworth, Portland Bureau of Police, Portland, Or., to Gary Blackmer, City Auditor, Portland, Or. (Aug. 27, 2004) (on file with author).

[FN54]. See Portland, Or., City Code ch. 3.21, §110(B) (2005) (codifying ordinance allowing the IPR to investigate tort claims); Telephone Interview with Richard Rosenthal, supra note 35.

[FN55]. See Telephone Interview with Mary-Beth Baptista, supra note 35.

[FN56]. See, e.g., Eileen Luna-Firebaugh, Performance Review of the Independent Police Review Division 86 (2008).

[FN57]. See Telephone Interview with David Woboril, supra note 35.

[FN58]. See BJS Law Enforcement Census, supra note 36, at 10.

[FN59]. Richard Rosenthal, Office of the Indep. Monitor, Annual Report 2005 (2006).

[FN60]. Id.

[FN61]. Id.; Telephone Interview with Richard Rosenthal, supra note 35.

[FN62]. See BJS Law Enforcement Census, supra note 36, at 10.

[FN63]. Libby Sander, Chicago Revamps Investigation of Police Abuse, but Privacy Fight Continues, N.Y. Times, July 20, 2007, at A14 (describing the "string of recent scandals") ("An off-duty officer was caught on videotape beating a female bartender. In another incident, also captured on videotape, a group of off-duty officers was seen beating four businessmen at a downtown bar. In addition, several officers in an elite unit are awaiting trial on charges that include home invasion, theft and armed violence, as county prosecutors continue to investigate the unit.").

[FN64]. IPRA investigates "allegations of the use of excessive force, police shootings where the officer discharges his/her weapon and strikes someone, deaths in custody, domestic violence, verbal abuse including bias and coercion." See About IPRA, City of Chi., Indep. Police Review Auth., http:// www.iprachicago.org/about.html (last visited Oct. 31, 2011). Other misconduct claims are investigated by Chicago's internal affairs division.

[FN65]. See Telephone Interview with Ilana Rosenzweig, supra note 35.

[FN66]. See id.

[FN67]. There is no national data about the prevalence of this type of trend analysis. The statistics about the prevalence of early intervention systems can offer some guidance, given that trends are sometimes identified through such systems. See Schwartz, supra note 13, at 1058-59. Yet statistics about national use of early intervention systems should not be relied on heavily. Departments may not use their early intervention systems for this purpose. And other departments--including Chicago, Seattle, Denver, and Portland--conduct some manner of trend analysis without a computerized system. See Telephone Interview with John Fowler, supra note 35; Telephone Interview with Richard Rosenthal, supra note 35; Telephone Interview with Ilana Rosenzweig, supra note 35. Finally, departments with policies to review lawsuits for trends may not do so in practice. Those departments relying on early intervention systems for their trend analyses will suffer from the same technological problems, errors, and incomplete information described infra notes 95-105 and accompanying text. And department officials that look for trends without computerized assistance may experience difficulties identifying trends. See Schwartz, supra note 13, at 1063.

[FN68]. See Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 7th Semiannual Report 56 (1997) [hereinafter LASD 7th Semiannual Report].

[FN69]. See Telephone Interview with Richard Rosenthal, supra note 35.

[FN70]. See Maxine Bernstein, Claims Against Portland Police Officers Cost City Millions, The Oregonian, Dec. 11, 2010, available at http:// www.oregonlive.com/portland/index.ssf/2009/12/portland_payouts_on_police_ use.html (describing Portland's Tort Claim Review Board, a group of city risk managers, police personnel, and city attorneys who meet monthly to review tort claims against the city); Telephone Interview with John Fowler, supra note 35; Telephone Interview with Shaun Mathers, supra note 35 (explaining that, when a claim is filed against the LASD, the risk management bureau has the involved station investigate the allegations, after which the bureau reviews the completed claim file in conjunction with other claims to determine whether the incident is part of a trend); Telephone Interview with Richard Rosenthal, supra note 35; Telephone Interview with Ilana Rosenzweig, supra note 35.

[FN71]. Telephone Interview with Shuan Mathers, supra note 35.

[FN72]. See LASD 7th Semiannual Report, supra note 68, at 54-56.

[FN73]. See id. at 56.

[FN74]. Michael J. Gennaco et al., Office of Indep. Review, Cnty. of L.A., Second Annual Report 40-41 (2003) [hereinafter OIR Second Annual Report], available at http://www.laoir.com/reports/2nd-annualrpt-2003.pdf.

[FN75]. See id.

[FN76]. See id.

[FN77]. See Telephone Interview with David Woboril, supra note 35.

[FN78]. Luna-Firebaugh, supra note 56, at 86.

[FN79]. Other departments in this Study do not conduct this type of analysis. Richard Rosenthal, Denver's auditor, recently requested that the department begin to collect "how much money has been paid out by the Police and Sheriff's Departments, based on allegations of misconduct, over the course of the past few years," and despaired of the fact that "the Department of Safety has no data information in this regard and has no tools to identify trends in litigation which could be used to identify, on a systemic basis, where training resources or policy reviews would be best used." Richard Rosenthal, Office of the Indep. Monitor, Annual Report 2009, at 5-8 (2010).

[FN80]. See General Phone Numbers, L.A. Cnty. Sheriff's Dep't, http://www.lasdhq.org/lasd_services/lasd_gnrlphone_no.html (last visited Oct. 31, 2011) (listing LASD's twenty-three stations).

[FN81]. LASD 7th Semiannual Report, supra note 68, at 52-53. The auditor also observed that these stations were responsible for a disproportionate number of "significant force incidents," shootings, and civilian complaints, and that "stations in equally tough neighborhoods have a much better record on controlling shootings, force, and litigation." Id. at 53.

[FN82]. See Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 13th Semiannual Report 9 (2000) [hereinafter LASD 13th Semiannual Report]. Bobb also considered Century station to be "a microcosm of American policing in inner city, crime-ridden, minority neighborhoods." Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 15th Semiannual Report 1 (2002) [hereinafter LASD 15th Semiannual Report]. This investigation was presented not only as an audit of the department, but also as a means of examining LASD policies implemented as a result of the Kolts Commission report. See Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 9th Semiannual Report 7-8 (1998) [hereinafter LASD 9th Semiannual Report].

[FN83]. LASD 9th Semiannual Report, supra note 82, at 9.

[FN84]. Id. at 8.

[FN85]. Id. at 21-25.

[FN86]. Id. at 17-26.

[FN87]. While Century station was, in 1997, responsible for sixty percent of the shootings by deputies, two years later it was responsible for only ten percent of the shootings. See LASD 13th Semiannual Report, supra note 82, at 11. Two years later, during a period in which the LASD was less committed to risk-management efforts, Bobb found that these

downward trends reversed themselves: uses of force and shootings had increased throughout the LASD, but particularly at Century station. LASD 14th Semiannual Report, supra note 39, at 89-90.

[FN88]. Interview with Michael Gennaco, supra note 35; Telephone Interview With Ilana Rosenzweig, supra note 35.

[FN89]. See Schwartz, supra note 13, at 1065-66.

[FN90]. See Portland Tort Claims Report, supra note 50; Interview with Michael Gennaco, supra note 35; Telephone Interview with Kathryn Olson, supra note 35; Telephone Interview with Richard Rosenthal, supra note 35; Telephone Interview with Ilana Rosenzweig, supra note 35.

[FN91]. See, e.g., Telephone Interview with Michael Gennaco, supra note 35; Telephone Interview with Kathryn Olson, supra note 35; Telephone Interview with Richard Rosenthal, supra note 35; Telephone Interview with Ilana Rosenzweig, supra note 35. There has been no study of the number of departments that internally investigate litigation claims, but police-practices experts recently described this type of policy as rare. In most departments, legal claims are investigated and defended with no effort to incorporate findings into personnel and policy decisions. See Schwartz, supra note 13, at 1059.

[FN92]. For a discussion of the likelihood that departments will be notified of misconduct allegations through lawsuits, see infra Part II.A.

[FN93]. See, e.g., Interview with Michael Gennaco, supra note 35 (noting that the OIR will "ensure that when claims come in we get them, we review them, and if there are issues that suggest that an internal affairs investigation or an administrative investigation is needed, we will push to have that happen").

[FN94]. See Samuel Walker, The New World of Police Accountability 62-63 (2005).

[FN95]. National data suggests that early intervention systems are the most frequently used systems to track and analyze data about officer performance. See Schwartz, supra note 13, at 1058-59. Of the five departments in this Study, the LASD and the Seattle Police Department track litigation data in their early intervention system. Portland and Denver have early intervention systems, though litigation data is not included. And the Chicago Police Department's early intervention system is still being developed. See id.

[FN96]. Early intervention systems are not always computerized: some departments, particularly smaller departments, may engage in this analysis without computerized assistance. See, e.g., Int'l Ass'n of Chiefs of Police, Protecting Civil Rights: A Leadership Guide for State, Local and Tribal Law Enforcement 52 (2006) [hereinafter Protecting Civil Rights], available at http://www.cops.usdoj.gov/files/ric/Publications/e06064100.pdf.

[FN97]. See generally Protecting Civil Rights, supra note 96, at 49-77; Walker, supra note 94; Samuel Walker, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide 27 (2003), available at http://www.cops.usdoj.gov/files/RIC/Publications/e07032003.pdf.

[FN98]. Interventions generally involve counseling or retraining of selected officers. See Walker, supra note 94, at 115. Counseling can range "from the very informal, such as a discussion of the indicating event with a supervisor, to the more formal, such as a referral to psychological counseling, stress management, or substance abuse programs through a department's employee assistance program." See Protecting Civil Rights, supra note 96, at 65. Interventions are not, however, generally disciplinary in nature. The goal is to intervene before discipline is necessary. For a description of the LASD's Personnel Review Committee meetings and decision-making process, see LASD 15th Semiannual Report, supra note 82, at 45-48.

[FN99]. Protecting Civil Rights, supra note 96, at 65.

[FN100]. See Schwartz, supra note 13, at 1061-62.

[FN101]. Id. at 1062-63.

[FN102]. Available evidence does not measure the effect of lawsuits on these performance improvements; some departments with successful early intervention systems do not track lawsuit data. See Samuel Walker et al., Early Warning Systems: Responding to the Problem Police Officer (2001), available at http:// www.ncjrs.gov/pdffiles1/nij/188565.pdf (finding officers were named in one-half or one-third as many civilian complaints after intervention, but none of the departments studied track legal claims in their early intervention systems). For the difficulty of measuring the effects of lawsuits on behavior, see infra Part I.D.

[FN103]. See LASD 15th Semiannual Report, supra note 82, at 3.

[FN104]. See id.

[FN105]. See infra note 195 and accompanying text (describing positive effects of early interventions in two large police departments).

[FN106]. See Telephone Interview with Ilana Rosenzweig, supra note 35.

[FN107]. See Telephone Interview with Kathryn Olson, supra note 35.

[FN108]. See Telephone Interview with John Fowler, supra note 35.

[FN109]. Bernstein, supra note 70.

[FN110]. When the LASD auditor reviewed twenty-nine cases of police misconduct that settled for over $100,000 and found that only eight involved any disciplinary action, the auditor questioned the strength of the department's internal investigatory procedures. Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 19th Semiannual Report 30 (2005) [hereinafter LASD 19th Semiannual Report]. And the LASD auditor found it

> ironic and somewhat puzzling that the County's lawyers and the Board of Supervisors can judge the risk of loss to be sufficiently great to believe it to be in the best interests of the County to settle for $500,000 and incur $200,000 in attorney's fees but the LASD, on the other hand, is paralyzed from taking any disciplinary action against the deputy because it cannot figure out who to believe, the deputy or [the plaintiff].
>
> LASD 15th Semiannual Report, supra note 82, at 72.

[FN111]. LASD 3rd Semiannual Report, supra note 41, at 14.

[FN112]. For a description of one such corrective action report, see Merrick J. Bobb et al., L.A. Cnty. Sheriff's Dep't, 11th Semiannual Report 64 (1999) [hereinafter LASD 11th Semiannual Report].

[FN113]. Departments may attempt to reduce misconduct through any number of strategies, including mediating complaints, improving use-of-force policies and reporting requirements, improving civilian complaint policies, improving internal investigations, and reviewing shootings and other incidents.

[FN114]. See supra Part I.C (describing this contextual analysis).

[FN115]. See Schwartz, supra note 13, at pt. II.D (describing common implementation problems).

[FN116]. See, e.g., Maxine Bernstein, Portland Officials Call for Overhaul of Police Oversight, The Oregonian, Mar. 11, 2010, available at http:// www.oregonlive.com/portland/index.ssf/2010/03/portland_commissioner_randy_le_ 3.html (describing efforts to give Portland auditor subpoena and disciplinary authority); P.J. Huffstutter, This Police Watchdog is Walking a Tough Beat, L.A. Times, Feb. 11, 2008, at A8 (describing criticism of Chicago's police auditor).

[FN117]. See Rachel A. Harmon, Promoting Civil Rights Through Proactive Policing Reform, 62 Stan. L. Rev. 1, 28-32 (2009) (describing the lack of comparative data about police misconduct).

[FN118]. See, e.g., Chasse Report, supra note 20; Sara Burnett, 2 Cops on Tape in Beating Fired, Denver Post, Mar. 26, 2011, at A1; Mike Carter, Justice Dept. Begins Preliminary Review of Seattle Police, Seattle Times, Jan. 25, 2011, at A1 (reporting that the U.S. Department of Justice (DOJ) is investigating a possible pattern of civil rights violations after "highly publicized incidents in which officers have resorted to force, often against people of color"); Robert Faturechi & Andrew Blankstein, Deputies Sue After Alleged Attack at Party, Two Say L.A. County Sheriff's Department Fosters Lawlessness Among Jail Employees, L.A. Times, May 5, 2011, at AA3.

[FN119]. See LASD 7th Semiannual Report, supra note 68, at 51 (describing drop in litigation costs); Correspondence from Merrick Bobb, Founding Dir., Police Assessment Res. Ctr., and Special Counsel, L.A. Sheriff's Dep't, to author (June 14, 2009) (on file with author) (reporting that the LASD auditor charges the County of Los Angeles $200,000 per year for his services). This $30 million reduction in legal fees is not solely attributable to the LASD's review of litigation data, but rather to the LASD's policies as a whole. See LASD 1st Semiannual Report, supra note 38, at 4 (noting LASD reduces litigation costs through "participation in the management of litigation to shape strategy and control costs, active involvement by the LASD in decisions to settle or try individual cases, and deployment of LASD investigatory resources so that the Department and counsel are better able to defend the LASD in litigation against it and win meritorious cases"). Moreover, any argument about the financial benefits of litigation review should account for the costs of the review and the administrative costs associated with litigation.

[FN120]. See LASD 9th Semiannual Report, supra note 82, at 83.

[FN121]. Joel Warner, Independent Monitor Richard Rosenthal Keeps a Close Eye on the Denver Police, Denver Westword, May 19, 2011, available at http:// www.westword.com/2011-05-19/news/richard-rosenthal-independent-monitor-denver-police.

[FN122]. See infra notes 177-83 and accompanying text.

[FN123]. See supra notes 71-74 and accompanying text.

[FN124]. See supra notes 79-87 and accompanying text.

[FN125]. A focus on lawsuits' role in individual decisions is particularly well-suited to control for the effects of unrelated factors. Imagine a police department that experiences a precipitous jump in the number of lawsuits alleging chokeholds by its officers. If there is a subsequent decline in these chokehold cases, but the department does not keep track of lawsuits brought against it and has not otherwise been informed of the chokehold cases, those suits did not likely play a role in the decline. On the other hand, if there is no marked decline in the number of chokehold cases filed against the department but there is good evidence that the department gathered and evaluated lawsuit data, identified chokeholds as a potential problem, and trained officers in new techniques, then there is reason to believe that the suits may have influenced

department decision-making, but department efforts to reduce the incidence of chokeholds were thwarted by intervening causes.

[FN126]. See generally Walker, supra note 94 (describing use-of-force and civilian complaint policies).

[FN127]. In Part III, I describe the imperfections of litigation data and the ways department analyses mitigate these imperfections.

[FN128]. See Protecting Civil Rights, supra note 96, at 85.

[FN129]. Matthew R. Durose et al., Bureau of Justice Statistics, U.S. Dep't of Justice, Contacts between Police and the Public: Findings from the 2002 National Survey, at v (2005) [hereinafter BJS 2002 Study]. The Bureau of Justice Statistics (BJS) surveyed over 75,000 people about their contacts with the police, and estimated national numbers based on their survey results. BJS has conducted several similar surveys, and has reached findings with some variation in each. See Matthew R. Durose et al., Bureau of Justice Statistics, U.S. Dep't of Justice, Contacts Between Police and the Public, 2005, at 7 (2007) [hereinafter BJS 2005 Study] (finding that police used or threatened force against an estimated 707,520 people in 2005); Patrick A. Langan et al., Bureau of Justice Statistics, U.S. Dep't of Justice, Contacts Between Police and the Public: Findings from the 1999 National Survey 24 (2001) [hereinafter BJS 1999 Study] (finding that police used or threatened force against approximately 422,000 people); Bureau of Justice Statistics, U.S. Dep't of Justice, National Data Collection on Police Use of Force (1996) [hereinafter BJS National Data Collection Study]. I rely on the 2002 study--instead of the more recent 2005 study--because the 2005 study did not measure the frequency with which people sued or filed civilian complaints regarding perceived misconduct by the police. See infra note 131 and accompanying text.

[FN130]. BJS 2002 Study, supra note 129, at 19-20. The other BJS studies found a similar percentage of those surveyed believed that the force used against them was improper. See BJS 2005 Study, supra note 129, at 8 (finding that nearly eighty-three percent of those who had force used against them believed the force was excessive); BJS 1999 Study, supra note 129, at 25 (finding that 76.1% of those who had force used against them believed the force was excessive); BJS National Data Collection Study, supra note 129.

[FN131]. BJS 2002 Study, supra note 129, at 20 (finding that, of the estimated 580,108 individuals who were involved in a police use of force and believed officers had acted improperly, just 63,699 filed a complaint with the law enforcement agency and 7988 filed a complaint with a civilian complaint review board).

[FN132]. The BJS's 2005 survey reported that nearly ten percent of the people who had contact with the police in 2005 believed the police had acted improperly. See BJS 2005 Study, supra note 129, at 3. There is no comparable number in the BJS's 2002 study, but given the consistency in other aspects of the two reports, one can assume that a similar percentage of respondents would have said that the police acted improperly had this question been asked in 2002. The 2002 study estimated that 45.3 million people had contact with police. If ten percent of those people--4.53 million--believed the police acted improperly, and approximately 580,108 of those people believed that the police had acted improperly during a use of force, BJS 2002 Study, supra note 129, the remaining approximately 3.95 million would have concluded that the police acted improperly for reasons other than officers' use of force. Id.

[FN133]. See BJS 2002 Study, supra note 129, at 16-20 (finding that the police had used force against 664,500 people, 87.3% of whom (580,108) believed that the police acted improperly, and just 1.3% of whom (7416) filed a lawsuit regarding the alleged misconduct).

[FN134]. Daniel J. Meltzer, Deterring Constitutional Violations by Law Enforcement Officials: Plaintiffs and Defendants as Private Attorneys General, 88 Colum. L. Rev. 247, 284 (1988) (footnotes omitted); see also Richard L. Abel, The Real Tort Crisis: Too Few Claims, 48 Ohio St. L.J. 443, 448-51 (1987).

[FN135]. See Human Rights Watch, Shielded from Justice: Police Brutality and Accountability in the United States 306 (1998) ("Lawyers bringing civil lawsuits against police officers [in New York] told Human Rights Watch that they often do not recommend that their clients file a complaint with [Internal Affairs] because the information provided is often used against the client."). The police auditor in Chicago has found that plaintiffs' attorneys regularly prevent plaintiffs and witnesses from cooperating with investigators, "effectively shutting off IPRA's access to information." See Ilana B.R. Rosenzweig, Indep. Police Review Auth., Annual Report 2007-2008, at 8 (2008); see also Bernstein, supra note 70 ("If the lawyer doesn't respond [to the Portland police auditor's request for information], 'that pretty much stymies us, unless the police reports themselves raise serious issues of misconduct.'").

[FN136]. See Portland Tort Claims Report, supra note 50, at 19. Moreover, claims in lawsuits against the department involved more serious allegations than those in civilian complaints: Fifty percent of lawsuits alleged excessive force compared to just fifteen percent of civilian complaints filed during the same period. See id. at 21.

[FN137]. Kolts Commission Report, supra note 37, at 60 (noting that just fifty-seven of the 124 lawsuits reviewed had been internally investigated). The Kolts Commission study of excessive force cases does not answer whether similar disparities exist for lawsuits alleging other types of claims.

[FN138]. See, e.g., Interview with Michael Gennaco, supra note 35 (estimating that the LASD learns of misconduct allegations through lawsuits "a significant number" though "not a majority" of the time). The Portland auditor has continued to find that many lawsuits concern claims not previously submitted as civilian complaints. See LaVonne Griffin-Valade & Mary-Beth Baptista, Office of the City Auditor, Independent Police Review Division: Annual Report 2009, at 19 (2009) [hereinafter Annual Report 2009] (finding that of 165 civil claims filed, only twenty-nine had been previously submitted as civilian complaints); Gary Blackmer & Mary-Beth Baptista, Office of the City Auditor, Independent Police Review Division: Annual Report 2008, at 23 (2008) (finding that of 163 civil claims reviewed in 2008, only thirty had been previously submitted as civilian complaints); Gary Blackmer & Mary-Beth Baptista, Office of the City Auditor, Independent Police Review Division: Annual Report 2007, at 22-23 (2007) (finding that of 184 claims reviewed by the Portland auditor in 2007, only forty-two had already been alleged in civilian complaints); Gary Blackmer & Leslie Stevens, Office of the City Auditor, Independent Police Review Division: Annual Report 2005-2006, at 22 (2006) (finding that only ten percent of civil claimants filed separate civilian complaints). Portland's auditor does not open internal investigations for many of these lawsuit claims. For example, in 2009, the auditor opened only seven internal investigations from the 136 lawsuits making allegations not previously submitted as civilian complaints. See Annual Report 2009, supra, at 19.

[FN139]. U.S. Dep't of Justice, Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies 7 (2001) (recommending that police departments should allow civilians to "file complaints in-person, by mail, by telephone, by facsimile transmission, or, where possible, by email").

[FN140]. Telephone Interview with Kathryn Olson, supra note 35.

[FN141]. See Telephone Interview with Shaun Mathers, supra note 35.

[FN142]. For the precise provisions in the settlement agreements and consent judgments entered into between the DOJ and law enforcement agencies, and for the investigative findings and technical assistance letters provided to over a dozen additional law enforcement agencies, see Conduct of Law Enforcement Agencies, U.S. Dep't of Justice, http://

www.justice.gov/crt/about/spl/police.php.

[FN143]. See, e.g., Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Marc A. Ott, City Manager for Austin, Tex. 28 (Dec. 23, 2008) [hereinafter Austin Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/AustinPD_taletter_12-23-08.pdf (recommending that the department "better disseminate information to the public about its complaint process" by making complaint forms available online and in public offices, and in multiple languages); Letter from David N. Kelley, U.S. Attorney for S. Dist. of N.Y., to Gerard J. Pisanelli, Counsel for Beacon Police Dep't 15 (June 21, 2005) [hereinafter Beacon Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/split_ beacon_ta_letter_6-21-05.pdf (finding that the department has no "formalized system for the intake and tracking of complaints," and only allows a civilian to file a complaint if he has first discussed the matter with the sergeant); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Roosevelt F. Dorn, Mayor of Inglewood, Cal. 18-19 (Dec. 28, 2009) [hereinafter Inglewood Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/inglewood_pd_Jail_findlet_12-28-09.pdf (recommending that "[t]he IPD should change elements of its citizen complaint process that have the potential to discourage the filing of complaints, and to impair effective tracking of complaints"); Letter from Shanetta Y. Brown Cutlar, Acting Chief of Special Litig. Section of Civil Rights Div., to Michael T. Brockbank, Corp. Counsel for Schenectady, N.Y. 16-17 (Mar. 19, 2003) [hereinafter Schenectady Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/schenectady_ta.pdf (recommending that it be made easier for citizens to file complaints); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Kerry Drue, Attorney Gen. for V.I. 15 (Oct. 5, 2005) [hereinafter V.I. Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/virgin_ island_pd_talet_10-5-05.pdf (finding that the department's civilian complaint forms "are inadequate and inconsistent with generally accepted police practices"); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Raymond P. Fitzpatrick, Counsel for Yonkers Police Dep't 18-21 (June 9, 2009) [hereinafter Yonkers Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/YonkersPD_talet_06-09-09.pdf (recommending that the Yonkers police department "increase public awareness of how to use the citizen complaint process" and increase access to civilian complaint forms by distributing them at public facilities and printing forms in Spanish).

[FN144]. See Austin Technical Assistance Letter, supra note 143, at 28 (reporting that "communications personnel, i.e., 911 operators, on many occasions may have discouraged complainants from filing complaints, failed to contact supervisors regarding complaints, and failed to document the calls and the complaints"); Letter from Bill Lann Lee, Acting Assistant Attorney Gen. for Civil Rights Div., to Janet E. Jackson, City Attorney for Columbus, Ohio (July 21, 1998) [hereinafter Columbus Investigative Findings Letter], available at http://www.justice.gov/crt/about/spl/documents/columbus.php (finding "a complaint process that discourages complainants at intake"); Letter from Steven H. Rosenbaum, Chief of Special Litig. Section of Civil Rights Div., to Alejandro Vilarello, City Attorney for Miami, Fla. 17 (Mar. 13, 2003) [hereinafter Miami Investigative Findings Letter], available at http:// www.justice.gov/crt/about/spl/documents/miamipd_techletter.pdf (identifying several policies and practices "that appear to discourage the filing of complaints"); Letter from Shanetta Y. Brown Cutlar, Acting Chief of Special Litig. Section of Civil Rights Div., to Gary Wood, Corp. Counsel for Portland, Me. 10 (Mar. 21, 2003) [hereinafter Portland Investigative Findings Letter], available at http://www.justice.gov/crt/about/spl/documents/portland_ta_ ltr.pdf (recommending that the department "change aspects of its complaint process that have the potential to discourage the filing of complaints"); Schenectady Technical Assistance Letter, supra note 143, at 16 (observing that the internal affairs division "receives approximately 5 to 10 complaints each year from citizens reporting that a SPD supervisor refused to accept their complaints"); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Michael

O'Brien, Mayor of Warren, Ohio 10 (Mar. 2, 2006) [hereinafter Warren Technical Assistance Letter], available at http://www.justice.gov/crt/about/spl/documents/wpd_talet_3-2-06.pdf (reporting that some citizens "have not been permitted to submit a Complaint Form to anyone other than" one single lieutenant appointed to handle internal investigations, and only during "limited working hours").

[FN145]. See Indep. Comm'n on the L.A. Police Dep't, Report of the Independent Commission on the Los Angeles Police Department 158-59 (1991) [hereinafter Christopher Commission Report] (finding that one-third of the people who filed complaints against the LAPD reported that officers discouraged complaint filing by not providing Spanish-speaking officers in heavily Latino divisions, requiring complainants to wait for a long time before filing the complaint, and threatening the complainant with defamation suits or immigration consequences).

[FN146]. Indep. Monitor for the L.A. Police Dep't, Report for the Quarter Ending June 30, 2003, at 3 (2003) ("In one sting operation, an undercover police officer, posing as a juvenile, complained of misconduct. The Sergeant then took an inordinate amount of time to take the details of the complaint, stretching the process beyond 10:00 p.m., at which point the sergeant detained the ostensible juvenile for curfew violation."). At that time, officers were found to follow department procedures only forty-three percent of the time. See id. In a later audit, the monitor found that officers were complying with procedures seventy-eight percent of the time. See Indep. Monitor for the L.A. Police Dep't, Report for the Quarter Ending December 31, 2003, at 26 (2004). A subsequent audit found approximately ninety-four percent compliance. See Indep. Monitor for the L.A. Police Dep't, Report for the Quarter Ending December 30, 2004, at 19 (2005).

[FN147]. See Walker, supra note 94, at 62-63 (describing administrative and internal affairs investigations).

[FN148]. Christopher Commission Report, supra note 145, at 159.

[FN149]. See Austin Technical Assistance Letter, supra note 143, at 30-31 (finding that the department's "process of complaint classification raises concerns because the classification categories are broad, subject to different interpretations, lack uniformity, and lack consistency," amounting to "'escape valves' that can minimize officers' misconduct"); Columbus Investigative Findings Letter, supra note 144 (finding that the complaint process "transforms about half of the complaints that are filed into 'inquiries' that are not properly investigated"); Inglewood Technical Assistance Letter, supra note 143, at 20 (finding that some excessive force complaints were routed to division-level reviews--instead of internal investigations--and were routed to "supervisors who were on the scene and completed the original use of force report...present[ing] an apparent conflict of interest"); see also San Jose Indep. Police Auditor, Year End Report, 1993-1994 (1995).

[FN150]. See David Rudovsky, Police Abuse: Can the Violence Be Contained?, 27 Harv. C.R.-C.L. L. Rev. 465, 490 (1992) (describing the difficulty of hiring a lawyer on contingency to litigate a case against the police); Alison L. Patton, Note, The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 is Ineffective in Deterring Police Brutality, 44 Hastings L.J. 753, 756 (1993) (noting that "few plaintiffs can afford counsel and most suits are taken on a contingency basis"); see also infra note 186 (discussing the frequency with which attorneys' fees are awarded under 42 U.S.C. §1988).

[FN151]. See Patton, supra note 150, at 756-57 (noting that, because most attorneys take police-misconduct cases on contingency, "an attorney undertakes enormous financial risk when filing a §1983 suit" and "will therefore be hesitant to accept a weak case or a case without significant damages").

[FN152]. See Marc L. Miller & Ronald F. Wright, Secret Police and the Mysterious Case of the Missing Tort Claims, 52 Buff. L. Rev. 757 (2004) (describing difficulties of prevailing in lawsuits against the police).

[FN153]. Protecting Civil Rights, supra note 96, at 136.

[FN154]. See Anthony M. Pate & Lorie A. Fridell, Toward the Uniform Reporting of Police Use of Force: Results of a National Survey, 20 Crim. Just. Rev. 123, 135-36 (1995).

[FN155]. See, e.g., Letter from Steven H. Rosenbaum, Chief of Special Litig. Section of Civil Rights Div., to Ruth Carter, Corp. Counsel for Detroit, Mich. (Mar. 6, 2002), available at http:// www.justice.gov/crt/about/spl/documents/dpd/detroit_3_6.php (finding that Detroit police officers "are not required to report uses-of-force other than uses of firearms and chemical spray, unless the use of force results in a visible injury or complaint of injury"); Austin Technical Assistance Letter, supra note 143, at 18-22 (describing inadequacies with department use-of-force reporting protocols); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Virginia Gennaro, City Attorney for Bakersfield, Cal. 5 (Apr. 12, 2004) [hereinafter Bakersfield Technical Assistance Letter], available at http:// www.justice.gov/crt/about/spl/documents/bakersfield_ta_letter.pdf (finding the department's requirement that a use-of-force form be filled out "when an officer uses a level of force higher than 'standard searching and handcuffing techniques"' to be overly ambiguous); Beacon Technical Assistance Letter, supra note 143, at 12 (finding that the department's policies "do not clearly indicate the manner in which uses of force are to be reported"); Columbus Investigative Findings Letter, supra note 144 (finding an "overly restrictive definition of what constitutes a use of force"); Letter from Shanetta Y. Cutlar, Chief of Special Litig. Section of Civil Rights Div., to Stu Gallaher, Chief of Staff of Office of Mayor, Easton, Pa. 6 (Nov. 26, 2007) [hereinafter Easton Technical Assistance Letter], available at http:// www.justice.gov/crt/about/spl/documents/easton_talet_11-26-07.pdf (finding that the department does not have a form dedicated to use-of-force reporting, "making it extremely difficult to extract information to adequately track and analyze uses of force"); Inglewood Technical Assistance Letter, supra note 143, at 16-17 (finding that the department's "current practice of documenting uses of force within arrest or incident reports and policy have been under-inclusive in what the IPD has considered force, and, in turn, it appears that the reporting of force by officers has been under-inclusive"); Miami Investigative Findings Letter, supra note 144, at 12 (finding that the department's use-of-force reporting requirements "are likely to lead to an under-reporting of the use of force"); Portland Investigative Findings Letter, supra note 144, at 5-6 (finding that "officers are not required to report 'restraining force' or certain other types of physical contacts with citizens," and that use-of-force forms are unclear); Schenectady Technical Assistance Letter, supra note 143, at 9 (finding, despite a "very broad reporting requirement, command level and line officers acknowledge that officers rarely document uses of force and that supervisors do not enforce the reporting policy"); V.I. Technical Assistance Letter, supra note 143, at 11 (noting that a use-of-force report is required "only when there is an injury, medical treatment is required or requested, or the force used related to a criminal charge (i.e., resisting arrest, assault, endangering or harassment)"); Warren Technical Assistance Letter, supra note 144, at 6 (finding that the department requires officers to fill out a use-of-force form "anytime their actions allegedly result in injury or death, anytime they utilize a non-lethal weapon, and anytime they discharge their firearms" and recommending, instead, that the department require a form be completed "for all uses of force beyond unresisted handcuffing"); Yonkers Technical Assistance Letter, supra note 143, at 17-18 (finding that use-of-force forms were required when an officer uses a firearm, but not when she uses a baton or deploys a K-9 unit, and recommending that a form be filled out whenever force is used).

[FN156]. See Interview with Michael Gennaco, supra note 35.

[FN157]. See supra notes 71-74 and accompanying text.

[FN158]. Ellen H. Ceisler & James B. Jordan, Phila. Police Dep't Integrity & Accountability Office, Third Report 28 (1999).

[FN159]. Id.

[FN160]. Kolts Commission Report, supra note 37, at 56.

[FN161]. LASD 3rd Semiannual Report, supra note 41, at 42-43. For problems with the reports, see id. at 42-49.

[FN162]. For an overview of the problems with civilian complaint processes, see Walker, supra note 94, at 71-99.

[FN163]. Human Rights Watch, supra note 135, at 63.

[FN164]. For descriptions of the inadequacies of the civilian-complaint investigation procedures in the departments that have been investigated but not sued by the DOJ, see, for example, Austin Technical Assistance Letter, supra note 143, at 36 (finding evidence that the department's internal investigatory process is "erratic and irregular" and that "IA did not always investigate their complaints"); Bakersfield Technical Assistance Letter, supra note 155, at 14 (finding that internal investigations are inconsistent and incomplete); Easton Technical Assistance Letter, supra note 155, at 9-10 (finding that the department did not keep civilian complaints and investigations organized in a single file or office, making personnel and trend review impossible, and that the department "has no formal policies governing investigative training, evidence collection and storage, victim and witness interviews, or case file documentation and retention"); Inglewood Technical Assistance Letter, supra note 143, at 22-23 (describing the "lack of a formal, structured, and consistent investigative process" in the department); Yonkers Technical Assistance Letter, supra note 143, at 22-23 (recommending that the department "develop and implement a centralized, formal, structured, and consistent system for resolving complaints without discouraging the filing of complaints").

[FN165]. Indep. Monitor for the L.A. Police Dep't, Report for the Quarter Ending September 30, 2003, at 25 (2003) (finding that the internal affairs division for the LAPD failed to tape record witness interviews, did not canvas the area for witnesses, allowed group interviews, failed to collect or preserve evidence, and failed to identify inconsistent statements); Civil Rights Div., U.S. Dep't of Justice, Technical Assistance Letter to the Cleveland Division of Police 9-10 (2002), available at http:// www.justice.gov/crt/about/spl/documents/cleveland_uof.pdf (finding that internal investigators "inject opinions and speculation that may call into question the objectivity of the investigation" and raising concerns about the thoroughness of internal investigations); Columbus Investigative Findings Letter, supra note 144 (finding "a process for investigating complaints, uses of force (lethal and non-lethal), and injuries to prisoners that is biased in favor of the involved officers"); Portland Investigative Findings Letter, supra note 144, at 14-17 (finding investigators to be inadequately trained); Schenectady Technical Assistance Letter, supra note 143, at 20-21 (recommending that investigators be trained in standard investigative policies and practices); Warren Technical Assistance Letter, supra note 144, at 17-18 (expressing concern that department policy does not "require basic investigative techniques, including questioning WPD personnel through personal interviews or gathering extrinsic evidence--e.g., third party witness accounts, or photographs of alleged injuries").

[FN166]. Craig B. Futterman et al., The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System, 1 DePaul J. Soc. Just. 251, 274 (2008).

[FN167]. Id. at 275.

[FN168]. There are several forms of civilian review, including police auditors, independent commissions, and civilian review boards. A 2003 study found that some form of civilian review is in place in approximately nineteen percent of municipal law enforcement agencies with more than 100 sworn officers, twenty-five percent of county police departments, six percent of sheriffs' departments, and none of the forty-nine state agencies surveyed. See Protecting Civil Rights,

supra note 96, at 93-94. One in four of the civilian review boards had independent investigatory authority. See id. at 94.

[FN169]. See Walker, supra note 94, at 165-67 (discussing failed police auditors); Stephen Clarke, Arrested Oversight: A Comparative Analysis and Case Study, 43 Colum. J.L. & Soc. Probs. 1 (2009) (studying different models of civilian oversight and finding underfunding).

[FN170]. See Telephone Interview with Kathryn Olson, supra note 35.

[FN171]. LASD 15th Semiannual Report, supra note 82, at 85.

[FN172]. Id.

[FN173]. As Bobb has observed, "It is difficult to play that dual role of defending to the hilt the plaintiff's claims in a lawsuit, including the need to cast ambiguous facts in a favorable light and, at the same time, report the same facts internally in a cold and ojective [sic] way for purposes of discipline." Id. at 78.

[FN174]. Id. at 85.

[FN175]. Id. at 86.

[FN176]. See Telephone Interview with Richard Rosenthal, supra note 35.

[FN177]. The facts of Chasse's arrest are hotly disputed. For the purposes of this description, I rely on the findings of an outside expert that studied the events of that evening. See Chasse Report, supra note 20, at 8 (stating that the officers thought Chasse was "either urinating or possibly injecting drugs into his hand").

[FN178]. See Chasse v. Humphreys, No. CV-07-189-HU, 2009 U.S. Dist. LEXIS 100626 (D. Or. Oct. 13, 2009); see also Chasse Report, supra note 20, at 8.

[FN179]. Chasse Report, supra note 20, at 25-26.

[FN180]. Id. at 27.

[FN181]. Id.

[FN182]. Id.

[FN183]. Id. at 28.

[FN184]. Mayor Bloomberg recently opposed the New York City Council's efforts to gather information about pending lawsuits and settlements against the New York City Police Department because, his spokesman testified, "[T]he mere fact of a settlement in any litigation is not an acknowledgement of wrongdoing, or of the truth of the facts alleged....While some settlements seem unfair or even outrageous to us, and to the public, the Law Department's decision to settle a matter is largely separate from the merits of the litigation." William Heinzen, Deputy Counselor to the Mayor, Statement Before the N.Y.C. Council Comm. on Governmental Operations (Dec. 11, 2009) (on file with author). Police department officials in other jurisdictions have similarly argued that settlements are often strategic decisions--not admissions of wrongdoing--and so should not be probative of misconduct. See, e.g., Human Rights Watch, supra note 135, at 81 (noting that internal affairs staff interviewed by Human Rights Watch in fourteen police departments "made statements such as 'civil cases are not our problem,' or asserted that the settled suits do not indicate the 'guilt' of an officer,

disregarding the important information that citizen-initiated lawsuits could provide"); Robert Becker & Todd Lightly, Deputies' Abuse Cases Cost County: 32 Complaints Settled in 4 Years for $1.5 Million, Chi. Tribune, Feb. 10, 2002, at C1 (citing director of operations for Cook County Sheriff as stating that legal settlements are often business decisions and not proof of officer misconduct); Nicholas Riccardi, Lawsuits Question Actions of Sheriff's Deputies in 3 Cases, L.A. Times, Jan. 23, 2002, at B1; Susan Sward et al., The Use of Force: When SFPD Officers Resort to Violence, S.F. Chron., Feb. 5, 2006, at A1 (citing the San Francisco Police Department's risk manager as stating that legal settlements can be granted by the city attorney for various reasons and are not proof of officer misconduct). Police officials also contend that delays in the filing and adjudication of lawsuits make lawsuits arguably inferior to internal information sources. See Statement of William Heinzen, supra (opposing legislation to gather lawsuit data because more timely information about alleged misconduct is available through the civilian complaints filed with the city's Civilian Complaint Review Board); Telephone Interview with Richard Rosenthal, supra note 35 (referring to lawsuits as "late warning systems").

[FN185]. There are low filing rates for police-misconduct claims. See supra note 133 and accompanying text (noting that one percent of people who believe they have been mistreated by the police actually sue). For other studies of civil-litigation filing rates, see, for example, Deborah R. Hensler et al., RAND Inst. for Civil Justice, Compensation for Accidental Injuries in the United States: Executive Summary 19 (1991) (finding that lawsuits were filed for forty-four percent of vehicle injuries, seven percent of work injuries, and three percent of other injuries); Marc Galanter, Real World Torts: An Antidote to Anecdote, 55 Md. L. Rev. 1093 (1996) (describing common disputes pyramids for tort claims, discrimination claims, and claims post-divorce); Richard E. Miller & Austin Sarat, Grievances, Claims, and Disputes: Assessing the Adversary Culture, 15 Law & Soc'y Rev. 525, 544 (1981) (finding that five percent of grievances became filed lawsuits); and David M. Studdert et al., Negligent Care and Malpractice Claiming Behavior in Utah and Colorado, 38 Med. Care 250, 254-55 (2000) (finding less than three percent of those injured by medical error brought legal claims).

[FN186]. Plaintiffs' attorneys in civil rights cases will also be entitled to attorneys' fees if they prevail. See 42 U.S.C. §1988(b) (2006). Many cases are resolved through settlement agreements, however, which do not necessarily include a provision for attorneys' fees. See, e.g., Evans v. Jeff D., 475 U.S. 717 (1986). In those cases, the attorney will take a portion of the plaintiff's recovery.

[FN187]. See Meltzer, supra note 134 (observing that people mistreated by the police often do not bring claims because of "ignorance of their rights, poverty, fear of police reprisals, or the burdens of incarceration"); Miller, supra note 2, at 68 (noting that, given heightened pleading standards in Twombly and Iqbal, meritorious but hard-to-prove cases may not be brought "because prospective litigants or their counsel may not have--or be willing to risk--the resources needed to investigate sufficiently prior to institution to survive a motion to dismiss"); Rudovsky, supra note 150, at 467 ("Because police abuse is most often directed against those without political power or social status, their complaints are often dismissed or ignored.").

[FN188]. This is not to suggest that plaintiffs regularly lie in their complaints. Although some complaints will overstate the plaintiffs' case, there are strong incentives for a plaintiff to be judicious but thorough in her complaint. An attorney will not recover attorneys' fees for time spent on frivolous claims. In fact, a defendant can recover fees for time spent defending against frivolous claims. See Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978); Harris v. Maricopa Cnty. Superior Court, 631 F.3d 963, 971-72 (9th Cir. 2011). The threat of sanctions under Rule 11 of the FRCP also discourages a plaintiff and her attorney from including unsupportable facts and claims. On the other hand, the plausibility pleading requirements in Twombly and Iqbal require plaintiffs to file detailed pleadings. See Miller, supra note 2.

[FN189]. Although some evidence generated during discovery will be prejudicial and irrelevant, the general consensus among attorneys is that discovery produces the correct amount of information needed properly to litigate the case.

Willging et al., supra note 3, at 531. Contingency-fee plaintiff's attorneys are particularly unlikely to engage in frivolous discovery practice: "To avoid expenditures that may never be reimbursed and to prevent the loss of potentially more attractive professional opportunities," contingent-fee lawyers are unlikely to "conduct unnecessary depositions or be inundated with documents or e-discovery to hunt for the proverbial 'smoking gun.'" Miller, supra note 2, at 67.

[FN190]. See, e.g., Jerome Frank, Courts on Trial: Myth and Reality in American Justice 86 (1949) ("[The witness] often detects what the lawyer hopes to prove at the trial. If the witness desires to have the lawyer's client win the case, he will often, unconsciously, mold his story accordingly. Telling and re-telling it to the lawyer, he will honestly believe that his story, as he narrates it in court, is true, although it importantly deviates from what he originally believed."); Ellen E. Sward, Values, Ideology, and the Evolution of the Adversary System, 64 Ind. L.J. 301, 304 (1989) ("Witnesses may differ in what they think they saw; or there may be no witnesses on a significant issue so that the past must be reconstructed from circumstantial evidence; or, in some cases, witnesses may deliberately lie." (footnotes omitted)).

[FN191]. See John H. Langbein, The German Advantage in Civil Procedure, 52 U. Chi. L. Rev. 823, 843 (1985) ("It is a rare litigator in the United States who has not witnessed the spectacle of a bumbling adversary whose poor discovery work or inability to present evidence at trial caused his client to lose a case that should have been won."); Issachar Rosen-Zvi & Talia Fisher, Overcoming Procedural Boundaries, 94 Va. L. Rev. 79, 91 (2008) ("Because the adversarial system relies upon the parties to produce the facts, examine and cross-examine witnesses, and present legal arguments on their own behalf, the parties must be at least somewhat equally capable of making their cases.... If, due to a lack of resources, one party is unable to uncover evidence or is less skilled in developing legal arguments, the outcome might be skewed in favor of her better-equipped adversary."); William B. Rubenstein, The Concept of Equality in Civil Procedure, 23 Cardozo L. Rev. 1865, 1873-74 (2002) ("If one side in adversarial adjudication is ill-equipped--it cannot afford access to the system, or has less time and money to pursue evidence, or less skill in developing legal claims--then what emerges as the stronger case might not necessarily be the better case.").

[FN192]. See Telephone Interview with Ilana Rosenzweig, supra note 35 (stating that she considers but does not blindly rely on information developed during the course of litigation in her independent reviews).

[FN193]. See supra Parts I.C.1; I.C.3 (describing trend analysis and early intervention systems).

[FN194]. See Protecting Civil Rights, supra note 96, at 62 ("Understanding the critical factors, both on and off the job, will help supervisors decide when to intervene and to tailor needed interventions to individual officers' needs.").

[FN195]. Walker, supra note 94, at 102.

[FN196]. See supra notes 80-83 and accompanying text (describing the investigation of the Century station by the LASD auditor).

[FN197]. See supra notes 84-86 and accompanying text (describing the auditor's recommendations).

[FN198]. There are not only information costs but also financial costs associated with departments' contextual analyses. Auditors charge cities and counties hundreds of thousands of dollars each year. See Warner, supra note 121 (reporting that Denver's auditor's budget is $636,000); Correspondence from Merrick Bobb, supra note 119 (reporting that the LASD auditor charges the County of Los Angeles $200,000 per year for his services). Of course, not all of this money is spent reviewing lawsuit data. Police auditors are involved in multiple different efforts to improve police accountability and do not charge piecemeal for their litigation-review services.

[FN199]. See, e.g., Herbert A. Simon, Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations (1947); Daniel G. Goldstein & Gerd Gigerenzer, Models of Ecological Rationality: The Recognition Heuristic, 109 Psychol. Rev. 75 (2002); Amos Tversky & Daniel Kahneman, Judgment Under Uncertainty: Heuristics and Biases, 185 Sci. 1124 (1974).

[FN200]. As James March observed, decision-makers "often have relevant information but fail to see its relevance. They make unwarranted inferences from information, or fail to connect different parts of the information available to them to form a coherent interpretation." James G. March, A Primer on Decision Making: How Decisions Happen 10 (1994); see also Diane Vaughn, Rational Choice, Situated Action, and the Social Control of Organizations, 32 Law & Soc'y Rev. 23, 29 (1998) ("Decisionmakers do not weigh all possible outcomes but instead rely on a few key values; the magnitude of possible bad outcomes is more salient, so that there is less risk taking when greater stakes are involved; in practice, quantifying costs and benefits of a line of action is not easy." (citation omitted)).

[FN201]. See supra note 195 and accompanying text.

[FN202]. As sociologist Diane Vaughn has observed,

> [A]n extensive body of research and theory on decisionmaking in organizations shows that the weighing of costs and benefits does occur, but individual choice is constrained by institutional and organizational forces: Decision practices and outcomes are products of external contingencies, political battles, unacknowledged cultural beliefs, and formal and informal internal pathologies that undercut both the determination of goals and their achievement.

Vaughn, supra note 200, at 29.

[FN203]. See generally Protecting Civil Rights, supra note 96, at 44-78.

[FN204]. The benefits of auditing and review have been recognized in multiple organizational contexts. See, e.g., Donald C. Langevoort, Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (And Cause Other Social Harms), 146 U. Pa. L. Rev. 101, 122 (1997) (recognizing the benefits of auditing and review in corporate data-gathering and analysis); Ronal W. Serpas & Matthew Morley, The Next Step in Accountability Driven Leadership: "CompStating" the CompStat Data, Police Chief Mag., May 2008, available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1501&issue_id=52008.

[FN205]. For the potential for biased information in a variety of institutional contexts see, for example, Barbara E. Armacost, Organizational Culture and Police Misconduct, 72 Geo. Wash. L. Rev. 453 (2004); Jane E. Dutton et al., Reading the Wind: How Middle Managers Assess the Context for Selling Issues to Top Managers, 18 Strategic Mgmt. J. 407 (1997); and R. Joseph Monsen, Jr. & Anthony Downs, A Theory of Large Managerial Firms, 73 J. Pol. Econ. 221 (1965).

[FN206]. Although auditors may be more objective than department personnel, they are still human; auditors' decisions will be impacted by errors and biases, including possible biases toward their department employers. See generally Robert A. Prentice, The Case of the Irrational Auditor: A Behavioral Insight into Securities Fraud Litigation, 95 Nw. U. L. Rev. 133 (2000).

[FN207]. See Carl B. Klockars, A Theory of Excessive Force and Its Control, in Police Violence: Understanding and Controlling Police Abuse of Force 1, 6-7 (William A. Geller & Hans Toch eds., 1996) (describing legal requirements in civil rights actions and observing that "police can engage in all sorts of objectionable behavior without transgressing criminal or civil definitions of excessive force"); see also Levinson, supra note 25, at 372-73 (noting that, even if a plaintiff's constitutional rights have been violated, they cannot be awarded damages absent injury).

[FN208]. See, e.g., Janet Cooper Alexander, Do the Merits Matter? A Study of Settlements in Securities Class Actions, 43 Stan. L. Rev. 497 (1991) (finding that awards are based more on the extent of plaintiff's injury than defendants' wrongdoing); Randall R. Bovbjerg et al., Juries and Justice: Are Malpractice and Other Personal Injuries Created Equal?, 54 Law & Contemp. Probs. 5 (1991) (showing that malpractice damage awards correlate to severity and duration of injury); Troyen A. Brennan et al., Relation Between Negligent Adverse Events and the Outcomes of Medical-Malpractice Litigation, 335 New Eng. J. Med. 1963 (1999); David A. Hyman, Medical Malpractice and the Tort System: What Do We Know and What (If Anything) Should We Do About It?, 80 Tex. L. Rev. 1639, 1642-44 (2002) (describing studies in multiple contexts that have found that "the best predictor of the size of an award is the severity of disability, not whether there was negligence, or an adverse event").

[FN209]. It is, for example, more expensive for a defendant to harm an executive than it is to harm a factory worker. See Richard J. Pierce, Jr., Encouraging Safety: The Limits of Tort Law and Government Regulation, 33 Vand. L. Rev. 1281, 1292 (1980). It is more expensive for a defendant to harm a parent than it is to harm a child or a person without dependents. Id. at 1293. It is more expensive to harm a person who lives in a city than it is to harm a person who lives in the country. Patricia Danzon, The Frequency and Severity of Medical Malpractice Claims, 27 J.L. & Econ. 115, 143 (1984).

[FN210]. See, e.g., David M. Studdert et al., Medical Malpractice, 350 New Eng. J. Med. 283, 286 (2004).

[FN211]. See, e.g., Audrey Chin & Mark A. Peterson, The RAND Corp., Deep Pockets, Empty Pockets: Who Wins in Cook County Jury Trials (1985) (studying Chicago jury verdicts from 1960 to 1980 and finding that plaintiffs who had fallen in a corporate-owned building recovered higher damages than those who had fallen in government owned and privately owned buildings).

[FN212]. See, e.g., Stephen D. Sugarman, Doing Away with Personal Injury Law: New Compensation Mechanisms for Victims, Consumers, and Business 38 (1989).

[FN213]. For descriptions and discussions of so-called "nuisance value" suits, see, for example, Robert G. Bone, Modeling Frivolous Suits, 145 U. Pa. L. Rev. 519 (1997); Randy J. Kozel & David Rosenberg, Solving the Nuisance-Value Settlement Problem: Mandatory Summary Judgment, 90 Va. L. Rev. 1849 (2004); and David Rosenberg & Steven Shavell, A Model in Which Suits Are Brought for Their Nuisance Value, 5 Int'l Rev. L. & Econ. 3, 3 (1985).

[FN214]. For discounts in settlements, see James Chelius, Workplace Safety and Health: The Role of Workers' Compensation 61 (1977); Donald Harris, Compensation and Support for Illness and Injury 318-19 (1984); and Patricia M. Danzon, The Medical Malpractice System: Facts and Reforms, in The Effects of Litigation on Health Care Costs 28, 30 (Mary Ann Baily & Warren I. Cikins eds., 1985). But see James K. Hammitt, The RAND Corp., Automobile Accident Compensation: Payments by Auto Insurers 74 (1985) (noting that automobile cases settled for approximately the same amounts that were recovered after trial, without a discount); Elizabeth M. King & James P. Smith, The RAND Corp., Economic Loss And Compensation in Aviation Accidents 75 (1988) (finding that air-crash cases that settled after a lawsuit was filed recovered approximately fifty percent of actual losses, but cases that went to trial recovered only approximately forty-four percent of actual losses).

[FN215]. For other critiques of lawsuits' deterrent effects, see Schwartz, supra note 13, at 1026-27.

[FN216]. But see supra note 25 (describing possible nonfinancial "costs" of civil rights lawsuits).

[FN217]. A. Mitchell Polinsky & Steven Shavell, Punitive Damages: An Economic Analysis, 111 Harv. L. Rev. 869, 873 (1998); see also Ciraolo v. City of New York, 216 F.3d 236, 243 (2d Cir. 2000) (Calabresi, J., concurring) ("[U]nless approximately all the costs of the activity are borne by the actor...the actor will not be adequately deterred from undesirable activities."); Margo Schlanger, Second Best Damage Action Deterrence, 55 DePaul L. Rev. 517, 520 (2006) (referring to this equity as the "identity principle"); Schwartz, supra note 11, at 423 (noting that torts-and-economics scholarship "assume[s], at least implicitly, a one-to-one relationship between the incentives afforded by tort liability rules and the resulting conduct of real-world actors").

[FN218]. See Schwartz, supra note 13, at 1032-33.

[FN219]. See supra notes 81 and 110 and accompanying text.

[FN220]. See supra Part I.C.3 for a description of early intervention systems.

[FN221]. See supra Part I.C.1 for a description of trend analysis.

[FN222]. See supra Part I.C.2 for a description of investigations of legal claims.

[FN223]. See supra Part I.C.4 for a description of closed-case reviews.

[FN224]. Michael J. Gennaco et al., Office of Indep. Review, Cnty. of L.A., Seventh Annual Report 17 (2009), available at http:// www.laoir.com/reports/SeventhAnnualRept.pdf.

[FN225]. See, e.g., L.A. Cnty. Bd. of Supervisors, Information on Proposed Settlement of Litigation: Montoya v. County of Los Angeles (Nov. 28, 2005), available at http://file.lacounty.gov/bos/supdocs/36736.pdf (finding no personnel or policy failures in lawsuit, settled for $150,000, in which plaintiff was shot in the abdomen after a struggle with sheriff's deputy); L.A. Cnty. Bd. of Supervisors, Information on Proposed Settlement of Litigation: Eichenlaub v. County of Los Angeles (2009), available at http:// lacounty.info/bos/sop/supdocs/47196.pdf (finding no personnel or policy failures in lawsuit, settled for $450,000, claiming excessive force and wrongful death).

[FN226]. See supra note 184. The effects of the delay on the impact of litigation have been recognized in other contexts as well. See, e.g., Paul C. Weiler, A Measure of Malpractice 81 (1993) ("Consider, for example, and anesthetist who is momentarily distracted from indicators of oxygen deprivation to the patient and omits the necessary emergency response. The prospect of a tort suit arising years later as a result of a problem the doctor is too distracted even to be thinking about during the treatment in question will not likely provide him with motivation to adopt the proper precautions."); John A. Siliciano, Corporate Behavior and the Social Efficiency of Tort Law, 85 Mich. L. Rev. 1821, 1830-31 (1987) ("[In the products-liability context,] some risks from a product may not be discovered until long after it has entered the marketplace. These 'remote' risks pose a particularly difficult dilemma for the manufacturer. The manufacturer could engage in an extensive research and testing program aimed at uncovering all such risks, but at some point the costs and delay involved in such a program become prohibitive.").

[FN227]. Merrick J. Bobb et al., L.A. County Sheriff's Dep't, 5th Semiannual Report 29 (1996).

[FN228]. See supra Part I.C (describing early intervention systems and trend analyses).

[FN229]. Bernstein, supra note 70.

[FN230]. See supra notes 177-183 and accompanying text (describing Chasse case and investigation).

[FN231]. See supra Part I.C.4 (describing benefits of closed-claim reviews).

[FN232]. For scholarship describing the effects of organization on behavior, see V. Lee Hamilton & Joseph Sanders, Responsibility and Risk in Organizational Crimes of Obedience, 14 Res. Org. Behav. 49 (1992); and David Luban et al., Moral Responsibility in the Age of Bureaucracy, 90 Mich. L. Rev. 2348 (1992).

[FN233]. See, e.g., Michael K. Brown, Working the Street: Police Discretion and the Dilemmas of Reform (1981); Jerome H. Skolnick & James J. Fyfe, Above the Law: Police and the Excessive Use of Force (1993); James Q. Wilson, Varieties of Police Behavior: The Management of Law and Order in Eight Communities (1978); Robert E. Worden, The Causes of Police Brutality: Theory and Evidence on Police Use of Force, in Police Violence, supra note 207, at 23.

[FN234]. See, e.g., Schuck, supra note 25; Armacost, supra note 205; Rudovsky, supra note 150.

[FN235]. See Schuck, supra note 25; Armacost, supra note 205; Rudovsky, supra note 150. For similar arguments in the medical malpractice context, see Weiler, supra note 226; and Mello & Brennan, supra note 210, at 1623-24.

[FN236]. See supra note 224 and accompanying text.

[FN237]. See supra note 71 and accompanying text.

[FN238]. See, e.g., Paul Barach & Stephen D. Small, Reporting and Preventing Medical Mishaps: Lessons from Non-Medical Near Miss Reporting Systems, 320 British Med. J. 759 (2000) (describing "near-miss" reporting systems in aviation, petrochemical processing, steel production, and nuclear power); Tom Kontogiannis & Stathis Malakis, A Proactive Approach to Human Error Detection and Identification in Aviation and Air Traffic Control, 47 Safety Sci. 693 (2009); Bryan A. Liang, Error in Medicine: Legal Impediments to U.S. Reform, 24 J. Health Pol., Pol'y & L. 27, 29-31 (1999); J. Bryan Sexton et al., Error, Stress, and Teamwork in Medicine and Aviation: Cross Sectional Surveys, 320 British Med. J. 745 (2000).

[FN239]. Randall R. Bovbjerg et al., Paths to Reducing Medical Injury: Professional Liability and Discipline vs. Patient Safety--and the Need for a Third Way, 29 J. L., Med. & Ethics 369, 374 (2001); see also Liang, supra note 238, at 39 ("[P]hysicians with tort liability concerns may be hesitant to report adverse events and medical errors for fear that plaintiffs' attorneys will have access to this information, thus exposing physicians to liability."); William M. Sage, Unfinished Business: How Litigation Relates to Health Care Regulation, 28 J. Health Pol., Pol'y & L. 387, 407 (2003) ("Patient safety advocates believe that fear of litigation discourages voluntary reporting of near-misses by physicians and compromises efforts to ascertain root causes of medical errors."). But see David A. Hyman & Charles Silver, The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem of Part of the Solution?, 90 Cornell L. Rev. 893, 894 (2005) ("[T]here is no foundation for the widely held belief that fear of malpractice liability impedes efforts to improve the reliability of health care delivery systems.").

[FN240]. See Douglas W. Perez & William Ker Muir, Administrative Review of Alleged Police Brutality, in Police Violence, supra note 207, at 213, 231-32.

[FN241]. See Schwartz, supra note 13, at Part II.D (describing these types of implementation problems).

[FN242]. See LASD 15th Semiannual Report, supra note 82, at 53.

[FN243]. See Schwartz, supra note 13, at 1065-66.

[FN244]. See id. at 1064.

[FN245]. Chasse Report, supra note 20, at 22-24.

[FN246]. See id. at 23.

[FN247]. See supra note 204.

[FN248]. See generally Schwartz, supra note 13, at pt. II.D.

[FN249]. See id. at 1063-64 (citing examples).

[FN250]. See, e.g., City of Monterey v. Del Monte Dunes, 526 U.S. 687, 727 (1999) (Scalia, J., concurring) (writing that §1983 "is designed to provide compensation for injuries arising from the violation of legal duties and thereby, of course, to deter future violations" (citation omitted)); City of Riverside v. Rivera, 477 U.S. 561, 575 (1986) ("[T]he damages a plaintiff recovers contributes significantly to the deterrence of civil rights violations."); Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 307 (1986) ("[D]eterrence...operates through the mechanism of damages that are compensatory." (emphasis omitted)). For scholarly discussions of lawsuits as a financial deterrent, see, for example, Fallon & Meltzer, supra note 25. Some have noted, however, that other types of pressures associated with lawsuits can influence behavior. Myriam Gilles has pointed out that information revealed during litigation, press attention, and the symbolic power of judgment can have a deterrent effect. See Gilles, supra note 25. Several have also pointed out that individual officers may be deterred by the stresses of defending oneself. See, e.g., Bogan v. Scott-Harris, 523 U.S. 44, 50-54 (1998); Gilles, supra note 25, at 854-55; John C. Jeffries, Jr., In Praise of the Eleventh Amendment and Section 1983, 84 Va. L. Rev. 47, 50-51 (1998).

[FN251]. See Schuck, supra note 25, at 125 (arguing that government officials may tolerate officer misconduct to further "goals such as crime control, intelligence-gathering, or preservation of neighborhood schools," "[b]ureaucratic needs," and "[a]dministrative imperatives"); Armacost, supra note 205, at 475 (arguing that officials may tolerate police misconduct that reduces crime); Levinson, supra note 25, at 345 (arguing that "[g]overnment actors respond to political incentives, not financial ones" (emphasis added)).

[FN252]. See supra notes 37, 44, and 64 for descriptions of the scandals that led to independent oversight of the LASD, the Seattle police department, and the Chicago police department, respectively.

[FN253]. See supra notes 24-25 for representative scholarship in this area.

[FN254]. This is the type of weighing assumed in many accounts of law enforcement decision-making, even as scholars differ about the precise incentives that guide those decisions. See, e.g., Levinson, supra note 25.

[FN255]. See supra note 81 and accompanying text.

[FN256]. See supra note 78 and accompanying text.

[FN257]. Wendy Wagner, Stubborn Information Problems & the Regulatory Benefits of Gun Litigation, in Suing the Gun Industry 271 (Timothy D. Lytton ed., 2007).

[FN258]. See, e.g., Timothy D. Lytton, Using Tort Litigation to Enhance Regulatory Policy Making: Evaluating Climate-Change Litigation in Light of Lessons from Gun-Industry and Clergy-Sexual-Abuse Lawsuits, 86 Tex. L. Rev. 1837 (2008); Wendy Wagner, When All Else Fails: Regulating Risky Products Through Tort Litigation, 95 Geo. L.J. 693 (2007).

[FN259]. See, e.g., Gilles, supra note 25.

[FN260]. See supra Part III.

[FN261]. See supra Part II.

[FN262]. LASD 15th Semiannual Report, supra note 82, at 81.

[FN263]. Id. at 84.

[FN264]. See Telephone Interview with Kathryn Olson, supra note 35 (referring to a paper given by an official in the Eugene, Oregon, police department).

[FN265]. See, e.g., Theodore Eisenberg, Section 1983: Doctrinal Foundations and an Empirical Study, 67 Cornell L. Rev. 482 (1982) [hereinafter Eisenberg, Section 1983] (studying filing rates and outcomes of §1983 cases in the Central District of California); Theodore Eisenberg & Stewart Schwab, The Reality of Constitutional Tort Litigation, 72 Cornell L. Rev. 641 (1987) (studying a larger sample of §1983 cases filed in the Central District of California). Several of the studies focus only on civil rights claims filed by inmates. See, e.g., Darrell L. Ross, Emerging Trends in Correctional Civil Liability Cases: A Content Analysis of Federal Court Decisions of Title 42 United States Code Section 1983: 1970-1994, 25 J. Crim. Just. 501 (1997); William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 Harv. L. Rev. 610 (1979). These studies are generally focused on examining the extent to which civil rights actions have imposed a burden on the courts, as opposed to the underlying merits of the claims.

[FN266]. See, e.g., Eisenberg, Section 1983, supra note 265, at 537-38 (concluding, following a review of cases brought in Los Angeles, that "section 1983 cases usually involve important constitutional claims" and, "[a]s is true of nonprisoner cases, most prisoner section 1983 complaints were not plainly trivial assertions implicating little or no federal interest," but observing that "[t]he ultimate truth or falsity of allegations in section 1983 cases...is not yet a debated issue"); Henry F. Fradella, In Search of Meritorious Claims: A Study of the Processing of Prisoner Cases in a Federal District Court, 21 Just. Sys. J. 23, 46-47 (1999) (finding that only six of 290 claims in 200 randomly selected cases were "factually absurd"); Margo Schlanger, Inmate Litigation, 116 Harv. L. Rev. 1555, 1572 (2003) (concluding that the ten most often litigated issues "mostly concern real hardships inherent in prison life, not peanut butter").

[FN267]. Although one study reports that less than one percent of people who believe police mistreated them sue, BJS 2002 Study, supra note 129, we do not know how frequently people whose rights have actually been violated by the police decide to sue. Similar analyses have successfully been conducted to determine, for example, the frequency with which victims of medical error sue. See Studdert et al., supra note 186. For a description of the many gaps in our information about police uses of force, see Michael R. Smith, Toward a National Use-Of-Force Data Collection System: One Small (and Focused) Step Is Better Than a Giant Leap, 7 Criminology & Pub. Pol'y 619 (2008).

[FN268]. Although the studies cited supra note 265 examine the frequency with which civil rights cases are dismissed, these studies do not evaluate whether the "right" outcome was reached.

[FN269]. See, e.g., Schlanger, supra note 266, at 1613-14 (2003) (observing that inmates with attorneys have a higher success rate than pro se inmates, but concluding that "without data there is really no way to know which effect dominates--the depression of success rates because lawyers are not available, or the absence of lawyers because the cases are not very good cases" (footnote omitted)); see also Victor E. Kappeler et al., A Content Analysis of Police Civil Liability Cases: Decisions of the Federal District Courts, 1978-1990, 21 J. Crim. Just. 325, 333 (1993) (finding that procedural

safeguards cause defendants to win §1983 cases more often than they would if plaintiffs and defendants were on "equal footing" procedurally).

[FN270]. For the frequency with which wrongfully injured people sue, see supra note 185. For the correlation between damages awarded and underlying harms, see supra note 208. For the frequency with which the "right" result occurs in medical-malpractice cases, see, for example, Frank A. Sloan et al., Suing For Medical Malpractice 166-68 (1993) (finding correlation between actual outcomes of cases and independent evaluations of medical liability); Henry S. Farber & Michelle J. White, Medical Malpractice: An Empirical Examination of the Litigation Process, 22 Rand J. Econ. 199, 199 (1991) (finding that negligence is an "extremely important determinant of defendants' medical malpractice liability"); David M. Studdert et al., Claims, Errors and Compensation Payments in Medical Malpractice Litigation, 354 New Eng. J. Med. 2024 (2006) (presenting a study of closed-claim files that found that the "right" result was reached about seventy-three percent of the time and finding that false negatives were 1.6 times more likely than false positives); and Mark I. Taragin et al., The Influence of Standard of Care and Severity of Injury on the Resolution of Medical Malpractice Claims, 117 Annals Internal Med. 780 (1992) (finding that payments in unmeritorious medical malpractice cases are rare).

[FN271]. See Steven Suydam et al., Patient Safety Data Sharing and Protection from Legal Discovery, in Advances in Patient Safety: From Research to Implementation 361 (Kerm Henriksen et al. eds., 2005) (describing existing discovery protections for patient safety efforts); Alan Levin, FAA Error-Reporting Program Reveals Hazards, Yields Fixes, USA Today, Apr. 5, 2010, at A1 (describing new FAA reporting program that provides immunity to reporters for all but the most serious lapses).

[FN272]. Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998).

[FN273]. U.S. Sentencing Guidelines Manual §8C2.5(f) (2006).

[FN274]. A more aggressive approach would impose an affirmative obligation on police departments to gather and analyze litigation data. See, e.g., Hazel Glenn Beh, Municipal Liability for Failure to Investigate Citizen Complaints Against Police, 25 Fordham Urb. L.J. 209, 229 (1998); see also In re Caremark Int'l Derivative Litig., 698 A.2d 959 (Del. Ch. 1996) (creating an affirmative obligation for boards of directors to create compliance mechanisms).
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TESTIMONY OF JOHANNA MILLER
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION

before

THE NEW YORK CITY COUNCIL
COMMITTEE ON OVERSIGHT & INVESTIGATIONS

on

INTRO. 119 (Requiring the Inspector General of the NYPD to Submit Quarterly Reports to the City Council)

May 5, 2014

The New York Civil Liberties Union respectfully submits the following testimony regarding the Council's consideration of Intro. 119, which would require the NYPD Inspector General to submit quarterly reports of the number and disposition of civil actions filed against the police department.

With 50,000 members and supporters, the New York Civil Liberties Union (NYCLU) is the foremost defender of civil liberties and civil rights in New York State and a longstanding advocate for government transparency and oversight of police practices. We are pleased to support this bill to require the Inspector General to provide reports of civil actions against the NYPD, as a mechanism for permitting public oversight of activities by police officers that subject the City to liability.

I. Introduction

We applaud the Council's work to create the office of NYPD Inspector General (IG) in 2013 by passing the NYPD Oversight Act (Local Law 70, 2013). Alleged patterns of police violence, racial profiling, discourtesy, and unprofessional conduct were too often ignored during the Bloomberg "Stop and Frisk" era, when the focus was more often on individual bad actors. And though the political climate has shifted, the Council has an obligation to ensure that the will to improve oversight and accountability of the NYPD outlasts the current administration and Council terms. We believe Intro. 119 is a part of creating that foundation, but only a part. We hope the Council will continue to explore ways to maximize the impact of the NYPD IG and hold the NYPD accountable.

In our testimony today, we make three recommendations:

1. We recommend that the Council create a mechanism to seek further investigation by the IG where the reports issued under Intro. 119 reveal patterns of misconduct, abuse, mismanagement, or other issues.
2. We urge the Council to use its oversight authority to ensure the NYPD IG dedicates proper focus and resources to systemic issues within the NYPD, rather than individual allegations of wrongdoing.
3. We recommend the Council begin to think more broadly about creating a lasting culture of transparency at the NYPD, including, for example, ensuring compliance with the City's Open Data Law and requiring public reporting of data generated by non-criminal summonses.

II. Investigating Patterns of Misconduct

The NYCLU wholeheartedly supports the City taking a closer look at civil complaints for what they can reveal about policing. For many years, advocates have urged the NYPD to adopt an "early warning system" to alert police supervisors of patterns of misconduct among officers. Where individual officers really are "bad apples," it is incumbent on the Department to recognize and address that fact as early as possible, to reduce the risk to New Yorkers who come into contact with those officers. Monitoring of civil complaints is not a substitute for, but can be an important supplement to, that early warning system.

While the filing of civil lawsuits is not proof of officer misconduct or structural failures, the IG must use his investigation powers and authority to look beyond the numbers and seek out patterns that require decisive action. The Council must be willing to hold hearings to examine this information and to press the IG to take on meaningful investigations.

III. Guarding the Inspector General's Mandate

In 2007, the NYCLU issued a report, "Mission Failure," that documented the many ways the Civilian Complaint Review Board (CCRB) was not living up to its promise to bring transparency and accountability to police practices. One of the primary failures was the CCRB's inability or reluctance to recognize systemic issues revealed by repeated individual complaints, though it was well-positioned to make those connections. In 2013, we issued another report, "Beyond Deliberate Indifference: An NYPD for All New Yorkers," that sadly demonstrated the continuation of those same issues at the CCRB.

Until creation of the NYPD IG last fall, systemic oversight of NYPD policies and practices did not exist. The City Council fought hard to create the office of the IG, and it must keep focus on the mission, operations, and evaluation of that office moving forward. While Intro. 119 brings a much needed level of oversight to one aspect of the police department, we caution that the resources of the IG must be preserved for investigations into systemic issues within the police department, and not diverted into investigations against individual police officers, even in egregious cases.

Among police reform advocates, the creation of the IG signaled the City's recognition that systemic issues of training, supervision, and choices about policing tactics were causing real harm to New York communities. Those system-level decisions could not be addressed through

IAB or CCRB investigations, and until the passage of the Community Safety Act (Local Law 71, 2013), were difficult to address in the courts. Investigating and scrutinizing those issues will always be less politically popular than sorting out "good" from "bad" police officers. The office must not become redundant of the Internal Affairs Bureau (IAB) or CCRB, both agencies that investigate allegations of wrongdoing by individual officers.

Where the system itself is broken, even good officers cannot redeem it. The Committee on Oversight and Investigations has the responsibility to ensure that the IG lives up to its mandate, focusing resources on investigation of systemic flaws and not individual wrongdoing. We recommend the Committee review carefully all reports issued by the IG, and be on alert for circumstances where more decisive action is warranted. We also recommend the Council use its oversight powers over the Department of Investigations and NYPD IG to be vigilant against a de facto shift in the IG's mission.

IV. Additional Areas for Consideration

Finally, we recommend the Council take this opportunity to examine other areas of police practice that remain hidden from public scrutiny, particularly in this moment, when a new administration has yet to write its policing philosophy in stone. The NYPD has historically been one of the most resistant city agencies when it comes to transparency. It is time for a change.

To begin with, the NYPD remains egregiously out of compliance with the New York City Open Data Law (Local Law 11, 2012). This law demonstrated great leadership and vision by the City Council, and has the potential to create one of the most powerful open government programs in the nation. The law requires government agencies to upload all databases maintained by the agency to a publicly accessible web portal, in a format that is easy to download and easy for technologists and programmers to make use of. Currently, the majority of NYPD databases are not posted to the Open Government portal at all. Those that are available are locked into .pdf format, which is not permitted under the law, and which defeats the "open" format of the portal. The NYPD must be made to comply with this mandate.

As another example, aggressive NYPD enforcement of non-criminal violations continues to impact police-community relations but is hidden from public scrutiny. Officers can issue a summons for non-criminal wrongdoing, such as violation of the open container law, riding a bicycle on the sidewalk, or engaging in "disorderly conduct." During the Bloomberg administration, the Department issued more than six million of these summonses, which can result in serious collateral consequences for people, including fines and even jail time. As with the Stop and Frisk program, advocates believe the NYPD may unfairly enforce these non-criminal violations against communities of color (preliminary data suggests that black and Latino New Yorkers have received nearly 2/3 of these summonses in some years).

Yet there is no public reporting of the race or other demographic information about New Yorkers who receive criminal court summonses from the NYPD. As it was during our City's reckoning with the Stop and Frisk program, it is imperative that policymakers and the public have the opportunity to examine demographic information and think critically about maintaining safety in a way that is healthy for all communities. The NYCLU would be pleased to assist the Council in obtaining current information on summonses and exploring a program to require the regular reporting of that information.

These are just two examples of the failure of a culture of transparency to take hold at the NYPD. We hope the Council will continue building a solid foundation of transparency that will outlast individual elected officials, and will ensure the NYPD works for all communities across the City.

We thank the Council for its dedication to bringing oversight and accountability to the operations of the NYPD and we hope there will be more improvements to come. In the name of promoting greater transparency and accountability to the community, we trust the IG and the Council will make the reports generated under Intro. 119 available publicly. We look forward to working with you to bring lasting change to New York City.

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WRITTEN TESTIMONY OF THE
NEW YORK CITY AFFAIRS COMMITTEE

NEW YORK CITY COUNCIL
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS
May 5, 2014

Int. 0119-2014
Requiring the Inspector General of the NYPD to submit quarterly reports to the city council, comptroller and civilian complaint review board detailing the number and disposition of civil actions filed against the NYPD

The New York City Affairs Committee of the New York City Bar Association respectfully submits this testimony in support of Int. 0119-2014, which would require that the NYPD's Inspector General submit quarterly reports to the City Council, Comptroller, and Civilian Complaint Review Board. These reports would include information regarding the number and disposition of civil actions filed against the NYPD or individual police officers, as well as information regarding the officers against whom the actions have been asserted, such as number of years of service, precinct affiliation, and past civil actions alleging misconduct by those same officers.[1]

In Fiscal Year 2010, the City paid out $137.3 million in settlements and judgments for claims against police officers.[2] In Fiscal Year 2011, the total soared to $185.6 million.[3] In a single year, tort claims against the NYPD – an overwhelming majority of which consist of claims for civil rights violations – increased by an astounding 35%.[4] In 2012 the City paid out $151.9 million in settlements and judgments for claims against police officers - the amount was a slight decrease from 2011, but still an enormous sum.

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[1] The bill provides that "[n]othing in this section shall require the reporting of any record that is confidential pursuant to section 50-a of the civil rights law" which refers to a police officer's personnel record.

[2] *Claims Report Fiscal Year 2011*, City of New York, Office of the Comptroller, Dec. 27, 2012, *available at* http://www.comptroller.nyc.gov/bureaus/bla/pdf/2012_Claims_Report.pdf (last visited May 1, 2014).

[3] *Id*.

[4] *Id*.

Despite the huge sums paid out to victims, the information on these awards does not seem to be utilized to deter the very police misconduct responsible for precipitating them. To the contrary, the dramatic increase in the sum the City has paid each year clamors for reform. In 2000, the City Bar released a report that addressed this very issue: "*The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change*."[5] A copy of that report is appended to this testimony. It is telling that the issue was of serious concern in 2000, and yet the total paid to resolve NYPD cases in the five years prior to that report was $140 million; in contrast, payments in the past five years exceed $700 million, a five-fold increase.

Then, as now, the NYPD should be giving more attention to the civil cases brought against police officers as part of its routine job performance and discipline reviews. Requiring the reporting called for in Int. 119 should yield immediate benefits, including: (1) allowing the NYPD to identify those officers with a possible propensity for violating and/or disregarding New Yorkers' civil rights; (2) notifying and deterring repeat offenders by marking their personnel files; and (3) assisting the NYPD in unearthing practices among officers or department-wide policies that precipitate recurring misconduct.

In addition, the data should be used by the NYPD to further analyze the information provided in the reports so that targeted changes can be made to reduce the incidents of police misconduct and the number of cases brought as a result. For example, officers with claims against them should have the cases noted in their personnel files. In addition, the NYPD should be tracking trends in the location and types of suits being brought, to help identify systemic problems, including where training lapses may exist. Rigorous use of this information will not only result in a reduction of suits brought, and judgments paid, to settle police misconduct cases, but it will also help to increase the public trust in the City's police department.

Tracking allegations of police misconduct has proven effective at curbing abuses and forestalling future suits. For instance, when the Los Angeles County Sheriff's Department began tracking lawsuit filed against its deputies in the aftermath of the Rodney King assault, recidivism among offending deputy sheriffs plummeted. The precipitous drop saved Los Angeles County $30 million from 1992 to 1996.[6]

While we support the proposed legislation, we recommend that the bill be amended to require that a redacted version of these reports, with identification of individual officers removed, be made public. As the NYPD continues to take steps to increase the transparency of its actions and improve relationships with the community, it is important that these reports be made available to the very public the NYPD is trying to better protect. Access to these reports will not only allow for an open dialogue on how to reduce and better handle these lawsuits, but it

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[5] New York City Affairs Committee, *The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change,* New York City Bar Association, March 2000, *available at* http://www2.nycbar.org/Publications/reports/show_html.php?rid=32 (last visited May 1, 2014).

[6] *The Los Angeles County Sheriff's Department Seventh Semiannual Report*, Special Counsel Merrick J. Bobb & Staff, April 1997, 53, http://www.comptroller.nyc.gov/bureaus/bla/pdf/2012_Claims_Report.pdf (last visited May 2, 2014).

will foster a sense of public accountability for the City's police department and its officers. That being said, it is vitally important that the reports be properly redacted so as not to compromise the identities of any officers. However, such redactions should not in any way compromise the overall purpose and objective of the reports, which is to provide public disclosure and accountability, and to encourage the NYPD and its officers to improve policing efforts.

By tracking and monitoring claims against police officers, the NYPD can identify problem officers, discern patterns of misconduct, identify better training opportunities, and take corrective action accordingly. Such benefits not only promise to reduce the fiscal costs lawsuits exact but also to bolster the public's confidence and trust in the NYPD.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
COMMITTEE ON NEW YORK CITY AFFAIRS

The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change

There is constant debate in this City, both in its political institutions and in the press, about police accountability to the public for violations of civil rights. The Civilian Complaint Review Board, an independent body to investigate civilian complaints against the police, has been criticized as insufficiently vigorous in pursuing and substantiating complaints against police; and in the cases in which citizens' complaints are substantiated, the Police Commissioner has been criticized for failing to act to discipline the officers involved.

It is not our purpose to enter into the merits of the ongoing controversy concerning the adequacy of administrative measures of discipline, but instead to call attention to an additional, generally neglected source of police accountability to the public, and to propose changes that will serve to make the legal process as a whole more effective both in reducing the amount of damages paid out of public funds and in controlling police abuses. That source of accountability is the tort system - the damages paid by the city for the injuries allegedly inflicted by police officers.

Under the terms of New York State's General Municipal Law, the City is obligated to supply counsel and pay the damages for civil claims against its employees, including police officers, when the employee "was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency;"[1] the Corporation Counsel interprets this provision in such a way as to supply counsel and indemnify police officers in the overwhelming majority of civil claims. Furthermore, as a self-insurer, the City pays such claims directly out of its fiscal resources. Thus the municipality pays nearly all the damages arising out of claims of abuse by police officers.

The City paid a total of $140 million in damages for alleged police abuses, through settlements as well as litigated judgments, between the 1994-95 and 1998-99 fiscal years.[2] By contrast, in the five years 1988-92, the City paid out $45.5 million for similar cases. Despite the substantial sums involved, there is no showing that either the police department or the City administration has made systematic use of the facts or results in such cases either in connection with the discipline of individual police officers or in the shaping of police department policy. Thus the tort system is failing in one of its principal purposes, to shape the actions of those officials on whose behalf damages are paid.

[1] NYS Gen. Mun. Law sec. 50-k.

[2] K. Flynn, "Record Payout in Settlements against Police," New York Times Oct. 1, 1999. This figure reflects recent increased efforts by the Office of the Corporation Counsel to settle cases.

The Office of the Comptroller, the City's fiscal officer, has for nearly a decade been urging the police to make use of data from civil tort claims for purposes of discipline and policy. In February 1992, the office of then Comptroller Elizabeth Holtzman made a study of cases in which damages had been paid for police abuses; she recommended that the NYPD:

- monitor claims and lawsuits involving charges of police misconduct in addition to complaints filed with the Civilian Complaint Review Board and correlate the data from all three sources;

- use the data from claims and lawsuits, as well as from civilian complaints, to identify and correct problems in training or other procedures and policies; and identify individual police officers and take appropriate follow-up action, including additional training or other assistance;

- use the information from police misconduct cases to improve the function of the NYPD, reduce claims and save the City money.

Talks were held between the police and the Comptroller in the effort to implement these recommendations, but so far as this Committee has been able to determine, the recommendations were not followed.

In 1999, Comptroller Alan Hevesi, in a memo of April 12 to Police Commissioner Safir, recommended that the NYPD "review settled claims data" in the following terms:

> In FY 98, we paid out $28.3 million for police action claims. Although most of these claims are settled by the Comptroller's Office and Corporation Counsel without a direct admission of guilt on the part of the police officers(s) involved, there is enough evidence collected to convince the City that the plaintiff has a serious case. The police department should analyze these settled claims, and take steps to review the officers' performance and propensity to commit acts of excessive force

Mr. Hevesi has remarked that "there is a total disconnect" between the settlements of civil claims and police department action; such matters are ordinarily not even noted in an officer's personnel file.[3] As a result, the NYPD does not learn of potential problem officers, fails to take curative action, and not infrequently fosters a situation in which an officer will engage in another act of violation, resulting in harm to another person and further damages from the City. More important, study of a large number of cases might well reveal patterns of misconduct against which the NYPD could and should take systematic management action. The City's Commission to Combat Police Corruption recently recommended that "...in cases where Law Department attorneys intend to settle claims or there are adverse judgments involving police officers because of liability for excessive force or other misconduct, such reporting can lead the [police]

[3] Ibid.

Department to take training or disciplinary measures to address the problem."[4] Most important, the present policy, in place for years, has resulted in a situation in which the City consistently misses opportunities to increase the protection of the rights of persons in the city and to reduce injuries that poison the relations between police and citizen and in doing so saving millions of dollars.

The Law Department, which usually represents the defendants, including the City itself and/or its employees, has suggested that, because the vast majority of police abuse claims are settled, it might be a mistake to try to draw conclusions concerning liability or policy from the results.[5] The defendants usually do not admit liability in a settlement, and cases may be settled merely upon an estimate of the risks involved in the litigation, rather than because of the intrinsic merits of the claim. Nevertheless, it appears to be the case that the City and its Police Department (NYPD) can make judgments about the behavior of individual officers based on their investigations of cases, and that more general conclusions could be drawn from a range of cases. A memo of the facts is made as a basis for a recommendation of settlement in a tort case, and as a result, the City usually does have an informed opinion concerning the actual liability of the officers and the City from its own investigation of the case. Narrative accounts of cases, based upon sometimes undisputed facts, both by the Comptroller and in news accounts, indicate that some very serious abuses have passed through the tort system without any action by the NYPD. For example, in 1995, the city paid $16.6 million in a case where a man was left a quadriplegic after police allegedly slammed his head into a door with such force that it crushed his spine. The police officers involved were apparently never disciplined.[6]

We understand that the Law Department now regularly provides a data printout of case filings to the NYPD. In addition, the Law Department submits a detailed lawyer-client memorandum to the NYPD on cases which, in the Law Department's view, might result in a payment of damages of $250,000 or more. While clearly a highly useful procedure, the cases on which memoranda are prepared represent only one or two percent of the cases filed, too small a number, in our view, to provide sufficient information on patterns of conduct by officer, by precinct or by the NYPD in general.

We recognize that the preparation of additional memoranda will entail a significant degree of effort, and perhaps additional expenditures by the law department. However, we believe that the extra effort and cost is more than justified:

- whatever can be learned about the practices of one, some or many police officers that can be used by the NYPD to better train, manage and discipline wrongful conduct will result should result in enough savings -- given the magnitude of the sums paid in damages -- to more than offset the increased resources devoted to reporting;

[4] NYC Commission to Combat Police Corruption, "The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy" August 1999 p.35.

[5] Ibid.

[6] D. Sontag and D. Barry, "The Price of Brutality: A Special Report," New York Times Sept. 17, 1997

- beyond the cost saving, any changes that will reduce the friction between the NYPD and much of the City's population, or improve public confidence in the behavior and judgment of police officers, would provide far more than monetary benefits. This, of course, depends on whether the NYPD effectively utilizes the information provided.

We are not suggesting that there be a specific dollar value of a case above which a report should be provided to the NYPD. We are persuaded that dollar value can be a misleading indicator of which cases would be most instructive to the NYPD, inasmuch as the age, status and condition of the victim is a major determinant of this value, often regardless of the culpability of the offending officer's conduct. However, there are factors that can be used to separate cases which may be frivolous or of relatively little merit:

- level of culpability of the officer
- some evidence of a pattern of conduct of an officer or group of officers, or a precinct
- some corroborative evidence of misconduct
- severity of harm to the victim.

In response to this approach, the argument may be made that, since so many cases are settled and many, in the judgment of the Law Department, may have questionable value, the tort system essentially should not serve as the warning device in police cases that it so pervasively serves. We cannot accept that argument. At any one time, there may be 7,000 cases of police misconduct pending against the City. That is simply too large a number to ignore, particularly since the tort system is the only means available for people who seek monetary compensation for injuries resulting from police misconduct. The fact that one case is settled for a small amount may not be significant, but the fact that several cases are brought against the same officer, or many cases may involve officers of the same precinct, or a substantial number are brought with regard to a particular practice, may be of great significance, even if all the resulting judgments are relatively small. Moreover, the public needs assurances that any patterns of misconduct or instances of egregious misconduct, however brought to the City's attention, are dealt with seriously and effectively by the agencies involved, and this is perhaps most true in the case of the NYPD, with the enormous authority it wields over the population.

Recent changes in the way that civil claims for police abuses in Los Angeles, California, in both the city and the county, are being handled suggest that a reform in the relations between the tort system and the management of the police in New York City is overdue and will result in substantial benefits to the city. Following the notorious beating of Rodney King in 1991, the Christopher Commission examined all civil cases alleging the use of excessive force by the Los Angeles Police Department (the city police) in which there was a payment in excess of $15,000. The Commission found disturbing patterns of abuse and failure to discipline officers for such abuses. The Commission recommended:[7]

[7] Report of the Independent Commission on the LA Police Department p. 63 (1991).

> LAPD management must recognize that the problem of litigation is a reflection of the more fundamental problem of excessive force, not in all cases to be sure, but in far too many of them. Prompt investigation and discipline, if appropriate, should be pursued. Information about officers' conduct that becomes available in the litigation should be used in evaluating those officers. Conduct that results in large settlements or judgments, including punitive damages awarded on the basis of egregious or intentional misconduct, should be carefully studied to determine what went wrong and why. In addition, the Department, in conjunction with the City Attorney's office and other interested bodies of City government, might consider arbitration or mediation of claims that are not routinely denied and often lead to more expensive litigation.

According to later reports, these recommendations are being implemented.

The experience in Los Angeles County, outside the confines of the city, with the LA Sheriff's Department, is still more revealing. The Special Counsel to the County and its Board of Supervisors examined the records of civil cases alleging brutality by deputy sheriffs during a period of five years, and found that there were certain repetitive fact situations that gave rise to litigation and to a serious risk of loss on behalf of the county. As a result, measures were taken both in policy and in training to reduce the risk of such cases recurring. At present, the county has a system for tracking new litigations, to determine the officer's record and to introduce information concerning the case into the department's records. Whenever there is a substantial settlement, the Sheriff's Department is required to submit a report setting forth what the department is doing to minimize the risk of repetition, through changes in procedure and/or training. Furthermore, the corrective action report and the county counsel's recommendation for a settlement are public records. As a result, the number of such cases filed dropped dramatically, and the Special Counsel has estimated that the county saved $30 million between 1992 and 1996.

We note that the actions taken in Los Angeles go beyond those recommended from time to time by the Office of the Comptroller here in New York. The Comptroller has recommended only that the NYPD track civil cases involving alleged police abuses and make more systematic use of the results. It would appear that continued recommendations that the NYPD, acting alone, take action to integrate the information offered by civil claims are inadequate; the onus to make use of the results of legal claims that have been litigated by the City's lawyers and settled with the consent of the Comptroller should not be placed on the police department alone. The systematic use of such information would be a change in policy by the City that should be carried out by the Corporation Counsel, the Comptroller and the NYPD acting jointly.

Based upon the repeated recommendations of the Office of the Comptroller of the City of New York, on the continued rise in damage payments for alleged police abuses in our city, and upon the experience in Los Angeles, our Committee recommends the following:

1. The Comptroller and Law Department should study police misconduct cases over the last five years to identify patterns and general issues, and make recommendations for the NYPD to consider.

2. The above two agencies and the NYPD should form a liaison team, and the NYPD should appoint a specially-designated liaison officer to carry out NYPD's responsibilities under this proposal.

3. The Law Department should report the filing of a case to the NYPD liaison officer, who should maintain a databank on these cases, assess the claim and report back to the Law Department. Officers with three or more claims against them should have the cases noted in their personnel files.

4. The three agencies, working together, should develop criteria for determining when a case should be reported in detail by the Law Department to the NYPD. The criteria should include: level of culpability of the officer; some evidence of a pattern of conduct; some corroboration of the misconduct; and degree of harm to the victim. When a police misconduct case is identified that meets these criteria, a report on the matter should be prepared by the Law Department and sent to the NYPD and the Comptroller. The NYPD liaison officer should prepare a response to the report indicating whether there have been other settlements or judgments with regard to the officer in question, and what action was taken with regard to the officer or what change in policy or procedure has resulted, or is to be implemented. The amount of damages paid in a matter should be entered on the officer's record.

5. The liaison team should review reports every six months and analyze trends or other data from these actions to identify appropriate changes in policy or procedure. The team should also follow up with NYPD concerning actions taken with regard to the officers involved and with regard to training or other systemic improvements that had been recommended previously. The team should issue a report with recommendations, and a redacted version of this report, with identification of individual officers removed, should be made public.

6. The Comptroller should issue an annual report, by March 31 of the year following, with data on police conduct cases brought and settled, judgments rendered, and amount paid out. This report should be made public.

In the view of this Committee, the recommendations set forth above are essential. At present, it appears that the NYPD is failing to take curative measures and to implement changes in training and practices that would be revealed as necessary by a systematic study of past and present claims for damages. Thus the tort system is failing in one of its basic purposes, to modify the conduct of persons and organizations found liable. Most important, a change in the present policy, through which the NYPD and other parts of the City administration would make a systematic study of police abuses revealed through the litigation of civil claims in the Law Department and inform the public of resulting steps taken, would reduce the number of claims, increase the protections of the rights of persons in New York City, improve police-community relations and save the City and ultimately the taxpayers many millions of dollars.

March, 2000

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