New York City Department of Investigation
The Office of the Inspector General for the NYPD (OIG-NYPD)

Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing

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Executive Summary

Over the past decade, legal claims and civil lawsuits against the New York City Police Department (NYPD) have been increasing in number. According to NYPD, in the past five fiscal years alone, the City has seen more than 15,000 lawsuits filed against NYPD, a 44% increase in total number, that in sum have cost the City over $202 million. These cases result in a substantial financial burden on New York City taxpayers. The City's response has ranged from removing the most-sued officers from the streets to allocating new and greater resources to the attorneys who must defend these lawsuits. The Mayor recently announced that the New York City Law Department would receive an additional $4.5 million to hire 30 new attorneys and 10 new paralegals to defend the City against such lawsuits. While parties may differ on what has caused this high volume of lawsuits, the byproduct has been a large quantity of lawsuit and claims data which, if used correctly, can assist NYPD and the City with taking necessary corrective action. However, various agencies with responsibility for different aspects of this litigation are not tracking the data from these cases in the most effective way possible. This Report discusses the necessary steps needed for the efficient collection and use of this data.

While the high number of legal claims and lawsuits being filed against NYPD is concerning, the careful collection and analysis of data regarding legal claims and civil lawsuits (hereinafter "litigation data") has the potential to reduce costs while improving both officer performance and police-community relations. Although litigation data is not a perfect indicator of police performance, when the correct litigation data is collected and used properly, it can help result in changes that benefit individual officers, the police department, community members, and the City at large.

As outlined in this Report, NYPD can use litigation data in three ways: First, a quantitative and qualitative review of litigation data can be used to help law enforcement identify patterns and trends of police misconduct that warrant remediation. Second, by coupling litigation data with "Early Intervention Systems," law enforcement agencies can identify at-risk officers who may be in need of enhanced training or monitoring. Third, litigation data analysis can contribute

to improvements and positive shifts in departmental culture. In this Report, OIG-NYPD looks at how law enforcement agencies in other jurisdictions have successfully used litigation data in these three ways to effect change and reduce costs, and how NYPD can do the same.

While litigation data has the potential to bring improvements, the limitations of the information must also be taken into account. For example, the fact that a claim or lawsuit is settled is not necessarily proof of liability or improper conduct. Cases are not always resolved on the merits, and non-meritorious cases are sometimes settled for lower amounts to avoid the costs and uncertainties of litigation. Moreover, litigation data cannot, by itself, drive change in how plaintiffs and the City choose to litigate and resolve lawsuits. Separate strategies, independent of this Report, are required to address how claims and lawsuits are managed by agencies and counsel. But when the data is properly gathered and analyzed, litigation data can still be used for positive, proactive improvements in policing.

While this Report lists several steps that should be taken, OIG-NYPD notes that NYPD is, in some ways, ahead of many other police departments with respect to tracking and analyzing litigation data. For example, NYPD has been improving its system for using data – including litigation data – to track and monitor the performance of individual officers. NYPD also recently revamped its internal team responsible for reviewing and identifying trends in legal claims and litigation. Finally, NYPD has been exchanging data more regularly with the two agencies that also track litigation data against NYPD and its officers: the Office of the Comptroller of the City of New York (Comptroller's Office) and the New York City Law Department (Law Department).

Notwithstanding this progress, more should be done. OIG-NYPD sees several opportunities for enhancing how litigation data is collected and utilized in the long-term. OIG-NYPD therefore makes the following three recommendations:

1) **NYPD should perform a qualitative review of the most relevant data contained within legal claims and lawsuits against NYPD**. A more thoughtful examination of certain litigation metrics generates the greatest benefit from a risk management perspective, police oversight perspective, and accountability perspective. Specifically, NYPD, the Comptroller's Office, and the Law Department need to start tracking more details about the nature of the claims and the core allegations, information about the subject police officer, the location of the alleged incident, and the address of the plaintiff. A more qualitative review of claims and final outcomes will also help to distinguish potentially meritless cases from more substantive claims and, therefore, will help to determine which cases can best help with an Early Intervention System or a trend analysis system.

2) **NYPD should more closely coordinate the collection and exchange of litigation data through the creation of an interagency working group with the Comptroller's Office and the Law Department.** Beyond the current bilateral discussions that NYPD has with both the Comptroller's Office and the Law Department, an interagency working group would allow all three agencies to better understand the optimal path forward in facilitating and exchanging the review of police-involved litigation data. This includes identifying what data exists and where, how data should be classified, what additional data should be collected, what resources are needed to capture data that is not readily available, and how to best balance the benefits of data review with the practical realities of data collection.

3) **NYPD should be more transparent in its emerging work in litigation data analysis so that New York City residents can better understand how the officers serving their community are evaluated and how NYPD is using litigation data to identify trends in the Department as a whole.** In addition to revealing details about both officer performance monitoring and litigation data analysis, NYPD should also solicit public

comment regarding these systems. With increased transparency and openness to comment will come greater public confidence in NYPD's plan for analyzing litigation data.

Reliable data on police activities is a foundation of oversight and review. This Office, as well as NYPD, must therefore take all practical steps to harness the most accurate data from all available sources and render it useful. If the recommendations in this Report are implemented, litigation data analysis may further this goal by helping to reduce the number of legal claims and lawsuits directed towards NYPD, while also reducing costs and improving policing and police-community relations in New York City as a whole.

I. Introduction

Civil lawsuits and legal claims against the New York City Police Department (NYPD) are increasing in number and presenting a material financial burden on New York City taxpayers. The City's response has ranged from removing the most-sued officers from the streets to allocating new and greater resources to the attorneys who defend these lawsuits. However, the City has not yet succeeded in coordinating the three agencies with the most access to data from these claims and lawsuits so that the relevant information from these claims and lawsuits can be analyzed and acted upon.

While the high number of legal claims and lawsuits being filed against NYPD may be concerning, NYPD should use the data generated from such lawsuits to consider potential changes and reforms. Even given the limitations of such data, aspects of the data from this growing pool of legal claims and lawsuits can be used to identify and analyze trends of both individual officer performance and department performance as a whole. Addressing such trends can ultimately lead to positive shifts in departmental culture. Other cities have harnessed the power of litigation data to bring about positive change, and NYPD, which has taken steps in this direction, should continue to do so as well.

In this Report,[1] the Office of the Inspector General for the NYPD (OIG-NYPD) analyzes how the careful collection and analysis of data from legal claims and civil lawsuits can be used by NYPD to self-monitor, implement reforms, and ultimately reduce the costs on the City overall. OIG-NYPD sees at least three areas in which the City could further improve its performance with this emerging trend. First, certain relevant quantitative and qualitative categories of litigation data should be identified, collected, and tracked by NYPD, the New York City Law Department (Law

[1] Commissioner Mark G. Peters and Inspector General Philip K. Eure thank the staff of OIG-NYPD for their efforts, persistence, and insight in researching and writing this Report, especially Sandra Musumeci, Deputy Inspector General; Asim Rehman, General Counsel; Rebecca Engel, Examining Attorney; and Michael Acampora, Special Investigator. Commissioner Peters and IG Eure also recognize the important contributions made by Lesley Brovner, First Deputy Commissioner, and Jeri Powell, Director of Intergovernmental Affairs. Commissioner Peters and IG Eure also extend thanks to the New York City Police Department, the New York City Law Department, and the Office of the Comptroller of the City of New York for their cooperation during the investigation of this Report.

Department), and the Office of the New York Comptroller (Comptroller's Office). Second, these three agencies need to better align their litigation data collection, exchange, and coordination. Third, NYPD needs to be more transparent in its emerging work in litigation data analysis, to help New York City residents better understand how the officers serving their community are evaluated and how NYPD is using data to identify trends in the Department as a whole.

II. The Rise and Impact of Police-Related Litigation and Legal Claims

In recent years, New York City has seen a notable rise in the number of pre-litigation legal claims and lawsuits filed against NYPD.[2] In 2014, the Comptroller's Office reported that the number of legal claims filed against NYPD had risen by 71% in the past nine years.[3] The majority of these claims have consisted of allegations of police misconduct, civil rights violations, and injury or damage from accidents involving police vehicles.[4] According to the Comptroller's Office, the Bronx is by far the borough with the most complaints, as it is home to the five precincts with the highest number of personal injury police action claims (when adjusted for the crime rate).[5] In addition to Notices of Claim, the number of lawsuits against NYPD remains concerning. According to NYPD, in the last five fiscal years, there have been more than 15,000 lawsuits filed against NYPD, a 44% increase in total number. In sum, these lawsuits have cost the City over $202 million.[6]

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[2] In this Report, legal claims and lawsuits against NYPD refer both to those against individual officers and against the Department as a whole.

[3] Office of the New York City Comptroller, CLAIMSTAT: PROTECTING CITIZENS AND SAVING TAXPAYER DOLLARS 1 (July 2014). City Council has also taken note of the rise of lawsuits and legal claims by introducing Proposed Int. No. 119-A in February 2014, a proposed local law that called for tracking more information about civil actions filed against NYPD and its officers.

[4] *Id*.

[5] *Id.*

[6] Risk Assessment Unit, ANALYSIS OF LITIGATION, FISCAL YEAR 2010-2014, at 2. (The Risk Assessment Unit is now known as NYPD Risk Management Bureau, Enterprise Liability Assessment Unit).

While parties may debate the causes behind the rise of these lawsuits, the *bona fides* of legal claims and lawsuits brought against NYPD, and how such cases should be litigated and resolved, the overall impact of these claims and lawsuits is undeniable. First, these actions take a significant financial toll on the City. In 2013 alone, settlements and judgments against NYPD cost the City $137.2 million.[7] In April 2014, NYPD removed an officer from street duty an officer who reportedly had been sued 28 times and had cost the City at least $884,000 in settlements. Overall, the costs of claims related to NYPD have been the highest of any agency in the City since 2010.[8] Moreover, beyond the pure monetary costs of these settlements and judgments, the rise in claims has placed an increased resource burden on the various personnel and institutions involved, including City attorneys, City claims administrators, courts, and law enforcement professionals. In fact, the Mayor recently announced that the Law Department would receive an additional $4.5 million to hire 30 new attorneys and 10 new paralegals to defend the City against such lawsuits.

Unfortunately, as is discussed more fully in Section IV below, data from these lawsuits remains elusive. Generally speaking, the Comptroller's Office tracks the number and type of pre-litigation legal claims filed and the amount paid in any claim settlements; the Law Department tracks the number of lawsuits filed, the court in which they were filed, any named defendants, and, after closure, the disposition type and total disposition amount; and NYPD tracks information about individual officers, such as their rank, precinct, and Internal Affairs Bureau and Civilian Complaint Review Board (CCRB) complaint histories. However, there is currently no effective method of merging this data to allow a complete picture. As a result, for example, there is no simple way now to determine what percentage of the 15,000-plus lawsuits filed in the last five years resulted in legitimate findings of excessive force, despite the obvious value of such information.

[7] CLAIMSTAT, *supra* note 3, at 1.

[8] *Id.* at 5.

Legal Claims against NYPD

Notices of Claim

Under Section 50-e of the General Municipal Law, parties seeking to file personal injury tort claims or property damage tort claims against the City of New York – including claims against NYPD – are legally required to file a "Notice of Claim" with the Comptroller's Office before they can file a lawsuit in court. The Notice of Claim contains basic information about the claimant, the incident, and the injury or damages. The Notice of Claim process allows the Comptroller's Office, as the City's chief fiscal officer, to investigate, evaluate, and settle claims before they proceed to litigation. A Notice of Claim is required for state tort claims against NYPD but may not be required for other types of claims.

Lawsuits

Parties also file lawsuits against NYPD and individual officers in state and federal court. In some situations, lawsuits against NYPD are filed only after the Notice of Claim process does not result in settlement or resolution. For other types of cases – including certain federal claims – parties do not need to first file a Notice of Claim and may proceed directly to court. Lawsuits are commenced by the filing of a Complaint, which contains detailed information about the parties, the allegations, and the relief sought by the plaintiff. Lawsuits against NYPD and individual officers are primarily defended by the New York City Law Department.

For the purposes of this Report, information from Notices of Claim and information from Lawsuits are being collectively referred to as "Litigation Data."

III. Litigation Data as a Tool for Improvement

While both costly and potentially indicative of larger problems, the rise in legal claims and lawsuits against NYPD also presents the City with potentially valuable data. Done correctly, the thoughtful collection and analysis of litigation data has the tremendous potential to reduce costs to the City while also improving both officer performance and police-community relations.

First, a quantitative and qualitative review of relevant litigation data can help law enforcement and police oversight agencies identify patterns and trends of police misconduct that

warrant remediation. Second, by coupling litigation data with Early Intervention Systems,[9] law enforcement agencies can identify at-risk officers who may be in need of enhanced guidance or training. Third, litigation data analysis can contribute to improvements and positive shifts in departmental culture overall. By utilizing litigation data in these ways, not only will NYPD be able to identify issues at both the officer and departmental level, but, in the long run, the City may see a decline in the number and costs of legal claims and lawsuits filed against NYPD.[10]

a. Identifying Trends and Patterns

First, by reviewing litigation data, police departments can discover systematic problems that might have otherwise gone unnoticed.[11] In particular, litigation data can be used to identify trends, breaking down how officer behavior and departmental policies generate litigation costs and highlighting areas where corrections can be made through changes to policy or training. As part of this process, some police departments compare information from concluded lawsuits with information in their closed internal affairs files. In doing so, departments can analyze the outcomes of their own investigations and evaluate current departmental training and policies, to "'assess how new training plays out on the street, or to determine whether new training is needed.'"[12]

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[9] Early Intervention Systems (EIS) are discussed in greater detail on page 7 of this Report.

[10] While not covered in this Report, the analysis of litigation data can also serve to better explain why lawsuits and claims against NYPD are on the rise. For example, data analysis may suggest that the increases in legal claims and lawsuits over the last five years reflect the current health of police-community relations. By contrast, the data could underscore changes in litigation strategies by both plaintiffs and defendants, such as more aggressive filing by certain plaintiffs' bar attorneys who have an economic incentive in bringing questionable lawsuits that they believe are likely to be settled.

[11] Johanna Schwartz, *What Police Learn from Lawsuits*, 33 CARDOZO L. REV. 841, 853 (2012).

[12] *Id*. at 859 (quoting the Los Angeles County Sheriff Department's Special Counsel).

Case Study:

Using Litigation Data to Identify Trends – Los Angeles County Sheriff's Department

Nationwide, at least 16 police departments – including those in Seattle, Denver, and Cincinnati – are analyzing litigation data in order to identify larger-scale trends in police behavior.[13] However, perhaps the most in-depth trend analysis is taking place within the Los Angeles County Sheriff's Department (LASD), the nation's second largest law enforcement agency. This department created the country's first official Risk Management Bureau for a law enforcement agency, which was designed to reduce both problematic incidents and liability costs for LASD.

For approximately 20 years, the Special Counsel for LASD regularly produced public reports analyzing the Department's policies and practices. In its last report, the Special Counsel described how the Risk Management Bureau gathers information about incidents alleged in lawsuits and then works with County Counsel, "to determine whether the matter should be settled quickly or if the Department should fight in court all the way through trial."[14] Most importantly from the risk management perspective, there is a "unified philosophy that communicating information about misconduct by Sheriff's personnel, discovered in litigation, is a smart thing to do to benefit the Department in the long run."[15]

More specifically, on at least an annual basis, LASD's Risk Management Bureau informs LASD leaders about how much the County is paying out in judgments or settlements, how much each patrol division is costing in pay-outs, how many claims are being received, and the types of claims being filed. For example, in 2012-13, LASD's trend analysis revealed that 46.5% of the

[13] *See* Joanna Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking*, 57 UCLA L. REV. 1023, 1091 (2010).

[14] Police Assessment Resource Center, 34TH SEMIANNUAL REPORT OF SPECIAL COUNSEL: LOS ANGELES COUNTY SHERIFF'S DEPARTMENT 31 (August 2014).

[15] *Id.*

cases alleged excessive force by the police, and another 25.5% related to "alleged 'law enforcement' mistakes made in the field or jails."[16]

While the Special Counsel's report approved of the overall goal of the trend analysis being carried out by LASD's Risk Management Bureau, the reports opined that LASD's information-sharing did not provide enough specific information to identify strategies for change, and therefore did not "make it into the consciousness of Department members."[17] Accordingly, the report suggested that in addition to providing regular reports on litigation to senior-level officers, the Risk Management Bureau should do a more specific "break-down of what behavior is generating the costs," present "the identification of any patterns of cost-generating behavior both in the station and unit, and throughout the Department," and then "work more closely with the Litigation Cost Manager to organize and distribute data."[18] In other words, trend analysis must be carefully managed, distributed, and have its goals clearly defined in order to perform its task in the most successful way.

b. Early Intervention Systems

Litigation data can be also utilized as one essential aspect of an "Early Intervention System" (EIS), a data-focused system that law enforcement agencies are increasingly exploring nationwide. An EIS is a computerized database system that allows police departments to monitor individual police officers based on a series of "performance indicators."[19] The set list of performance indicators may differ from department to department, but there is value in including litigation data regarding the number and type of legal claims and lawsuits filed against individual officers. Other potential data points include the number and type of use-of-force

[16] *Id.* at 35.

[17] *Id.* at 38.

[18] *Id*. at 39.

[19] Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 77 (2012).

incidents involving the officer, number of arrests made and/or tickets issued, recommendations and awards, and line-of-duty injuries. Credited by some observers as "the most powerful police accountability tool," an EIS allows supervisors to quickly identify officers who are in need of intervention while providing the department with global data regarding the performance of its law enforcement professionals.[20] Although a properly functioning EIS cannot rely on litigation data alone and must always be mindful of the inherent problems presented by such data, information about claims and lawsuits is an important performance indicator, and the effective collection and integration of litigation data into an EIS can greatly aid the system. With an EIS system, police departments can also investigate misconduct claims in a lawsuit the same way that they would if the claims were alleged in a citizen complaint, and then counsel or retrain accordingly.[21]

The EIS process may be understood in four procedural steps:

1) **Review of Performance Indicator Data**: The department collects performance indicator data (including but not limited to litigation data), and supervisors review and analyze the data on a regular basis.
2) **Identification**: Supervisors identify officers who raise performance concerns based on their EIS analysis.
3) **Intervention**: The department counsels, educates, re-trains, and/or disciplines officers, as needed.
4) **Monitoring**: The department performs post-intervention monitoring to promote improvements or identify non-compliance.[22]

Research has shown that EIS systems not only act as a risk management system for departments, but also create both a new obligation and a new tool for supervisors, requiring

[20] Samuel Walker, THE NEW WORLD OF POLICE ACCOUNTABILITY 137 (2nd Edition 2014).

[21] Schwartz, *supra* note 11, at 856-7.

[22] Walker, *supra* note 20, at 146-157.

them to become "data analysts with an emphasis on identification of patterns of conduct."[23] With performance indicators such as litigation data at their command, supervisors using EIS systems are held to higher standards of accountability, as they are expected to use this data in "non-traditional models of problem solving," to "enhance their management skills," and to "help round out their people interaction skills."[24] The Department of Justice's Office of Community-Oriented Policing Services (COPS) has compared EIS systems to other data-driven systems which "rely on the analysis of systematic data for the purpose of addressing problems and holding police managers accountable for problems under their command."[25]

Case Study:

Early Intervention Systems At Work – Los Angeles County Sheriff's Department

The Los Angeles County Sheriff Department's EIS system is one of the oldest in the country. Following the Rodney King incident in Los Angeles in 1991, the Kolts Commission, appointed to investigate LASD, identified a group of 62 "problem officers" in the department and recommended the development of an EIS system.[26] The Department's Personnel Performance Index (PPI), which was introduced in 1997, "soon became widely regarded as the best EIS in the country."[27] As a process, it identifies officers who have been involved in a disproportionate number of "risk" incidents. A Performance Review Committee, comprised of rotating panels of three commanders, then screens each identified officer and assigns a lieutenant to prepare a detailed Employee Profile Report. If the Committee decides to refer an officer to intervention,

[23] *Id.* at 158.

[24] U.S. Department of Justice, Office of Community Oriented Policing Services, EARLY INTERVENTION SYSTEMS FOR LAW ENFORCEMENT AGENCIES: A PLANNING AND MANAGEMENT GUIDE 12 (2003).

[25] *Id*. at 17.

[26] Walker, *supra* note 20, at 140.

[27] *Id*.

then the Department also prepares a Performance Plan, which may include counseling, retraining, or reassignment. [28]

After LASD's EIS system was put into place in 1997, use-of-force incidents dropped from an average of 7.11 per month for officers before they were placed on Performance Review to .98 per month after they were placed on Performance Review. Likewise, the rate of shootings dropped from .50 per month to zero per month after Performance Review. In addition, 11% of all officers placed on Performance Review left the department completely after being placed on review: ten retirements, six discharges, one resignation, and one for unknown reasons. Police accountability experts have suggested that LASD's EIS system "influenced these decisions, sending a strong message to the officers that their performance did not meet department expectations," therefore effectively removing the most problematic officers from LASD.[29]

Nonetheless, by 2003, the Special Counsel for LASD did find some systematic weaknesses with LASD's EIS system: namely, that "Officer performance data were not being entered in a timely fashion . . . some citizen complaint data were not being entered into the system, many reports were incomplete or contained errors . . . and some commanders were not even aware of the capabilities of the PPI."[30] In other words, an EIS can be enormously valuable in setting standards for police accountability, but as an "extremely complex administrative tool[]," it must be effectively managed.[31]

[28] *Id*. at 150-1.

[29] *Id*. at 165.

[30] *Id.* at 188.

[31] EARLY INTERVENTION SYSTEMS, *supra* note 24, at 60.

c. Changing Departmental Culture and Building Community Trust

Finally, if there is an effective trend analysis and/or EIS system in place, information from legal claims and lawsuits can positively influence law enforcement leadership and lead to perhaps the biggest change of all: that of departmental culture. More specifically, if used correctly, litigation data can be used alongside leadership and other risk assessment changes to "solidify[] the skill set of field leaders to guide their units through organizational culture change so that the data is openly discussed and used to help guide how the Department functions on a day to day basis."[32] Moreover, the effective collection, analysis, and use of litigation data can help improve police accountability and engender greater trust in police-community relations when the public is made aware of such efforts.

Case Study:

Shifting Culture – Portland, Oregon Police Department

The Portland, Oregon Police Department is one example of how departmental culture can change over time as risk assessment practices evolve. In 2002, the Police Assessment Resource Center (PARC) was hired by Portland to conduct a review of a number of officer-involved shootings and in-custody deaths between 1997 and 2000. Initially, Portland's Police Bureau (PPB) officers acknowledged that within their departmental culture, "'[W]e are hesitant to be critical . . . we hate to call each other on the carpet,' and 'People are afraid to ask hard questions.'"[33] Overall, when PARC first began its work at PPB, officers were resistant to the notion of any departmental change whatsoever.

[32] 34TH SEMIANNUAL REPORT OF SPECIAL COUNSEL, *supra* note 14, at 40.

[33] Walker, *supra* note 20, at 203 (citing Police Assessment Resource Center, THE PORTLAND POLICE CENTER: OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATHS 1-2 (2003)).

Over time, PPB made numerous changes in its policies on officer-involved shootings and in-custody deaths. Over the course of seven years, PPB accepted nearly all of PARC's initial 89 recommendations, on everything from the use of different weapons by officers to the management of records and information about officer-involved shootings.[34] They also broke "new ground nationally" with a new use-of-force policy that provided an "explicit recognition that police officers must strive to use lesser levels of force even if higher levels of force might otherwise be permissible in the circumstances."[35] In sum, these changes led not only to a "substantial reduction in officer-involved shootings,"[36] but changes in departmental culture as well.

Data analysis has also become a part of PPB's shift towards adopting a risk monitoring culture. In 2006, at the same time that PARC was reviewing officer-involved shootings, Portland also formed a Force Task Force that reviewed data collected on use-of-force reports filed by PPB. The Force Task Force released a report in 2007 which analyzed patterns in the department's use-of-force; PPB agreed to all sixteen of the Force Task Force's recommendations for reducing those trends.[37]

Likewise, in 2004, Portland's City Auditor began to look at lawsuits filed against PPB. The Auditor's analysis of lawsuits showed that a number involved the police entering homes and making arrests without appropriate warrants. As a result of this analysis, the Auditor's office, in

[34] Police Assessment Resource Center (PARC), THE PORTLAND POLICE BUREAU: OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATHS, THIRD FOLLOW-UP REPORT 1-2 (February 2009).

[35] *Id.* at 5.

[36] *Id.* at 2.

[37] *See* Portland Force Task Force, USE OF FORCE BY THE PORTLAND POLICE BUREAU FOLLOW-UP *ix* (July 2009). ("[E]ach member of the Task Force agreed that the Bureau followed through on its commitment, and fulfilled all of the original recommendations"). This follow-up report analyzed the results of the 2007 study and did further data analysis, showing that use-of-force complaints were down 58% since 2004, while citizen-initiated complaints were down 42%. *Id*. at 15.

conjunction with the City Attorney, produced a training video about this issue for all PPB officers.[38]

After finishing its work with Portland, PARC observed that "PPB is making a commendable effort to assume greater internal accountability and perform self-critical analysis. Should these trends continue, strengthen, and become woven into the institutional fabric, the PPB should become a more self-correcting enterprise."[39] In other words, changes in departmental culture take more time than other forms of risk assessment and reduction, but they can be the most meaningful and longstanding way of reducing costs for police departments and improving policing and community relationships more distinctly.

d. The Limitations of Litigation Data

Litigation data by itself cannot provide answers to all the problems involving policing and police-community relations. Lawsuits suffer from a number of weaknesses as sources of information. Relatively few individuals ever file legal claims or lawsuits to begin with, even when their rights are violated or they are harmed. Additionally, there is the tendency to allege as much as possible in initial complaints, the potential for inaccuracies in claims and evidence, and the fact that many lawsuits only assert charges against a "John Doe" as opposed to against a particular officer. How and why cases are resolved is likewise not a perfect reflection of the claim; plaintiffs with strong claims may lose and those with weak claims may prevail. Cases that are dismissed by the court are less useful in showing overall departmental trends or the specifics needed to improve officer behavior. Finally, there is the slow pace of litigation, as well as the degree to which lawsuits generally emphasize the behavior of an individual, and not an organization.[40]

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[38] Schwartz, *supra* note 13, at 1068.

[39] PARC, *supra* note 34, at 5.

[40] *See generally* Schwartz, *supra* note 11.

In addition, even if NYPD or a named officer is not at fault, a case may be settled either to avoid the uncertainty of litigation or expensive litigation costs. While settling potentially meritless lawsuits occurs in many contexts – often for legitimate organizational reasons – these settlements do have financial consequences, and the Mayor recently criticized some aspects of the practice in the context of NYPD suits.[41] Obtaining a better understanding of what percentage of claims and lawsuit settlements are settled for these reasons will allow the City to understand the cost-benefit arguments for settling or litigating such cases.[42] Additionally, it will allow NYPD to adjust its review of the entire litigation data set so that the existence of potentially meritless cases is accounted for when reviewing relevant data: data collected from these cases will be of little value for trend analysis, early intervention systems, or changes in overall departmental culture. That said, there is no clear method for tracking these potentially unreliable cases.[43] While NYPD data indicates that over 60% of the lawsuits against the police settled for $25,000 or less in 2014, there is no current data that would help distinguish the *bona fide* low-value cases from those which were potentially meritless and settled to avoid costly litigation. As discussed below, further coordination is needed between NYPD and other agencies to determine if reliable metrics can be generated regarding such settlements.[44]

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[41] Earlier this year, both NYPD Commissioner Bratton and Mayor de Blasio made their opposition to the settlement of "frivolous" lawsuits known after the Law Department confirmed that it had settled a case for $5,000 with an individual who was wielding a machete against NYPD officers.

[42] During a January 30, 2015 press conference, the Mayor announced that the City will no longer settle "frivolous" suits. The same day, First Deputy Mayor Shorris made the same announcement in a letter to several police unions about changes in the City's litigation strategy for lawsuits against NYPD. Letter from Anthony E. Shorris, First Deputy Mayor to Mr. Ray Richter, President, Captain's Endowment Association *et al.* (Jan. 30, 2015).

[43] *See e.g.*, Robert G. Bone, *Modeling Frivolous Suits*, 145 U. PA. L. REV. 519, 520 (1997) ("Reliable empirical data is extremely limited, and casual anecdotal evidence highly unreliable. We have no clear explanation of why frivolous suits are filed or even common agreement on what constitutes a 'frivolous suit.'").

[44] Litigation data cannot, by itself, drive change in how plaintiffs and the City choose to litigate and resolve lawsuits. Separate strategies, independent of this Report, are required to address how claims and lawsuits are assessed and managed by agencies and counsel.

IV. The Current Use of Litigation Data Within NYPD

In many ways, NYPD has already begun to utilize litigation data in both its EIS system and in analyzing trends and patterns through its newly-organized Risk Management Bureau.[45] First, with respect to EIS systems, NYPD currently uses different computerized systems for tracking officer performance and conduct. Within these systems, data such as CCRB complaints and civil lawsuits filed against an officer, the officer's disciplinary history, and the officer's performance evaluations are all entered into databases for tracking purposes. For example, NYPD's Civil Litigation Monitoring (CLM) database is used by NYPD's Performance Analysis Unit to track civil lawsuits filed against individual officers. Under these various EIS databases, if an officer meets certain criteria demonstrating potential performance issues, then the officer is placed into one of three performance monitoring levels. At Level One monitoring, officers are required to develop a plan with a commanding officer to address their behavior and to undergo a 12-month monitoring period; at Level Two, a commanding officer submits profiles on a quarterly basis and the officer undergoes an 18-month monitoring period; at Level Three, a commanding officer submits monthly profiles and the officer undergoes a 12-month monitoring period and is prohibited from certain platoons, among other limitations. If an officer has had three or more lawsuits filed against him or her in the last 12 months, or six within the last five years, he or she is placed on Level Two Monitoring.[46]

NYPD is currently updating its EIS system to create a single, integrated database for both officer performance analysis and department-wide risk assessment. NYPD is commissioning a new system – the Risk Assessment Litigation System (RAILS) – which is intended to provide the Risk Management Bureau, the Performance Analysis Section, and officer supervisors with real-time data regarding officers. Under the current system – which is managed by the Performance Analysis Section – an officer's direct supervisor is not made aware that an officer is deemed to

[45] The Risk Management Bureau was established by NYPD in March 2015. *See* NYPD, INTERIM ORDER, ORGANIZATIONAL CHANGE: DEPUTY COMMISSIONER, LEGAL MATTERS- ESTABLISHMENT OF THE RISK MANAGEMENT BUREAU, Mar. 19, 2015.

[46] NYPD, Deputy Commissioner, Personnel, PERFORMANCE ANALYSIS SECTION (PowerPoint Presentation) at 7-11.

be "at risk" and is under Performance Monitoring unless the supervisor manually searches the EIS system for that officer. According to NYPD, once the RAILS system is implemented, supervisors will automatically be notified if certain thresholds for monitoring are met, including whether an officer is the subject of a civil lawsuit.

With the RAILS database and other changes, the Performance Analysis Section aims to "[i]dentify problematic trends and patterns in performance," "[d]evelop programs and policies designed to remediate deficiencies identified in members," and "[i]dentify uniformed members of the service whose behavior and method of performing duty increase the risk of their resorting to the use of force in situations not normally dictating such use."[47] While these conceptual goals are consistent with the basic principles behind early intervention systems, the new NYPD system has yet to be implemented or tested.[48] The RAILS system is currently in the very early stages of procurement and its efficacy remains to be seen. The public is also currently unaware of what categories of data NYPD has decided are most useful in reaching the goals of its new EIS system.

In addition to updating its EIS, NYPD recently enhanced its internal team responsible for reviewing and identifying trends in legal claims, litigation, and related data. The newly-created Enterprise Liability Assessment Unit – which is also housed in NYPD's Risk Management Bureau – is intended to "[i]dentify potential legal risks, mitigate, end or prevent the risks, and better assist the New York City Law Department in defending lawsuits" and "[a]nalyze all lawsuits filed against the Department and its members to determine the existence of patterns or trends."[49] However, although this Unit has already been collecting and analyzing litigation data in order to identify trends, NYPD has yet to release any of its findings, including those about areas in which lawsuits may be increasing or decreasing for different reasons and those areas where NYPD has or seeks to take corrective action.

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[47] INTERIM ORDER, *supra* note 45, at 4.

[48] OIG-NYPD will conduct a review of NYPD's EIS system once NYPD has had sufficient experience with the updated system.

[49] INTERIM ORDER, *supra* note 45, at 3.

In addition to the need to see how these systems work in practice, there are also problems with what data is being tracked and with the coordination of tracking among agencies. First, when it comes to the specific types of litigation data that is tracked, the Comptroller's Office, the Law Department, and NYPD all collect and track different information from legal claims and lawsuits. For example, the Comptroller's Office tracks the number and type of pre-litigation Notices of Claim filed with the Comptroller's Office, as well as the amount paid in any claim or lawsuit. The Law Department tracks the number of lawsuits filed, the court in which they were filed, and any named defendants; after the cases have closed, it also tracks the disposition type, and if a settlement is involved, the total disposition amount. Both agencies also keep some metrics regarding "police action" matters, but the specific definition of "police action" and the categories of cases that fall under "police action" differ from agency to agency.

Unfortunately, NYPD's access to this already-limited data is not sufficient. Because Notices of Claim filed with the Comptroller's Office are against the City as a whole, both NYPD and individual officers have frequently been unaware when they were they subject of a Notice of Claim. Likewise, since lawsuits are served on and managed by the Law Department, both NYPD and individual officers have not always had knowledge of lawsuits filed against them. Similarly, NYPD was often unaware of the ultimate settlement or resolution of pre-litigation claims filed against the Department and individual officers. Recently, the Comptroller's Office has begun to provide NYPD with access to its "OAISIS" Notice of Claim database and has begun to meet regularly with the Department.[50] However, the OAISIS database has limited data and functionality, and does not lend itself to efficient trend analysis without the manual inputting of information from individual Notice of Claim forms.

The Law Department also provides NYPD with limited information about police-related litigation. For example, while NYPD does have some access to search and view lawsuit

[50] *See* Office of New York City Comptroller Scott M. Stinger, Remarks as Prepared, Association for a Better New York at 5 (Jan. 26, 2015) ("[W]e have launched the first real-ever, real-time data sharing agreement with the NYPD. The department now gets claims data from our office through a dedicated portal, and we're holding weekly conference calls between front-line attorneys at both agencies.").

information on the Law Department's "Law Manager" litigation database, it can only search based on the name of a plaintiff and the docket number. Without being able to search by the names of defendant officers, the current utility of Law Manager for NYPD is significantly restricted. Likewise, while the Law Department has, for several years, provided NYPD with monthly litigation reports containing several data points, the content in the reports is limited to certain topics and the format of the report has, until recently, not been well-suited for NYPD's analytical needs. Moreover, the monthly reports still do not include certain details about the nature of the claims and, according to NYPD, the information in these reports needs to be manually inputted into NYPD's multiple databases. Recently, the Mayor's Office confirmed that the Law Department will provide NYPD with thorough and consistent notification of civil cases filed against individual officers and of any settlement of actions against individual officers.[51]

Finally, many of the same concerns flow in the other direction. While NYPD also maintains information relevant to lawsuits, such as details about defendant police officers, those data points may not be captured by either the Comptroller's Office or the Law Department.[52] Ultimately, while all three agencies have made improvements in how litigation data is collected and shared, they do not yet have anything approaching a fully coordinated system.

Accordingly, while NYPD has made significant progress in accessing and reviewing litigation data, there is still room for much improvement. OIG-NYPD sees several opportunities for enhancing how such data is collected and utilized in the long term.

[51] *See* Letter from Anthony E. Shorris, *supra* note 42.

[52] Transcript of the Minutes of the New York City Council, Committee on Oversight and Investigations, May 4, 2014, at 50.

V. Recommendations

The collection and analysis of litigation data regarding NYPD, if done properly, has the potential to reduce police misconduct, improve public safety, control costs, identify training opportunities, bolster public confidence, and advance law enforcement oversight. However, as illustrated above, the collection and analysis of litigation data is not a simple, one-size-fits-all endeavor. Rather, a tailored approach is required to understand what data is available in New York City and how it can be best utilized.

Accordingly, OIG-NYPD makes the following three recommendations to NYPD so that it can best move forward with its efforts to utilize litigation data in the future:

1) NYPD Should Perform a Qualitative Review of the Most Relevant Data Contained Within Legal Claims and Lawsuits Against NYPD.

A thoughtful examination of certain litigation metrics generates the greatest benefit from a risk management perspective, but also from an oversight and accountability perspective, when that examination is supplemented by a more searching qualitative review and analysis of certain facts underlying the litigation. In addition to data that is already being collected and reviewed, NYPD should track, in conjunction with the Comptroller's Office and the Law Department, the following information for all legal claims and lawsuits pertaining to NYPD actions:

1.1 **Nature of the claims/core allegations**: Data regarding the nature and type of claims would help identify trends in alleged police misconduct, as well as identify and prioritize issues for further investigation and review. However, in order to properly capture such data, one must not merely look at legal claims pleaded in the claim or complaint, but actually consider the factual allegations themselves. Legal claims and lawsuit pleadings do not always organize allegations according to specific categories of misconduct, and they often list multiple causes of action relating to one core set of factual allegations. Accordingly, analysis of claims data is most useful when based on a careful reading of the factual allegations asserted, and not merely drawn from a laundry list of claims

stated. (Such a careful reading might also help flag potentially meritless claims, which should not be analyzed for either trend analysis or officer performance.)

1.2 Information about the subject police officer(s): OIG-NYPD's research suggests that tracking information regarding the rank, experience, precinct, and prior complaints associated with officers named as defendants in lawsuits may provide value in the effort to improve policing in the City. OIG-NYPD would recommend having these data point descriptions capture the rank and precinct affiliation of the defendant officers at the time of the alleged incident, and reflect years of service by reporting the year that the defendant officers joined NYPD. Such data may identify specific categories of officers who would benefit from additional training in certain aspects of policing. Similarly, data regarding the number and result of complaints made to CCRB or the Internal Affairs Bureau against individual officers would help identify individual officers who may require specialized attention. Finally, OIG-NYPD would also suggest collecting data about whether the officer was in uniform or plainclothes, to see how assignments or perception of authority might affect officers' behavior.

1.3 Location of the alleged incident and address of the plaintiff(s): Given that the Comptroller Office's analysis has already identified the Bronx as the borough with the highest number of pre-litigation claims against NYPD, OIG-NYPD believes that it would be helpful to determine such data for lawsuits as well. The collection of this data will help identify trends — both the areas of the City where alleged incidents are occurring and where the plaintiffs who file these lawsuits are living and still encountering the police on a day-to-day basis — and to determine possible focus areas for improvement.[53]

[53] However, OIG-NYPD believes that some other metrics would be less helpful in realizing these policing goals. These include the number of claims in each action, the amount of time each claim has been pending, whether a case is in state or federal court, and whether there was declination of representation by the City. OIG-NYPD believes that this type of proposed litigation data, while perhaps useful from a work-flow management perspective, would have little probative value with respect to actually identifying and addressing trends in alleged police misconduct.

2. NYPD Should Create an Interagency Working Group between NYPD, the Comptroller's Office, and the Law Department to Improve Their Police-Involved Litigation Data Collection, Coordination, and Exchange.

OIG-NYPD recognizes that collecting the aforementioned litigation data points will be no simple task. As discussed, some are currently available to different City agencies, while other litigation data points are currently not in the immediate control of any one agency. The fact that varying types of data currently reside with different agencies – and that other types of litigation data are not captured at all – is not surprising. NYPD, the Comptroller's Office, and the Law Department each serve different functions and each have different data needs. Moreover, the practice of collecting and analyzing a broad set of litigation data points remains a relatively new endeavor in law enforcement and police oversight circles.

However, considering the importance of sharing existing data and identifying methods and resources for collecting currently unavailable data, OIG-NYPD recommends that, beyond having bilateral discussions with the Comptroller and with the Law Department, NYPD create a three-agency working group. This working group can allow all three agencies to better design the optimal path forward in facilitating and exchanging the review of police-involved litigation data. This can include identifying what data exists and where, what additional data should be collected, what resources are needed to capture data that are not readily available, and how best to balance the benefits of data review with the practical realities of data collection on both a quantitative and qualitative level. NYPD has recently made several positive strides in coordinating data collection with the Comptroller's Office and the Law Department, but more steps can be taken to improve the identification and collection of data between relevant agencies. Not only will these steps allow NYPD to improve officer performance and agency practices, but better coordination will also allow law enforcement eventually to utilize the refined litigation data for citywide review purposes.

3. NYPD Should Provide the Public with Details about NYPD's Early Intervention System and its Litigation Data Analysis Team and Solicit Suggestions for Further Development.

Finally, NYPD should increase the transparency of its infrastructure for litigation data analysis. More specifically, OIG-NYPD recommends that NYPD make certain aspects of both its EIS and its litigation data analysis team known, so that the public can become familiar with how it is analyzing litigation data on both an individual officer and systemic level.

In particular, given NYPD's recent efforts to enhance its EIS system and its litigation data analysis team, OIG-NYPD recommends that NYPD provide the public with details regarding the progress of both efforts. First, regarding its EIS system, NYPD should disclose more about which performance indicators it tracks for officers and how the monitoring levels operate.[54] Greater transparency regarding the system will help New York City residents to better understand how officers serving their community are evaluated and how NYPD actively takes steps to track and address officer performance.

This transparency might take several different forms, as the experiences of other metropolitan police departments demonstrate. For example, while the San Francisco Police Department actively involved the public in the formation of its EIS system,[55] other cities, such as Seattle and East Haven, Connecticut simply make the procedural details of their EIS systems available on their websites.[56] San Diego, meanwhile, created an EIS through a Department of

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[54] This proposed transparency would involve information about NYPD's processes in its use of an EIS system, and not protected personnel information about individual officers.

[55] Cicero A. Estrella, *Early-intervention plan set for problem police/Tracking could start by end of year, deputy chief says*, Jun. 22, 2006, THE SAN FRANCISCO CHRONICLE, *available at* http://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Early-intervention-plan-set-for-2516722.php ("In April, the Police Department presented a draft plan on how to track officers' behaviors. The plan drew criticism from the Police Commission, the Office of Citizen Complaints, and the American Civil Liberties Union, among others . . . The department has been working with the ACLU, the Police Commission, and the Office of Citizen Complaints to finalize its plan by July . . .").

[56] *See* Seattle Police Department, *Seattle Police Department Manual: 3.070-Performance Mentoring Program,* http://www.seattle.gov/police-manual/title-3---employee-welfare/3070---performance-mentoring-program (last visited Feb 24, 2015); East Haven Police Department, *Policies and Procedures: No. 207.2, Early Intervention System*

Justice "Enhancing Cultures of Integrity Grant," the details of which were then outlined in a technical assistance guide on the crafting of such a program.[57]

In addition, NYPD's litigation data analysis team should produce public reports disclosing aspects of trends in such areas as incident location, nature of claims, officer rank, and the other categories, as well as any improvements in trends, practice or policy, that have been revealed through its study of police misconduct cases from the past few years.

When it comes to details such as these, with both its EIS system and its litigation data analysis, NYPD should solicit the public's thoughts and comments. With increased transparency and openness to comment will come greater public confidence, as the public learns how NYPD takes its officers' behavior into account in mentoring, training, and new policies, all of which may eventually affect overall departmental culture. If litigation data analysis becomes a transparent process, it can also help to assure the public that analyzing and reducing the number of legal claims and lawsuits directed towards NYPD is a critical goal, not just for the Department, but for New York City as a whole.

(EIS), http://www.easthavenpolice.com/files/9014/0682/9564/207.2-Early_Intervention_System_Effective_09-01 2014.pdf (last visited Feb. 24, 2015).

[57] U.S. Department of Justice, Office of Community Oriented Policing Services, SAN DIEGO POLICE DEPARTMENT, ENHANCING CULTURES OF INTEGRITY: BUILDING LAW ENFORCEMENT EARLY INTERVENTION SYSTEMS, TECHNICAL ASSISTANCE GUIDE (January 2011), *available at* http://ric-zai-inc.com/Publications/cops-p052-pub.pdf.

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The Office of the Inspector General for the NYPD (OIG-NYPD) is a new oversight office charged with investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs, and practices of the New York City Police Department (NYPD). The goals of OIG-NYPD are to enhance the effectiveness of the police department, increase public safety, protect civil liberties and civil rights, and increase the public's confidence in the police force, thus building stronger police-community relations. OIG-NYPD is part of the New York City Department of Investigation and is independent of NYPD.

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