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# The Impact of Police Misconduct in Kings County on New York City's Civil Liability 2006-2010

Brian A. Maule

*Graduate Center, City University of New York*

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THE IMPACT OF POLICE MISCONDUCT IN KINGS COUNTY  
ON NEW YORK CITY'S CIVIL LIABILITY 2006-2010.

BY  
BRIAN A. MAULE

A dissertation submitted to the Graduate Faculty in Criminal Justice  
in partial fulfillment of the requirements for the degree of Doctor of Philosophy,  
The City University of New York

2015

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This manuscript has been read and accepted for the  
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Maria (Maki) Haberfeld

1/14/15  
Date

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Chair of Examining Committee

Deborah Koetzle

1/15/15  
Date

---

Executive Officer

Lior Gideon

Jon Shane

Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

THE IMPACT OF POLICE MISCONDUCT IN KINGS COUNTY  
ON NEW YORK CITY'S CIVIL LIABILITY 2006-2010.

By

Brian A. Maule

Adviser: Professor Maria (Maki) Haberfeld

The confluence of police misconduct and civil liability is an issue of growing concern for many communities throughout the U.S. today. The gravamen of the issue is evident in increases in the number of lawsuits alleging police misconduct and the civil liability that results from these lawsuits.

In New York City during the period 1997-2005 the cost for police misconduct went from \$27.9 million in 1997 to \$40.4 million in 2005 (Thompson, 2007). Concerns over these increases have resulted in efforts to curb both the number of lawsuits brought against the New York Police Department and the civil liability to the City that results from these lawsuits.

The study examines and describes the impact of allegations of police misconduct in Kings County during the years 2006-2010 on New York City's civil liability. Using allegations of police misconduct in lawsuits that resulted in a settlement or jury award as a measure of police misconduct, the study provides evidence of the increasing costs of police misconduct in Kings

County, New York. The study found that the increasing financial impact that police misconduct had on the City during the years studied was not the result of the increasing costs of settlements and jury awards per se but rather the increase in the number of lawsuits vis-à-vis the increase in the incidence of police misconduct.

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## Introduction

The confluence of police misconduct and civil liability is an issue of growing concern for many communities throughout the U.S. today. On the one hand the concern of police and municipal officials is the financial burden that resulted from lawsuits alleging police misconduct (Emery and Maazel, 2000; Ross, 2000; Vaughn et al., 2001),<sup>1</sup> On the other hand, the concern is the social injury to the general community particularly in this new era of community policing. The gravity of the issue is evident in nation-wide increases in the number of lawsuits alleging police misconduct and the civil liability that results from these lawsuits (Champion, 2001; U.S. Commission on Civil Rights, 2000; Human Rights Watch, 1998). For example, research by the International Association of Chiefs of Police (2001) found a ten times increase in the number of civil lawsuits filed against police officers and their departments in the years 1976-1991. According to Ross (2000) the average plaintiff's (the person who initiated the lawsuit) award for police misconduct in the U.S. during the years 1989-1999 was more than \$492,000 with an additional \$60,000 awarded for attorney fees. This compares to the average non-police tort award of \$52,000 nation-wide (U.S. Dept. Justice, 1996).

In New York City ("City") during the period 1977-2005 the cost for police misconduct went from \$27.9 million in 1997 to \$40.4 million in 2005 (Thompson, 2007). Concerns over these increases have resulted in efforts to curb both the number of lawsuits brought against the New York Police Department ("NYPD") and the civil liability of the City that results from these lawsuits.<sup>2</sup> Nevertheless, despite many efforts year after year the City continues to spend millions of dollars to litigate civil lawsuits brought against the NYPD for alleged officer misconduct.<sup>3</sup> For example, there were 35,379 incidents of misconduct alleged against officers of the NYPD in the period 2006-2010. These incidents resulted in 14,955 legal claims<sup>4</sup> and 193 million dollars paid

to settle these claims.<sup>5</sup> This compares to 25,999 incidents and 176.6 million dollars paid in settlements and jury awards for the period 2001-2005.<sup>6</sup> This is in addition to significant but less obvious litigation costs, arguably in the millions, including but not limited to employee salaries investigating the allegations, and sometimes trial expenses to defend these claims. While these increases were city-wide, they were more pronounced in Bronx and Kings Counties. For example, in Kings County alone (Brooklyn) there was a 70% increase in the number of allegations for 2006-2010 compared to the period 2001-2005 and a 269% increase in civil liability to the City.

The study examines and describes the impact of allegations of police misconduct in Kings County during the years 2006-2010 on New York City's civil liability. Allegations of police misconduct that resulted in a settlement or jury award were used as a measure of police misconduct. The study reviewed 2076 lawsuits filed in Kings County New York during the years 2006-2010 to examine and describe the impact of police misconduct on the City's civil liability. Allegations of police misconduct in Kings County were chosen because, as the most populous borough of the City, and demographically representative of the entire city, it was expected that a larger number of lawsuits would be brought in Kings County than in the other NYC boroughs. Furthermore, prior research showed that the crime rate in both the Eastern District and Southern District of New York<sup>7</sup> are comparable, and although arrest rates are higher in the Southern District than they are in the Eastern District, the number of §1983 lawsuits<sup>8</sup> per 100,00 of the population is higher in the Eastern District (Chiabi, 1995). Therefore, an empirical understanding of the impact of allegations of police misconduct in Kings County on the City's civil liability can be generalized to the entire city. It was also possible that the yearly increases in both the number of lawsuits filed against the NYPD and the resulting climb in total civil liability for Kings

County would imply that existing NYPD policies and programs were inadequate at preventing police misconduct city-wide and as such, may be contributing to the City's civil liability.

### Statement of the Problem

In recent years New Yorkers have experienced several high-profiled lawsuits against the NYPD as a result of questionable police actions. From the sodomy of Abner Louima, the killings of Amadou Diallo and Sean Bell, to the increasing number of civilian complaints and lawsuits filed as a result of the NYPD's Stop, Question and Frisk program, questions of the appropriateness of police conduct and the adequacy of the City's civil liability remain issues of contentious debate. Moreover, while these incidents tend to galvanize public discourse that continue long after they occur, it is the social injury that results, and the fact that these incidents may represent increases in police misconduct and civil liability that concern some New York City officials (Liu, 2010).<sup>9</sup>

Official data from the Civilian Complaint Review Board ("CCRB") show that there were 12,504 incidents of alleged police misconduct in Kings County for the years 2006-2010.<sup>10</sup> These civilian complaints resulted in 2076 lawsuits at a cost of more than \$56.2 million to the City (See Table 4.5). As shown in Table 4.2 these numbers also reflect a trend of yearly increases in allegations of police misconduct.

Highlighting this trend of increasing allegations of police misconduct and resulting civil liability is the fact that in compiling their annual reports, successive Comptrollers noted that the NYPD was the only New York City agency<sup>11</sup> to experience an increase in the number of lawsuits brought against it in each of the fiscal years 2001-2006 (Thompson, 2007) and surpassed all

other city agencies in 2010 in becoming the city agency with the most lawsuits brought against it (Liu, 2011).<sup>12</sup>

The increases in police misconduct and resulting civil liability were even more problematic because they occurred at a time when New York City, like most U.S. cities were financially strapped and the NYPD, like other police departments throughout the U.S., had embraced community-oriented policing which requires greater police accountability and increased public involvement in fighting crime (Human Rights Watch, 1998).

#### Purpose of Study

The financial impact of police misconduct lawsuits on municipalities in the U.S. is well documented (del Carmen, 1991; Hall et al., 2003; Kappeler, 1993; Kappeler & Kappeler, 1993; Silver, 2001; Stevens, 2001; Thrum, 1992; Vaughn & Coomes, 1995; Vaughn, 1999; Vaughn et al., 2001; Worrall, 2001; Pipes & Pape, 2001; Kappeler, Kappeler & del Carmen, 1993; Escholz & Vaughn, 2001; Kappeler & Vaughn, 1997; Vaughn & Kappeler, 1999; Ross, 2000; Vaughn et al., 2001) and more specifically the impact of §1983 lawsuits<sup>13</sup> in Central California (Eisenberg & Schwab, 1987); in Pennsylvania and Georgia (Schwab & Eisenberg, 1988), and with Bivens actions<sup>14</sup> in the Southern and Eastern District of New York (Chiabi, 1995). However, the impact of allegations of police misconduct in Kings County for the years 2006-2010 on New York City's civil liability was uncertain.

Therefore, although egregious incidents of police misconduct in the City were well publicized and past studies (Cohen, 1972; Kane, 2001; Kane, 2002; Reuss-Ianni, 1983) and commissions (Knapp, 1972; Mollen, 1994) explored and documented them, none explored the

impact of allegations of police misconduct in Kings County on the City's civil liability for the years 2006-2010.

While it is accepted that an allegation of police misconduct may not be equal to actual police misconduct, an allegation being simply a claim and not uncontroverted evidence of the incident, given the adversarial and expositive nature of the judicial system arguably a settlement or a jury award based on an allegation can be interpreted as a substantiated probability that the alleged incident did in fact occur. It is within this context that the study sought to fill the gap by examining the impact of allegations of police misconduct in Kings County during the years 2006-2010 on the City's civil liability. Using allegations of police misconduct that resulted in a settlement or jury award as a measure of police misconduct, the study addressed the following broad question: what was the impact of police misconduct in Kings County on New York City's civil liability for the years 2006-2010?

The following research questions informed by independent causes of action alleged in lawsuits were used to accomplish this:

#### Research Questions

Research Question 1: What is the relationship between allegations of false arrest and civil liability?

Research Question 2: What is the relationship between allegations of assault/battery and civil liability?

Research Question 3: What is the relationship between allegations of a police shooting and civil liability?

Research Question 4: What is the relationship between allegations of inadequate police training and civil liability?

## Chapter II Literature Review

By its very nature, policing in general is a complex and unique occupation (Alpert and McDonald, 2001; Cohen, 1996). In the U.S. the characteristics of public accountability, openness to evaluation and responsiveness to citizen demands (Bayley, 1998) contribute to the inimitable nature of policing in that police officers, in interpreting and applying static and dynamic rules, are legally permitted to act in ways, such as using deadly force, that would be criminal if committed by a civilian (Alpert and McDonald, 2001; Cohen, 1996). Furthermore, by working in isolation from public observation, police officers are provided with ample opportunities to misuse their authority (Dunningham and Norris, 1998; Escholz and Vaughn, 2001; Moran, 2005) in what some have argued is an occupation conducive to malpractice (Hunter, 1999; Ivkovic, 2004). Moreover, the unique character of policing, and the lack of consensus on the frequency of police misconduct, with some arguing that it is rare (Chappell and Piquero, 2004) and others the opposite (Ivkovich, 2003; Worden and Catlin, 2002), make police misconduct difficult to define and difficult to document (Kane and White, 2009).

### Police Misconduct

Police misconduct, like any other behavior that deviates from the norms of a society, is as varied and diverse as the norms themselves. This is apparent in the ease with which some forms of police behavior can readily be labeled as misconduct but it also underlies the difficulty in articulating a cogent definition of the term.

One well accepted definition proffered by Roebuck and Barker (1974) defines police misconduct as behavior that is deviant, dishonest, improper, unethical or criminal. Similar broad

definitions have been suggested by Skogan and Meares (2004) and by Klenig (2006). While these definitions specify “police misconduct” as the term being defined, arguably they can be attributed to malpractice in almost any profession and they do not capture the unparalleled authority that police officers possess, and the “or else” power that underlies every command from police officer to civilian.

The U.S. Supreme Court provides a more nuanced definition of police misconduct as the “[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state” (*Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922-929, 1982). In other words the police officer uses his or her authority to engage in job-specific malpractice (Kane, 2002). While more acceptable, at its core this definition seems to suggest that police misconduct is an affirmative “misuse of power.” Therefore, in recognizing that police misconduct can also include acquiescence or non-action, such as the acceptance of free meals or the disregard of a legal obligation, in operationalizing police misconduct, researchers have used behaviors as diverse as corruption (Sherman, 1978); wrongful death (Kappeler, Vaughn and del Carmen, 1991); use of excessive force (Thurm, 1992); police sexual violence (Escholz and Vaughn, 2001; Kappeler and Vaughn, 1997); acceptance of free meals (Alpert and Dunhan, 1997) and sleeping while on duty (Barker and Carter, 1994) to examine it.

Moreover, because of the variance in operationalizing police misconduct, it is generally a well-accepted argument that every police organization has experienced some form of misconduct during its existence (Kappeler et al., 1998; McCafferty, Souryal and McCafferty, 1998). Furthermore, by its nature, policing provides multiple opportunities for deviance and malpractice (Barker, 1997; Ivkovic, 2004), because of policing’s low visibility to public observation (Goldstein, 1960; Haar, 1997; Haar & Morash, 1999) in addition to the difficulty in defining it,

police misconduct is also difficult to document (Kane and White, 2009), and efforts to identify its correlates have been inconclusive (Chappell and Piquero, 2004; Fyfe & Kane, 2006). Most of the difficulty in documenting police misconduct lies in the unique nature of policing itself (King 2009; Manning 2009), as police officials and officers tend to define behavior that constitutes misconduct narrowly while the public defines it broadly (Adams, 1996; Lersch, 1998b; Lersch and Mieczkowski, 2000). This disparity in determining what behavior constitutes police misconduct is evident in the number of public complaints filed against police officers compared to the number of those complaints that are substantiated by the agency charged with investigating the complaints. For example, in New York City there were 52,049 formal complaints of police misconduct filed with the City's Civilian Complaints Review Board ("CCRB")<sup>15</sup> for the period 2006-2010. These complaints resulted in 36,743 investigations<sup>16</sup> but only 1,513 of those complaints were substantiated by the CCRB.

Still, while less than 3% of formal complaints of NYPD officer misconduct allegations filed during 2006-2010 were substantiated, whether as a result of more civil rights conscious citizens, an increasingly litigious society, controversial actions such as the NYPD's Stop and Possibly Frisk program,<sup>17</sup> or some of each, the number of lawsuits alleging police misconduct against NYPD officers and the civil liability that resulted, increased during the period 2006-2010.

Lawsuits against the City alleging police misconduct are based on one or more of the following:

False arrest.

False arrest is an allegation that police acting under color of law violated the individual's freedom of movement without having probable cause to do so. In most lawsuits it is a warrantless arrest and is presumptively illegal because it is made without the judicial process that is required in obtaining a warrant (*Broughton v. State*, 1975). This distinction is notable because an allegation of a false arrest places the burden of proof on the police to show that probable cause existed to make the arrest.

Police shooting.

A police shooting when claimed to have violated the victim's Fourth Amendment right to be free from search and seizure<sup>18</sup> is based on the allegation that the force used was excessive and therefore unreasonable (*Stein v. State* 53 A.D. 2d 988, 1976). According to the U.S. Supreme Court the legality of the use of force is determined by whether or not the force used was objectively reasonable and therefore must be evaluated within the context of the "severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether [the individual] actively resisted arrest or attempted to evade arrest." (*Graham v. Connor*, 490 U.S. 386, 396).

Assault/Battery.

Although these are two separate acts, they are usually pled and adjudicated together. When alleged in a police misconduct lawsuit, assault/battery like a police shooting is based on the claim that police used more force than was reasonably necessary.<sup>19</sup>

Inadequate police training.

Inadequate police training is claimed in some police misconduct lawsuits regardless of the violation alleged and the injury claimed. A lawsuit filed in a federal court against the NYPD oftentimes claims that the City failed to “train, supervise and discipline” the police officer alleged to have violated the individual’s constitutional rights. A lawsuit filed in a state court often alleges that the City was negligent in the “hiring, training and retention” of the police officer who is the subject of the lawsuit. The difference is notable because while an allegation in a state court (negligent hiring) is almost impossible to prove because it is a ministerial act cloaked in immunity, an allegation in a federal court (inadequate police training and retention) is subjected to an objective standard and may not be so cloaked (Harlow v. Fitzgerald, 1982)

Although federal and state lawsuits were adjudicated in different forums, because both assert police training as a cause of action and because the data used in this study comprised both federal and state lawsuits, both claims were consolidated in this study as “inadequate police training.”

Law enforcement, including the use of deadly force, is often a matter of individual judgment and individual discretion (Hayden, 1980). Nevertheless, that judgment and the use of discretionary authority must be within the guidelines of the required conduct first learned in the police academy (Harris, 1973, Kappeler et al., 1998). Therefore, although recruitment, selection and training provide qualified police officers to do the job, to get the job done right, the officer must work within the guidelines of his or her training. Thus, despite some contention that training is an inadequate method of preventing police misconduct (Emery & Mazel, 2000) it is generally accepted that not only does training reduce incidents of police misconduct (Collins, 1997; Vaughn and Coomes, 1995) but proactive policing itself may be unsuccessful without proactive training (Haberfeld, 2002). Moreover, even though the effectiveness of training to

prevent police misconduct and thus civil liability is debatable, not many would disagree that it should continue to be a part of any police academy curriculum. In fact, Scogin and Brodsky (1991), in a survey of police academy cadets found that cadets were concerned about work-related lawsuits. This suggests that the academy is the appropriate place to establish awareness of the impact of police misconduct on a municipality's civil liability.

### Police Misconduct and Civil liability

It is well accepted that the control of police misconduct, like crime itself, is directly related to the performance of the government, and to the safety and perceived well-being of citizens in a democratic society (Franklin, 1999). Efforts to curb police misconduct can be classified based on whether these efforts are regulatory, legislative or judicial (Swanson, Territo and Taylor, 2001). Regulatory controls are basically administrative and involve disciplinary measures within the police organization aimed at controlling individual officer conduct (Iris, 1998). Legislative and judicial efforts come in the form of statutes and court decisions and are aimed at the individual police officer and his or her organization. They include criminal prosecutions of police officers which are rare (Amnesty International, 2000) though effective at punishing the individual police officer and deterring others (Agathocleous, 1998) and civil lawsuits against officers and/or their police organizations which are ubiquitous and aimed mostly at reforming the police organization and its subculture (Agathocleous, 1998; Barrineau, 1994; Fallon & Meltzer, 1991; Gilles, 2001). Besides an individual officer's conduct is often shaped by the subculture of the organization (Kappeler et al., 1998) and prior studies suggest that legislative and judicial efforts may be more effective at controlling misconduct than regulatory efforts because in targeting the organization and its subculture (Reiner, 1998) with prescribed civil

liability, legislative and judicial efforts provide an incentive for police departments to modify their training of their police officers (Papik, 2004).

In New York City legislative and judicial efforts are effectuated with the filing of civilian complaints and/or lawsuits. Allegations of police misconduct in the City are investigated either by the CCRB or the NYPD's Internal Affairs Bureau ("IAB") with jurisdiction determined by the nature of the complaint. Allegations of the use of force, whether or not it is alleged to be excessive, abuse of authority, discourtesy or use of foul language, are investigated by the CCRB. By comparison, if what is alleged involves serious physical injury or death then the investigation is done by the IAB.<sup>20</sup> Even if not substantiated by the CCRB or IAB, complaints of police misconduct that allegedly violated the individual's U.S. or New York state constitutional rights are legally actionable, and if successful, impose civil liability on the City. For example, of the 10,548 CCRB and IAB complaints of misconduct alleged in 2010 against NYPD officers,<sup>21</sup> some 3,987 new claims resulted and the City paid approximately \$56.4 million dollars in judgments and settlements for existing claims.<sup>22</sup> This compares to 9,048 complaints, 2,221 lawsuits and 25 million dollars for 2006. These increases in both the number of claims of police misconduct and the resulting civil liability in New York City, while of concern to City officials (Liu, 2011, Thompson, 2007), exemplify the growing nexus between police misconduct and civil liability nationwide (Emery & Maazel, 2000).<sup>23</sup>

#### Legal basis for civil Liability.

New York City was first exposed to civil liability for the acts or omissions of its employees in 1945 when New York's highest state court, the Court of Appeals, held that "civil divisions of the State are answerable equally with individuals and private corporations for

wrongs of officers and employees” (*Bernadine v. City*, 294 N.Y. 361, 365. 1945). This case in effect abolished the long held doctrine of sovereign immunity for municipalities of New York State.<sup>24</sup> However, because it came from a state court, the ruling did not apply to federal civil rights violations.

Some 16 years later in the seminal case of *Monroe v. Pape*, 365 US 167 (1961) the U.S. Supreme Court held that 42 U.S.C. was the basis for individual police officer liability because the police conduct alleged violated the constitutional rights of the victim. In this case Monroe and his wife were held naked in their living room by thirteen Chicago police officers while their home was searched without a search warrant. Monroe was subsequently held in jail for ten hours and later released without being charged with a crime. Monroe sued both the individual police officers and the City of Chicago. The U.S. Supreme Court found that the individual officers were civilly liable but the City of Chicago was not because it was not a “person”<sup>25</sup> within the meaning of 42 U.S.C. §1983.

In 1978 the U.S. Supreme Court reversed itself, holding that municipalities were in fact “persons” and equally important the Court rejected the argument that a municipality was vicariously liable whenever a police officer violated an individual’s constitutional rights. The municipality was liable only if the violated individual could prove the existence of an official policy, practice, custom or usage that deprived him or her of a federal constitutional or federal statutory right (*Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978)). In application the City of New York is liable for the misconduct of NYPD officers if the individual alleging the violation can show that his or her injury was the result of some official policy, practice or custom of the NYPD. More specifically, the individual alleging the violation must show that the NYPD had a formal written policy or procedure that expressly violated a federal

constitutional or federal statutory right (*Tennessee v. Garner*, 471 U.S.1, 1985)<sup>26</sup> or a practice, usage or custom arising out of the City's failure to adequately train its police officers (*Canton v. Harris* 489 U.S. 378, 1989).

To establish a practice, usage or custom it must be shown that the officer's inadequate police training was the result of the NYPD's deliberate indifference to federal constitutional or federal statutory rights of the individual, or, alternatively that if after having notice of the violation by its police officers, the NYPD failed to address the problem by providing further corrective training of its police officers. Without proof of these conditions, there is no municipal civil liability, and if a violation did occur then there is only personal civil liability against the individual police officer (*Pembaur v. City of Cincinnati*, 475 U.S. 469, 1986).

Whether the defendant is the NYPD, the individual police officer, or both, most lawsuits alleging NYPD officer misconduct are brought under federal statute 42 U.S.C. §1983<sup>27</sup> which for a number of reasons has become an effective means of obtaining relief for federal constitutional or federal statutory violations (Barrineau, 1987; Kappeler, 1993; McCoy, 1986, 1987).

42 U.S.C. §1983.

Enacted into law on April 20, 1871, the Civil Rights Act codified as 42 U.S.C. §1983 ("Act") in relevant part provides that

"every person who, under color of any statute ordinance, regulation, custom, or usage, of any State . . . subjects, or Causes to be subjected, any citizen of the United States or Other person within the jurisdiction thereof to the Deprivation of any rights,

privileges, or immunities Secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”<sup>28</sup>

The Act’s original purpose was to provide civil remedies for African Americans whose constitutional rights were violated by government officials who were also members of the Klu Klux Klan (“KKK”).<sup>29</sup> Enforcement of the Act was so effective against the KKK that with the Klan’s decline much of the Act fell into disuse until 1961 (Gaines, Kappeler & Vaughn, 1997; Means, 2004) when the U.S. Supreme Court held that one purpose of the Act was to supplement state remedies if those remedies were inadequate or unavailable (*Monroe v. Pape* 365 US 167, 1961).

Although the Act’s original purpose and early use was to go after individual Klan members, and §1983 of the Act explicitly states “person”, in 1978 the U.S. Supreme Court interpreted the term “person” to include a municipal government.<sup>30</sup> This interpretation of the term “person” to include a municipal government permits a police officer to be sued both in his or her official and individual capacity. If the lawsuit is against the officer in his or her official capacity then the lawsuit is essentially against the municipality. In contrast if the lawsuit is against the police officer individually then the police officer is personally liable for the resulting settlement or jury award because the injured party is seeking damages against the officer and not from the municipality.<sup>31</sup> Meanwhile, indemnification even when the police officer is personally liable often resulted in the City paying the lion’s share of the settlement or jury award.<sup>32</sup>

In 1971 in the case of *Bivens v. Six Unnamed Defendants* the U.S. Supreme Court expanded the application of 42 U.S.C. §1983 to include federal employees.<sup>33</sup> With this expansion

any law enforcement officer, whether federal, state or municipal if acting under color of law,<sup>34</sup> can be individually liable for violating an individual's constitutional or statutory rights.

The result of these interpretations of 42 U.S.C. together with citizens' increased awareness of their civil rights have "made Section 1983 the most utilized and lucrative form of civil liability litigation against law enforcement officers" (Chiabi, 1995: 3) in the U.S. today. Contributing to the lucrative use of 42 U.S.C. is the §1988 provision for the recovery of attorney's fees<sup>35</sup> which are not available in a New York state lawsuit.<sup>36</sup>

Thus, while it is apparent that the recent U.S. Supreme Court interpretations of 42 USC have led to increases in the number of lawsuits brought against police officers and/or their departments and in civil liability to their municipalities, arguably these decisions seem to be in keeping with the efforts of courts to control police misconduct through deterrence (*Owen v. City of Independence*, 445 U.S. 622, 1980).

Civil liability as deterrence.

Fundamental to the use of civil liability as a method of controlling police misconduct is the courts' advocacy of civil liability's deterrent power. Premised on the belief that even the mere "threat of litigation and civil liability" is enough to deter a police officer's future misconduct (*City of Riverside v. Rivera*, 477 U.S. 575, 1986)<sup>37</sup> many judicial decisions, from the U.S. Supreme Court down to the lower courts, are replete with opinions on, and advocacy for, the deterrent power of civil liability. In the words of Associate Justice of the U.S. Supreme Court Antonin Scalia "[t]he damages a plaintiff recovers contributes significantly to the deterrence of civil rights violations" (*Memphis or her Community School Board v. Stachura*, 477 U.S. 299, 1986:307). Furthermore, more than mere advocacy for the deterrent power of civil liability, in

2006 the U.S. Supreme Court limited the application of the exclusionary rule in holding that civil liability, not the suppression of evidence, was the appropriate remedy for a particular police violation of a state law.<sup>38</sup>

Nevertheless, despite decades of judicial advocacy and reliance on the power of civil liability, or the threat of it, at deterring future police misconduct, its effectiveness continues to be unsettled and contentious.<sup>39</sup> Some argue that civil liability deters future police misconduct (Fallon & Meltzer, 1991; Giles, 2000), and others contending that it does not (Armacost, 2003; Levinson, 2000; Miller, 1998). Proponents of the deterrent power of civil liability as a method of controlling police misconduct point to studies that found that police officers believed that civil liability was a deterrent (Avery & Rudovsky, 1981; Champion, 1988; Garrison, 1995; Hall et al., 2003; Hughes, 2001; Nahmod, 1982, 1984, 1986).<sup>40</sup> In contrast, some studies have reported that although police officers expressed concern about civil liability, their concerns did not translate to their interactions with citizens on the street (Kappeler et al., 2001; Garrison, 1995). In fact Novak et al. (2003), in their survey and observation of thousands of police encounters with citizens, found that not only did most officers initiate aggressive behavior and were undeterred by the prospect of a civil lawsuit,<sup>41</sup> but that officers who were previously sued were more aggressive than those who were not. These studies support the position that police officers not only are undeterred by civil liability or the threat of it but, because of indemnification, the potential that they would be personally liable is slight (Davis, Small & Wohlberg, 1979; Meltzer, 1988; Miller, 1999); for often they, and even their supervisors, are unaware that substantial monetary awards could be assessed against their municipality (*City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 269, 1981; Fyfe, 1993).<sup>42</sup>

In the case of the NYPD, some have argued that deterrence is particularly ineffective being that the City, like most U.S. municipalities, defends and indemnifies the individual officer when he or she is hit with a settlement or jury award.<sup>43</sup>

### Indemnification

The City's policy of indemnification is covered under the provisions of the New York General Municipal Law ("GML") which states that the City will indemnify and provide legal representation to defend any public employee in a civil lawsuit that arises while that employee was acting under color of law and in discharge of his or her duties and was not in violation of any rule or regulation of his or her agency at the time the alleged act or omission occurred (McKinney's, 2000). In the case of the NYPD, if a police officer is sued for an incident occurring while carrying out his or her duties and if he or she is not violating any NYPD rule or regulation<sup>44</sup> while doing so, the City will provide legal representation and may pay part, most or all, of any settlement or jury award that will result.

This model of indemnification appears to be standard throughout the U.S. in that most municipal employers indemnify their police officers for any settlement or jury award that resulted from a lawsuit when the police officer acted under color of law (Davis et al., 1979). This is evidenced in a study of §1983 lawsuits in Central California by Eisenberg et al. (1987) that failed to find a single case in which the police officer sued was not indemnified by the municipality regardless of the violation alleged.

Indemnification of police officers, even when they are found to have violated the constitution that they are sworn to uphold, has led some to argue that civil litigation is an ineffective method of punishing the individual officer and/or deterring him or her and others

from future misconduct (Amnesty International, 2000; Armacost, 2004; Ass'n of The Bar of The City of N.Y. COMM. 2000; Hoffman, 1993; Levinson, 2000). This is so, it is argued, because police officers are so far removed from the litigation process that they have no knowledge when lawsuits settle and the amount of the settlement (Emery and Mazel, 2000). Therefore, unless the individual officer suffers some financial penalty he or she will not be deterred from future misconduct (Davis et al., 1979). In contrast supporters of indemnification argue that not only is indemnification not guaranteed to the officer being sued (Armacost, 1998), but without it the social, financial and emotional harm (Davis et al., 1979; Giles, 2000; Schlanger, 2003) that resulted can deter public service where the financial rewards pale in comparison to the costs of civil liability (*Bogan v. Scott-Harris*, 1977; Howard, 2009).<sup>45</sup>

Nevertheless the increasing costs of civil liability resulting from police misconduct lawsuits has led some scholars to propose different ways of maintaining the delicate balance between controlling police misconduct and the unique function of policing. These suggestions include using injunctive relief instead of a damages action (Giles, 2000), subtracting litigation costs from police department budgets (Miller and Wright, 2004) and the British model of requiring police officers, not unlike U.S. physicians, to have individual liability insurance (Otu, 2005). Although the British model of “policing the police” (Otu, 2005) appears promising, if for no reason other than that it has been successfully implemented in a major jurisdiction, to date it has not been tried in the U.S. and it is debatable if the political climate in most major U.S. jurisdictions, and New York in particular, would be open to it.

What exists in New York City as well as in most U.S. jurisdictions is the allotment of part of the settlement or jury award to the individual police officer that is somewhat proportional to his or her violating conduct.<sup>46</sup> However, because apportionment oftentimes is lopsided to the

detriment of the taxpayer<sup>47</sup> some have argued for a more balanced approach to the allotment of civil liability (Emery and Mazel, 2000). Again, given the political climate and the strength of the police union in the City,<sup>48</sup> more proportional civil liability may not be a viable option and arguably may not further one of the general deterrent aims of civil liability: the incentive for police departments to better train their officers.

### Theoretical Explanations for Police Misconduct

Because most acts that constitute police misconduct are criminal when done without legal authority or legal justification most theoretical explanations of police misconduct are applications of existing criminological theories. Besides, some behaviors such as the use of foul language, sleeping on the job, and the acceptance of free meals, though considered to be police misconduct, are not criminal and arguably are best explained by adaptations of criminological theories, such as Kappeler et al.'s (1998) "police worldview" explanation of police deviance rather than by pure criminological theories. For example, in contending that police officers are products of the society and that misconduct results not from personal characteristics but from the confluence of the police organization's subculture, the community and the law, Kappeler's "police worldview" can explain an officer's acceptance of a free meal believing that "it comes with the job" and a proprietor giving it believing that it was not a bribe but the "right thing to do" to put his establishment in a more privileged position within the police subculture. In other words it is the meeting of subculture, community and law that provides police officers with neutralizing techniques based on non-legal standards that allow them the rationalization and justification for their misconduct (Champion, 2001; Kappeler et al., 1998).

However, while Kappeler's "police worldview" is able to explain police misconduct that is legal, police misconduct that is illegal, such as that contained in the data of the study, can best be explained by Gottfredson and Hirschi's control theory (1990) and Edwin Sutherland's differential association theory (1947).

Control theory proposes that individuals refrain from deviance and conform to the legal definitions of their society because they are bonded to it. The strength of the societal bond is controlled by, and varies, depending on the individual's belief in the norms of their society, their attachment and commitment to the social institutions, and their involvement in the conventional activities within the society. Specifically, the individual's self-control developed through his socialization prevents him from becoming deviant (Hirschi, 1969). Deviance is therefore a product of a lack of control and weakened or severed societal bonds and as such prior deviant and criminal behavior can predict future offending. In fact, research by Cohen and Chaiken (1973) support this in finding that police officers accused of misconduct were likely to have questionable past employment histories such as prior job dismissals and discipline problems in the military if they so served prior to their police employment.<sup>49</sup>

Nevertheless, while control theory can explain a police officer's misconduct as a continuation of prior malfeasance, arguably it cannot account for a new officer with strong societal bonds becoming deviant after exposure to an existing police subculture.<sup>50</sup> Developed in the 1940's, differential association theory asserts that deviance is present in normative conflict because in modern societies definitions of law both favorable and unfavorable to its violation exists (Sutherland, 1947). Differential association is the process by which individuals experience these conflicting definitions. The balance of, and exposure to, these definitions determine whether or not the individual will engage in conforming or deviant conduct, in that an excess of

definitions favorable to the violation of law provides powerful reference conduct for individuals associated with it (Conser, 1979).

In application differential association theory suggests that police misconduct is learned by the individual officer in being associated with deviant conduct generated by non-conforming officers within the police subculture and by being isolated from the law-abiding members of the general public.

The police subculture characterized by conservatism, solidarity and a code of silence (Kampanakis, 2002) provides an excess of malpractice definitions that directly affects the individual's conduct and allows officers ample opportunities to rationalize and justify their misconduct (Kappeler et al., 1998). In other words in a police subculture where misconduct is tolerated or even encouraged, the individual police officer learns favorable definitions of misconduct that are acceptable within the subculture (Aultman, 1977; Conser, 1979). Research has documented not only the existence of police subcultures (Conser, 1979) but has also found that the attitude of police academy recruits change in becoming more accepting of peer misconduct with the recruits increasing exposure to the police subculture as they advance from academy to the streets (Savitz, 1970). Thus, differential association theory provides an explanation not only for individual officer misconduct but also group malfeasance such as in the Rodney King beating or group indifference or collusion as in the police sodomy of Abner Louima.

Furthermore, as detailed earlier, one of the requirements for success in §1983 lawsuits is the plaintiff's showing of a "practice, usage or custom" within the police department (*Monell*, 1978). Differential association suggests that such a showing is more possible within a police subculture that tolerates or encourages misconduct.

Together, control theory and differential association theory can explain allegations of police misconduct in lawsuits against a single or multiple police officers and have helped in informing the study.

### Chapter III: Methodology

As mentioned earlier, police misconduct is difficult to document. One source of data is the individual police officer or police official. What's more, not only is it difficult to get information from individual officers or police officials (Collins, 1988) but because of the homogenous nature of police culture, findings from research at the individual level may be mixed, ambiguous and lack variability (McManus, 1969; Grant and Grant, 1996). Though somewhat more reliable than research at the individual level (Kane and White, 2009) research at the organizational level may nonetheless reflect an organizational subculture of policies formed by administrators but executed by individual police officers. For example, some police organizations may have a "siege mentality" of "them versus us" that permits and even encourages violent misconduct by individual police officers to maintain order on the streets (Skolnick and Fyfe, 1993). In such cases research at the organizational level may also be limited by its lack of variability but more importantly may suffer from external validity in that administrative officials and supervisors in different police organizations may differ in what constitutes police misconduct in their particular organization.

To overcome these difficulties many previous studies have used a variety of data sources including publicly available official data such as civilian complaints to study police misconduct (Kinnaird, 2006, Lawton et al., 2001; Lersch 1998a, 1996, 2002; Lersch & Mieczkowski, 2000; Terril & McCluskey, 2002). While such data are well suited to study the conduct of public officials (Henggeler et al., 1996), civilian complaints present a particular set of limitations including under and over-reporting problems (Walker & Bumphus, 1992) and the problem of perception as to what constitutes police misconduct. Prior research showed that not only do the

public and police officers differ as to what constitutes misconduct (Adams, 1996; Lersch, 1998b; Lersch and Mieczkowski, 2000) but also that more active police officers were likely to receive more civilian complaints of misconduct than less active officers whether or not the conduct complained of was within departmental guidelines (Lersch, 2002).

This study limited these weaknesses by using information from court files of police misconduct lawsuits in Kings County, New York brought against the NYPD during the years 2006-2010. In examining and describing the impact of allegations of police misconduct in Kings County during the years 2006-2010 on New York City's civil liability the study differed from prior studies in two additional ways. First, the study was specific to the NYPD. Prior research such as that of Chiabi (1996), in analyzing lawsuits alleging §1983 violations included Bivens actions, i.e. lawsuits filed against federal law enforcement officers as well as the NYPD. Second, in collecting data from both the Eastern District Court and Kings County state courts the study captured all NYPD misconduct lawsuits filed in Kings County for the period 2006-2010 and provided a more complete picture of police misconduct in Kings County and of civil liability to the City of New York that resulted from police misconduct in Kings County.

## Data

The data were collected from all publicly available court files containing lawsuits brought both in Kings County state courts and the Eastern District Court of New York (because police misconduct lawsuits alleging violations of 42 U.S.C. §1983 can be brought in either federal or state courts).<sup>51</sup> For example, if the alleged police misconduct was only a violation of a federal constitutional or federal statutory right, such as an illegal search, then the forum was either a U.S. District Court or a New York state court. If the allegations of misconduct raised both

federal and state issues, as they often did, then again the plaintiff could have chosen either forum<sup>52</sup> and, oftentimes chose both for strategic reasons.<sup>53</sup> In addition, if the alleged misconduct did not involve a federal constitutional or federal statutory violation,<sup>54</sup> such as a state tort of assault and battery, then the forum was a New York state court; most often the New York State Supreme Court.

Court files from the U.S. Eastern District Court were reviewed to eliminate allegations of police misconduct in Queens, Nassau, Suffolk and Richmond counties and allegations against federal employees (Bivens actions). In other words only misconduct lawsuits against the NYPD arising from an incident that occurred in 2006-2010 in Kings County whether filed in a Kings County state court or the Eastern District Court were analyzed. Information including demographics, the precinct having jurisdiction over the location of the incident, the violation alleged and particulars of the disposition were collected.

There were 2076 civil lawsuits filed against the City of New York alleging police misconduct in Kings County for the period 2006-2010. Of these 609 cases were eliminated for several reasons. Most of them were eliminated because they imposed no liability on the City having been abandoned, dismissed by the courts or decided for the City after a jury trial. A few cases, even though they imposed liability on the City during 2006-2010, were eliminated because the incident occurred before 2006. For example, the largest liability imposed on the City during the years of the study was a 2010 settlement of \$9.9 million for 19 years of wrongful imprisonment following a false arrest. However, although the lawsuit was filed in 2006 and disposed of in 2010, it was eliminated from the dataset because the incident occurred in 1984.

After such eliminations the remaining 1467 cases resolved either by settlement or trial imposed civil liability on the City and form the dataset of the study.

Table 3.1 Lawsuits 2006-2010		
Year	Frequency	Percentage
2006	172	8.3
2007	335	16.1
2008	454	21.9
2009	473	22.8
2010	642	3.9
Total	2076	100

#### Variables

Most police misconduct lawsuits against the NYPD were based on an alleged violation of the New York State Constitution and or the U.S. Constitution's Fourth Amendment guaranty of the right to be free from search and seizure without probable cause. Based on the nature of the police action, the violation may have alleged a false arrest/imprisonment; an assault/battery; or a police shooting. While these allegations were all based on police acting without probable cause and were independent of each other, an assault/battery and a police shooting were based on the specific claim that police used more force than was reasonably necessary (excessive force) in the incident at issue.

Also, a plaintiff could allege that inadequate police training was the cause of the violation. In other words regardless of, and in addition to, the primary violation (a false arrest, a police assault or a police shooting) a plaintiff could also allege inadequate police training. When an allegation of inadequate police training is successful, the settlement or jury award is

exponentially greater than without it. Because of this, for the purpose of this study, an allegation of inadequate police training was used in this study as being independent of its primary allegation.

As expected, most lawsuits alleged multiple violations. Therefore the study used anticipated cost to determine the primacy of the allegation. Specifically, if a lawsuit alleged inadequate police training then it was determined to be the primary allegation. If the primary allegation was a police shooting but did not allege that it was caused by inadequate police training then, a police shooting was the primary allegation analyzed. A police assault was the primary allegation when there was neither an allegation of a police shooting or of inadequate police training. Finally, a false arrest was the allegation used when it was alleged and no other allegation was claimed.

Thus, police misconduct was operationalized as a categorical group variable with four independent variables: an allegation of a false arrest, an allegation of a police assault; an allegation of a police shooting and an allegation of inadequate police training.

#### Independent Variables

An allegation of a false arrest was a claim that a police officer acting under color of law violated the individual's Fourth Amendment right to be free from search and seizure by making the arrest without the legally required probable cause to do so.

An allegation of a police shooting was a claim that police violated the individual's Fourth Amendment right by using more force than was reasonably necessary and resulting in injury or death.

An allegation of assault/battery: Although these were two separate acts they were usually pled and adjudicated together. An allegation of assault/ battery was again based on the claim that police used more force than was reasonably necessary.

An allegation of inadequate police training was a secondary claim that the primary violation was the result of the officer's deliberate indifference to the rights of the violated individual which occurred because of inadequate police training.

For statistical comparison and uniformity, the selected allegations mirrored the categories used by the Comptroller in compiling his annual report with one notable exception: an allegation of inadequate police training.<sup>55</sup> Although inadequate police training was absent as a separate category in the Comptroller's yearly analysis it was an independent variable in the study for three reasons. First, prior research has shown that inadequate police training subjected municipalities to civil liability (Collins, 1997). In fact when successful an allegation of inadequate police training results in an exponentially larger award than the primary violation by itself. Second, some lawsuits against the NYPD included this allegation regardless of the violation alleged and when successful resulted in a large financial disposition. Third, in suggesting that prior deviant and criminal conduct can predict future offending, control theory infers that police officers who were the subjects of allegations of inadequate police training were likely to have prior incidents of misconduct in their previous employment, or current police, personnel files. Because a police officer's personnel file, redacted of personal information such as the officer's home address, is subject to discovery, prior incidents of police misconduct contained in the file may have helped to substantiate claims of negligent hiring, training and retention and in doing so result in an exponentially larger civil disposition than if there were no

prior incidents. For these reasons, an allegation of inadequate police training was used as the principal allegation independent of, and instead of, its primary allegation.

Finally, differential association theory suggests that in the police subculture there are definitions of the Fourth Amendment that are both favorable and unfavorable to its violation. For this reason, differential association theory suggests that when there is an excess of definitions favorable to its violation some police officers may not only stop, search and seize without Fourth Amendment justification (reasonable suspicion and probable cause)<sup>56</sup> but may have used excessive force in doing so.

#### Dependent Variables

Regardless of what was alleged a lawsuit was disposed of in one of four ways. First, it was abandoned or discontinued by the plaintiff. If a lawsuit was abandoned or discontinued then for the purpose of the study, it had no impact on the City's civil liability given that compared to a settlement or judgment only a nominal amount of money was spent on investigating the allegations of police misconduct. Second, a lawsuit was summarily dismissed by the court. Again for the purpose of the study a dismissal had no impact on the City's civil liability. Third, a lawsuit could have been settled by the parties at any point of the litigation process prior to a jury award. Lastly, a lawsuit was disposed of with a jury award against the City. Either of the last two methods of disposition (settlement or jury award) resulted in civil liability to the City. Therefore, the dependent group variable civil liability comprised the following three dependent variables: Disposition Method, Disposition Cost, and Disposition Time.

Disposition Method: this was the legal method by which the lawsuit was resolved. It was a dichotomous variable comprising a settlement or a jury award. Disposition method was coded 0 for a jury trial and 1 for a settlement.

Disposition Cost: this was the monetary amount accepted to dispose of the lawsuit. If the method of disposition was a settlement then the disposition cost was the amount agreed to by plaintiff and defendant to resolve the lawsuit. If the plaintiff and defendant did not settle the lawsuit and it proceeded to a jury trial then the disposition cost was the monetary amount awarded to the plaintiff by the jury. Disposition cost was measured in dollars.

Disposition Time: this was the time that it took for the lawsuit to be resolved, from filing to disposition. In addition to the disposition cost imposed on the defendant by settlement or a jury award when the lawsuit is successful, less obvious costs are incurred by both parties. For the City like any other defendant, less obvious costs include the salaries of attorneys and investigators, the costs of experts and of doctors to determine the nature and permanency of injury that the plaintiff alleged. Because measuring their actual costs was beyond the scope of this study, disposition time, a continuous variable, was used as a measure of these costs. Disposition Time was measured in months.

#### Control Variables

While previous studies that used lawsuits to study police misconduct in general (Kappeler & Kappeler, 1992; Kappeler, Kappeler, delCarmen, 1993; Schafer, Martinelli & Loper, 2001) and police misconduct in New York in particular (Chiabi, 1995) did not use control variables, this study controlled for two variables; the gender of the plaintiff and litigation representation were covariates.

## Hypotheses

The following hypotheses were used to examine and describe the impact of allegations of police misconduct in Kings County for the years 2006-2010 on New York City's civil liability:

H<sub>1</sub>: Allegations of false arrest were likely to result in a settlement as the disposition method.

H<sub>2</sub>: Allegations of false arrest were more likely to result in a smaller final disposition when settlement was the disposition method than if tried by a jury.

H<sub>3</sub>: Allegations of assault/battery were likely to result in a settlement as the disposition method.

H<sub>4</sub>: Allegations of assault/battery were more likely to result in a smaller final disposition when settlement was the disposition method than if tried by a jury.

H<sub>5</sub>: Allegations of a police shooting were likely to result in a settlement as the disposition method.

H<sub>6</sub>: Allegations of a police shooting were more likely to result in a smaller final disposition when settlement was disposition method than if tried by a jury.

H<sub>7</sub>: Allegations of inadequate police training were likely to result in a jury trial as the disposition method.

H<sub>8</sub>: Allegations of inadequate police training were more likely to result in a smaller final disposition when a jury trial was the disposition method than if tried by a jury.

H<sub>9</sub>: Allegations of an assault were likely to take less time to settle than allegations of a police shooting.

H<sub>10</sub>: Allegations of a police shooting were likely to take less time to be tried than allegations of inadequate police training.

## Chapter IV: Data Analysis

The purpose of the study was to examine and describe the impact of allegations of police misconduct in Kings County, New York during the years 2006-2010 on New York City's civil liability. While many studies have documented the financial impact of police misconduct on municipalities, none had studied the financial impact specific to Kings County, New York and the New York Police Department.

In this chapter the findings of the study are presented within the context of the research question in three sections. In the first section frequency distributions, percentages and descriptive summary statistics are presented to engender an understanding of the data and provide a foundation for the inferential analyses of sections II and III.

In Section II a multinomial logistic regression analysis was conducted to determine whether or not a statistically significant relationship existed between the group variable police misconduct (a false arrest, a police assault, a police shooting and inadequate police training) and the dependent variable disposition method. The analysis also examined the nature of the relationship to determine if the gender of the plaintiff and/or whether or not the plaintiff was represented by legal counsel may have had a confounding effect on the relationship. As opposed to multiple univariate tests, a multivariate analysis was used to reduce the probability of making a family-wise error (Field, 2009).

An examination of the data in Section I revealed that the dependent variables disposition time and disposition cost were positively skewed outside the boundaries of normality,  $+3/-3$  (Onwuebuze & Daniel, 2002). As a result in Section III a non-parametric K independent samples Kruskal-Wallis analysis was used to determine and examine the relationship between

police misconduct and the dependent variables disposition time and disposition cost. This analysis was followed by a series of Mann-Whitney *U* tests to determine the independence of the independent variables that comprised the group variable police misconduct.

In the final part of Section III the hypotheses relating to the effect that the disposition method had on the statistically significant relationships of police misconduct and the dependent variables disposition cost and disposition time were tested.

## Section I

There were 1467 lawsuits (N=1467) available for analysis in the study. This represented all the lawsuits filed in Kings County, New York for incidents of alleged police misconduct that occurred in the years 2006-2010 and resolved with civil liability to New York City.

Various descriptive statistics are reported in Table 4.1- 4.1.2. As shown, an overwhelming number of persons alleging police misconduct were male (76.3%) and so were the police officers (96.0%) against whom these allegations were made. As in other studies most lawsuits were brought by a single plaintiff (Chiabi, 1995; Rudovsky, 1992) and in this study 93.4% of all lawsuits were against a lone police officer. Approximately 94.1% of litigants were represented by counsel while 5.9% represented themselves. In contrast to the other descriptive statistics, the chosen forum for litigation was less skewed with 68.2% of plaintiffs choosing the US District Court (federal) to adjudicate their lawsuits and 31.8% choosing a Kings County State court. Comparatively, a small number of lawsuits (4.5%) were brought by parents on behalf of their minor children for incidents of police misconduct both on and off of school premises.

TABLE 4.1 Descriptive Statistics: Plaintiff				
Variable	Total	Attributes	Frequency	Percent
Adult/Minor Plaintiff	N= 1467	Adult	1401	95.5
		Minor	66	4.5
One or more Plaintiffs	N= 1467	One	1264	86.2
		One +	203	13.8
Plaintiff Gender	N= 1467	M	1119	76.3
		F	348	23.7

TABLE 4.1.1 Descriptive Statistics: Police Officers				
Variable	Total	Attributes	Frequency	Percent
One or more Officers	N= 708	One	661	93.4
		One +	98	6.6
		F	348	23.7
Officer Gender	N= 747	M	675	96.0
		F	89	4.0

TABLE 4.1.2 Descriptive Statistics: Court & Representation				
Variable	Total	Attributes	Frequency	Percent
Legal Representation	N= 1467	Yes	1383	94.1
		No	84	5.9
Court	N= 1467	Federal	1002	68.2
		State	465	31.8

As shown in Table 4.2 there were 118 allegations that resulted in civil liability to the City in 2006 compared to 438 in 2010, an increase of more than 371%. The data also showed that except for an allegation of inadequate police training, the incidence of which peaked in 2009,

allegations of police misconduct increased yearly during 2006-2010 with the most significant increase being allegations of false arrest which in 2010 were four times their 2006 amount. More specifically, while allegations of police shootings and inadequate police training fluctuated during 2006-2010, allegations of false arrests and police assaults increased steadily in each year of that period. These statistics appear to be in keeping with the reported increases in the number of persons being stopped and frisked during the same period.

	2006	2007	2008	2009	2010	Totals
Arrest (#)	50	84	141	144	200	619
Assault (#)	59	127	186	189	224	785
Shooting (#)	2	3	4	4	5	18
Training (#)	7	5	11	13	9	45
Totals (#)	118	219	342	350	438	1467

Of interest was the difference in incidents alleged when comparing units within police jurisdiction. As presented in Table 4.3 Kings County's 66<sup>th</sup> precinct had the lowest number of allegations made against its officers while the 75<sup>th</sup> precinct had the highest. Also of interest is the fact that the top 5 precincts, in terms of the number of police misconduct lawsuits, were in neighborhoods where the residents are predominantly African Americans and Latinos.

Table 4.3 Incidents by Police Jurisdiction 2006-2010					
Prcnt. #	Freq.	Prcnt. #	Freq.	Prcnt. #	Freq.
60 <sup>th</sup>	41	72 <sup>nd</sup>	25	88 <sup>th</sup>	22
61 <sup>st</sup>	17	73 <sup>rd</sup>	73	90 <sup>th</sup>	26
62 <sup>nd</sup>	10	75 <sup>th</sup>	127	94 <sup>th</sup>	9
63 <sup>rd</sup>	21	76 <sup>th</sup>	10	Narc/Patrol	135
66 <sup>th</sup>	5	77 <sup>th</sup>	13	Transit #30	5
67 <sup>th</sup>	69	78 <sup>th</sup>	8	Transit #32	6
68 <sup>th</sup>	20	79 <sup>th</sup>	73	Transit #33	4
69 <sup>th</sup>	22	81 <sup>st</sup>	32	Transit #34	6
70 <sup>th</sup>	83	83 <sup>rd</sup>	50	Housing	33
71 <sup>st</sup>	50	84 <sup>th</sup>	12		

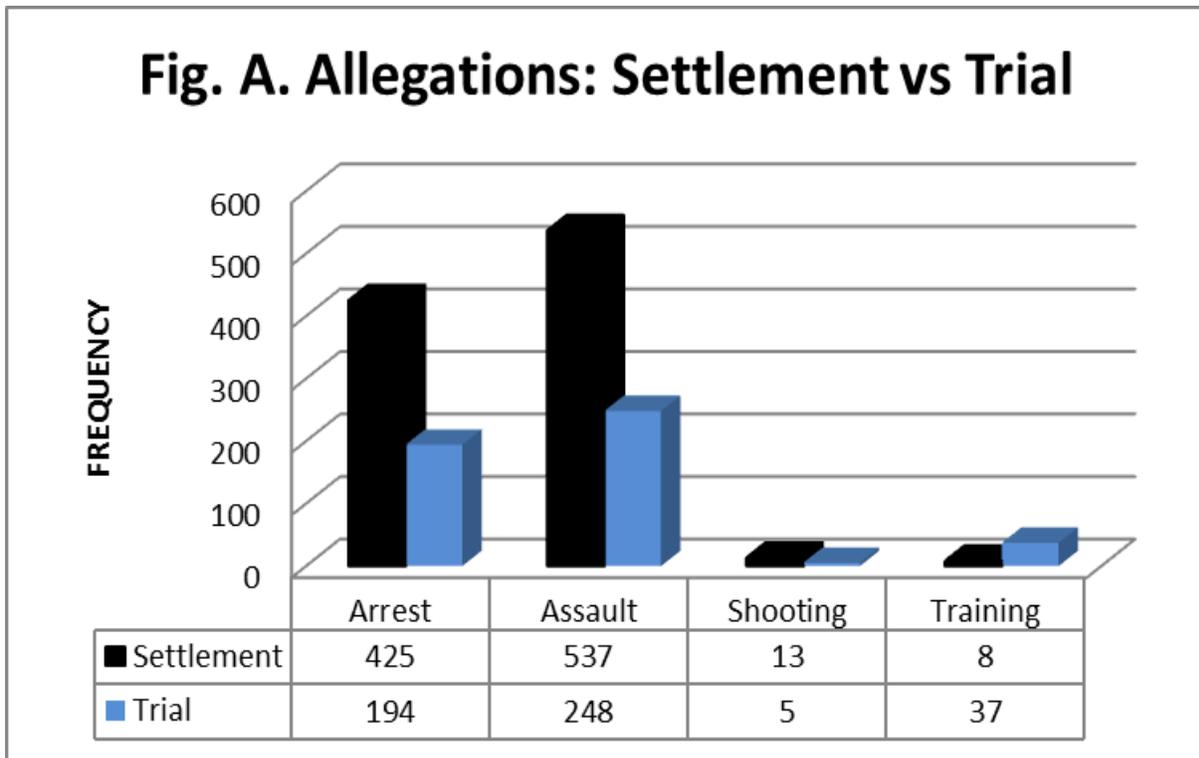
### Disposition Method

As incidents of police misconduct increased during the years studied so did the percentage of cases being settled compared to those that went to trial. Table 4.4 shows that twice as many lawsuits were settled (66.9%) as were tried (33.1%) during 2006-2010. This indicates that in most lawsuits the parties preferred to settle rather than risk the uncertainty of a jury trial. However, while there were yearly increases in the number of lawsuits being settled as opposed to those that went to trial, this was not so for all violations. For as depicted in Fig. A, of the 42 lawsuits alleging inadequate police training only 8 were settled while 37 were disposed of by jury trial.

Table 4.4 Incidents: Year and Disposition Method

Year	No. Cases	Percent Settlement	Percent Trial
2006	118	58.47	41.53
2007	219	52.05	47.95
2008	342	63.45	36.55
2009	350	72.85	27.15
2010	438	72.60	27.40
2006-2010	1467	66.32	33.68

**Fig. A. Allegations: Settlement vs Trial**



Disposition Cost

Table 4.5 shows that overall the City spent more than \$56.2 mil. to dispose of lawsuits alleging police misconduct that occurred during the years 2006-2010 in Kings County. The data also showed a steady increase in the yearly costs of police misconduct from \$5.1 mil. in 2006 to more than \$15 mil in 2010. Besides, as was expected, disposition cost differed by violation

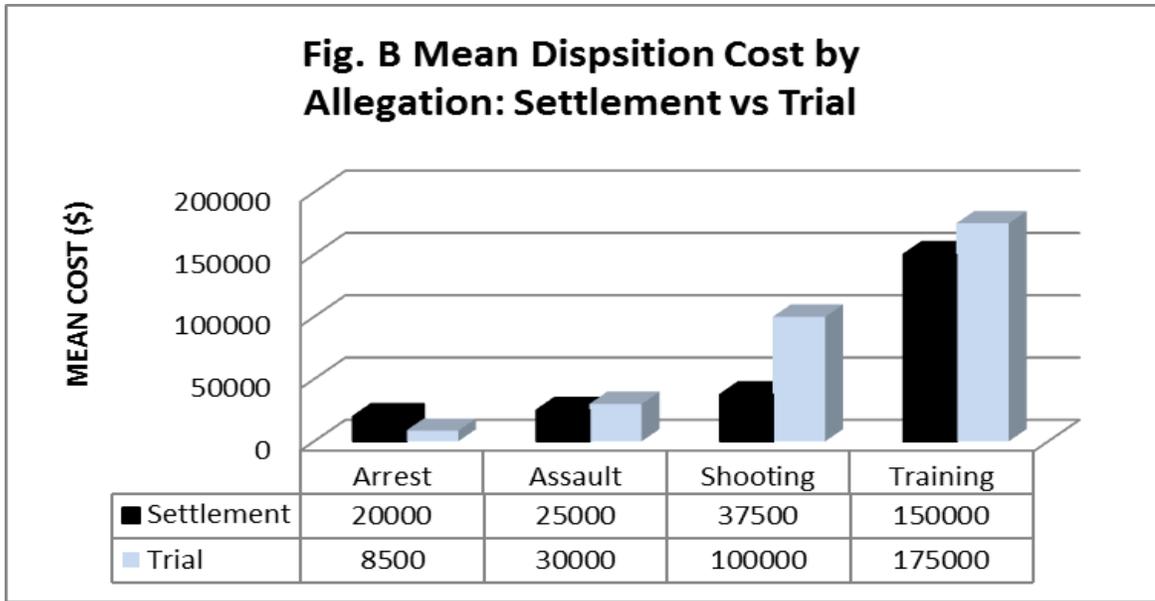
alleged. Allegations of false arrest and police assault while responsible for 95.7% of all allegations, accounted for approximately \$41.7 million and 74.3% of the City expenditure for police misconduct occurring during 2006-2010. In contrast, 45 allegations of inadequate police training consisting of 3% of all allegations costs approximately \$12.1 million and 21.6% of the City's civil liability for police misconduct for the years 2006-2010.

	2006	2007	2008	2009	2010	Totals
Arrest	747,118	1,605,002	2,857,064	3,898,501	5,312,499	14,420,184
Assault	1,850,502	4,871,001	6,060,033	6,776,857	7,820,910	27,379,303
Shooting	125,000	190,000	803,000	567,500	582,250	2,267,750
Training	2,383,463	1,248,503	3,557,500	3,605,500	1,361,000	12,155,966
Totals	5,106,083	7,914,506	13,277,597	14,848,358	15,076,659	56,223,203

Although the incidents of police misconduct and their resulting costs increased over the period studied as shown in Table 4.6 their mean cost decreased. For example, the average cost to settle a lawsuit alleging police misconduct in 2006 was \$36,660 but \$33,855 in 2010. Similarly, the average cost of a police misconduct trial was \$52,581 in 2006 but \$35,922 in 2010.

Table 4.6 Disposition Method and Costs in Dollars by Year						
Year	No. Cases Settled	Cost of Settlements	Avg. Cost of Settlement	No. Cases Tried	Cost of Trials	Avg. Cost of Trial
2006	69	2,529,582	36,660	49	2,576,500	52,581
2007	124	4,403,006	35,508	95	3,511,500	36,963
2008	217	6,653,822	30,662	125	6,623,775	52,990
2009	255	9,236,708	36,222	95	5,616,650	59,070
2010	318	10,766,078	33,855	120	4,310,581	35,922
2006-2010	983	33,589,196	34,581	484	22,639,006	47,505

An analysis of the disposition method by allegation as presented in Fig. B shows that the average cost of settling a lawsuit alleging a false arrest or a police shooting was more than the cost of a jury trial. In fact the average cost of a settlement for an allegation of a false arrest was twice the cost of a trial. However, as predicted by hypotheses 4 and 6 allegations of a police assault and of inadequate police training were less costly when settlement was the disposition method.

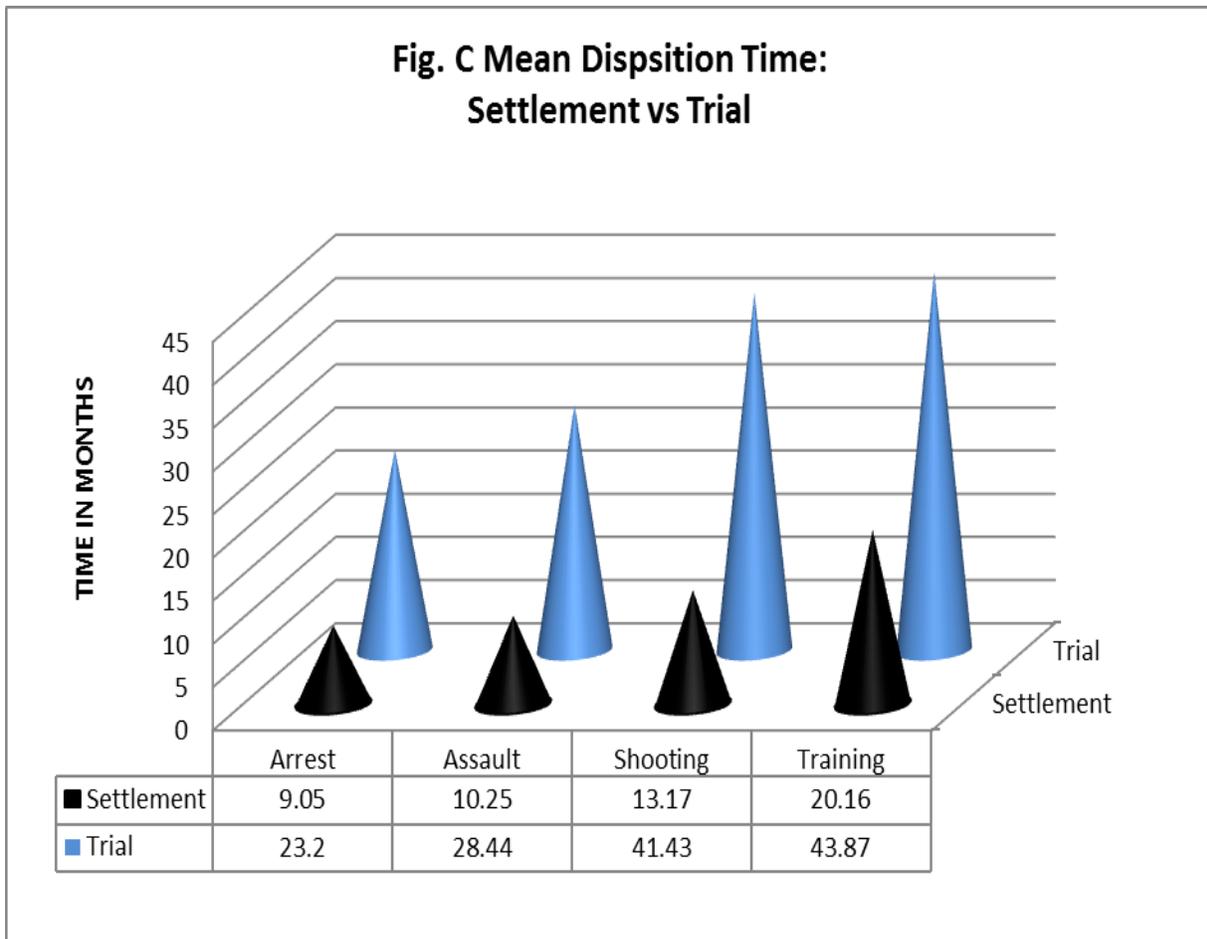


In contrast to the decrease in the average cost to the City for a lawsuit alleging police misconduct, the cost to a police officer when named as an individual party to the lawsuit steadily increased during the years from 2006 to 2010. In 2006 the average costs was \$30,833 but \$103,625 in 2010. However, the overwhelming majority of police officers were not named individually, for they were named defendants in only 3 cases in 2006, 2 in 2007, 4 in 2008, 4 in 2009 and 4 in 2010. So, while police officers were personally and partially liable for misconduct occurring in 2006-2010 in a total of 17 lawsuits, the City was liable in 1467 lawsuits.

Year	Avg. Costs to City	Avg. Cost to Named Officer
2006	43,271	30,833
2007	36,219	35,000
2008	38,823	58,874
2009	42,423	85,750
2010	34,421	103,625
Avg. 2006-2010	39,031	67,970

## Disposition Time

The mean disposition time (from the filing of a lawsuit to its final resolution) for police misconduct lawsuits in Kings County for the period studied was 15.72 months, with a range of an average minimum time of 9.05 months for settlement of a lawsuit alleging a false arrest to 43.87 months for a trial of an allegation of inadequate police training as depicted in Fig. C. Furthermore, the mean time to dispose of a lawsuit by settlement differed significantly from that of a trial for the same type of allegation. This was particularly so for allegations of inadequate police training which took an average of 2.16 months to settle, compared to 43.87 months to be disposed of by trial.



## Section II

### Police Misconduct and Disposition Method

A multinomial logistic regression analysis was used to determine if there was a statistically significant relationship between the group variable police misconduct and the dependent variable disposition method, and to examine its nature if it existed. The results presented in Table 4.9 show an initial log likelihood value of 115.077, and after the independent variables were accounted for in the logistic regression model, a final log likelihood value of 54.441. The difference between the initial and final log likelihood value, the model's Chi-square value of 60.635, had a significance of  $p = .000$  indicating that a statistically significant relationship existed between police misconduct and the method used to dispose of a lawsuit. However, while the relationship was weak, (Nagelkerke  $R^2 = .045$ ), overall the model was accurate for 68.9% of the relationships observed.

The analysis also shows that the gender of the plaintiff did not affect whether or not a lawsuit was settled or went to trial. By comparison, whether or not the plaintiff was represented by counsel did. In fact the odds ratios indicate that a lawsuit in which the plaintiff was represented by counsel was 2.7 times more likely to be disposed of by settlement than by trial. The standard error values and B coefficients were small indicating that there were no numerical problems with the model. Wald statistics show that the independent variables that comprise the group variable police misconduct had independent statistically significant relationships with the disposition method.

The odds ratio of independent variable to the disposition method shows that a lawsuit in which the principal allegations was a false arrest or an assault had a positive effect on the

disposition model and was more than 9 times more likely to be settled than proceed to a jury trial. An allegation of a police shooting was 11.6 times more likely to be settled than tried. Finally, an allegation of inadequate police training had a 9% more likelihood of being tried rather than settled.

In summary the results indicate statistical significant support for hypotheses 1, 3, 5 and 7.

Table 4.8 Regression: Police Misconduct and Disposition Method				
Model Fitting				
-2 Log likelihood (intercept) Chi-square: 115.077				
Model	R <sup>2</sup>	Chi-square	df	Significance
-2 Log Likelihood	0.45	54.441		
Improvement		60.355	5	.000
Classification Table Disposition Method				
Observed	Predicted			Percent correct
	Settlement	Trial		
Settlement	973	8		99.2%
Trial	447	37		7.6%
Overall	96.9%	3.1%		68.9%
Likelihood Ratio Tests				
Effect	Model Fitting	Likelihood Ratio		
	-2 Log Likelihood Model	Chi-square	Df	Significance
Gender (Plaintiff)	54.613	1.72	1	.678
Representation (plaintiff)	67.018	12.577	1	.000
Police Misconduct	101.279	49.684	3	.000

Table 4.9 Significant Predictors (Reference: Trial)				
Variable	Wald	Df	Significance	Exp(B)
Gender (Plaintiff)	.171	1	.679	1.057
Representation (Plaintiff)	10.350	1	.001	2.718
Settlement/ Arrest	32.835	1	.000	9.924
Settlement/ Assault	32.875	1	.000	9.823
Settlement/ Shooting	13.961	1	.000	11.685
Significant Predictors (Reference: Settlement)				
Trial/ Training	34.403	1	.000	.099

### Section III

A Kruskal-Wallis test was conducted to evaluate the differences among the four independent variables of the group variable police misconduct (arrest, assault, shooting, training) and their relationships with both disposition time and disposition cost. Tied ranks were corrected with the substitution of the median.

As shown in Table 4.8, overall there was a statistically significant relationship between disposition time and police misconduct,  $\chi^2(3, N=1467) = 98.400, p = .000$  with a mean rank disposition time of 651.29 for a false arrest, 764.31 for a police assault, 924.94 for a police shooting and 1250.92 for an allegation of inadequate police training. Similarly, there was a statistically significant relationship between disposition cost and police misconduct,  $\chi^2(3, N=1467) = 211.344, p = .000$  with a mean rank disposition cost of 574.52 for a false arrest, 819.56 for a police assault, 1083.19 for a police shooting and 1255.46 for an allegation of inadequate police training.

Table 4.10 Independent-Samples Median Test		
Dependent Variable	Disposition Time	Disposition Cost
N	1467	1467
Mean Rank (False Arrest)	651.29	574.52
Mean Rank (Police Assault)	764.31	819.56
Mean Rank (Police Shooting)	924.94	1083.19
Mean Rank (Inadequate police training)	1250.92	1295.46
Test Statistic	98.400	211.344
Degrees of Freedom	3	3
Asymptotic Sig.	.000	.000

While the Kruskal-Wallis test determined that there were statistically significant relationships between the independent variables as a group and both disposition time and disposition cost, to determine the nature of the relationship, (i.e., independence of each independent variable and its individual relationship with disposition time and disposition cost), a series of Mann-Whitney *U* tests of two-way comparisons were conducted. Effect size values for each compared pair were manually calculated. The results are presented in Table 4.8.1 below.

There were statistically significant differences in the distributions of the independent variables within the group variable police misconduct to affect both disposition time and disposition cost. Specifically, all four independent variables had statistically significant

independent effects on disposition cost. However, when paired, a police assault and a police shooting did not have a statistically significant effect on the dependent variable disposition time; whereas the remaining paired comparisons were statistically significant. In other words, a police assault and a police shooting were not independent of each other in their effect on the time it took to dispose of the lawsuit.

In summary the Kruskal-Wallis tests followed by post-hoc Mann-Whitney U tests showed that except for the relationship of police assaults and police shooting on disposition time, the individual variables that comprised police misconduct had independent effects on both the time it took to dispose of a lawsuit and the cost of settlement or jury award.

Variable	Table 4.11 Independent Variables on Disposition Time and Disposition Cost							
	Disposition Time				Disposition Cost			
	Statistic	df	Sig.	Eff. Size	Statistic	df	Sig	Eff. Size
Arrest/Assault	204552.000	1	.000	-0.1350	151999.000	1	.000	-0.3232
Arrest/Shooting	3474.000	1	.006	-0.1080	2217.000	1	.000	-0.1730
Arrest/Training	3234.000	1	.000	-0.3341	809.500	1	.000	-0.4104
Assault/Shooting	5476.000	1	.104	-0.0057	4039.500	1	.002	-0.1099
Assault/Training	5280.000	1	.000	-0.2746	1533.500	1	.000	-0.3583
Shooting/Training	174.000	1	.000	-0.4424	193.000	1	.001	-0.4068

#### Police Misconduct and Disposition Cost

Binomial logistic regressions were performed to test hypotheses 2, 4, 6, and 8. Table 4.10.1 shows that the model explained a low 15% (Nagelkerke  $R^2$ ) of the variance of the interaction of an arrest and settlement with disposition cost and was accurate in 69.3 % of the interactions observed (Table 4.10.2). The Wald statistic (135.4006,  $p = .000$ ) presented in Table 4.10.3 indicates that the interaction had a statistically significant contribution to the disposition cost and that a one unit change in the interaction would result in a 40% change in the disposition cost. As such there was statistically significant support for the hypothesis that allegations of false

arrest were likely to result in a smaller final disposition when settlement was the disposition method than if tried by a jury.

The binomial regression model presented in Table 4.10.1 explained 29% (Nagelkerke  $R^2$ ) of the variance in the interaction of a police assault and settlement as the disposition method with disposition cost. The model was accurate in 66.6% of the interactions observed. The Wald statistic 29.545,  $p = .000$ , shows that the interaction was a statistically significant contributor to predicting that allegations of assault/battery were likely to result in a smaller final disposition when settlement was the disposition method than if tried by a jury. As such, hypothesis 4 was supported.

For hypothesis 6 which states that allegations of a police shooting were likely to result in a smaller final disposition when settlement was the disposition method than if tried by a jury, Table 4.10.1 shows that the model explained a low 2% (Nagelkerke  $R^2$ ) of the variance of an allegation of a police shooting and settlement interacting with disposition cost. The model was accurate in 92.9 % of the interactions observed (Table 4.10.2). The Wald statistic (1.332,  $p = .249$ ,  $p > .05$ ) presented in Table 4.10.3 indicates that the interaction did not have a statistically significant contribution to the disposition cost. As such, there was no statistically significant support for hypothesis 6.

Lastly, as presented in Table 4.10.1 the binomial regression model explained 30% (Nagelkerke  $R^2$ ) of the variance of the interaction of an allegation of inadequate police training and settlement with disposition cost. Overall the model was accurate in 97.2% of the interactions observed. Furthermore, the Wald statistic 96.259,  $p = .000$ ,  $p < 0.5$ , shows that the interaction was a statistically significant contributor to the prediction that allegations of inadequate police training were likely to result in a smaller final disposition when a jury trial was the disposition

method than when settled. Furthermore, the odds ratio (Exp(B)) shows that a one unit change in the interaction would result in only a 1% change in the odds of a trial as the disposition method and therefore hypothesis 8 was supported.

Variable	Step	-2 Log Likelihood	Nagelkerke R <sup>2</sup>
Arrest/Settlement	< Median Disp. Cost	1642.323	.150
Assault/Settlement	< Median Disp. Cost	1838.423	.029
Shooting/Settlement	< Median Disp. Cost	749.626	.002
Training/Settlement	< Median Disp. Cost	269.981	.305

Variable	Predicted < Median	Overall % Correct
Arrest/Settlement	920	69.3
Assault/Settlement	977	66.6
Shooting/Settlement	1363	92.9
Training/Trial	1426	97.2

Variable	B	S.E.	Wald	df	Sig.	Exp(B)
Arrest/Settlement	-2.810	.241	135.406	1	.000	.060
Assault/Settlement	.710	.058	29.545	1	.000	.339
Shooting/Settlement	.481	.417	1.332	1	.249	1.618
Training/Trial	3.754	.209	96.259	1	.000	.001

### Police Misconduct and Disposition Time

Two binomial logistic regressions were performed to test hypothesis 9 and 10. The analysis presented in Table 4.11.1 shows that the regression model explained 26.6% (Nagelkerke  $R^2$ ) of the variance of the interaction of an assault and settlement with disposition time. The Wald statistic ( $F(113.260,1 p = .000)$ ) presented in Table 4.11.2 indicates statistical significance for the prediction that allegations of an assault were likely to take less time to settle than allegations of a police shooting, thus supporting hypothesis #9.

Hypothesis 10 was also supported in that the binomial logistic regression model explained 14.1% of the variance of the interaction of police shooting lawsuits that went to trial with the median time. The model was statistically significant ( $F= (176.310, p =.000)$ ), and was accurate for 72.9% of the interactions observed, and a unit increase in the interaction resulted in only a 33% change in the disposition time.

Table 4.13.1 Model Summary

Variable	Step	-2 Log Likelihood	Nagelkerke $R^2$
Assault/Settlement	< Median Disp. Time	1389.796	.216
Shooting/Trial	< Median Disp. Time	1474.180	.141

Table 4.13.2 Classification

Variable	Predicted < Median	Overall % Correct
Arrest/Settlement	1114	74.8
Shooting/Trial	1069	72.9

Variable	B	S.E.	Wald	df	Sig.	Exp(B)
Arrest/Settlement	5.391	.507	113.260	1	.000	219.508
Shooting/Trial	-3.394	.329	176.310	1	.000	.033

### Summary

Analysis of the data revealed that overall there were statistically significant relationships between police misconduct, the method by which the City disposed of a lawsuit against the NYPD, its cost and the time it took to reach the disposition. In addition, as Table 4.14 shows, all hypotheses were supported except Hypothesis 6. Specifically, the analysis showed no statistically significant support for the prediction that allegations of a police shooting were likely to result in a smaller final disposition when settlement was the disposition method than when tried by a jury.

Hypothesis	p-Value	Sig. p-Value	Interpretation	Conclusion
Hyp. 1	$p = .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 2	$p < .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 3	$p = .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 4	$p = .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 5	$P = .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 6	$P = .249$	$P > 0.5$	Strong evidence for $H_0$	Fail to Reject $H_0$
Hyp. 7	$P = .000$	$P < 0.5$	Weak evidence against $H_0$	Reject $H_0$
Hyp. 8	$P = .000$	$P < 0.5$	Weak evidence against $H_0$	Reject $H_0$
Hyp. 9	$p = .000$	$P < 0.5$	Strong evidence against $H_0$	Reject $H_0$
Hyp. 10	$p = .000$	$P < 0.5$	Moderate evidence against $H_0$	Reject $H_0$

## Chapter V: Findings, Discussion and Policy Implications

In this chapter the principal findings and conclusions of the study are reviewed and discussed within the context of the research hypotheses. Based on the findings several conclusions, policy implications and recommendations are made.

### Findings

The study examined the impact of police misconduct in Kings County on New York City's civil liability during the years 2006-2010. Using allegations of police misconduct that resulted in a settlement or jury award as a measure of police misconduct, the study provided evidence of the increasing costs of police misconduct in Kings County.

Specifically, the study found that most police defendants were male as were most of the individuals alleging police misconduct. In fact female police officers were under-represented in lawsuits in Kings County given that reportedly they comprise 34% of total number of sworn officers of the NYPD (NYC Workforce Project Report, 2013). Disproportionality was also present in violations alleged when analyzed by police jurisdictions with the 75<sup>th</sup> precinct having the most lawsuits brought against its officers and the 66<sup>th</sup> having the least.

Of the allegations comprising police misconduct, false arrests were the most numerous comprising 54.14% of all violations alleged, followed by allegations of police assault. Together, allegations of false arrests and police assaults accounted for 95.7% of the total number of allegations made and 74.3% of the City's total civil liability for police misconduct in Kings County for the years studied.

The study also found that an allegation of inadequate police training that was tried before a jury was the most costly to the City with an average cost of \$175,000, while a false arrest allegation, with an average cost of \$8,500 when tried was the least costly.

Based on previous studies, in particular that of Gould and Mastrofski (2004), it was hypothesized that a lawsuit based on the principal allegation of a false arrest would be more likely to settle than go to trial. The data showed that of the 619 allegations of false arrest more than 68% were settled and the analysis provided statistically significant support for this prediction. In contrast, the analysis provided statistically significant support for settlement of an arrest allegation being less costly than a trial. The data did not bear this out for it was more than twice as expensive to settle arrest allegations, than to try them before a jury. For all other allegations the study found settlement to be the less expensive method of disposition.

Lastly, legal representation, and not gender of the plaintiff was statistically significant in determining whether or not a lawsuit was settled or tried. The majority of litigants were represented by counsel and the majority of cases were settled (54.4%) with an average disposition time ranging from 9.05 months to settle an allegation of a false arrest to 20.16 months for settlement of an allegation of inadequate police training.

Overall, although the number of lawsuits alleging police misconduct almost quadrupled from 2006 to 2010, the average cost of a lawsuit alleging police misconduct decreased significantly during the years studied from \$43,271 in 2006 to \$34,421 in 2010. By comparison, the personal cost to the police officer when named as an individual defendant increased significantly from \$30,833 in 2006 to \$103,625 in 2010.

## Discussion

The study produced both anticipated and unexpected results in that although many of the relationships identified were anticipated, some were not.

It was anticipated, in part due to the City's Stop, Question and Possibly Frisk policy, that not only would there be increases in the number of lawsuits alleging police misconduct, but that most plaintiffs would allege assault/battery or false arrest as their principal allegation and that together false arrest and police assault would account for the major part of the City's civil liability. Also anticipated was the finding that most individuals alleging police misconduct would be represented by counsel and that legal representation would be predictive of whether or not a lawsuit would be settled or would proceed to trial.

As to individual allegations it was anticipated that on average it would be less costly to settle a lawsuit than to proceed to trial; however, settling a lawsuit when the principal allegation was a false arrest was shown to be a lot more costly than a jury trial. Nonetheless, the data shows that 68.7% of the 619 lawsuits alleging false arrest were settled although on average it costs \$11,500 more to do so. The likely reasons for this practice could be the sheer number of false arrest lawsuits and the extended disposition time indicative of the litigation costs of a trial compared to a settlement.

The most costly of the allegations found by the study was that of inadequate police training, which on average was \$25,000 more costly when tried before a jury than when settled and had a much longer disposition time of 43.87 months for trial compared to 20.16 months for settlement. Still, 82.2% of lawsuits alleging inadequate police training were disposed of by trial rather than with a settlement even though it was more costly to the City to do so. One likely explanation for this is that plaintiff's settlement demand was a lot higher than what was offered

by the City and City attorneys believed that a jury award, particularly in a low profile lawsuit, would be less than plaintiff's demand. Conversely, it is also possible that plaintiff's attorney believed that a jury award would be larger than the amount offered by City attorneys.

What was unexpected, however, were the yearly decreases in the average cost of a lawsuit to the City, and in contrast the increases in the average cost to the police officer when a named defendant in the lawsuit. Interestingly, as an ancillary finding, all 17 lawsuits in which a police officer was found to be individually liable for the violation alleged were jury trials. Unlike other counties in New York State, juries in Kings County and the Bronx tend to reflect the racial composition of the county (NYS Chief Administrative Law Judge Report, 2011). With non-whites comprising 56% of the population of Kings County (U.S. Census, 2010) and the top five precincts in terms of violations alleged all having jurisdiction in neighborhoods of color most affected by "Stop and Frisk", it is possible that jury awards in these trials reflect the sentiment of jurors towards police officers and not the actual evidence presented in lawsuits.

Furthermore, because police officers' CCRB files are subject to disclosure, it is possible that as suggested by control theory the individually named officers may have had multiple civilian complaints and disciplinary actions against them in their disclosed personnel files which may have influenced the jury resulting in higher awards against them.

Also, although it was anticipated that there would be differences in allegations when examined by police jurisdiction, it was not anticipated that the 75<sup>th</sup> Precinct would have more than 25 times the number of lawsuits filed against its officers as the 66<sup>th</sup> Precinct, which had the lowest number of allegations. For context, available data published by the NYPD shows that during the years 2001-2013 incidents of reported crime decreased 85% from 7,927 to 1,191 in the 66<sup>th</sup> Precinct compared to a smaller decrease of 69% from 12,273 to 3,902 in the 75<sup>th</sup> Precinct

(NYPD CompStat, 2014). Therefore, it is quite possible that, particularly in a high crime police jurisdiction, such as in the 75<sup>th</sup> Precinct, the high number of lawsuits is the price of doing business as some have suggested (Skolnick & Fyfe, 1993).

Another possible explanation that is suggested by differential theory is that in these precincts with relatively high number of lawsuits against its officers there is a police subculture that tolerates and may even accept police misconduct. Although only 6.6% of the lawsuits of the study involved multiple police officers, and while it is outside the scope of this study it would be interesting to determine if these 47 lawsuits were concentrated in any particular precincts or dispersed throughout Kings County. For as suggested by differential association, such group malfeasance or collusion may show acceptance of definitions favorable to the violation of law existing in those particular precincts.

In conclusion the increasing financial impact that police misconduct had on the City during the years studied was not the result of increasing costs of the lawsuit per se but rather the increase in the number of lawsuits vis-à-vis the increase in the incidence of police misconduct.

#### Limitations of the Study

There are several possible limitations to the study. First, in using allegations of police misconduct to measure police misconduct, it is recognized that not all incidents of police misconduct result in a civil lawsuit. Indeed, police misconduct lawsuits are incidents of alleged misconduct that have been brought to the attention of the judicial system. As such it is possible that incidents of police misconduct may be more numerous than the number of lawsuits filed.

Second, there are frivolous lawsuits and therefore even when a settlement or judgment results, in other words an admission or finding of police misconduct, it is quite possible that what

was alleged may not have occurred.<sup>57</sup> This limitation is evident in the fact that for the years studied a low 3% of police misconduct claims filed with the CCRB was substantiated.<sup>58</sup> However, despite this low degree of substantiation it is recognized that because police officials and officers tend to define police misconduct narrowly while the public defines it broadly (Adams, 1996; Lersch, 1998b; Lersch and Mieczkowski, 2000), and complaints include claims such as the use of foul language and discourtesies, which are not legally actionable, arguably 3% substantiation is not truly indicative of the frivolity of some legal claims.

Thus, while the use of lawsuits to examine police misconduct in Kings County provided a select sample of cases, they provided a reliable and credible source of information due to the scrutiny of many different professionals engaged in the adversarial judicial process and therefore these limitations did not threaten the validity of the study.

### Policy Implications

The finding that overall the impact of police misconduct on the City's civil liability is the result of increases in the number of lawsuits being filed, i.e. the incidence of police misconduct and not a rise in the average cost of the lawsuit, points to a two-prong approach to policies regarding police misconduct and its impact on civil liability of New York City. First, policies aimed at preventing police misconduct, and second policies aimed at managing its costs when it occurs.

Preventing police misconduct starts at the academy. Past research shows that cadets are concerned about work-related lawsuits (Scogin and Brodsky, 1991) but on becoming a part of a subculture that may accept police misconduct as a way of doing business, their conduct is not only shaped by the subculture (Kappeler et al., 1998) but they become more accepting of

misconduct as they progress from academy to the streets (Savitz, 1970). Therefore, beyond the possibility of dismissal from the NYPD, cadets should be instructed not only of the potential personal costs they face for misconduct when they are named individually in a lawsuit, but also as important, the civil liability to the City and the social cost to its residents.

While preventing police misconduct requires additional misconduct specific instruction at the academy, it is recognized that this may not be enough as police officers and officials are often unaware of the outcomes of police misconduct lawsuits (Skolnick & Fyfe, 1993). This suggests that police officers must be informed of the legal proceeding in which they are involved. Continued awareness of the existence and potential cost of police misconduct may mean regular updates of on-going lawsuits at roll call or, and, one-on-one meetings with their supervisors so that they may be more aware of the impact of their conduct on their department and the City. Awareness may also mean the creation of a database specific to police misconduct actions and issuance of reports to individual officers and their supervisors keeping them apprised of the progress of the lawsuit. For if police misconduct lawsuits are inevitable, not because they result from aggressive policing but from the subjective difference of 34,000 police officers defining inappropriate conduct narrowly and 8 million New Yorkers defining it broadly, then the study suggests that current policies that have led to decreases in the average cost of a lawsuit for the years studied should continue. Specifically, the findings suggest that there should be a vigorous effort to increase the use settlement rather than jury trials not only because on average settlement is 37% less costly but additionally the time to get to disposition is on average approximately 50% less for a settlement than for a trial.

In spite of these recommendations, it is realized that there will always be outliers, i.e., police officers who are undeterred by civil lawsuits. For example, a recent report by the New

York Daily News detailed a two-month investigation of the most sued police officers in New York City.<sup>59</sup> According to the report 55 NYPD officers, who had more than 10 lawsuits against each of them, were responsible for a total of 609 misconduct lawsuits and \$6 million in civil liability. One particular officer had been sued 28 times in the past 8 years at a cost to the City of \$1.3 mil. When presented with the cost of his conduct to the City, the detective allegedly replied “I am unaware of that” and “once it goes to court, I don’t follow it”, supporting the contention of Skolnick and Fyfe (1993). From this it appears that existing accountability mechanisms need to be reformed and, where inadequate, new mechanisms put in place. One possible accountability mechanism could require the police officer involved in the alleged violation, even when he or she is not a named defendant, to be informed of the progress of the lawsuit through regular, required communications with City attorneys.

If all else fails then officers who continually engage in misconduct should be taken off of the streets and assigned to desk duty or dismissed.

#### Directions for Future Research

Prior research has provided a general understanding of the relationship of police misconduct and civil liability. This study provided a more nuanced understanding of police misconduct in Kings County, New York.

Future studies can build on this research particularly in the area of a more expansive measure for litigation costs. Furthermore, while this research did not evaluate the adequacy of NYPD training programs at preventing police misconduct, it showed the continuing need for programs that address the impact that police misconduct has on the civil liability of the City of the New York. One possibility for future research therefore would be an evaluation of the

adequacy of current NYPD academy training programs specific to the prevention of police misconduct. Lastly, the finding of disproportionality in the number of lawsuits when analyzed by precinct suggests a more in-depth precinct-level analysis in the future that could explain the extent to which police misconduct at that level is accepted as a way of doing business in certain police precincts in Kings County, New York.

## End Notes

- <sup>1</sup> Of notable exception is the view that some police departments accept increased civil liability as the price for aggressive policing (Armacost, 2003). Others even encourage civil liability by appearing to be tough on crime as a way of increasing police funding for their departments (Miller & Wright, 2000).
- <sup>2</sup> Starting with Elizabeth Holtzman (1989-1993), successive comptrollers (William Thompson 2002-2009; John Liu 2009-current) have expressed concern and made various administrative efforts to reduce civil liability that results from police misconduct. Infra see note at 1.
- <sup>3</sup> In general a lawsuit alleging unconstitutional policies or practices is brought against a municipality, in this case the City, and not the police department itself. In New York this is codified in Sec. 396 of the New York City Charter which in relevant part states that “all actions . . . for the violation of any law should be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law.” McKinney’s Laws at 200.
- <sup>4</sup> John C. Liu., City of N.Y. Office of the Comptroller, Claims Report: Fiscal Years 2009-2010, (2011), available at [http://www.comptroller.nyc.gov/bureaus/bla/pdf/2010\\_Claims\\_Report.pdf](http://www.comptroller.nyc.gov/bureaus/bla/pdf/2010_Claims_Report.pdf).
- <sup>5</sup> Although this study is primarily concerned with lawsuits brought by civilians against the NYPD, it should be noted that some costly lawsuits against the City are brought by police officers themselves. One such lawsuit which resulted in a \$4.5 million jury award that was subsequently overturned on appeal involved a police officer shooting himself in the leg while leaning back on a chair of his precinct and later alleging in his lawsuit that the cause of his injury was a defective chair. Scott Shiref. New York Daily News, p.5. November 27, 2009.
- <sup>6</sup> Thompson, William. City of N.Y. Office of the Comptroller, Claims Report: Fiscal Years 2001-2005, (2005), available at [http://www.comptroller.nyc.gov/bureaus/bla/pdf/2005\\_Claims\\_Report.pdf](http://www.comptroller.nyc.gov/bureaus/bla/pdf/2005_Claims_Report.pdf).
- <sup>7</sup> The Eastern District refers to the federal judicial area that includes the New York Counties of Kings, Queens, Richmond, Nassau and Suffolk whereas the Southern District includes Manhattan and Bronx counties.
- <sup>8</sup> A full explanation begins on pg. 15.
- <sup>9</sup> In an attempt to address his concerns over increases in the number of lawsuits and resulting civil liability, in 2006 former New York City Comptroller, William Thompson, Jr., created a special unit within the City’s Law Department to review and investigate police misconduct cases with a goal towards early settlement. (Thompson, 2007).

- <sup>10</sup> A formal complaint filed with the CCRB is an allegation of an injury that resulted from alleged police misconduct. Whereas a formal complaint sought investigation and possible disciplinary action against the officer, a claim is filed with the Comptroller because it sought compensation from the individual officer and or the City for the injury sustained as a result of the alleged police misconduct. Both procedures are independent of each other and can occur simultaneously.
- <sup>11</sup> The term “agency” was used in this study to designate any City entity under the administrative control of the Mayor of New York.
- <sup>12</sup> The gravity of the problem has become so acute that 13 months after this researcher committed to the proposed study, the City created a special unit within the Corporation Counsel’s office consisting of 29 attorneys and 16 support staff for the sole purpose of defending tort lawsuits against the NYPD. Keshner, Andrew. “Law Dept. Launches Unit to Defend State Torts Against NYPD.” New York Law Journal, 15 May 2013.
- <sup>13</sup> §1983 lawsuits are lawsuits in which an individual alleges that a government employee acting under color of law violated his or her federal constitutional or statutory rights. Violations of state constitutional rights or city ordinances are not actionable under §1983.
- <sup>14</sup> *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971). Bivens actions are §1983 lawsuits against federal employees that allege a violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution or of a federal statute.
- <sup>15</sup> The CCRB is an independent, all civilian New York City agency and is not part of the NYPD. The CCRB is “empowered to receive, investigate, hear, make findings” concerning alleged NYPD officer misconduct, and make recommendations for possible disciplinary action, to the NYPD. <http://www.nyc.gov/html/ccrb/home.html>
- <sup>16</sup> The CCRB receives many complaints against police officers that it has no authority to accept and investigate. Such complaints are referred to the appropriate City agency for investigation.
- <sup>17</sup> A review of more than 15,000 NYPD Stop and Possibly Frisk reports by then Attorney General Elliot Spitzer and Columbia University’s Center for Violence Research and Prevention found that approximately 39% were constitutionally questionable.
- <sup>18</sup> U.S. Const., Amend. IV.
- <sup>19</sup> The legitimate use of force distinguishes law enforcement from other branches of government (Kobler, 1975). As such police officers are granted qualified immunity for using reasonable force regardless of the injury that resulted as long as they were acting in good faith (*Anderson v. Creighton*, 483 U.S. 635, 1987).

- <sup>20</sup> These lawsuits may also fall under CCRB jurisdiction because, in addition to allegations of serious physical injury or death, there may be other misconduct allegations. Thus for a single incident of police misconduct it is possible to have two parallel ongoing investigations at the same time. However, the police commissioner has the authority to “remove CCRB’s authority where there is an ongoing IAB or criminal investigation against an officer or where the officer has neither a disciplinary record nor any substantiated CCRB complaints.” Baker, Al. Independent Agency Gets New Powers to Prosecute New York Police Officers. New York Times, March 27, 2012.
- <sup>21</sup> <https://www.nyc.gov/html/ccrb/html/complaint.html>
- <sup>22</sup> This was an 18% increase over 2009 and represented “the largest number of new police action filings during the last fiscal year.” See note at 4.
- <sup>23</sup> See also (Novak, Smith and Frank, 2003; Ross, 2000; Vaughn et al., 2001).
- <sup>24</sup> Whereas the Bernadine decision gave individuals the right to sue a municipality for the negligent and wrongful acts of its employees, because of the home rule doctrine, a municipality can limit its non civil rights’ civil liability by limiting an individual’s right to bring a lawsuit. One example is the City’s local law (General Municipal Law, Article 4, § 50-e) which dictates that prior to the commencement of a lawsuit the City must be made aware of the alleged incident from which the lawsuit arises by the filing of a Notice of Claim by the injured party within 90 days of the date of incident.
- <sup>25</sup> *Monroe v. Pape*, 365 U.S. 167 (1961)
- <sup>26</sup> In this case the City of Memphis had a formal policy permitting police officers to shoot at a fleeing person regardless of the threat posed by that person to the officer or other individuals.
- <sup>27</sup> While 42 U.S.C. §1983 (1871) covers civil remedies, 18 U.S.C. §242 (1866) covers federal criminal prosecution which quite often proceeds before or at the same time with the civil lawsuit. A recent example of this was the 1997 case of Abner Louima. The police officers and the City were subject to civil liability pursuant to 42 U.S.C. §1983 and the officers were criminally prosecuted under 18 U.S.C. §242.
- <sup>28</sup> 42 U.S.C. § 1983 (1871). The Act is invoked whenever a government official, in this case the individual police officer, violates a federally guaranteed right of an individual. For example, an illegal search, false arrest or police brutality.
- <sup>29</sup> See del Carmen, Rolando and Michael R. Smith. (2001). “Police, Civil liability, and the Law” In Dunham, Roger G., and Geoffrey OP. Alpert, *Critical Issues in Policing: Contemporary Readings*. (4<sup>th</sup> ed.). (pp. 181-189), Prospect Heights, IL: Waveland Press, Inc.

- <sup>30</sup> *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978). This case involved a then New York City policy that required pregnant employees to take unpaid leave before it was medically required. The impacted women sued the City alleging that the policy was unconstitutional in that it violated the Equal Protection Clause of the 14<sup>th</sup> Amendment. The U.S. Supreme Court agreed.
- <sup>31</sup> In most lawsuits both the NYPD and the individual officer are named defendants. The reason for naming both as defendants lies in the fact that the City is the proverbial “deep pocket” defendant who in most lawsuits pursuant to GML 50-k will indemnify the individual police officer.
- <sup>32</sup> See note *infra* at 41.
- <sup>33</sup> See Note at *supra* at 15.
- <sup>34</sup> According to the U.S. Supreme Court “color” of law means “pretense” of law (*Screws v. U.S.*, 1945:91). In other words a police officer is civilly liable if in pursuit of his or her official duty the officer causes an injury that violates a federal constitutional or statutory right. In applying this interpretation courts must first determine if the officer was indeed acting under color of law and thereafter determine if his or her actions violated the individual’s federal constitutional or statutory right. Vaughn and Coomes (1995) argue that the order of determination should be reversed in that what should be determined first is whether or not a federal constitution or statutory right was violated and thereafter if the violator was acting under color of law.
- <sup>35</sup> 42 U.S.C. §1988 codifies the 1976 Civil Rights Attorney Fee Award Act which is intended to encourage attorneys to accept lawsuits of civil rights violations from those most in need of civil rights protection but least able to afford an attorney.
- <sup>36</sup> Attorneys’ fees and punitive damages are sometimes many times larger than the other awards of an actual settlement or jury award. For example in *Preston v. City of New York* and *P.O. Edward Cunningham* the total judgment was \$80,000 with \$5000 going to the plaintiff for her unlawful detention and \$75,000 for attorneys fees (her attorneys had requested \$300,000 in fees).
- <sup>37</sup> *City of Riverside v. Rivera*, 477 U.S. 575 (1986) (“The damages a plaintiff recovers contributed significantly to the deterrence of civil rights violations in the future . . . particularly in the area of individual police misconduct, where injunctive relief generally is unavailable.”)
- <sup>38</sup> *Hudson v. Michigan*, 547 U.S. 586 (2006). The court held that a police officer’s violation of the state’s “knock and announce” statute does not warrant suppression of the evidence found and that in this particular violation, civil liability, and not the exclusionary rule, is the deterrent against an illegal search.

- <sup>39</sup> According to Kappeler (2001:50), “the prospect of civil liability has a deterrent effect in the abstract . . . but . . . does not have a major impact on field practices” of police officers. In a survey of 1,050 police chiefs, Vaughn et al. (2001) found that most supported the use of civil liability to deter police misconduct and while they considered the prospect of civil liability when making administrative decisions, they believed that concerns of civil liability rarely leads to change in police practices.
- <sup>40</sup> For example, Hall et al. (2003) found that 48% of police officers found that the threat of civil liability deters police conduct, compared to 62% in a study done by Garrison (1995).
- <sup>41</sup> As noted by Walker (2001:10) “there is no [U.S. Supreme] Court decision barring a police officer from calling someone on the street a ‘scumbag’ or an ‘asshole.’ ”
- <sup>42</sup> In fact Skolnick & Fyfe (1993) contend that not only are officers and officials unaware of the results of police misconduct and the policy implications that come with the results but some police officials may see civil liability as “the costs of doing business.”
- <sup>43</sup> See note 44.
- <sup>44</sup> Some NYPD rules and regulations far exceed what New York State law authorizes. For example, the use of deadly, physical force against a fleeing felon. New York law authorizes deadly physical force if the perpetrator is armed and fleeing after committing a violent felony. However, the NYPD authorizes deadly physical force **ONLY** if it is necessary to stop an imminent threat of death or serious physical injury (emphasis added). New York Patrol Guide.
- <sup>45</sup> *Bogan v. Scott-Harris*, 523 U.S. 44 (1977).
- <sup>46</sup> See note 44.
- <sup>47</sup> For example, police sergeant Dorst agreed to pay \$5000 of a \$250,000 settlement. Dorst was alleged to have sexually harassed a subordinate police officer by repeatedly demanding sex from her while telling her that “it is going to be the best one minute of your life.” John Marzulli. Harassed Cop Wins 250G. It’ll be best minute of your life, creepy sarge told her. N.Y. Daily News, December 20, 2006. Sec.: News, p. 18.
- <sup>48</sup> In lawsuits in which the police officer is charged with intentionally violating the individual’s constitutional rights, the City refuses to defend and indemnify the named police officer accused of constitutional violations, the police union steps in and does both. See *Louima v. City of New York et al.* In this case defendants settled for \$8.6 million dollars with the City paying \$7 million and the PBA, the remaining \$1.6 million. William Rashbaum. Settlement Talks Stall in Louima Suit Against City & PBA. N.Y. Times, March 28, 2001.

- <sup>49</sup> For NYPD officers, part of the legal process in a §1983 lawsuit alleging police misconduct is the disclosure of the CCRB's file of the police officer who is alleged to have committed the violation. The officer's CCRB file (with personal information such as his home address redacted) contains information on all formal complaints brought against him or her, the results of all past investigations and the disciplinary actions that ensued. Disclosure information from the CCRB file may be exhibited to the jury if the lawsuit goes to trial, or may serve as bargaining chips when settlement is negotiated.
- <sup>50</sup> It should be noted that, according to Hirschi, there are no deviant subcultures just variance in an individual's attachment, involvement, commitment to, and belief in, the norms of their society (1969).
- <sup>51</sup> §1983 lawsuits, which allege state violations in addition to federal claims, the lawsuit can be brought in either forum.
- <sup>52</sup> A state court can adjudicate federal Civil Rights Claims. See *Felder v. Casey*, 487 U.S. 131 (1988).
- <sup>53</sup> In practice because of expediency and more expansive discovery in federal courts, lawsuits against the NYPD are often litigated in both federal and state courts concurrently and on completion of discovery, discontinued in the federal court. One reason plaintiff attorneys give for their preference for continuance in a state court as opposed to a federal court is that in federal courts unanimous verdicts are required whereas in state courts they are not.
- <sup>54</sup> A lawsuit alleging police misconduct can be brought in a federal court only if a "federal question is presented." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).
- <sup>55</sup> Although hiring, training and retention, it is one cause of action (in other words one allegation).
- <sup>56</sup> In their study of police searches Gould and Mastrofski reported that a panel of Fourth Amendment experts (a former federal prosecutor, a state appellate judge and a government attorney among others) found that more than 39% of the stops they observed were unconstitutional.
- <sup>57</sup> In 2008 a Maryland jury awarded \$2.4 million dollars for a police shooting even though the U.S. Department of Justice found that the police officer acted appropriately. Ruben Castaneda, "Man Who Was Shot by Officer Wins \$2.4 Million Judgment" *The Washington Post*, March 1, 2008.
- <sup>58</sup> *Id.* At 16.
- <sup>59</sup> Paddock, Barry. Detective is NYPD's most-sued cop, 28 lawsuits filed against him since 2006. *NY Daily News*. September 29, 2014.

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