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DOI RELEASES REPORT ON NYPD USE OF LITIGATION DATA FINDING SHORTCOMINGS
--Report is Follow Up to DOI's 2015 examination of the same issue--

Mark G. Peters, Commissioner of the New York City Department of Investigation ("DOI"), announced the release of a Report today finding deficiencies in how the New York City Police Department ("NYPD") tracks and reviews litigation data and trends. DOI issued this Report pursuant to a 2017 law passed by City Council (Local Law No. 166 of 2017) and as a follow-up to DOI's April 2015 report on the use of data from lawsuits involving NYPD to improve policing. For this Report, DOI conducted its own analysis of claims and lawsuits filed against officers in six NYPD precincts to illustrate the types of patterns and trends NYPD could study if its systems were more robust. DOI's analysis identified precincts that experienced both increases and decreases in different types of allegations (e.g. false arrests, excessive force, etc.) and underscored the types of data trends NYPD could be assessing in order to make adjustments to policies and practices as needed. A copy of DOI's Report is attached to this release and can be found at the following link: DOI's 2018 Litigation Data Report

DOI Commissioner Mark G. Peters said, "Data from litigation can be a useful tool in identifying and correcting potential policing problems. This report, and DOI's 2015 report on the same issue, demonstrate that relevant information from these lawsuits can reveal significant patterns and trends that can be further studied by the NYPD."

DOI's Inspector General for the NYPD Philip K. Eure said, "New Yorkers have a right to know how much of their tax dollars are spent in the course of litigation against NYPD. Also, NYPD can learn from information revealed during litigation to improve its policies, training, and other practices."

For this Report, DOI examined data for six precincts, finding that there were upward and downward spikes in specific types of lawsuits and legal claims made against NYPD and/or its officers in some of the precincts, including allegations of excessive use of force and false arrest. While such lawsuits do not necessarily demonstrate improper conduct, NYPD could use these larger trends to identify areas for closer review in how the police department operates. DOI also found that, despite NYPD's official response to DOI's April 2015 Report, which acknowledged the benefits of analyzing litigation data, NYPD has since abandoned plans to use its early intervention system to track the number, type, and monetary outcome of lawsuits filed against individual officers. In addition, this Report details how NYPD does not currently make public any information about the limited data analysis it conducts regarding litigation and legal claims.

DOI's earlier April 2015 Report – *Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing* – recommended that NYPD: (1) improve how NYPD collects, tracks, and analyzes information in legal claims in order to identify patterns and trends that need to be remedied; (2) formalize and improve NYPD's collaboration with the City Comptroller's Office and the City Law Department; and (3) increase transparency with the public surrounding its litigation tracking efforts by engaging with community stakeholders on these issues. Subsequently, New York City passed Local Law 166 (2017), which took effect last September, requiring DOI to review, among other things, claims and lawsuits involving NYPD, and make recommendations where necessary.

This current Report makes five recommendations to address the new findings stemming from this investigation:

➢ NYPD should create internal reports that describe specific Department-wide and precinct or unit-level trends in legal claims and should share these reports with command leadership.

➢ NYPD should regularly enter data about claims naming individual officers into its new Risk Assessment Information Liability System, or comparable early intervention system, so that NYPD is aware of at-risk officers who may require intervention.

➢ NYPD should create public reports that do not violate rules of confidentiality, taking care to disclose only the number and the general nature of claims filed against the Department as well as the current state of any interventions or policy changes.

➢ NYPD should analyze Department-wide litigation trends as well as observable trends within individual precincts and units in order to identify areas for improvement in Department policies, training, supervision, and tactics.

➢ NYPD should increase the number of employees focusing primarily on tracking litigation data to more effectively identify and address problematic trends.

The Report was prepared by DOI's Inspector General for the NYPD, specifically Investigator Angel Rendon; Assistant Counsel David Rozen; Policy Analysts Tyler Gibson, Justyn Richardson, Leah Nussbaum, and Adrian Amador; Senior Investigator Brigitte Watson; and Data Assistant Derek Chin, under the supervision of Director of Policy Analysis Candace McCoy, Deputy Inspector General Asim Rehman, Inspector General Philip K. Eure, Associate Commissioner Paul Cronin, Deputy Commissioner/Chief of Investigations Susan Lambiase, and First Deputy Commissioner Lesley Brovner.

New York City Department of Investigation's

Inspector General for the NYPD

Ongoing Examination of Litigation Data Involving NYPD

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April 2018

ONGOING EXAMINATION OF LITIGATION DATA INVOLVING NYPD

Table of Contents

Abbreviations and Key Terms

Cases

For purposes of this Report, legal matters filed with the Comptroller's Office or in court, including Notices of Claim (NOCs) and federal civil rights lawsuits, are referred to as "cases." Within each case, there may be several allegations.

ELAU

NYPD's Enterprise Liability Assessment Unit was formed in 2015 under NYPD's new Risk Management Bureau. It was originally intended to track systemic litigation trends by studying data from legal claims.

Law Manager

The New York City Law Department's litigation case management system.

Litigation Data

Litigation data is information from lawsuits and legal claims (including Notices of Claim) regarding the underlying circumstances, involved parties, allegations, and related data points.

NOC

A Notice of Claim is a filing made with the Comptroller's Office when making a legal claim against New York City agencies or their employees.

OAISIS

The Omnibus Automated Image Storage and Information System is the database used by the Comptroller's Office to store and track NOC.

PALS

NYPD's Police Action Litigation Section was formed in late 2014 and is housed in NYPD's Legal Bureau.

RAILS

NYPD's Risk Assessment Information Liability System, an early warning and disciplinary information system for individual officers.

RMB

NYPD's Risk Management Bureau, formed in 2015, oversees numerous divisions and units dedicated to monitoring the performance of individual members of service.

I.   Executive Summary

On August 24, 2017, the New York City Council passed legislation concerning "the evaluation of civil actions, claims, complaints, and investigations alleging improper police conduct."[1] By amending the New York City Charter, Local Law 166 requires the New York City Department of Investigation's (DOI) Inspector General (IG) for the New York Police Department (NYPD) to develop recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of NYPD by considering, among other things, patterns and trends arising from lawsuits, claims, complaints, and other actions filed against NYPD.[2]

Previously, on April 2015, DOI had released a Report – *Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing* – recommending that NYPD use data on legal claims against police officers and NYPD (hereinafter "litigation data") more effectively.[3] Noting there was need for improvement in how NYPD tracked legal claims, the Report issued recommendations to (1) improve how NYPD collects, tracks, and analyzes information in legal claims in order to identify patterns and trends that need to be remedied; (2) formalize and improve NYPD's communication and collaboration with the Comptroller's Office and the Law

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[1] N.Y.C. Local Law No. 166 (2017); N.Y.C. Charter Chapter 34 §808. The law took effect on September 8, 2017.

[2] N.Y.C Charter Chapter 34 §808(b) (as amended by N.Y.C. Local Law No. 166 (2017)).

[3] N.Y.C. Department of Investigation, Office of the Inspector General for the NYPD, *Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing* (2015), *available at* https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-04-20-Litigation-Data-Report.pdf (last visited April 10, 2018). *See* Appendix C for full report.

Department; and (3) increase transparency by providing the public with details surrounding its litigation tracking efforts and by engaging with community stakeholders on these issues.[4]

As part of DOI's ongoing work in examining NYPD's efforts to track litigation patterns and trends, and pursuant to New York City Charter sections 803 and 808, DOI issues this Report.[5]

For this Report, DOI assessed NYPD's current efforts to analyze litigation data and trends. DOI also conducted its own analysis of claims and lawsuits filed against officers in six NYPD precincts to illustrate the types of patterns and trends NYPD could be studying if NYPD's systems were more robust. DOI found that:

➢ When claims and lawsuits against officers are categorized by precinct, certain precincts have upward and downward spikes in specific types of

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[4] Both the Comptroller's Office and the Law Department play important roles with regard to litigation against the City and litigation data. Certain pre-litigation claims must be filed with the Comptroller before they can be filed in court, and the Comptroller's Office, as the City's Chief Fiscal Officer, will investigate, evaluate, and possibly settle claims before they proceed to litigation. Once a case against the City proceeds to litigation in court, the Law Department will represent the City in the action. Both the Law Department and Comptroller maintain certain data on these claims and cases.

[5] This report fulfills DOI's obligations under section 803(c)(1) of the Charter (as amended by Local Law 70 of 2013), which requires DOI to make recommendations regarding the operations, policies, programs and practices of NYPD. When DOI issues such reports and recommendations, the Police Commissioner is required to submit a written response within 90 days. See N.Y.C. Charter Chapter 34 §803(e)(2).

  This report similarly fulfills DOI's obligations under section 808(b) of the Charter (as amended by Local Law 166 of 2017), which requires DOI to make certain recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of the NYPD by considering, among other things, patterns and trends arising from lawsuits, claims, complaints, and other actions filed against NYPD. Section 808(c) requires DOI to issue such recommendations by April 30, 2018.

claims (e.g., use of force, false arrests, denial of rights). Further analysis may identify problems and areas for improvement in policy, training, and supervision.

➢ NYPD's early intervention system is not currently tracking the number, type, and monetary outcome of lawsuits filed against individual officers, despite initial plans to do so.[6]

➢ In instances where NYPD identifies issues from litigation data, NYPD sometimes communicates corrective actions through direct and informal discussions with commanders in the affected division rather than through formal channels that would distribute the guidance Department-wide.

➢ NYPD does not currently make public any information about its limited data analysis.

In light of these findings, DOI issues the following recommendations on how NYPD can make its litigation data-tracking system more effective:

1. NYPD should analyze Department-wide litigation trends as well as observable trends within individual precincts and units in order to identify possible areas for adjustments to Department policy, training, and supervision.

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[6] An "Early Intervention System" (EIS) is a computerized database system that allows police departments to monitor individual police officers based on a series of performance indicators, allowing supervisors to identify officers who are in need of intervention while providing the department with global data regarding the performance of its law enforcement professionals.

2. Based on the findings that result from such analyses, NYPD should develop internal reports that describe specific Department-wide, precinct, and unit-level trends in legal claims and should share these reports with command leadership.

3. NYPD should regularly enter data about claims, naming individual officers, into its new Risk Assessment Information Liability System (RAILS), or a comparable early intervention system, so that the Department is aware of at-risk officers who may require additional training or supervision.

4. NYPD should create public reports that do not violate rules of confidentiality, taking care to disclose only the number and the general nature of claims filed against the Department as well as the current state of any specific interventions or policy changes.

5. NYPD should ensure sufficient staffing that focuses primarily on identifying and tracking litigation data patterns and trends.

As noted in DOI's April 2015 Report, the fact that a claim or lawsuit is filed and the way in which it is resolved are not necessarily proof of liability or improper conduct. Cases are not always resolved on the merits, and non-meritorious cases are sometimes settled for low amounts to avoid the costs and uncertainties of litigation. As NYPD has acknowledged, however, litigation data, when properly gathered and analyzed, can play an important role in encouraging proactive improvements in policing.[7]

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[7] *NYPD Response: Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing* (Jul. 17, 2015) at 2, *available at*

II.   Methodology

DOI reviewed 935 allegations contained in 541 lawsuits and claims filed against NYPD and its officers in the 14th, 25th, 49th, 77th, 103rd, and 120th Precincts from 2013 through 2016. DOI selected these six precincts based on records of claims and lawsuits obtained from the City's Comptroller and Law Department, identifying the three precincts for which claims filed against NYPD and officers most notably increased and the three precincts for which claims filed against NYPD and officers most notably decreased in volume during the period under review. This sample of claims brought against NYPD and its members illustrates the types of data currently available to the Department. DOI's analysis in this Report demonstrates how NYPD could, and in fact should, use litigation data to spot trends warranting adjustments to policy, training, and supervision.[8]

DOI also examined the structure and function of NYPD's litigation data collection and analysis by interviewing officials in NYPD's Legal and Risk Management Bureaus, the Law Department, and the Comptroller's Office. DOI also reviewed relevant NYPD records and sections of the New York City Charter and held discussions with risk management officials in other police departments.

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https://www1.nyc.gov/assets/doi/oignypd/response/nypd_response_oig_reusing_data_from_Lawsuits_legal_claims.pdf (last visited April 10, 2018).

[8] DOI does not opine on exactly how NYPD should engage in its litigation analysis, and DOI's review does not survey all litigation against NYPD and its personnel nor attempt to decide the merits of claims and lawsuits. In aggregating available data and observing trends from the dataset, DOI demonstrates the types of litigation data analysis beyond what NYPD was conducting (as of June 2017) and that NYPD can and should be performing in the future.

The findings detailed in this Report are based, in part, on discussions with NYPD employees and information obtained from NYPD through mid-2017. In late 2017 and early 2018, DOI sought additional information including updates on NYPD's operations to assess whether NYPD had itself uncovered, investigated, or addressed any of the trends identified by DOI. As to these later requests, when DOI sought certain information, NYPD withheld it on the basis of legal privilege, although such privileges do not bar disclosure of NYPD information to DOI. When DOI attempted to interview current NYPD lawyers about the NYPD unit that monitors litigation, NYPD refused to make NYPD lawyers available to DOI, despite DOI's legal mandate and despite NYPD being informed that the interviews would cover general questions about the unit (as opposed to covering specific lawsuits).[9] NYPD instead directed DOI to the Law Department for further consultation.[10] DOI, however, does not need Law Department approval to conduct this Charter-mandated inquiry. NYPD also intervened in DOI's efforts to interview a former NYPD lawyer who currently works for another City agency, instructing that lawyer that certain issues must be resolved between NYPD and DOI before such an interview could take place.

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[9] Therefore, DOI cannot state whether NYPD is currently conducting the type of analysis described in this Report.

[10] Before even knowing what the interviews were to cover, NYPD also prematurely invoked the "sensitive information" provision of N.Y.C. Charter §803(c)(3) when protesting the interviews. As noted, the interviews were not intended to cover ongoing civil or criminal investigations or proceedings. Also, the "sensitive information" provision does not preclude production of information to DOI but only governs steps to safeguard that information from public disclosure. Therefore, the provision is not a relevant basis to deny production outright.

As a result of NYPD's conduct, certain findings in this Report could not be updated and verified prior to the release of this Report.[11]

III.   Background

A. DOI's April 2015 Report

Collecting and analyzing litigation data helps police departments nationwide to detect patterns of misconduct and violations of rights, to identify high-risk officers who may be in need of enhanced training or supervision, and to contribute to positive shifts in departmental culture. DOI's April 2015 Report noted there was room for improvement in how NYPD tracked legal claims, and made the following recommendations:

1) NYPD should review relevant data from legal claims and lawsuits against NYPD, including the nature of the claims or core allegations, information about the police officer(s) identified in the claims, and the location of the incident and the address of the plaintiff(s);

2) NYPD should create and coordinate an inter-agency working group with the Comptroller's Office and the Law Department in order to improve police-involved litigation data collection, coordination, and exchange;

3) NYPD should be more transparent in providing the public with details on how its litigation data-tracking systems work. NYPD should disclose its

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[11] DOI is presently discussing these and other non-disclosure issues with NYPD. DOI remains optimistic that such issues can be resolved; however, the statutory April 30 deadline required releasing this Report now, and prior to resolution. In the event that DOI determines that such negotiations are not reasonably likely to succeed, DOI will notify the City Council of such impasse and will take appropriate legal action.

performance indicators for officers and its tracking categories so the public

can see how the Department analyzes litigation data with respect both to

individual officers and to Department-wide practices. In addition, NYPD

should solicit suggestions from community stakeholders on how to develop

its litigation data-tracking system further.[12]

In its official response to DOI's report, NYPD stated that it was "already in the

process of implementing each of [DOI's] recommendations."[13] Most notably, while

recognizing that data from lawsuits can be flawed and at times incomplete, NYPD

acknowledged the benefits of uncovering litigation trends that highlight problems

possibly requiring official intervention.[14]

B. NYPD's Evolving Risk Management Efforts

In the fall of 2014, NYPD's Legal Bureau established the Police Action

Litigation Section (PALS), which NYPD describes as a unit that assists the Law

Department in the legal defense of NYPD and that "preserves and collects all

available evidence necessary to defend the Department and its members against

allegations of misconduct."[15] In March 2015, pursuant to an Interim Order, NYPD

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[12] *See* Appendix C for full report.

[13] *See NYPD Response*, *supra* note 7. However, NYPD also stated that there were certain "barriers" that prevented the Department from adopting all aspects of DOI's recommendations. In particular, NYPD stated that: 1) the Department should analyze only "trustworthy" data; 2) it had already established lines of communication with the Comptroller's Office and the Law Department, and so a formal working group was not needed; and 3) Civil Rights Law § 50-a, a statute which deals with police personnel files, could prohibit sharing information about lawsuits filed against individual officers.

[14] *See NYPD Response*, *supra* note 7.

[15] *Police Action Litigation Section,* N.Y. Police Dep't, https://www1.nyc.gov/site/nypd/bureaus/administrative/police-action-litigation-section.page (last visited April 10, 2018).

established a Risk Management Bureau that included an "Enterprise Liability Assessment Unit." This new unit was responsible for "[a]nalyz[ing] all lawsuits filed against the Department and its members to determine the existence of patterns or trends" and to "[i]dentify potential legal risks, mitigate, and/or prevent the risks, and better assist the New York City Law Department in defending lawsuits."[16] Whereas PALS was within the Legal Bureau, the Enterprise Liability Assessment Unit was under the Risk Management Bureau, with both bureaus reporting in parallel chains of command to the Deputy Commissioner, Legal Matters.

In the fall of 2016, however, NYPD reorganized these units and their corresponding responsibilities, moving the Enterprise Liability Assessment Unit under the purview of PALS. NYPD argued that the structural changes were necessary due to inefficiencies resulting from parallel chains of command. Appendix A, attached, contains a chronology of structural changes to NYPD's risk-management programs and related events.

At the same time, the Department also redirected the function of its planned Risk Assessment Information Litigation System.[17] The earlier vision for RAILS was an "enterprise management system," one component of which included lawsuit data as a factor in an early intervention system for monitoring individual officer performance.[18] Today, RAILS is strictly an early intervention system "[t]o provide

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[16] Organizational Change: Deputy Commissioner, Legal Matters – Establishment of the Risk Management Bureau, NYPD Interim Order No. 5-6, c.s. (Mar. 19, 2015).
[17] The full name of the system was later changed to "Risk Assessment Information Liability System."
[18] *See NYPD Interim Order No. 5-6*, *supra* note 16.

commanding officers with an effective means to track the behavior and assess the performance of uniformed and civilian members of the service," and NYPD has decided not to include lawsuits and claims against officers as criteria within RAILS when monitoring officer performance.[19] According to NYPD, the decision not to include litigation data in RAILS was due in part to the fact that the Law Department's database, which would provide the data on litigation, did not track enough categories and could not, as currently configured, automatically feed data into RAILS. While the practical difficulties associated with feeding information from the Law Department's database into RAILS are a legitimate concern, the exclusion of litigation data from RAILS is a missed opportunity. Data from lawsuits and claims filed against officers can be useful in identifying at-risk officers, as NYPD has recognized.[20] Furthermore, as illustrated in the next section of this Report, analysis of lawsuits and legal claims can also identify broader patterns and trends in police activity at the Department and precinct levels.

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[19] Risk Assessment Information Litigation System (RAILS), NYPD Interim Order No. 73 (Nov. 6, 2017).

[20] *NYPD Response*, *supra* at note 7. N.Y.C Charter Chapter 34 §808(b) (as amended by N.Y.C. Local Law No. 166 (2017)) requires DOI, when developing recommendations, to consider "criteria included in any system that is used by the police department to identify police officers who may be in need of enhanced training or monitoring and outcomes resulting from utilization of such system."

IV.   Findings

A. Identifying Litigation Data Trends in Six Precincts

Consistent with the statutory requirements of N.Y.C. Charter Chapter 34 §808(b) (as amended by N.Y.C. Local Law No. 166 (2017)), DOI conducted its own review of lawsuits and claims filed against NYPD or its members.[21]   NYPD could follow DOI's model or design its own methods.

i. Identifying the Dataset

To build its dataset, DOI first obtained data from the Comptroller's Office as to total NOCs (using the Comptroller's "Police Action" and "Police Action-Civil Rights" claim categories) and information from the Law Department on lawsuits filed in the years 2015-2016 in all 77 precincts.[22] Police Action NOCs are primarily claims that will be filed in state court, including tort cases.[23] Police Action-Civil Rights NOCs are allegations that officers violated state civil rights statutes or violated rights protected under the United States Constitution.   The lawsuit category includes actions filed in federal court alleging that a "custom, policy, or practice" of the police department itself led to a violation of constitutional rights.   During this two-year

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[21] N.Y.C Charter Chapter 34 §808(b) (as amended by N.Y.C. Local Law No. 166 (2017)) requires DOI, when developing recommendations, to consider "patterns or trends identifying by analyzing actions, claims, complaints, and investigations, including but not limited to, any patterns or trends regarding precincts and commands." DOI's review, however, does not prescribe how NYPD should engage in litigation analysis, does not survey all litigation against NYPD and its personnel, and does not attempt to substantiate the merits of allegations found in claims and lawsuits.

[22] According to the Comptroller, personal injury claims involving improper NYPD action that are litigated in state courts are classified as "Police Action" claims. Claims involving police violation of Constitutional or civil rights are generally classified as "Police Action-Civil Rights" claims. See Office of the N.Y.C. Comptroller Scott M. Stringer, Bureau of Policy and Research, *ClaimStat 2.0: Reducing Claims and Protecting New Yorkers* 16 (2017) (hereinafter *ClaimStat 2.0*).

[23] A tort is a "wrongful act" that causes someone else to suffer a loss for which there is civil liability against the person who commits the act.

period, there were 6,375 Police Action NOCs, 1,407 Police Action-Civil Rights NOCs, and 1,697 lawsuits. In choosing which precincts to examine more closely for litigation trends, DOI first identified those with enough cases for meaningful statistical analysis in each of these three categories (i.e., Police Action NOC, Police Action-Civil Rights NOC, and lawsuits).[24] From this group of precincts, DOI then isolated a subset of precincts for deeper analysis. Specifically, DOI identified precincts where the volume of cases (lawsuits and NOCs) showed the steepest increase or decrease when comparing case volume in 2015 to case volume in 2016. Notable increases or decreases in litigation could signal that there may be problems or, with decreases, improvements that NYPD should analyze. DOI selected six such precincts – three where there was an increase in lawsuits, Police Action NOCs, or Police Action-Civil Rights NOCs, and three where there was a decrease in those categories. The three precincts with the steepest increases were the 14th in Manhattan (for Police Action NOC), the 103rd in Queens (for Police Action-Civil Rights NOC), and the 25th in Manhattan (for lawsuits). The three with deepest decreases were the 120th in Staten Island (for Police Action NOC), the 77th in Brooklyn (for Police Action-Civil Rights NOC), and the 49th in the Bronx (for lawsuits).

After choosing these six precincts, DOI then reviewed and analyzed NOCs or lawsuits (depending on the category for which the precinct was selected) concluded

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[24] To do this, DOI grouped the cases by precinct through a process of geo-coding the location in which the alleged incident occurred. The address of each incident was mapped within its relevant precinct. DOI then determined the median number of cases in all three categories in all precincts. If the numbers in a precinct were at the median or above in any of the three categories in both years, the precinct was selected for further consideration. In the Police Action NOC category, there were 35 precincts, for Police Action-Civil Rights NOC there were 31, and for lawsuits there were 31 precincts.

in 2013-2014 and commenced in 2015-2016, comparing litigation and NOC activity from the earlier period (2013-2014) to the later period (2015-2016).[25] For these six precincts combined, there were 240 cases in 2013-2014 (163 NOCs and 77 lawsuits), and 302 cases in 2015-2016 (255 NOCs and 47 lawsuits). **Figure 1** depicts the numbers of cases in each precinct and the percentage of change between the two time periods (2013-2014 compared to 2015-2016). It shows that the number of cases clearly changed over time – even more than doubling in the 14th and 120th Precincts. If NYPD took steps to identify such increases or decreases, it could drill further into the litigation data to see what is driving these trends.

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[25] The complete dataset contains cases litigated in 2013-2016 in the six precincts. Although the first period (2013-2014) contains data for cases closed and the second period (2015-2016) contains data for cases opened, the relevant characteristics of these two data sets are nearly identical. Specifically, DOI reviewed and compared the characteristics of *allegations* in both time periods—*not outcomes*—and the types of allegations reviewed in the first period are the same as the second. Furthermore, a small number of cases initiated but not yet concluded in 2013-2014 might not have been captured in this dataset, but should not have been numerous enough to influence the overall trends identified in this Report. *New York Codes, Rules and Regulations*, Uniform Rule 202.19 of the Uniform Rules for the Trial Courts sets 12 months as the standard period for tort cases to be ready for trial ("pre-note-of issue.") Given that most of these cases do not proceed to trial and that the relevant dataset covers *two* years (not just 12 months), the number of cases which were still open and not included in the 2013-2014 dataset should be small and would not have influenced the overall trends identified in this Report. As a result, the number of cases closed in 2013-2014 should, for the purposes of this Report, be comparable to the number of cases opened in 2015-2016.

Figure 1: Cases in Six Precincts - Change in Volume over Time

Precinct	Borough	2013-2014 Number of Cases[26]	2015-2016 Number of Cases	% Change
14	Manhattan	34	103	202.9%
25	Manhattan	52	42	-19.2%
49	Bronx	25	5	-80.0%
77	Brooklyn	89	56	-36.4%
103	Queens	17	24	41.2%
120	Staten Island	23	72	213.0%

ii. Identifying Potential Trends Within and Across Precincts

Parsing the data to determine what types of allegations are contained *within* these cases and how those types of allegations are trending reveals fluctuations in allegations that vary from precinct to precinct, presenting areas of inquiry that NYPD should explore. DOI read and analyzed each of the 542 lawsuit complaints and NOCs from all six precincts, recording data in 22 distinct categories in order to extract usable data.[27] These categories included data points such as time of incident, number of officers, type of alleged illegal conduct, associated criminal charges, and searches relating to the incident.[28]

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[26] For purposes of this table, "cases" refers either to NOCs or lawsuits, depending on the category of case for which the precinct was chosen (e.g., lawsuit, Police Action NOC, or Police Action-Civil Rights NOC).

[27] See Appendix B for a complete list of the data categories DOI used in reviewing lawsuit complaints and Notices of Claim for this review.

[28] Although DOI's 2015 Litigation Data Report (*supra* at note 3; *see* Appendix C for full report) had recommended that NYPD collect, analyze, and report on many such data points, not all such information is reported here. For instance, the names of officers sued and the geographic location of alleged incidents are available in these data but are not discussed here.

DOI identified notable patterns in the types of allegations made in all cases from 2013 through 2016. The most common types of allegations against police officers were some form of excessive force, some form of falsehood related to criminal charges stemming from the underlying incident, or some form of denial of a claimant's rights.[29] The data set covers all allegations made in any case; many cases had several allegations. **Figures 2, 3, and 4** below show how the frequencies of types of allegations changed between the 2013-2014 period and the 2015-2016 period in the six precincts. These allegations are presented as a percentage of the total legal claims for the period under review in each illustrative precinct. For example, in the 49th Precinct in 2013-2014, 76.0% of the cases included allegations of excessive force and 52.0% included allegations of false arrests. By comparison, the 2015-2016 cases involving the 49th Precinct included fewer excessive force allegations (40.7%) and fewer false arrest allegations (20.0%) than in the 2013-2014 period.

Furthermore, in some precincts, as shown in **Figures 2 and 3**, the volume of some allegations trended in a direction opposite to the overall precinct trend. Yellow highlights note where overall litigation volume has *decreased* for the selected precinct but the frequency of a particular allegation has *increased* and where overall litigation volume has *increased* but the frequency of a particular allegation has *decreased*. Such patterns are good candidates for NYPD to examine further.

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[29] For the purposes of this Report, "denial of rights" allegations include the failure to issue *Miranda* warnings, the failure to request medical care for individuals in custody, tampering with evidence, bias-based profiling, and related claims. DOI recognizes that NYPD may prefer to categorize allegations differently in building its own litigation database.

Figure 2. Trends in Allegations of Excessive Use of Force[30]

Precinct	Borough	Change in Overall Case Volume 2013-2016 *(From Fig. 1)*	Cases with Force Allegations 2013-2014	Cases with Force Allegations 2015-2016	Change in Percentage
14	Manhattan	*Increase*	52.9% (18/34)	43.7% (45/103)	-9.3
25	Manhattan	*Decrease*	71.2% (37/52)	57.1% (24/42)	-14.0
49	Bronx	*Decrease*	76.0% (19/25)	40.0% (2/5)	-36.0
77	Brooklyn	*Decrease*	75.3% (67/89)	76.8% (43/56)	1.5
103	Queens	*Increase*	52.9% (9/17)	50.0% (12/24)	-2.9
120	Staten Island	*Increase*	52.2% (12/23)	47.2% (34/72)	-5.0

Figure 3. Trends in Allegations of False Arrest

Precinct	Borough	Change in Overall Case Volume 2013-2016 *(From Fig. 1)*	Cases with False Arrest Allegations 2013-2014	Cases with False Arrest Allegations 2015-2016	Change in Percentage
14	Manhattan	*Increase*	82.4% (28/34)	75.7% (78/103)	-6.6
25	Manhattan	*Decrease*	69.2% (36/52)	66.7% (28/42)	-2.6
49	Bronx	*Decrease*	52.0% (13/25)	20.0% (1/5)	-32.0
77	Brooklyn	*Decrease*	94.4% (84/89)	85.7% (48/56)	-8.7
103	Queens	*Increase*	88.2% (15/17)	83.3% (20/24)	-4.9
120	Staten Island	*Increase*	78.3% (18/23)	79.2% (57/72)	0.9

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[30] In Figures 2, 3, and 4, the fourth and fifth column of each table note the percentage frequency of cases containing the allegation in question. Alongside those percentage frequencies, in parentheses, the raw numbers of cases containing the allegation in question are listed against the total number of cases originating in the precinct (drawn from Figure 1, which lists the total number of cases in each precinct for both time periods under review).

Figure 4. Trends in Allegations of Denial of Rights

Precinct	Borough	Change in Overall Case Volume 2013-2016 *(From Fig. 1)*	Cases with Denial of Rights Allegations 2013-2014	Cases with Denial of Rights Allegations 2015-2016	Change in Percentage
14	Manhattan	*Increase*	26.5% (9/34)	56.3% (58/103)	29.8
25	Manhattan	*Decrease*	51.9% (27/52)	45.2% (19/42)	-6.7
49	Bronx	*Decrease*	52.0% (13/25)	40.0% (2/5)	-12.0
77	Brooklyn	*Decrease*	92.1% (82/89)	91.1% (51/56)	-1.1
103	Queens	*Increase*	82.4% (14/17)	83.3% (20/24)	1.0
120	Staten Island	*Increase*	30.4% (7/23)	38.9% (28/72)	8.5

Again, these figures are not conclusive as to the true incidence of excessive force, false arrests, and denial of rights over this time period in these precincts. Instead, these trends present a roadmap for more in-depth areas of inquiry that NYPD could analyze further.[31]

iii.   Litigation Data from the 77th Precinct: An Illustration

DOI's April 2015 Report urged NYPD not only to collect, track, and analyze data from legal claims to identify Department-wide patterns and trends, but also to pay close attention to the data at other levels such as individual Patrol Boroughs,

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[31] Despite the recognized limitations of data contained in legal claims, extensive reporting by the now-defunct Special Counsel to the Los Angeles Sheriff's Department dating back to 1993 has repeatedly demonstrated the value of collecting and analyzing this information as a tool for reducing risk and improving Department policy, training, and supervision. Merrick Bobb et al., 34th Semiannual Report of Special Counsel, L.A. County Sheriff's Dep't (2014), https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54ad496ce4b060bee0197d99/1420642668163/34th+Semiannual+Report.pdf (last visited April 10, 2018).

commands, and units. When problematic patterns are identified, NYPD should take corrective actions and issue Department-wide guidance. Paying attention to the data that reveal such patterns and trends can yield valuable lessons regarding Department policy, training, and supervision. Similarly, where positive trends surface in individual precincts, such as a significant drop in a type of allegation within lawsuits, NYPD should explore what, if anything, drove the improvement. Factors that drove positive trends should be identified and utilized in other precincts to further overall NYPD improvement.

To illustrate how this might work, DOI reviewed litigation data from the 77th Precinct in Brooklyn. When compared to the five other precincts, the 77th Precinct cases contained a broader variety of allegations. Furthermore, when settlement data were considered, the case with the highest settlement amount of all precincts in the data set ($832,500) was in the 77th Precinct. In the 77th Precinct, 68.5% of cases concluded in 2013 and 2014 (61 of 89) were settled with payouts $10,000 and over, and 14.6% (13 of 89) $30,000 and over.

This detailed review showed a noticeable trend in allegedly unwarranted home searches in the 77th Precinct. In 2013-2014, 21.3% of the cases (19 of 89) alleged that police had entered a home without a warrant, and this rose to 51.8% (29 of 56) in 2015-2016. Furthermore, 28.1% of the cases (25 of 89) in 2013-2014 involved allegations of property being damaged, destroyed, or not returned; this rose to 41.1% (23 of 56) in 2015-2016. NYPD should conduct a deeper analysis to assess whether such increases represent a material change in police behavior.

Despite these spikes, the overall litigation volume in the Precinct trended downwards, i.e., fewer cases were being initiated against officers in the 77th Precinct. The category "false arrest" exemplifies this trend; such allegations fell from 94.4% of all allegations (84 of 89) in cases resolved in 2013-2014 to 85.7% (48 of 56) of cases commenced in 2015-2016. The false arrest cases mostly involved charges of possession of illegal items and resisting arrest.

A further review of the 145 cases filed against officers in the 77th Precinct uncovered allegations regarding excessive force. Approximately three quarters of 77th Precinct cases in both sets of years included such allegations, with plaintiffs alleging tight handcuffing, improper use of pepper spray, unnecessary body slams (i.e., officer pushing the claimant to the ground), an officer using a club on a child, pistol whipping, and driving recklessly with a passenger unsecured. The evident trends of specific allegations raised in these legal claims are an opportunity for NYPD to examine these issues more closely for possible improvements to policies, training and supervision. NYPD has long tracked reported allegations of possible misconduct against individual officers as criteria for performance monitoring and early intervention programs. Allegations investigated at the Civilian Complaint Review Board (CCRB) and NYPD's Internal Affairs Bureau (IAB) are documented in early intervention program records. Because NYPD already tracks similar allegations from other sources as criteria for performance monitoring and early intervention,

legal claims against officers should also be included as criteria in RAILS, the database now used for NYPD's early intervention programs.[32]

iv. Monetary Outcomes of the 2013-2014 Cases in Six Precincts

Beyond the substantive information contained in legal claims, the monetary outcomes that arise from litigation against the City's police are a matter of public concern. The Comptroller's Office publicly reports on settlement data.[33] While monetary outcomes from settlements and dispositions are not necessarily indicative of misconduct, and although the amounts paid in particular settlements are often outside NYPD's control, NYPD has acknowledged that reducing costs to the City alone is a valid rationale for reviewing litigation data.[34] Overall, NYPD should use information about settlement amounts and jury awards from trials (of which there were a few in this dataset) to identify cost-benefit strategies, although the City's Law Department must clearly make decisions about legal strategy. **Figure 5** charts the amounts of money paid in legal claims from 2013-2014 across the six precincts DOI analyzed.[35]

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[32] As previously noted, NYPD discontinued plans to incorporate these data in RAILS in part because, according to NYPD, the Law Department's database, which would provide the data on litigation could not, in its present state, automatically feed the most up-to-date relevant data into RAILS.
[33] *ClaimStat 2.0*, *supra* note 22, at 16; Office of the N.Y.C. Comptroller Scott M. Stringer, Bureau of Law and Adjustment, *Claims Report: Fiscal Year 2017* 15 (2018).
[34] *See NYPD Response*, *supra* note 7.
[35] DOI obtained the dollar amounts of cases concluded in 2013 and 2014 from the Law Department and Comptroller's Office.

Figure 5. Distribution of Settlement Dollar Amounts for 2013-2014 Claims

Distribution of Settlement Dollar Amounts Arising from Legal Claims Concluded in 2013-2014
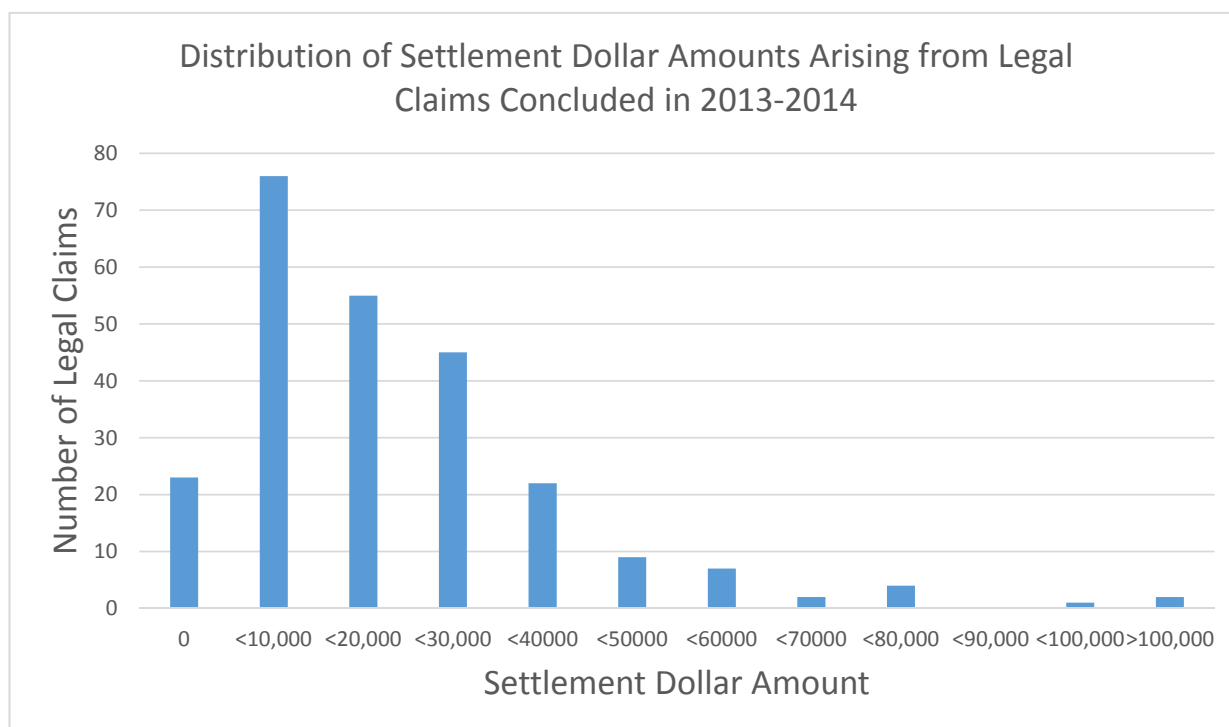
As the data show, the density of legal claims on the spectrum of settlement dollar amounts is skewed toward lower payouts. The highest settlement dollar amounts are rare relative to the lower amounts in the six precincts DOI reviewed. NYPD should analyze these data to identify trends. For example, NYPD could cross-reference settlement outcomes with other data contained in legal claims to explore whether certain claims tend to result in particular settlement amounts and which individual Patrol Boroughs, precincts, units, or practices are the driving forces behind trends in lawsuit payouts.[36] DOI sought to ask NYPD staff about their current efforts

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[36] Cases resulting in the largest settlements could similarly be subject to scrutiny to identify potential trends or areas of risk.

to analyze settlements data and spot trends, but these interviews were blocked for the reasons previously mentioned.

B. Programmatic Deficiencies in NYPD's Litigation Data Tracking Structure and Efforts

In addition to the review of data arising from legal claims in six precincts, DOI conducted a programmatic review consisting of interviews with officials in NYPD's Legal and Risk Management Bureaus, the Law Department, and the Comptroller's Office.[37]

i. *PALS's litigation data tracking efforts are insufficient*

NYPD currently has approximately 36,000 sworn members of service. According to the New York City Comptroller, 4,836 claims were filed against NYPD and/or its officers for "police action" or violations of "civil rights" in fiscal year 2017. Although PALS has at least five different sub-units with more than 40 staff members focusing on various aspects of litigation management, investigation, or defense, the majority of PALS's work does not involve identifying, tracking, and analyzing larger litigation trends. In June 2017, PALS leadership noted that only one person has the full-time responsibility to spot trends for risk-mitigation purposes. DOI sought to interview this individual, but the interview was blocked for the reasons previously

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[37] N.Y.C Charter Chapter 34 §808(b) (as amended by N.Y.C. Local Law No. 166 (2017)) requires DOI, when developing recommendations, to consider "steps taken by the police department in response to actions, claims, complaints, and investigations, including investigations conducted, disciplinary actions, or changes in its operations, policies, programs, and practices."

stated.[38] Accordingly, while DOI is aware that trend analysis was a relatively small portion of PALS's work as of mid-2017, DOI cannot specify how many individuals in PALS are currently dedicated to monitoring litigation data for systemic trends and whether such trends are examined at a Department-wide level and/or a more narrow level (e.g., borough, precinct, and unit).

Based on the meetings that DOI did conduct, the litigation trends that PALS tracks appear limited and this work is not aided by a structured, comprehensive database. First, with respect to NOCs, PALS accesses the Comptroller's OAISIS database and populates a spreadsheet with a narrow set of data points: claim number (assigned tracking number), claimant's name, claimant's attorney, date of occurrence, location of occurrence, Patrol Borough, precinct, and "notes." By limiting the spreadsheet to these data points, NYPD narrows the range of trends that it can observe. More specific data, such as the types of allegations raised in the legal claims or the types of units that are named in litigation, would allow PALS to identify richer patterns and trends. Generating such data would likely require reviewing the text of the NOC (i.e., not relying on OAISIS data alone).

With respect to lawsuits, PALS does not actually build and maintain its own database. Instead, PALS relies on information and reports from the Law

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[38] NYPD prematurely invoked the "sensitive information" provision of N.Y.C. Charter §803(c)(3) when protesting the interviews. The interviews were not intended to cover ongoing civil or criminal investigations or proceedings. Also, as noted, the "sensitive information" provision does not prevent DOI from access to information in any event.

Department, which consist of a list of cases "commenced" and "disposed of."[39] Due to resource constraints and related limitations, the Law Department does not provide NYPD with the original lawsuit paperwork associated with the pending claims (e.g., the filed complaint). Although lawsuit materials are an important and early source of litigation data for NYPD, DOI cannot confirm, for reasons previously stated, whether PALS is currently obtaining and reviewing such documents on a regular basis for the purpose of collecting and analyzing litigation data.

Beyond the limited efforts to identify trends proactively, such issues come to the attention of PALS through other channels: in response to media scrutiny, suggestions by the Law Department or the Comptroller, or by Department leadership. One of the handful of examples of policy interventions that DOI learned of during its investigation originated at the Comptroller's Office. According to the Comptroller's Office, through the office's ClaimStat initiative, staff members noticed a pattern in NOCs and notified NYPD of an emerging issue. NYPD responded by making alterations to an application on smartphones being distributed to NYPD officers at the time.[40] Such an example remains responsive and episodic, as opposed to ongoing, proactive, and systematic.

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[39] These reports cover such basic information as the matter name, the names of individual NYPD defendants, the location of the incident, the venues in which suits have been filed, and the status of the litigation. The Law Department also sends PALS a monthly document that includes narrative descriptions of significant new cases, significant developments in certain cases being handled by the Law Department, significant cases awaiting decision, and trial-ready cases.
[40] Due to the confidential nature of the underlying information drawn from filed legal claims, DOI cannot provide further details on these findings.

ii. PALS does not develop policy based on its findings

In 2015, one of the Risk Management Bureau's stated goals was to "develop and implement initiatives designed to minimize risk to the Department," by "provid[ing] advice and guidance on training issues" and "develop[ing] policies and procedures to reduce exposures to civil litigation."[41] Since then, the stated goals have changed. According to PALS, when PALS intervenes to reduce risk to the Department, the goal is not to develop or establish policy. PALS leadership has argued that doing so could expose NYPD to litigation risk should the development of such policies be subject to a Freedom of Information Law ("FOIL") or legal discovery request.[42]

Given this framework, when PALS has identified issues or trends requiring remediation, PALS has described its past interventions as direct communication with leadership of the command involved, through seminars, sit-down conversations, or phone calls. PALS intervenes along those lines instead of producing guidance and directives as the bases for Department-wide policies, trainings, or other interventions. Moreover, PALS does not track the outcomes of these episodic interventions. Because NYPD declined to provide and identify certain information, including legal bulletins, Interim Orders, and FINEST messages that PALS has

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[41] Interim Order No. 5-6, *supra* note 16, at 3.

[42] *See* N.Y. Pub. Off. Law §87 (McKinney 2015) et. seq. On the basis of legal privilege, NYPD similarly refused to identify to DOI those legal bulletins or "FINEST" messages that PALS requested that NYPD publish to officers regarding risk mitigation. Legal bulletins or "FINEST" messages are transmissions over NYPD's intranet. They may cover new interim order announcements, promotions, transfers, retirements, and reminders on policies, practices, and legal issues, among other matters.

requested NYPD to publish, DOI cannot, at this time, evaluate the scope of PALS's work in this regard.

By limiting such feedback, not tracking outcomes, and not using litigation data trends to inform Department-wide policies, NYPD runs the risk of certain issues recurring over time. While PALS creates internal reports on the litigation filed against the Department on a yearly basis, these documents discuss only the number of lawsuits filed and their overall costs. They do not explore any interventions that PALS might have proposed, nor do they integrate any discussions with either the Law Department or Comptroller's Office about broader themes. In addition, PALS does not make any of its analyses or interventions available to the public, which lacks transparency on an important public issue.

V. Recommendations

In light of the findings detailed in this Report and the data revealed through DOI's methodology for systemic review of litigation data in six precincts, DOI issues the following recommendations:

1. In line with the considerations codified in Local Law 166, NYPD should analyze Department-wide litigation patterns and trends as well as observable patterns and trends within individual precincts and units in order to identify areas for improvement in Department policies, training, supervision, and tactics. In paying greater attention to data within individual precincts, NYPD should review and analyze patterns and trends such as those shown in DOI's analysis of the 77th Precinct.

2. Based on the findings that result from such analyses, NYPD should create internal reports that describe specific Department-wide and precinct or unit-level patterns and trends in legal claims and should share these reports with command leadership.

3. NYPD should regularly enter data about claims naming individual officers into its new Risk Assessment Information Liability System (RAILS), or comparable early intervention system, so that NYPD is aware of at-risk officers who may require assistance.

4. NYPD should create public reports that do not violate rules of confidentiality, taking care to disclose only the number and the general nature of claims filed

against the Department as well as the current state of any interventions or policy changes.

5. NYPD should increase the number of employees focusing primarily on tracking litigation trends in order for NYPD to conduct proactive litigation analysis so that patterns and trends can be identified, tracked, and, where necessary, addressed.

As noted above, DOI is having ongoing discussions with NYPD about production issues. Once these are resolved, DOI may have additional recommendations and/or findings.

Appendix A:
Chronology of Litigation Data Developments in New York City

Fall 2014

- Police Action Litigation Section (PALS) was formed with a mandate to support NYPD in defending itself against ongoing litigation.

March 2015

- NYPD established a new Risk Management Bureau (RMB).
- NYPD created the Enterprise Liability Assessment Unit (ELAU) within the new Risk Management Bureau with a mandate to collect, track, and analyze litigation data for systemic trends.
- NYPD established a plan to create a Risk Assessment Information Litigation System (RAILS), a database designed for ELAU's new mandate.

April 2015

- DOI issued its first report on litigation data and noted several areas where NYPD could improve.

Fall 2016

- NYPD moved ELAU out of RMB and under the umbrella of PALS.
- NYPD redirected the purpose of RAILS so it would be limited to an early intervention system.

Fall 2017

- New York City Council passed Local Law 166.
- NYPD launched RAILS. Criteria for lawsuits against individual officers, which have been used as early intervention triggers since June 2011, were removed from the information stored in RAILS, with no plans in place to integrate them into the new database and reinstitute their use in early intervention program.

Appendix B:
Data Categories Used in DOI's Review of Legal Claims

- Incident Location
- Plaintiff's Address
- Incident Date
- Incident Time
- Filing Date
- Settlement Amount
- Plaintiff Lawyer
- Number of Plaintiffs
- Excessive Force Allegations
- Excessive Force Impact Location on Body
- Search Allegations
- Location of Search
- Property Lost/Damaged/Stolen
- Number of Officers
- Officer Name
- Officer Rank
- Officer Assignment
- Plainclothes or Uniform Assignment
- False Arrest Allegations
- False Charges Allegations
- Denial of Rights Allegations
- Hospital Transport

Appendix C:

Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing (2015)

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

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

Mark G. Peters
Commissioner

Philip K. Eure
Inspector General for the NYPD

Table of Contents

Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

I.   Introduction

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

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

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

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

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

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

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

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

[4] *Id*.

[5] *Id.*

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

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

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

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

[8] *Id.* at 5.

> **Legal Claims against NYPD**
>
> *Notices of Claim*
> Under Section 50-e of the General Municipal Law, parties seeking to file personal injury tort claims or property damage tort claims against the City of New York – including claims against NYPD – are legally required to file a "Notice of Claim" with the Comptroller's Office before they can file a lawsuit in court. The Notice of Claim contains basic information about the claimant, the incident, and the injury or damages. The Notice of Claim process allows the Comptroller's Office, as the City's chief fiscal officer, to investigate, evaluate, and settle claims before they proceed to litigation. A Notice of Claim is required for state tort claims against NYPD but may not be required for other types of claims.
>
> *Lawsuits*
> Parties also file lawsuits against NYPD and individual officers in state and federal court. In some situations, lawsuits against NYPD are filed only after the Notice of Claim process does not result in settlement or resolution. For other types of cases – including certain federal claims – parties do not need to first file a Notice of Claim and may proceed directly to court. Lawsuits are commenced by the filing of a Complaint, which contains detailed information about the parties, the allegations, and the relief sought by the plaintiff. Lawsuits against NYPD and individual officers are primarily defended by the New York City Law Department.
>
> *For the purposes of this Report, information from Notices of Claim and information from Lawsuits are being collectively referred to as "Litigation Data."*

III.   Litigation Data as a Tool for Improvement

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

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

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

a. Identifying Trends and Patterns

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

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

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

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

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

Case Study:

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

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

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

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

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

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

[15] *Id.*

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

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

b. Early Intervention Systems

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

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[16] *Id.* at 35.

[17] *Id.* at 38.

[18] *Id*. at 39.

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

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

The EIS process may be understood in four procedural steps:

1) **Review of Performance Indicator Data**:   The department collects performance indicator data (including but not limited to litigation data), and supervisors review and analyze the data on a regular basis.

2) **Identification**: Supervisors identify officers who raise performance concerns based on their EIS analysis.

3) **Intervention**: The department counsels, educates, re-trains, and/or disciplines officers, as needed.

4) **Monitoring**: The department performs post-intervention monitoring to promote improvements or identify non-compliance.[22]

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

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

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

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

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

Case Study:

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

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

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[23] *Id.* at 158.

[24] U.S. Department of Justice, Office of Community Oriented Policing Services, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide 12 (2003).

[25] *Id*. at 17.

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

[27] *Id*.

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

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

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

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

[29] *Id*. at 165.

[30] *Id.* at 188.

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

c.   Changing Departmental Culture and Building Community Trust

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

Case Study:

Shifting Culture – Portland, Oregon Police Department

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

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

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

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

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

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

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

[35] *Id.* at 5.

[36] *Id.* at 2.

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

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

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

d. The Limitations of Litigation Data

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

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

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

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

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

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

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

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

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

IV.   The Current Use of Litigation Data Within NYPD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.   Recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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