GOVERNMENT OF THE DISTRICT OF COLUMBIA
POLICE COMPLAINTS BOARD
OFFICE OF POLICE COMPLAINTS

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PCB POLICY REPORT #19-1:
Using Litigation Data to Improve Policing

Introduction:

The nature of police work involves inherent risk, and with that can come litigation. Comprehensive police department policies and well-trained police officers can minimize as much risk as possible, without jeopardizing the quality and effectiveness of the efforts to serve the community and the safety of officers. However, litigation will remain an inevitable consequence of policing, particularly in the aftermath of serious use of force incidents and incidents involving Fourth Amendment rights.

Like nearly every police department around the country, the Metropolitan Police Department (MPD) faces civil lawsuits. Some of them are very public, and gain a great deal of media attention. For example, the lawsuits related to the mass arrests at a September 2002 demonstration against the World Bank were litigated for almost 14 years and cost the District an estimated $13.8 million.[1] Currently, a similar lawsuit is pending for arrests made on Inauguration Day 2017.[2] Additionally, the $3.5 million settlement between the District and the family of a motorcyclist who was shot and killed has also gained media attention.[3] Conversely, there are other lawsuits that do not receive the same media coverage, but still present educational opportunities to MPD and individual members moving forward.

With these opportunities in mind, and utilizing the findings and model presented by the Office of the Inspector General for the New York Police Department (OIG-NYPD) in its report "Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing"[4], it is clear that

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[1] Spencer S. Hsu, *U.S., District settle in last mass-arrest lawsuit in 2002 World Bank Protests*, Washington Post, April 13, 2016.

[2] Keith L. Alexander, *ACLU adds 10-year-old boy, mother to lawsuit against D.C. police in Inauguration Day arrests*, Washington Post, January 3, 2018.

[3] Peter Hermann, *City attorney: Police chase began with D.C. officers angry over a red-light runner and ended in a fatal shooting*, Washington Post, April 19, 2018.

[4] *Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing*, available at https://www1.nyc.gov/assets/doi/press-releases/2015/apr/LitigationDataReport_FINAL_42115.pdf.

careful collection and analysis of data[5] regarding legal claims and civil lawsuits (hereinafter "litigation data") has the potential to reduce costs to the District while improving both officer performance and police-community relations. Just as MPD uses crime data to maximize department resources, litigation data can help MPD ensure that training and policies are targeted to prevent issues that led to the litigation and work to keep them from happening again. Although litigation data is not a perfect indicator of police performance, it can assist in producing improvements that benefit MPD members, MPD as a whole, community members, and the District at large.

Litigation data can be a useful approach to recognizing and correcting potential policing problems, thereby leading to improvements in policies, training, and other police practices. Further, community members have a right to know how much of their tax dollars are spent in the course of litigation against MPD, and then what actions MPD is taking to correct any issues of concern raised during litigation. MPD should be informing the community on what is being done to try and prevent the same litigation from occurring again in the future. This Report discusses the need for the efficient collection and use of litigation data.[6]

Benefits of Using Litigation Data:

First, a comprehensive review of litigation data can be used to help MPD identify patterns of police misconduct that may warrant discipline, training, and or larger policy changes. Second, by coupling litigation data with the Supervisory Support Program (SSP)[7], MPD 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 culture, and transparency with the District's community to better the police-community relationship.

With a quantitative and qualitative review of the litigation data, MPD can discover systematic problems that might have otherwise gone undetected.[8] Analysis of litigation data can lead to the identification of patterns, such as recognizing problematic officer behavior by individuals, units, or districts. Litigation data analysis can also identify if any MPD policies generate more litigation, which would in turn highlight areas where improvements can be made through changes to policy or training. As part of this process, some police departments have compared

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[5] Data includes, but is not limited to, legal claims and factual allegations of the lawsuits; demographic information for the officers involved in litigation (including rank, experience level, district); demographic information about the plaintiff(s); and date, time, and location of incident(s) in the lawsuit.

[6] The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

[7] The Supervisory Support Program (SSP) is MPD's early intervention system; "a program that consists of indicators, a threshold, assessments, intervention plans, and progress reviews in order to evaluate at-risk behavior." *See* SOP-07-01.

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

information from lawsuits with information in their closed internal affairs files. In doing so, departments can analyze the outcomes of their own investigations and evaluate current training and policies to "assess how new training plays out on the street, or to determine whether new training is needed."[9]

Litigation data can also be utilized as an essential aspect of an early intervention system (EIS), a data-focused system that allows police departments to monitor individual police officers based on a series of "performance indicators."[10] Often referred to 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.[11] MPD does have an EIS in place, the Supervisory Support Program (SSP). SOP-07-01[12] currently only directs civil suits to be entered into the SSP when there is a "judgement against a member indicating liability." MPD indicated that information on lawsuits is entered into the system for tracking purposes, but points are only assessed when there is a judgment against the officer. This may limit its value for direct supervisors and for implementing department-wide reform. However, there is value in alerting supervisors to litigation data regarding the number and type of legal claims and lawsuits filed against individual officers even if they do not have a judgement indicating member liability. Cases that are resolved by settlement may still involve member liability or present an opportunity for the member to improve their policing.[13] Further, waiting for a judgement in order to enter information into the SSP can mean waiting years between the initiation of the lawsuit and its conclusion; thus missing years' worth of opportunities to learn and improve. An effective EIS relies on "accurate and timely data collection."[14] By using lawsuit data pre-judgement, MPD can effectively learn from an incident while it is still fresh. For instance, if an officer had multiple pending lawsuits for similar conduct, that could indicate a need for training or other action. While litigation data is only a piece of the information that should be maintained in the SSP, information about claims and lawsuits, and the officer conduct contained in them, are still an important performance indicator. The effective collection and integration of this data can greatly aid the system.

Finally, with effective data analysis and the SSP, litigation data can positively influence MPD's leadership to bring about shifts in departmental culture. Specifically, if used correctly, litigation

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

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

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

[12] Standard Operating Procedures: Personnel Performance Management System (PPMS) and the Supervisory Support Program (SSP), SSP Indicator Chart (April 2007).

[13] Hermann, *supra* note 3, provides a good example of litigation that ended with a settlement, but there was still officer liability, and opportunities for education of other officers.

[14] Lum, C., Koper, C.S., Gill, C., Hibdon, J., Telep, C. & Robinson, L. (2016). *An Evidence-Assessment of the Recommendations of the President's Task Force on 21st Century Policing — Implementation and Research Priorities,* at p. 18. Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University. Alexandria, VA: International Association of Chiefs of Police.

data can be incorporated with other risk assessment changes to "solidify[] the skill set of field leaders [senior officers or supervisors] 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."[15] Moreover, the effective collection, analysis, and use of litigation data can help improve police accountability and build greater trust for police-community relations. To achieve this, MPD would need to release reports to inform the public of the litigation data (to the extent possible while protecting confidentiality). These reports would also include information on changes and efforts for improvements to MPD policies and training based on that litigation data. A clear policy for the collection of litigation data and its release to the public is likely to create public satisfaction,[16] and will help to "establish a culture of transparency and accountability in order to build public trust and legitimacy."[17]

Examples From Other Police Departments:

Nationwide, at least 16 police department are already analyzing litigation data in order to identify larger-scale trends in police behavior.[18] These departments include Los Angeles, Seattle, Denver, Portland, and Cincinnati.

The OIG-NYPD explored the impact of the litigation data analysis in two different departments- the Los Angeles County Sheriff's Department and the Portland Police Bureau- to inform their findings.[19] The findings are equally informative in exploring how such a system could benefit MPD, and are outlined below.

The Los Angeles County Sheriff's Department (LASD), the nation's second largest law enforcement agency, created the country's first official Risk Management Bureau for a law enforcement agency. The Risk Management Bureau was designed to reduce both problematic incidents and liability costs for LASD. The Special Counsel for LASD regularly produces public reports analyzing the Department's policies and practices, including litigation data. A recent report noted that 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."[20] While the Special Counsel's

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

[16] Lum, *supra* note 14.

[17] President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing (2015), at p. 85. Available at http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

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

[19] *Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing*, available at https://www1.nyc.gov/assets/doi/press-releases/2015/apr/LitigationDataReport_FINAL_42115.pdf, at pages 6 and 11.

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

report approved of the overall goal of the trend analysis being carried out by LASD's Risk Management Bureau, the report also 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."[21]   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."[22]   Meaning, litigation data trend analysis must be carefully managed, and the data needs to be presented to department leadership in an easy to understand and use format in order for such a program to be successful.

The Portland, Oregon Police Department is an example of how risk assessment practices, including litigation data analysis, can shift departmental culture over time. In 2002, Portland's City Auditor began to review lawsuits filed against the Portland Police Bureau (PPB). The Auditor's analysis of lawsuits showed that a large number of lawsuits involved the police entering homes and making arrests without appropriate warrants. As a result of this analysis, the Auditor's office, in conjunction with the City Attorney, produced a training video about this issue for all PPB officers.[23]   At the same time, 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, 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."[24]   Overall, when PARC first began its work at PPB, officers were resistant to the notion of any departmental change whatsoever. However, over time, PPB made numerous changes in its policies on officer-involved shootings and in-custody deaths. These changes led not only to a "substantial reduction in officer-involved shootings,"[25] but changes in departmental culture as well. 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."[26]   This included the important work of analyzing litigation data trends.

MPD can use the experience from these other police departments to develop a review program that analyzes litigation data to improve members' conduct and department policies and training.

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[21] *Id.* at 38.

[22] *Id*. at 39.

[23] Schwartz, *supra* note 18.

[24] Walker, *supra* note 10.

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

[26] *Id.*

Recommendations:

To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

1. **MPD should establish a program to systematically review litigation data[27] for lawsuits filed against MPD and its members.**

    The review of litigation data should include, but is not limited to, examining legal claims and factual allegations of the lawsuits; demographic information for the officers involved in litigation (including rank, experience level, district); demographic information about the plaintiff(s); and date, time, and location of incident(s) in the lawsuit.

    This information should be used to create internal reports that describe specific MPD-wide, police district, or unit-level trends in lawsuits. These reports should be used to craft relevant trainings and policy changes, and also be shared with command leadership.

    MPD should ensure that lawsuits naming individual officers are continuously and consistently being entered into the Supervisory Support Program (SSP), or any other iteration of an early intervention system, so that MPD is aware of at-risk officers who may require intervention. Currently, SOP-07-01[28] only directs civil suits to be entered into the SSP when there is a "judgement against a member indicating liability." However, pending cases or cases that are resolved by settlement may involve member liability or present an opportunity for the member to learn and improve their policing, and supervisors should immediately be aware of cases.

2. **MPD should publish public reports, with aggregate information, regarding lawsuits filed against MPD and/or its members, together with the costs associated with the litigation. The reports should include the current state of any interventions, trainings, or policy changes based on the litigation to inform the public that MPD is responsive to issues that are brought to the attention of the department. These reports should be made on a regular basis; at a minimum annually.**

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[27] Data should include, but is not limited to, legal claims and factual allegations of the lawsuits; demographic information for the officers involved in litigation (including rank, experience level, district); demographic information about the plaintiff(s); and date, time, and location of incident(s) in the lawsuit.

[28] Standard Operating Procedures: Personnel Performance Management System (PPMS) and the Supervisory Support Program (SSP), SSP Indicator Chart (April 2007).