

YOUR TAX DOLLARS AT WORK!
CHICAGO POLICE LAWSUIT PAYMENTS: HOW MUCH, AND FOR WHAT?

*Mark Iris, Ph.D.**

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* Department of Political Science and Mathematical Methods in the Social Sciences Program, Northwestern University. The author wishes to recognize the efforts of Ms. Janus Pan, Weinberg College of Arts and Sciences (WCAS), of Northwestern University, Class of 2013 and now a student at UCLA School of Law. As an undergraduate research assistant, Janus did an exemplary job of editing the data spreadsheet for this project. The author also wishes to thank WCAS for underwriting Ms. Pan's work through a grant from the Wendy DeMonchaux Fund, which supports female students engaged in quantitative research. The author wishes to thank Professor Roger Goldman, School of Law, St. Louis University, and Professor Wesley Skogan, Department of Political Science, Northwestern University, for their reviews and suggestions after reading an earlier draft of this work.

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INTRODUCTION

*LAPD crash will cost city \$6.6 million*¹

*Wrongful-death suit vs. [Philadelphia] officer settled for \$500,000*²

*Seattle to Pay Man \$185,000 to Settle Civil Rights Lawsuit*³

*[New York] City Pays \$98,000 to Critical Mass Cyclists*⁴

*[Houston] Jury Awards Man \$5M in Lawsuit over Prison Time*⁵

¹ Joel Rubin & David Zahniser, *LAPD Crash Will Cost City \$6.6 Million; Settlement Over Woman's Death Is the Latest Payout Related to Police Driving*, L.A. TIMES, June 30, 2012, at AA1.

² Julie Shaw, *Wrongful Death Suit vs. Officer Settled for \$500,000*, PHILA. DAILY NEWS, Jan. 25, 2011, at 6.

³ Scott Gutierrez, *Seattle to Pay Man \$185,000 to Settle Civil Rights Lawsuit*, SEATTLE POST-INTELLIGENCER, Nov. 24, 2007, at B2.

⁴ Anahad O'Connor, *City Pays \$98,000 to Critical Mass Cyclists*, CITY ROOM BLOG, (Mar. 30, 2010), available at http://cityroom.blogs.nytimes.com/2010/03/30/city-pays-98000-to-critical-mass-cyclists/?_r=0.

⁵ *Jury Awards Man \$5 M in Lawsuit Over Prison Time*, ASSOCIATED PRESS, June 26, 2009, available at http://www.boston.com/news/nation/articles/2009/06/25/jury_awards_man_5m_in_lawsuit_over_prison_time/.

*Wrongfully Convicted Boston Man Awarded \$14M*⁶

*No Daley Deposition in Burge Lawsuit: Ex-prisoner who alleged police torture in line to get \$5.375M settlement*⁷

Lawsuits alleging wrongs committed by police officers are a fact of life. Verdicts and settlements similar to those noted above are paid out in major—and not so major—jurisdictions across the country. For police managers and other local officials, these lawsuits are significant for at least two very important reasons. First, each lawsuit clearly communicates that someone in the public is very dissatisfied, even outraged, with the perceived misconduct of the local police. Thus, a lawsuit represents some degree of failure of police-community relations, an erosion of public confidence in the police. Second, these lawsuits are a drain on local funds. The financial costs include not only monies paid to plaintiffs as the result of out of court settlements and trial verdict judgments, but also legal expenses.

While the issue of lost public trust reflected by lawsuits is an important question, this paper will address the second question: *how much do these lawsuits cost?* Intuitively, many major city police chiefs might respond, “a lot!”

Empirically, that answer is less than satisfactory. The anecdotal cases, the headlines of the sort noted above, do not present a comprehensive overview of what is happening. An eye-catching headline is disproportionately likely to capture the exceptional case, the litigation atypical of what takes place, usually because of the cost.

⁶ Dennis Lavoie, *Wrongfully Convicted Boston Man Awarded \$14 M*, ASSOCIATED PRESS, Oct. 21, 2009, available at http://seattletimes.com/html/nationworld/2010107413_apuswrongfulconviction.html.

⁷ John Byrne, *No Daley Deposition in Burge Lawsuit: Ex-prisoner who alleged police torture in line to get \$5.375M settlement*, CHIC. TRIBUNE, July 24, 2012, at 4.

Previous research in this field is surprisingly very limited. Chiabi examined 42 U.S.C. § 1983 suits against police, filed in U.S. District Courts for the Southern and Eastern Districts of New York (effectively New York City and many of its surrounding suburbs) during 1983-1987.⁸ While useful, the study's utility is limited by its age, using data that are now over a quarter of a century old. Additionally, the study is at once both too broad and too narrow—too broad in that by focusing on court *filings* in two U.S. district courts, it captures numerous separate police agencies within the jurisdictions of those two courts, and therefore not revealing a particular agency's experience, and too narrow by *not* covering *state court* filings. State court litigation, as will be shown later, can be a significant and very costly component of the overall police litigation landscape. Of undoubtedly greater significance, Chiabi's study also examined only judgments, thus missing the scope and impact of a crucial factor: settlements, which in all likelihood substantially outnumbered judgments.

The limited work previously done in this area is the result of a very common and basic problem. Police agencies tend not to be forthcoming with these data. In fact, too often the data are simply not available. Perhaps the most telling piece in the literature deals not with data on the costs of litigation, but the *absence* of these data. Miller and Wright pointedly noted: “. . . many civil claims against police are resolved either before a case is filed, or through secret settlements and judgments sealed by courts. Police departments, cities and counties are settling strong cases, and perhaps even less strong cases, but they are requiring (and probably paying for) sealed agreements.”⁹

Such a lack of transparency is commonplace, and may in fact be spreading. New York City recently “quietly adopted a practice of withholding from public filings how much it pays to settle most federal

⁸ David K. Chiabi, *Police Civil Liability: An Analysis of Section 1983 Actions in the Eastern and Southern Districts of New York*, 21 AM. J. CRIM. JUST. 83, 83-102 (1996).

⁹ Marc L. Miller & Ronald Wright, *Secret Police and the Mysterious Case of the Missing Tort Claims*, 52 BUFF. L. REV. 757, 775 (2004).

court cases filed against the city or its employees.”¹⁰ Omission of the actual settlement amounts from court records is specifically required as a condition of settling these cases, although reportedly the city would honor specific Freedom of Information Act requests. The policy originally dealt with labor and employment cases, and was later expanded to cover suits against the police.¹¹

While newspapers may pick up on the sensational verdict with the exceptionally large judgment, many garden-variety cases are settled for lesser amounts and escape media attention.¹² There are some exceptions. In a few cities, newspapers have been able to access data on both judgments and settlements. One study found that New York City paid nearly \$1,000,000,000 in police lawsuit payments over the course of a decade.¹³ Another study found that Chicago paid in excess of \$45,000,000 during a period of just under three years for police misconduct lawsuits.¹⁴ But these, and similar media reports in other cities, are typically both vague and incomplete. Exactly what is a “police misconduct” lawsuit? What sorts of cases are included in these tallies of payments? And, even more significantly, what sorts of cases are *not* included? The accounts cited above, and others, do not address these crucial questions, because they focus only on part of the litigation landscape. For police chiefs and municipal risk managers, a comprehensive overview, covering full

¹⁰ Colin Moynihan, *City New Withholds Cost of Federal Court Settlements in Public Filings*, N.Y. TIMES, Dec. 10, 2012, at A19.

¹¹ *Id.*

¹² For example, in Chicago, newspaper reports of settlements, such as that noted *supra* in note 9, typically result from cases in which the proposed settlement is \$100,000 or greater, and thus require City Council approval (to be discussed later). Thus, the vast number of cases with settlements of less than \$100,000 typically get no news coverage.

¹³ Colleen Long & Jennifer Pelt, *Nearly \$1B in NYC Police Payouts*, N.Y. POST, Oct. 14, 2010, available at <http://nypost.com/2010/10/14/nearly-1b-in-nyc-police-payouts-investigation/>.

¹⁴ Angela Caputo, *Abusing the Badge*, CHIC. REP., May-June, 2012, at 8-14.

liability exposure, gives a more complete picture of the dimensions of the problem.

For a police chief, the impact of the full cost of litigation is affected by two opposing factors. On the one hand, the recession, which began in 2008, has had a massive impact on local government finances, severely straining local budgets, including those of police departments.¹⁵ Presumably this would make police executives even more sensitive to the issue of lawsuit payments. On the other hand, police chiefs are partially insulated from the direct financial impact of litigation, because such costs (whether paid directly by the municipality or through a third party outside insurance carrier) are often carried on the budget of another municipal agency, and not on the police department's own budgetary accounts.¹⁶ Thus, the cost of a number of settlements or judgments does not necessarily impact the police department's bottom line.

¹⁵ Budgetary constraints have led to police layoffs and/or hiring freezes in a number of jurisdictions. *See, e.g., HPD lays off 127 civilian employees*, KHOU.COM, (May 11, 2011) <http://www.khou.com/news/-HPD-127-civilian-employees-issued-layoff-notices-121674349.html#>; Martha Moore, *Police Layoffs make crime-plagued Camden [NJ] all the worse*, USA TODAY, Feb. 15, 2011, http://usatoday30.usatoday.com/news/nation/2011-02-14-camden-cops_N.htm#.

¹⁶ For example, the San Francisco Police Department Budget shows no entry for lawsuit costs, but there is an \$11,000,000 appropriation labeled "Litigation Reserve" located in the General Fund. *See CITY AND COUNTY OF SAN FRANCISCO: ANNUAL APPROPRIATION ORDINANCE 164-12 (2010) available at* <http://sfcontroller.org/Modules/ShowDocument.aspx?documentid=3358>. Similarly, Houston covers claims against police and other city agencies under the "General Government" heading in a "Claims & Judgments Account." *See CITY OF HOUSTON, ADOPTED OPERATING BUDGET VOL. 1,(2012) available at* http://www.houstontx.gov/budget/13budadopt/vol_1.pdf. The use of these accounts to cover police litigation payments was confirmed through e-mail communications with appropriate officials in both cities (on file with author).

Regardless of what accounts are used to cover these costs, the central question remains: how much is paid?¹⁷ Thus, the objective here is to present a detailed analysis of one city's experiences in civil litigation involving the police. How much do these suits cost? What are the specific areas of exposure? Addressing these questions with current data will fill a void in the existing literature on police performance and misconduct.

For reasons to be discussed later, the city chosen for this study is Chicago, Illinois. That city's payments for seven years will be analyzed to assess how much has been paid to resolve police-related litigation. The results should give the reader a fuller understanding of the toll of civil litigation for one major police agency, what causes of action are included, and what their relative shares of the total outlays are. This article will then explore how Chicago's experience may or may not be typical of other police departments.

I. SITE SELECTION AND DATA

Why Chicago? There are several reasons for examining lawsuits against the Chicago Police Department. First, it is a very large agency, with more than 12,000 sworn personnel. As such, it generates a large number of cases. Thus, patterns and trends can be discerned more easily than with a smaller agency with many fewer suits.

However, the most important reason for selecting Chicago is data availability. One would have to be very naïve to hold up Chicago as a model of good governance. Chicago, and Illinois in general, have a storied history of official corruption. In fact, many Chicagoans take almost a perverse pride in the scope and brazenness of that corruption. Nonetheless, some years ago, in a commendable step towards greater governmental transparency, the City of Chicago Law Department began to post online a

¹⁷ There are of course serious non-monetary costs associated with such litigation, such as erosion of public confidence in the police. These consequences, while important, are beyond the scope of this paper.

roster listing *all* lawsuit payments made by the City arising from claims against the City.¹⁸ While, in theory, information on expenditures of public funds should be readily available under the Freedom of Information Act and similar statutes, such transparency is far from the norm. The author's own personal experience, combined with insights gleaned from others, makes it clear that many jurisdictions keep this type of information closely guarded, wholly consistent with Miller and Wright's assessment.¹⁹

A sample page, adapted from one of the Chicago Law Department's postings, is reproduced in Table I. Note that while this figure lists payments involving litigation arising from all city departments, this paper will restrict itself to those involving only the Chicago Police Department. A quick review of the online data makes it clear that the police are far and away the most costly city agency involved.

¹⁸ These payment rosters do not report routine internal employee payments, such as workers' compensation costs or back pay awarded to an employee when, for example, an arbitrator reduces or overturns a disciplinary suspension, making the employee eligible for back pay.

¹⁹ See Miller & Wright, *supra* note 11, at 775-76.

Case #	Payee	Payment Amount (\$)	Fees & Costs (\$)	Primary Cause	City Department Involved	Disposition	Date to Comptroller
08 C 6956	Robinson, Cinderella and Troy	30,000	0	Excessive Force/Minor	Police	Settlement	3-May-11
09 C 3476	Olan, Jesse, Lemus	99,000	0	Excessive Force/Serious	Police	Settlement	3-May-11
11 MI 11023	Allstate Insurance Company A/S/O Surmacz, Maria	899	0	Property Damage-Street Condition	Transportation	Settlement	3-May-11
182-A08036-1	Kundu Anindya	117	0	Surface Damage Mechanical Equipment	Streets & Sanitation	Settlement	4-May-11
08 L 13324	Otero, Joseph and Smith, Madeline	27,364	784	MVA-City Vehicle	Transportation	Verdict	11-May-11

This Table lists the case number, the plaintiff's name, the amount paid, a very terse description of the nature of the case, the city department involved, and whether the payment was the result of an out-of-court settlement, a judgment from a trial verdict, or a satisfaction.²⁰ The last column on the right is the date the Law Department sent formal notice to the City Comptroller's office, authorizing payment. Those dates are typically the primary means of organization of this table. In four of the

²⁰ The entry of satisfaction is rarely seen. Significantly, some (but not all) "satisfactions" arise when the City is hit with a substantial judgment at trial, especially in a 42 U.S.C § 1983 suit, which carries with it fee-shifting, making the City responsible for the plaintiff's attorney's fees over and above the damages awarded by the jury. In these instances, and especially if the jury awards punitive damages, the City may then negotiate a settlement with the plaintiff. The parties agree to set aside the verdict; the plaintiff takes a reduced payment in satisfaction of the claim. In return, the City agrees to pay promptly, and waives any appeals, motions for a new trial, etc. This will be discussed in more depth later in this paper.

seven years studied here, cases are sequenced not by case number or plaintiffs' names, but in chronological order by the dates of these letters.

The case numbers noted in the far left hand column are significant for tracking purposes. Case numbers with the initials C (or sometimes CV) represent civil suits filed in the U.S. District Court for the Northern District of Illinois. Overwhelmingly, these are 42 U.S.C. § 1983 cases, alleging officers violated a subject's constitutional rights through the use of excessive force, false arrest, etc. There are also a handful of other non-42 U.S.C. § 1983 cases, alleging other federal claims, such as employment discrimination.

Case numbers with the notation L designate cases filed in the Law Division of the Cook County Circuit Court (the trial court of general jurisdiction). These are significant tort claims, with damages sought in excess of \$30,000. They constitute a mixed bag. Some of these lawsuits arise from traffic accidents involving Chicago police vehicles. Others are essentially 42 U.S.C. §1983 claims, but filed in state court. Given that a federal claim has been asserted, Chicago, in recent years, has typically petitioned to have these cases removed to U.S. district court. But previously, a number of these cases would remain in the Cook County Circuit Court. Using contacts with individuals well versed in local police litigation, efforts were made to ascertain why some cases remained in Cook County Circuit Court while others were moved to U.S. Court, and the rationale for the apparent shift in policy by the City's Law Department. These inquiries were inconclusive.

Case numbers with the notation M represent cases filed in the Municipal District of the Cook County Circuit Court. These are lesser tort claims and are below the \$30,000 threshold. They typically represent injury and/or property damage claims, mostly arising from vehicle accidents.

There are many cases with the caption beginning 011, 2011, or 182-A (the prefix used has changed over time). Although listed on the Law Department's roster of settlements and judgments, these do not reflect actual court cases. Instead, these are claims against the City processed administratively, bypassing the courts. One can even file such a

claim online with the City Clerk.²¹ These are modest claims, many in the \$500 to \$3,000 range. Overwhelmingly, they represent property damage claims, usually minor traffic accidents; in short, fender-benders.

There are a very small number of payments which in essence constitute miscellaneous state claims: an administrative hearing before the Illinois Human Rights Commission, actions in replevin in Circuit Court, payments arising from Freedom of Information disputes, Law Division cases which do not fit neatly into the categories noted above, etc. These cases appear on the Law Department's online roster very infrequently, typically no more than two or three a year, or less than one percent of the total.

In addition, despite each entry having a case number as a seemingly unique identifier, there are a handful of cases which defy classification, for a variety of reasons. The case numbers did not correspond to court records, plaintiffs' names could not be located in databases, etc. One untraceable case listed the cause of action as "Other," a description not very conducive to accurate coding. Realistically, those case numbers and names may represent data entry errors. Nonetheless, as funds were presumably paid for these cases, they are included for the sake of thoroughness.

A review of the full roster of online payments will disclose a number of payments of \$99,000 (or even \$99,999), not just the one shown in Table I. That is not a coincidence. City policy allows the Law Department the authority to enter into settlements of less than \$100,000. Once that threshold is reached, any settlement requires the approval of the City Council. Plaintiffs' attorneys may sometimes find it more expedient to settle a case for \$99,000, rather than hold out for a somewhat greater amount. In return for a reduced payment, the plaintiff avoids the delay and potentially bad publicity associated with a City Council hearing.

²¹ See *File and Track Your Claim*, CITY OF CHI. OFFICE OF THE CLERK, <http://chicityclerk.com/programs-services/claims/file-track-your-claim/> (last visited Feb. 10, 2014).

As of the conclusion of the writing of this article (July, 2013) data were posted online covering all payments for the years 2008, 2009, 2010, 2011, 2012, and the first four months of 2013. Previous years' postings had been taken down from the web, but upon request, the Law Department did make available rosters for the years 2006 and 2007. Thus, this paper will examine seven complete years' worth of payments—a total of 2,880 cases, paid (but not necessarily filed) from January, 2006 through December 2012.

These Law Department postings have very terse (two to five words, usually) descriptions of the nature of each case. For greater accuracy in coding many of these cases, the author examined many individual court case files and also used other resources (online edition of the *Chicago Tribune* and the National Registry of Exonerations). This scrutiny identified several cases in which the online summary did not accurately state the actual nature of the case. For instance, one § 1983 case, described as a *Monell* claim (indicative of a § 1983 case),²² was in fact an employee-employer dispute,²³ and two tort claims described as “Extended Detention” were in fact wrongful conviction cases, despite the fact that “Wrongful Conviction” was correctly used as the coding label for other cases.²⁴

During the time span covered by these data, there was a significant shift in Chicago's litigation posture. Late in 2009, the Law Department began to implement a new policy to deter allegedly frivolous lawsuits. The City essentially stopped settling many cases, especially the less serious ones, and began to litigate them—even if this meant spending \$50,000 in legal bills to defend a case that could have been settled for \$10,000. As

²² *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658 (1978).

²³ *FitzSimmons v. Weis*, No. 08-CV-3558 (N.D. Ill. 2008).

²⁴ The sheer number of cases—almost 2,900—combined with the nature of court files (paper files are common in Cook County, most already relegated to warehouses) precluded thorough verification of the nature of every individual cases. The miscategorizations discovered in this scrutiny were less than one percent of case files examined.

this new policy became known among the plaintiffs' bar, and as it became clear the policy was actually being followed, the number of new suits filed began to fall sharply.²⁵ And presumably over time, this would reflect a change in both the number of settlements and also the relative mix of total settlement costs versus total judgment costs.

II. FINDINGS

What then, can we learn from these data? Table II shows the total number of claims and the total expenditures paid by Chicago for the years 2006-2012. The most obvious finding is the sheer magnitude of the Chicago Police Department's liability exposure. During these seven years, the city authorized payments for 2,880 cases for a total of more than \$328,000,000. That works out to an average of just over \$46,900,000 per year.

²⁵ Kari Lydersen, *Fighting Suits Saves Money for Chicago*, N.Y. TIMES, Jan. 27, 2011, at A25A.

Year	U.S. Court Payments (\$)	N. Cases	State Court and Administrative Payments (\$)	N. Cases	Total Cases	Total Payments (\$)
2006	16,954,606	197	16,598,561	224	421	33,553,167
2007	30,329,172	306	9,197,019	235	541	39,526,191
2008	40,013,648	353	41,763,311	218	571	81,776,959
2009	23,460,879	293	16,194,518	177	470	39,655,397
2010	40,609,630	91	9,667,948	226	317	50,277,578
2011	26,489,957	106	11,997,815	181	287	38,487,772
2012	38,807,708	161	6,263,642	112	273	45,071,350
TOTAL	216,665,600	1,507	111,682,814	1,373	2,880	328,348,414

Police litigation as a proportion of the City of Chicago's total settlements has been substantially more than the combined total for all other city departments. Over the seven years covered, police expenditures have been 67.2 percent of the total for all city litigation payments. However, that average conceals some substantial variation—from a low of 51.6 percent in 2012 to a high of 83.9 percent in 2010.

In a number of ways, 2008 is an outlier. In absolute dollars, police payments that year were the highest—over \$81,000,000—of the seven years covered. Two factors helped produce this spike. It was by far the costliest year for payments arising from wrongful conviction cases (see Table IV below), and there was also a \$20,923,609 pursuit case payment.²⁶ Yet despite the size of these outliers, the police *share* of the total for that year was the second *lowest* out of the seven years examined. The explanation: there were several extraordinarily large payments in

²⁶ See *infra* note 43.

2008 for non-police cases,²⁷ increasing the City's total by a massive amount and thus driving down police lawsuit costs in proportional (but not absolute) terms. The combination of multiple police and non-police outliers, all paid in the same year led to total litigation payments of \$136,574,044 in 2008, 56 percent greater than the next-most costly year.

There is sometimes a substantial delay from when a verdict is rendered until payment is made. Early in 2012, there was a \$25,000,000 judgment returned in a wrongful conviction case.²⁸ In 2012, the City Council also approved a settlement of more than \$12,000,000 to protesters arrested during anti-war demonstrations in 2003.²⁹ Neither of those costs was posted to the 2012 payments roster.³⁰

For Chicago's taxpayers, 2013 is not looking very good either. As this article was finalized, payments posted online covered the first four

²⁷ See *2008 Judgment & Settlement Payment Requests*, CITY OF CHI., <http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2008expendituresthrough12312008.pdf> (Feb. 9, 2009). These extraordinary non-police costs include more than \$11,000,000 paid to over 1,000 claimants for violations of the *Shakman* decree (a 1969 court case which barred political considerations in city government hiring and promotions), an \$11,000,000 settlement pertaining to a claim arising from the construction of Millennium Park, and a \$6,900,000 settlement pertaining to Fire Department Medicare reimbursement (presumably for ambulance service billing). See *Shakman v. Dem. Org. of Cook Cnty.*, 310 F. Supp. 1398 (N.D. Ill. 1969). Any one of these in one year would have been a major factor driving up the non-police share of the total; all three in one year had a massive impact.

²⁸ Jeremy Gorner, *Wrongfully Imprisoned Chicago Man Wins \$25 Million in Damages: Federal Jury Award Comes after Arrest at 13 and 16 Years in Prison*, CHI. TRIB., Jan. 24, 2012, http://articles.chicagotribune.com/2012-01-24/news/ct-met-multimillion-verdict-wrongly-convicted-20120125_1_chicago-man-federal-jury-thaddeus-jimenez.

²⁹ Hal Dardick, *Aldermen settle Iraq War protest lawsuits for \$12 million*, CHI. TRIB., June 6, 2012, available at http://articles.chicagotribune.com/2012-06-06/news/chi-aldermen-settle-iraq-war-protest-lawsuits-for-12-million-20120606_1_protest-aldermen-police-conduct.

³⁰ As of July 2013, the \$25,000,000 judgment was still not yet reflected in the online payments roster, which was as of that date complete through April 30, 2013.

months of 2013. As of April 30, 2013, payments for police-related litigation were more than \$48,700,000. So for 2013, the first four months' *total* thus far is greater than the *annual* average for the previous seven years—with eight months to go!

These large annual totals for police-related settlements and judgments become more meaningful when one examines the categories within those aggregate figures. And allegations of excessive force and other civil rights violations are probably the ones of greatest significance to both police executives and the public alike.

III. CIVIL RIGHTS SUITS

Of greatest concern, and perhaps most corrosive of public support for police, are suits brought under 42 U.S.C. § 1983, the federal statute that makes local governments and their agents liable for damages if they deprive individuals of their constitutional rights. These suits commonly allege misconduct such as excessive force, illegal searches, or false arrest. The hot-button issues that inflame public opinion, the apparently unjustified beatings now so often captured on video—these are the sorts of incidents for which § 1983 provides potential legal redress. The payment rosters list most of these cases with descriptions such as “False Arrest,” “Excessive Force—Serious,” etc. Also included in these tallies (a coding judgment call) were cases labeled as “Other Police Misconduct.”³¹

While usually brought in U.S. court, a number of cases alleging these same general types of misconduct were also filed in Cook County Circuit Court. Some were subsequently removed to U.S. district court; some were not. For the purposes of this article, several of these Cook County Circuit Court cases were coded as civil rights cases based on the

³¹ For many (but not all) of these “Other Police Misconduct” cases, it was possible to examine the court case files to verify the actual nature of the alleged actions, and verify that a case was at its core a § 42 U.S.C. § 1983 suit. However, it was not feasible to do this in all such cases.

nature of what allegedly happened, rather than the formal statutory authority cited in the suit. For example, in one case, the plaintiff was the victim of an illegal search. Had it been framed in § 1983 terms, this would have been a typical police-civil rights case in U.S. district court. But in this instance, there was no claim of deprivation of constitutional rights. The suit instead claimed trespass and willful infliction of emotional distress—*state* court claims, thus ensuring the case would not and could not be transferred to U.S. district court. Often, a state law claim of malicious prosecution was added to the U.S. district court § 1983 claim. Table III sets forth the amounts paid for these claims.

Year	U.S. District Court (\$)	N. Cases	Cook County Circuit Court				Total Payments (\$)	N. Cases
			Law Division (\$)	N. Cases	Municipal Division (\$)	N. Cases		
2006	8,869,606	193	5,337,999	16	8,000	2	14,215,605	211
2007	20,195,472	299	3,711,499	18	10,200	2	23,917,171	319
2008	18,317,022	342	4,947,450	11	38,500	2	23,302,972	355
2009	18,714,379	287	8,793,946	20	0	0	27,508,325	307
2010	30,313,968	85	2,220,514	14	23,367	3	32,557,849	102
2011	24,817,810	102	3,297,750	11	0	0	28,115,560	113
2012	23,682,708	156	3,402,646	10	0	0	27,085,354	166
TOTAL	144,910,965	1,464	31,711,804	100	80,067	9	176,702,836	1,573

The amounts paid are substantial. U.S. court claims over the seven years totaled \$144,910,965 with payments made in 1,464 individual cases (some cases had multiple plaintiffs). This equates to a mean payment of \$98,983 per case. The median payment was significantly lower, \$19,000, indicating the mean was skewed by a relatively small proportion of very costly cases. Those cases which were disposed of in Cook County Circuit Court were less costly. In the Law Division, there were 100 cases costing \$31,711,804, an average of \$317,118 per case. Again the median was substantially lower, \$42,500. The Municipal Division of the Circuit Court

had a handful of such cases, nine over the seven years, totaling \$80,067 with a mean of \$8,896. Note these totals (for both the U.S. District Court for the Northern District of Illinois and the Cook County Circuit Court) do not include amounts paid for cases seeking damages for wrongful convictions or for injuries sustained as a result of police pursuits. Due to the particular salience of these specific claims for police managers, they will be addressed separately below.

It would be interesting to separate out and compare the cost of false arrest claims with illegal search claims, excessive force claims, etc. Unfortunately, that is simply not feasible. While the online postings typically list *one* of those as the specific cause for payment in each individual case, examination of many actual complaints filed in court made it very clear that the typical suit alleges *multiple* violations of constitutional rights. Thus, even if payment is made in a particular case with, for example, excessive force listed as the cause, it is extremely likely, in fact almost a certainty, that there were also one or more additional allegations of false arrest, illegal search, malicious prosecution (a state court claim often adjudicated in U.S. district court along with the § 1983 claim), etc.³² One rarely sees a court complaint filing with one, and only one, alleged rights violation (*e.g.*, false arrest). With multiple allegations present in the typical case, it is virtually impossible to assess the relative weight of each factor in the overall payment. Thus, it would be a fruitless exercise to subdivide these settlements and judgments in an attempt to categorize separately the amounts paid for claims labeled as excessive force, compared to claims for false arrest, etc. And as noted previously, many cases simply have a vague term such as “Police

³² As an example of this, see *Mayo v. City of Chicago*, No. 09-CV-1293 (N.D. Ill., 2009). The complaint (PACER Document 1 for this case), lists six separate allegations of misconduct. Five were § 1983 claims: (1) unreasonable seizure, (2) illegal search of a vehicle, (3) excessive force, (4) false arrest, and (5) failure to intervene; the sixth was a state law malicious prosecution claim. Also added were state law claims of *respondeat superior* and an indemnification claim. The Law Department payments roster shows a settlement payment of \$14,000 was authorized on August 31, 2009, with the cause of action listed simply as “False Arrest.”

Misconduct” or “Other Police Misconduct” to describe the cause for the payment.³³

These payments in Table III are totaled by the year of payment, not by case. On occasion, a case may have had multiple payments in different years. For example, a plaintiff may have been paid in one year, and the attorney received payment for fees and costs the following year. In a handful of cases, large judgments and settlements were paid in installments spread over multiple years. By tallying each payment for the year in which payment was made, and not aggregating payments by case across years, the annual payment totals are more accurate—but at the cost of very slightly inflating the numbers of cases involved. Conversely, if there were multiple payments for the same case, each listed separately, but all paid in the same year, they were aggregated so as to give one total payment for that year, with the case counted just once.

Finally, one should note the Law Department’s practice of not settling cases is linked with a sharp *decrease* in the *number* of cases in which payments were made—but an *increase* in the total *amounts* paid. In each of the last three years of the practice of widespread settlements (2007-2009), there were on average more than 300 cases per year with payments, with a total cost averaging less than \$25,000,000 annually. For the first three complete years of the non-settlement posture (2010-2012), the annual number of cases with payments plummeted to roughly half or less of that figure—but the annual cost was over \$32,000,000 in 2010, more than \$28,000,000 in 2011, and more than \$27,000,000 in 2012. And presumably there were significant additional costs, not captured on these charts for fees paid by the City of Chicago for its own legal counsel. One reasonable inference is that those cases that go to trial and result in verdicts against the City, and/or the cases which do settle, are costing on average substantially more per case.

³³ See *e.g.*, Crawford v. City of Chicago, No. 10-CV-7312 (N.D. Ill. 2010).

IV. WRONGFUL CONVICTIONS

In contrast to the blurred boundaries between excessive force cases and false arrest cases, suits alleging wrongful conviction stand out starkly. They all share a common factor: an actually innocent person went to prison for a crime he simply did not commit. While these cases may also feature allegations of excessive force or false arrest, it is the wrongful conviction, typically resulting in years in prison, which is the dominant characteristic of these cases. While one may question the role of courts, prosecutors, and jurors in these convictions, the amounts tabulated here all represent payments made solely for Chicago police defendants. Other individuals and agencies may in fact share some of the responsibility; but these data reflect solely on the liability exposure of the Chicago police. Table IV documents the costs of these particular suits.

Year	U.S. District Court (\$)	N. Cases	Cook County Circuit Court (\$)	N. Cases	Total
2006	8,035,000	3	0	0	8,035,000
2007	9,975,000	4	0	0	9,975,000
2008	16,008,500	7	6,840,000	2	22,848,500
2009	1,700,000	1	2,700,000	1	4,400,000
2010	7,894,912	3	0	0	7,894,912
2011	1,659,647	2	0	0	1,659,647
2012	15,125,000	5	0	0	15,125,000
TOTAL	60,398,059	25	9,540,000	3	69,938,059

While the cases are few in number, they are exceptionally costly. Those cases in U.S. district court numbered 25 with a total payment of \$60,398,059 and a mean payment of \$2,415,922 (the median was

\$1,800,000). An additional three cases adjudicated in the Cook County Circuit Court cost \$9,540,000, an average of \$3,180,000. These high per-case costs are readily understandable. Misconduct typified by a false arrest claim, or an allegation of police use of force that produces minor injuries, may appear outrageous, but it is usually sharply limited to a brief time frame. But a wrongful conviction claim often carries with it the long-term aftermath of someone imprisoned for five, ten or more years for a crime he simply did not commit. And if one has been exonerated of a felony, then realistically, the balance of proof in a civil case shifts dramatically. A police officer sued for use of excessive force can argue in defense that the suspect was violently resisting arrest, and the use of force was therefore lawful, thus clouding the issue for the jury. But defending against liability when someone was locked up for a crime he simply did not commit is definitely an uphill battle. As noted above, in one case (decided in 2012 but not yet paid, and thus not reflected in Table IV), a jury rendered a \$25,000,000 verdict against the City of Chicago. Arrested as a teenager for a crime he did not commit, the youth then spent sixteen years in prison before he was exonerated and released.³⁴ Unlike, say, excessive force cases, in this case, the question is not if the City will have to pay damages, but rather a question of how much.

Wrongful conviction cases certainly represent a very serious type of deprivation of constitutional rights; thus they are in essence a subset of § 1983 suits. Combining the totals from Tables III and IV, we see that for these seven years (2006-2012) Chicago paid a total of \$246,640,895 to resolve 1,601 § 1983 cases, an average of \$154,054 per case. These payments amount to more than 75 percent of the total litigation payments for these seven years.

³⁴ See Gerner, *supra* note 30.

V. TORTS

In addition to the various types of civil rights cases discussed above, the Chicago Police Department, as a large agency operating in an urban area, runs the more generalized risk of tort litigation—from minor fender benders to more serious incidents (typically but not exclusively arising from accidents involving police cars). Table V presents data on the costs of these cases. Note these data do not include the amounts paid to resolve pursuit cases; these will be discussed later in this paper.

Year	Administrative Claims (\$)	N. Cases	Municipal Division (\$)	N. Cases	Law Division (\$)	N. Cases	Total Payments (\$)	N. Cases
2006	297,748	145	187,927	45	397,500	8	883,175	198
2007	505,340	151	206,422	44	442,126	12	1,153,888	207
2008	361,919	137	198,809	43	989,750	12	1,550,478	192
2009	219,531	94	177,020	41	4,103,321	15	4,499,872	150
2010	258,856	114	322,716	78	3,801,495	14	4,383,067	206
2011	208,568	87	233,479	65	1,273,878	12	1,715,925	164
2012	248,769	44	195,873	38	628,143	15	1,072,785	97
TOTAL	2,100,731	772	1,522,246	354	11,636,213	88	15,259,190	1,214

These tort claims are dealt with in three separate settings. The first column shows the costs of claims processed administratively; that is, a claim filed without any requirement for a lawsuit. The seven years of data show a total of 772 cases. The total cost was \$2,100,731. The average cost was \$2,721.

The second column represents tort claims filed in the Municipal Division of Cook County Circuit Court. There were 354 settlements and judgments paid, with a total of \$1,522,246 and an average payment of \$4,300. The range of payments for these cases shows considerable overlap with those captured in the first column. It is unclear why an individual claimant would proceed in one forum versus the other.

The third column represents settlements and judgments for cases filed in the Law Division of Cook County Circuit Court. That division has a filing requirement of suits claiming a minimum of \$30,000 in damages. It is here that one sees suits seeking substantial damages. The bulk of these claims arose from accidents involving police cars, but there were assorted other tort claims, including one person whose foot was injured when stepped on by a police horse,³⁵ and another bitten by a police dog.³⁶ There were 88 cases in all, with a total cost of \$11,636,213 and a mean payment of \$132,230. Again, the median is much lower (\$21,161), indicating the mean was skewed by a handful of very costly cases.

VI. PURSUIT CASES

Not included in the preceding tort overview are pursuit cases. These pose a special exposure for police departments, and thus are examined separately in this Article. While wild police chase videos may captivate cable television audiences, many prudent police chiefs have recognized the great risk to the public and officers posed by these chases. As a result, many agencies, including the Chicago Police Department, have in the past fifteen to twenty years adopted restrictive policies designed to both minimize pursuits and also ensure that those pursuits which do take place are closely supervised, tightly regulated, and justified by a compelling police purpose.³⁷

³⁵ *Graton v. City of Chicago*, No. 09 L 1072 (Cook Cnty. Cir. Ct. 2009).

³⁶ *Cress v. City of Chicago*, No. 09 L 1000 (Cook Cnty. Cir. Ct. 2009). This was a general dog bite case, and *not* a § 1983 claim of excessive force (alleging the dog was used as the instrument of excessive force). In other words, in this instance, the police dog was simply being a dog, and was not acting under color of law.

³⁷ For a contemporary example of such a policy, see GEOFFREY P. Alpert, Roger G. DUNHAM & MEGHAN S. STROSHINE, *Orlando Police Department: Policy and Procedure 1120.0. Vehicle Pursuits*, in *POLICING: CONTINUITY AND CHANGE* 227-36 (Waveland Press 2008) (reporting the city's policy).

Chicago similarly adopted a policy aimed at limiting these pursuits.³⁸ Nonetheless, even with these restrictions in place, there are accidents, sometimes serious ones, arising from these pursuits. And with pursuits sometimes taking place at high speed, the consequences can be devastating. Table VI lists the pursuit cases identified, and their costs.

Year	Cook County Circuit Court Payments (\$)	N. Cases
2006	6,100,000	3
2007	4,311,607	4
2008	28,217,883	8
2009	50,000	1
2010	3,000,000	1
2011	6,580,000	2
2012	1,385,000	2
TOTAL	49,644,490	21

These suits were all brought in Cook County Circuit Court. The nature of a police pursuit, coupled with unfavorable (for a prospective plaintiff) U.S. Supreme Court rulings (e.g. *Scott v. Harris*)³⁹ make it difficult if not impossible to find valid grounds for filing such a suit in U.S. district court under § 1983 or any other grounds. But state law claims are another matter altogether. Note the number of cases—twenty-one—is relatively low,⁴⁰ possibly a reflection of the success of Chicago's

³⁸ Chicago Police Department, GENERAL ORDER G 03-03-01, EMERGENCY VEHICLE OPERATIONS—PURSUIT, available at <http://directives.chicagopolice.org/directives>.

³⁹ *Scott v. Harris*, 550 U.S. 372 (2007).

⁴⁰ A caveat: cases were identified for this Table based on the designation "pursuit" in the Law Department's case roster's description. In addition to these, the author reviewed

restrictive pursuit policy. But those cases which do arise are very costly. The seven years' total cost (\$49,644,490) and the mean payment (\$2,364,023) are both skewed by one case: a 2001 collision that led to a \$20,923,609 judgment,⁴¹ which was eventually paid in 2008 after an unsuccessful appeal. That one case accounted for one-fourth of Chicago's total police-related litigation payments in 2008.

VII. OTHER CASES

Finally, we have the residual category: cases which do not fit neatly into the categories above. These costs are detailed in Table VII.

Year	Misc. Payments - U.S. Courts (\$)	N. Cases	Misc. Payments - State Forums (\$)	N. Cases	Payments - Unknown Settings (\$)	N. Cases	Total Payments (\$)	N. Cases
2006	50,000	1	4,253,387	3	16,000	2	4,319,387	6
2007	158,700	3	0	0	9,825	4	168,525	7
2008	5,688,126	4	129,000	2	40,000	1	5,857,126	7
2009	3,046,500	5	134,873	3	15,827	2	3,197,200	10
2010	2,400,750	3	10,000	1	31,000	1	2,441,750	5
2011	12,500	2	404,140	4	0	0	416,640	6
2012	0	0	400,461	2	2,750	1	403,211	3
TOTAL	11,356,576	18	5,331,861	15	115,402	11	16,803,839	44

court files for many cases categorized as "MVA" (motor vehicle accident), and was able to identify and verify that two MVA cases were in fact pursuit cases. Although numerous court files were reviewed specifically to detect such instances, these file reviews were sometimes inconclusive in terms of determining whether or not the vehicle collisions in question occurred as the result of a police pursuit. Thus, there is a remote possibility that one or two additional cases were similarly mislabeled but went undetected.

⁴¹ Hudson v. City of Chicago, 01 L 6424 (Cook Cnty. Cir. Ct. 2001).

The first column tallies the costs of miscellaneous cases in U.S. district courts. For the most part, these payments arise from employer-employee disputes. Some of these payments arose from Title VII discrimination claims; others from suits alleging violation of the Fair Labor Standards Act. In terms of types of claims, the numbers of these cases are too few to allow for any further meaningful breakdown by type of case. However, in terms of the costs, by far the largest share of these payments (\$9,300,000 out of the total of \$11,356,576) arose from just one case. A U.S. Bureau of Alcohol, Tobacco and Firearms agent, working jointly with the Chicago Police on a task force, tried to alert the Chicago Police Department to a corrupt Chicago officer with whom she worked. She alleged a cover-up and severe retaliation in response to her whistleblowing efforts; a jury awarded her substantial damages.⁴²

Similarly, the second column represents the costs of miscellaneous state forum proceedings—an administrative hearing alleging race and age discrimination, violations of the state Freedom of Information Act, etc. There were also a handful of cases in the Law Division of Cook County Circuit Court. While a few of these may meet the legal definition of a tort claim, they are included here, not in Table V. The essence of these claims, *e.g.*, employees' allegations of defamation against supervisors and other employee-employer disputes, is at its core substantively different from the citizens-based claims, *e.g.*, arising from auto collisions, tabulated in Table V. As with the U.S. district court claims tallied in the first column, the small number of cases (fifteen in seven years, with a total cost of \$5,331,861) makes any further subdivision meaningless.

⁴² Klipfel v. Bentsen, No. 94-CV-6415, (N.D. Ill. 1994). In this case, the total of \$9,300,000 is the sum of three separate (and unequal) payments, one each in 2008, 2009, and 2010. The officer whose misdeeds this plaintiff tried to report was Joseph Miedzianowski. He was eventually tried in U.S. district court and sentenced to life in prison (subsequently appealed); Todd Lighty, *Ex-city cop loses appeal of conviction in federal drug case*, CHI. TRIB., June 22, 2005, available at http://articles.chicagotribune.com/2005-06-22/news/0506220227_1_sentencing-guidelines-new-sentencing-hearings-appeals-court (reporting federal prosecutors labeled Miedzianowski "the most corrupt cop in the city's history").

Finally, the third column represents those cases which defy categorization altogether. These are low in terms of both numbers and cost—\$115,402 paid in eleven cases. Candidly, they likely reflect data entry errors in the Law Department's roster of cases in which payments were made. For instance, in a few cases, the case numbers on the Law Department rosters do not match up with the standard formats for state or federal court cases. Searches of online court databases, in both state and U.S. district courts, revealed that either the case number and/or the plaintiff's name was non-existent. Other follow-up efforts to clarify these matters were unsuccessful. Nonetheless, they do represent city funds paid to resolve litigation, and thus for the sake of thoroughness those figures are included here.

VIII. OTHER COSTS

The costs detailed above represent the sums paid out to claimants. Not included here are substantial additional costs. The City of Chicago Law Department has a sizable staff of attorneys (and support staff) who work exclusively on these cases. That of course means substantial sums for salaries, fringe benefits, office space and overhead, etc. With the push to litigate more cases, additional attorneys from outside law firms have been retained to try these cases.⁴³ One report stated the City of Chicago paid over \$13,000,000 to outside counsel representing the Chicago Police Department in 2012 alone.⁴⁴ Just one case—the \$25,000,000 wrongful conviction judgment noted above—resulted in payment of legal fees of more than \$972,000 in 2012. Presumably this case incurred additional pre and post trial legal costs paid before and after 2012.

⁴³ See Lydersen, *supra* note 27.

⁴⁴ Tim Noval & Art Golub, *The Watchdogs: City Hall's tab for private lawyers nearly \$22 million last year*, CHICAGO SUN TIMES, April 8, 2013, available at <http://www.suntimes.com/19030733-761/the-watchdogs-city-halls-tab-for-private-lawyers-nearly-22-million-last-year.html>.

Additionally, personnel within the Chicago Police Department (including attorneys who are sworn personnel in the Legal Affairs unit) work extensively in a supporting role in these cases—assembling documents, responding to discovery requests. Officers, either as defendants or witnesses, cost the City substantial sums for appearing in court for trials, being available for depositions, etc. Either they do these tasks during their regular duty hours (meaning they are not out on the streets doing normal police work), or they do them outside their normal hours, in which case they may actually be paid at a premium, overtime rate. Either way—police work not performed, or extra salary paid—is a real cost. And there are additional case preparation costs—payments for expert witnesses, court reporters' charges for depositions, etc. While it is not the purpose of this paper to document fully these costs, they must be considerable.

In addition, these tables tallied payments for 2,880 cases over a period of seven years. *But those are only the cases which resulted in payments.* The total number of cases which consumed municipal resources includes cases which went to trial with verdicts against the plaintiffs.⁴⁵ One also needs to address cases which did not go to trial, but were disposed of through means other than a settlement: the plaintiff voluntarily withdrew the suit, the case was dismissed for want of prosecution, the court granted defendant's motion for summary judgment, etc. Other research, examining a subset of police litigation cases in Chicago, shows these non-trial and non-settlement dispositions were a full 50 percent of total case dispositions.⁴⁶ While these cases led to no payments to the

⁴⁵ Ascertaining the *total* number of lawsuits against the Chicago police would seem to be a straightforward matter by simply using standard databases as a means to calculate the total numbers of suits filed against the City of Chicago in any given time frame. However, as explained elsewhere in more detail, these supposedly standard databases are both inconsistent with one another and incomplete. Mark Iris, *Illegal Searches in Chicago: The Outcomes of 42 USC § 1983 Litigation*, 32 ST. LOUIS U. PUB. L. REV. 123, 125-26 (2012).

⁴⁶ *Id.*

plaintiffs, they nonetheless required City personnel to devote varying amounts of time and other resources, thus adding to the overall costs.

IX. SETTLEMENT VERSUS TRIALS

The online postings note whether the payment was the result of a trial verdict, settlement, or satisfaction. The first two are self-evident; the latter merits explanation. In § 1983 cases, losing defendants must pay legal fees for the prevailing plaintiff, separate from any damages awarded to the plaintiff. It is not unusual for these legal fees to be substantially more than the damages awarded.⁴⁷ Note also that Illinois law explicitly bars a unit of local government from paying punitive damages awarded against a public employee.⁴⁸ Thus, one may see a case in which a jury's verdict is against an officer. The City is liable for both the compensatory damages levied by the jury, and legal fees and costs. Occasionally, there may also be punitive damages. What sometimes happens in this sort of situation? Post-verdict, the City may negotiate with plaintiff's counsel. If there is a meeting of the minds, counsel will file an agreed motion to set aside the verdict, and the defendant (and counsel) will accept a discounted total package payment covering all damages, legal fees and costs. In return for accepting this reduced payment, the City agrees to pay promptly and not file any motion for a new trial, appeal, etc. Thus, in one case, court records show the jury awarded \$34,000 in compensatory damages and punitive damages of \$33,000. Attorney's fees for plaintiff's counsel were

⁴⁷ See *Henry v. Boyd*, No. 09-CV-5738, (N.D. Ill. 2009). The jury awarded compensatory damages of \$12,500; separately the attorney billed for fees of \$144,361 and costs of \$3,181 (subsequently negotiated down to a total of \$100,000); see also *Gillespie v. City of Chicago*, No. 09-CV-2733, (N.D. Ill. 2009) (awarding by jury compensatory damages of \$7,500; prevailing plaintiff's counsel submitted cost and fees petitions for \$4,152 and \$139,000, respectively).

⁴⁸ 745 ILL. COMP. STAT. ANN. 10/2-302 (West 2013) ("It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages.").

set at \$117,000, bringing the total to \$184,000.⁴⁹ The parties agreed to set aside the verdict; two separate payments totaling \$150,000 were made.⁵⁰ This type of arrangement is labeled a satisfaction on the Law Department payment roster.⁵¹ *With the trial verdict officially set aside, the City is formally paying a lump sum, with no specific award for punitive damages.* Thus, the statute barring public funds' coverage of punitive damages does not apply, and the officer is no longer liable for this payment. *This is a very significant practice.* Punitive damages are supposed to have a deterrent effect, both for the individual held liable for these punitive damages, and for his or her colleagues. *By relieving the officer from any obligation to pay punitive damages out of his or her own pocket, these satisfactions effectively neutralize the deterrent effect of punitive damages.*

The practice of officers not having to pay anything by way of damages, either punitive or compensatory, is apparently widespread. Schwartz was able to secure data from 70 of the largest law enforcement agencies in the United States, and found not one single instance of an officer satisfying a punitive damages judgment. Overall, she found that governments paid approximately 99.98 percent of the dollars paid to plaintiffs. Defendant officers' total share in all judgments and settlements was approximately 0.02 percent—roughly \$125,000 out of a total greater than \$754,000,000.⁵² So clearly the practice of officers held liable for punitive damages being able to evade any personal cost is not

⁴⁹ See *Rodriguez v. Doe*, No. 09-CV-1913, (N.D. Ill. 2009), PACER Document Number 163 (specifying the judgment amounts) and Document Number 168 (vacating the jury verdict and also specifying attorneys' fees).

⁵⁰ See *2011 Judgment & Settlement Payment Requests*, CITY OF CHI., <http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2011expendituresthrough12312011.xls> (last visited Oct. 31, 2013). The payment by the City to cover all aspects of this case appears on the payment roster, dated January 13, 2011.

⁵¹ The term "satisfaction" also applies to other types of atypical dispositions of cases. But the type discussed here is the most significant.

⁵² Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. (forthcoming 2014).

unique to Chicago. Schwartz calculated that the likelihood of an officer having to contribute any payment towards a settlement or judgment was lower than that officer's chance of being struck by lightning.⁵³

The author has often informed students in law and politics classes of Iris' First Theorem: "The Trial is the Anomaly." The general, growing trend in U.S. district courts is that the vast majority of cases, both civil and criminal, are disposed of through something other than an actual trial. Recent estimates indicate trials have now shrunk to less than two percent of the case dispositions in U.S. district courts nationwide.⁵⁴ Chicago's experience certainly supports this. The Law Department's roster of payments made in 2011 shows that payments were made in 26 § 1983 cases as the result of verdicts or satisfactions; that year's settlements numbered 77 cases. Contrast this with 2008 results, before the City adopted its pro-trial, anti-settlement stance. In that year there were ten payments as the results of judgments and satisfactions in 42 U.S.C. § 1983 cases—and 343 settlements. Clearly, while trials are much more common than they were in the past, settlements still outnumber verdicts by a very wide margin.

Those numbers do not give a full picture of trials as a proportion of all case dispositions. To do that, one must add in those cases that went to trial with verdicts favorable to the City of Chicago and the officers. More significantly, as noted above, there are many, many cases that are resolved with neither settlements nor trials. Factoring in the likely scope of these missing data, one can readily conclude that trials of police cases remain the exception, even under the more aggressive pro-litigation, anti-settlement posture adopted by Chicago in 2009.⁵⁵

⁵³ Schwartz, *supra* note 54.

⁵⁴ ROBERT P. BURNS, *THE DEATH OF THE AMERICAN TRIAL 2* (2009).

⁵⁵ The City's pro-trial, anti-settlement posture may be wavering in practice. Reviewing the online payments roster, the author noted a spate of settlements of § 1983 cases in the period May-October, 2012. Whether this was simply an anomaly, or an indication of a weakening of the no-settlements policy is unclear at this time.

X. DISCUSSION

Chicago is just one police agency among the many thousands in the United States. To what extent may one generalize from the Chicago experience to police agencies elsewhere? As noted previously, many jurisdictions treat their equivalents to these data as a state secret. Other jurisdictions may release data but only in an aggregate manner, making it difficult to assess the numbers and types of cases, mean payments for each, etc. A variety of factors come into play that can make any particular jurisdiction's litigation experience different from Chicago's. Let us consider some of these variables.

First, size matters. All other factors being constant, the more officers an agency has, the greater its litigation exposure. And officers are not always proportionate to a jurisdiction's population. Sworn personnel per thousand population, a commonly used measure of police strength, varies widely across the United States. Chicago is definitely on the high end of the scale in that respect. With 12,515 officers, Chicago is a large agency, in both absolute and relative terms.⁵⁶ In raw numbers, Chicago's force is the second largest municipal police force in the country. In relative terms, with an estimated population of 2,833,649, that sworn strength works out to a ratio of slightly more than 4.4 sworn per 1,000 population.⁵⁷ Many other cities have lower ratios in the 2.5 per 1,000 range. In particular, west coast cities' police forces are strikingly thinner on the ground. For example, San Diego (population 1,313,433) and San Jose (970,252) had 2010 sworn officer strengths of 1,863 and 1,259,

⁵⁶ FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, TABLE 78: ILLINOIS FULL TIME LAW ENFORCEMENT EMPLOYEES BY CITY 2010, (Oct. 31, 2010), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-78/10tbl78il.xls>.

⁵⁷ *Id.*

respectively.⁵⁸ These equate in turn to ratios of 1.4 and 1.3 per 1,000, less than one third of Chicago's ratio.⁵⁹

In addition to the *numbers* of officers, cities vary in terms of the *costs per officer*. McGhee estimated the costs of settling cases in Chicago to be the highest, on a per officer basis, of the several cities examined. The figures per officer per year (with the year(s) covered not specified) were \$2,930 in Chicago, \$2,700 in New York City, \$2,200 in Los Angeles, \$1,360 in Philadelphia, and \$697 in Denver.⁶⁰ Thus, in Chicago, a high per officer cost is compounded by a relatively high number of officers, with the net result being a very large litigation bill for Chicago's taxpayers.

Why is the cost per officer high? This question leads to another key point. Varying statutes can have a major impact on state court verdicts. While § 1983 cases are heard around the country under the same statutory framework, tort claims adjudicated in state court reflect major inter-state variations. As noted above, in 2008 Chicago paid a judgment of more than \$20,000,000, awarded by a jury to a motorist severely and permanently disabled as the result of a collision with a police car. That same case, had it occurred in a Texas city such as Houston, would have yielded the victim no more than \$250,000. Texas law caps a municipality's liability at \$250,000 per person and \$500,000 per incident if there is more than one claimant in the same event.⁶¹ While excessive

⁵⁸ FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, TABLE 78: CALIFORNIA FULL TIME LAW ENFORCEMENT EMPLOYEES BY CITY 2010, (Oct. 31, 2010), available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-78/10tbl78ca.xls>.

⁵⁹ Figures on sworn personnel for all the cities cited in this paragraph are somewhat out of date. The net effect of the ongoing recession and resultant government hiring cutbacks across the United States means the actual figures at the time this was written (winter-spring 2013) are probably lower.

⁶⁰ Tom McGhee, *Spike in Cops' Lawsuit Payouts: Settlements Over Allegations of Excessive Force by Denver Police Top \$1 Million in 2011*, DENVER POST, Jan. 13, 2012, at B01.

⁶¹ TEX. CIV. PRAC. & REM. CODE ANN. § 101.023 (West 2013). § 101.023(a) imposes similar caps in suits against state government, but § 101.023(b) sets lower caps of

force and police shooting claims may be fair game for a §1983 suit, auto accidents are not. Even criminal suspects injured while fleeing the police face Supreme Court precedent severely constraining successful § 1983 litigation.⁶² Texans involved in more ordinary vehicle accidents would likely find it very hard indeed to justify federal jurisdiction and thus avoid Texas state courts and that damages cap. Had Texas' cap been in force in Illinois during the time span covered, payments by the City of Chicago would have been reduced by at least \$46,000,000 in police pursuit cases alone—roughly 14 percent of all payments during the years covered.

Another legal factor in shaping litigation expenses in § 1983 cases is the variations among federal courts. Not every inter-circuit variation in Circuit Court of Appeals decisions leads to the Supreme Court settling the matter. Insiders in Texas jurisdictions perceive their relatively low costs in § 1983 litigation as resulting from favorable rulings in those cases from the Fifth Circuit.

Another factor, very real albeit not readily quantifiable, is the local legal culture—the values and norms that presumably impact attorneys' perceptions of jurors' receptivity to such claims. The perceived willingness of prospective jurors in certain locales to award massive damages in civil cases has long been a subject of commentary. Thus, different local jury pools could result in two similar cases filed in two different jurisdictions (possibly even within the same state) having vastly different verdicts. Similarly, differences in counsels' perceptions of the values of local jurors could significantly impact both whether a case is settled, and if so, for what amount; and, in fact, whether one decides to file a suit in the first place. For instance, as a related example in corrections (not police) litigation, consider the case of *Ruiz v. Estelle*.⁶³ In this landmark class action lawsuit alleging brutal conditions in Texas prisons,

\$100,000 per person and \$300,000 per incident for units of local government other than municipalities. I am indebted to Craig Ferrell, Chief's Counsel (retired), Houston Police Department, for alerting me to these particular statutory provisions.

⁶² See *Scott v. Harris*, 550 U.S. 372 (2007).

⁶³ *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980).

the lead plaintiff's counsel asserted an Eighth Amendment claim only, and deliberately opted not to seek monetary damages. This strategy ensured a bench trial for the injunctive relief sought. Adding a claim for monetary damages would have resulted in a jury trial.⁶⁴ Presumably, counsel strongly sensed that a jury in that district would have been very unreceptive to prison inmates' claims and wanted to avoid having a jury be the finder of fact.

Availability of experienced local counsel is also a crucial factor. Success feeds upon itself. If local attorneys observe that pursuing cases against the police, either for § 1983 claims or state court tort actions, is likely to be successful in terms of significant judgments or settlements, they will be more willing to file cases on behalf of other clients. Other legal resources besides the typical plaintiffs' trial bar play a major role. Chicago's huge 2008 payments included millions of dollars for settlements of wrongful conviction cases. The crucial factor in those civil settlements was the reversal of the underlying criminal convictions. Those convictions were erased in large part due to legal efforts by the Center on Wrongful Convictions, part of the School of Law at Northwestern University. The 2012 \$25,000,000 judgment in a wrongful conviction case noted above was also an outgrowth of that Center's work.⁶⁵ Wrongfully convicted "offenders" in another jurisdiction, lacking access to such a specialized pro bono resource, would likely receive neither exoneration nor the resultant litigation-driven compensation.

Finally, one must not overlook the efforts of a police agency to proactively police itself and thus, over time, reduce its liability exposure. For example, a number of agencies have entered into U.S. Department of Justice consent decrees to address past claims of patterns and practices of abusing residents' constitutional rights.⁶⁶ Typically, a key component of

⁶⁴ ROBERT PERKINSON, *TEXAS TOUGH: THE RISE OF AMERICA'S PRISON EMPIRE* 270 (2010).

⁶⁵ *See supra* note 30.

⁶⁶ The term "consent decree" is very misleading. While officially the decree is voluntary and not the result of a court proceeding, the reality is that the state or local

these decrees is a requirement that the agency in question institute an early intervention system (“EIS”) to monitor officers’ behavior, track actions which may be indicative of growing problematic behavior, and intervene with appropriate action (*e.g.*, training, counseling, close supervision) when the officer’s actions cross a certain pre-determined threshold. In theory such EIS measures, over time, should result in significant reductions in officer misconduct, with (hopefully) similar reductions in litigation costs.

In summary, the above details both how one city has experienced police litigation costs and how that experience might differ from other jurisdictions. The next step is clear: if comparable, comprehensive studies are done for other jurisdictions, what will be the results?

XI. Postscript

On the eve of publication, the Chicago Law Department posted the last data for 2013 payments. The editors kindly allowed the last minute addition of this update so as to present readers with an assessment of the most current data. Time constraints barred a thorough analysis; thus, the figures cited are preliminary estimates only. While not subjected to complete verification, these figures give a reasonably accurate overview of 2013 payments.

2013 was a very costly year. Police-related litigation cost Chicago more than \$86,000,000, the most in the eight years covered. The overwhelming share was for 42 U.S.C. § 1983 litigation. Those payments (including those for wrongful convictions) were over \$81,000,000. The trend (which began in 2010) of fewer payments but larger amounts paid continued. Also, in keeping with the more aggressive litigation posture, cases with settlements were 75 percent of the cases with payments; trials comprised 25 percent.

police agency typically finds itself under severe pressure to agree to the Justice Department’s proffered decree. One might as well describe an armed robbery simply as a funds transfer.

Tort payments (including claims bypassing the courts, and processed administratively) were roughly \$2,200,000. In addition to this, police pursuit cases led to just two payments totaling \$165,000.

One case that would have been tallied in Table VII as a miscellaneous state court case warrants mention, as it is the first such case seen in the now eight years of data examined. A man called police because his girlfriend's adult son was drunk and threatening. In two separate calls, the same officers responded, and in essence did nothing despite ample grounds for arrest under Illinois' domestic violence statutes. Shortly after the officers left from their second call to the house, the adult son killed the caller. The caller's heir sued, alleging willful and wanton indifference by these officers. The case went to trial, and the verdict cost the City \$2,133,000.

Finally, a word on wrongful conviction payments: There were at least four such cases paid out in 2013, *for a staggering total of \$32,750,000!* All four trace back to Jon Burge. To briefly summarize what is now a thirty years' saga: Starting in the 1980s, Burge, a commander of detectives, and his subordinates were repeatedly accused of torturing suspects into confessing to crimes (especially homicides). One such allegation led to his being fired in 1993. Burge is now in US prison after a perjury conviction in 2010 arising from a deposition he gave in a civil suit. But the inquests into wrongful convictions, the exonerations, and the litigation persist. There were Burge-related wrongful conviction payments in prior years, but these 2013 payments are more than the combined total for 2009–2012.

There could well be additional litigation, and payments, in 2014 (and beyond). Mr. Burge has not exercised any police powers since he was suspended in 1991 in the lead-up to his disciplinary hearing at the Police Board. That multi-million dollar lawsuit payments continue, almost a quarter of a century after he last carried a Chicago Police Star, is a telling comment on the financial costs of police misconduct. The human costs, paid by people imprisoned for decades for crimes they did not commit, cannot be quantified.