

## The Association of the Bar of the City of New York Committee on New York City Affairs

### The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change

There is constant debate in this City, both in its political institutions and in the press, about police accountability to the public for violations of civil rights. The Civilian Complaint Review Board, an independent body to investigate civilian complaints against the police, has been criticized as insufficiently vigorous in pursuing and substantiating complaints against police; and in the cases in which citizens' complaints are substantiated, the Police Commissioner has been criticized for failing to act to discipline the officers involved.

It is not our purpose to enter into the merits of the ongoing controversy concerning the adequacy of administrative measures of discipline, but instead to call attention to an additional, generally neglected source of police accountability to the public, and to propose changes that will serve to make the legal process as a whole more effective both in reducing the amount of damages paid out of public funds and in controlling **police abuses**. That source of accountability is the tort system - the damages paid by the city for the injuries allegedly inflicted by police officers.

Under the terms of New York State's General Municipal Law, the City is obligated to supply counsel and pay the damages for civil claims against its employees, including police officers, when the employee "was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency;"<sup>[1]</sup> the Corporation Counsel interprets this provision in such a way as to supply counsel and indemnify police officers in the overwhelming majority of civil claims. Furthermore, as a self-insurer, the City pays such claims directly out of its fiscal resources. Thus the municipality pays nearly all the damages arising out of claims of abuse by police officers.

The City paid a total of \$140 million in damages for alleged **police abuses**, through settlements as well as litigated judgments, between the 1994-95 and 1998-99 fiscal years.<sup>[2]</sup> By contrast, in the five years 1988-92, the City paid out \$45.5 million for similar cases. Despite the substantial sums involved, there is no showing that either the police department or the City administration has made systematic use of the facts or results in such cases either in connection with the discipline of individual police officers or in the shaping of police department policy. Thus the tort system is failing in one of its principal purposes, to shape the actions of those officials on whose behalf damages are paid.

The Office of the Comptroller, the City's fiscal officer, has for nearly a decade been urging the police to make use of data from civil tort claims for purposes of discipline and policy. In February 1992, the office of then Comptroller Elizabeth Holtzman made a study of cases in which damages had been paid for **police abuses**; she recommended that the NYPD:

- monitor claims and lawsuits involving charges of police misconduct in addition to complaints filed with the Civilian Complaint Review Board and correlate the data from all three sources;
- use the data from claims and lawsuits, as well as from civilian complaints, to identify and correct problems in training or other procedures and policies; and identify individual police officers and take appropriate follow-up action, including additional training or other assistance;
- use the information from police misconduct cases to improve the function of the NYPD, reduce claims and save the City money.

Talks were held between the police and the Comptroller in the effort to implement these recommendations, but so far as this Committee has been able to determine, the recommendations were not followed.

In 1999, Comptroller Alan Hevesi, in a memo of April 12 to Police Commissioner Safir, recommended that the NYPD "review settled claims data" in the following terms:

In FY 98, we paid out \$28.3 million for police action claims. Although most of these claims are settled by the Comptroller's Office and Corporation Counsel without a direct admission of guilt on the part of

the police officers(s) involved, there is enough evidence collected to convince the City that the plaintiff has a serious case. The police department should analyze these settled claims, and take steps to review the officers' performance and propensity to commit acts of excessive force

Mr. Hevesi has remarked that "there is a total disconnect" between the settlements of civil claims and police department action; such matters are ordinarily not even noted in an officer's personnel file.<sup>[4]</sup> As a result, the NYPD does not learn of potential problem officers, fails to take curative action, and not infrequently fosters a situation in which an officer will engage in another act of violation, resulting in harm to another person and further damages from the City. More important, study of a large number of cases might well reveal patterns of misconduct against which the NYPD could and should take systematic management action. The City's Commission to Combat Police Corruption recently recommended that "...in cases where Law Department attorneys intend to settle claims or there are adverse judgments involving police officers because of liability for excessive force or other misconduct, such reporting can lead the [police] Department to take training or disciplinary measures to address the problem."<sup>[4]</sup> Most important, the present policy, in place for years, has resulted in a situation in which the City consistently misses opportunities to increase the protection of the rights of persons in the city and to reduce injuries that poison the relations between police and citizen and in doing so saving millions of dollars.

The Law Department, which usually represents the defendants, including the City itself and/or its employees, has suggested that, because the vast majority of **police abuse** claims are settled, it might be a mistake to try to draw conclusions concerning liability or policy from the results.<sup>[5]</sup> The defendants usually do not admit liability in a settlement, and cases may be settled merely upon an estimate of the risks involved in the litigation, rather than because of the intrinsic merits of the claim. Nevertheless, it appears to be the case that the City and its Police Department (NYPD) can make judgments about the behavior of individual officers based on their investigations of cases, and that more general conclusions could be drawn from a range of cases. A memo of the facts is made as a basis for a recommendation of settlement in a tort case, and as a result, the City usually does have an informed opinion concerning the actual liability of the officers and the City from its own investigation of the case. Narrative accounts of cases, based upon sometimes undisputed facts, both by the Comptroller and in news accounts, indicate that some very serious abuses have passed through the tort system without any action by the NYPD. For example, in 1995, the city paid \$16.6 million in a case where a man was left a quadriplegic after police allegedly slammed his head into a door with such force that it crushed his spine. The police officers involved were apparently never disciplined.<sup>[6]</sup>

We understand that the Law Department now regularly provides a data printout of case filings to the NYPD. In addition, the Law Department submits a detailed lawyer-client memorandum to the NYPD on cases which, in the Law Department's view, might result in a payment of damages of \$250,000 or more. While clearly a highly useful procedure, the cases on which memoranda are prepared represent only one or two percent of the cases filed, too small a number, in our view, to provide sufficient information on patterns of conduct by officer, by precinct or by the NYPD in general.

We recognize that the preparation of additional memoranda will entail a significant degree of effort, and perhaps additional expenditures by the law department. However, we believe that the extra effort and cost is more than justified:

-- whatever can be learned about the practices of one, some or many police officers that can be used by the NYPD to better train, manage and discipline wrongful conduct will result should result in enough savings -- given the magnitude of the sums paid in damages -- to more than offset the increased resources devoted to reporting;

-- beyond the cost saving, any changes that will reduce the friction between the NYPD and much of the City's population, or improve public confidence in the behavior and judgment of police officers, would provide far more than monetary benefits. This, of course, depends on whether the NYPD effectively utilizes the information provided.

We are not suggesting that there be a specific dollar value of a case above which a report should be provided to the NYPD. We are persuaded that dollar value can be a misleading indicator of which cases would be most instructive to the NYPD, inasmuch as the age, status and condition of the victim is a major determinant of this value, often regardless of the culpability of the offending officer's conduct.

However, there are factors that can be used to separate cases which may be frivolous or of relatively little merit:

- level of culpability of the officer
- some evidence of a pattern of conduct of an officer or group of officers, or a precinct
- some corroborative evidence of misconduct
- severity of harm to the victim.

In response to this approach, the argument may be made that, since so many cases are settled and many, in the judgment of the Law Department, may have questionable value, the tort system essentially should not serve as the warning device in police cases that it so pervasively serves. We cannot accept that argument. At any one time, there may be 7,000 cases of police misconduct pending against the City. That is simply too large a number to ignore, particularly since the tort system is the only means available for people who seek monetary compensation for injuries resulting from police misconduct. The fact that one case is settled for a small amount may not be significant, but the fact that several cases are brought against the same officer, or many cases may involve officers of the same precinct, or a substantial number are brought with regard to a particular practice, may be of great significance, even if all the resulting judgments are relatively small. Moreover, the public needs assurances that any patterns of misconduct or instances of egregious misconduct, however brought to the City's attention, are dealt with seriously and effectively by the agencies involved, and this is perhaps most true in the case of the NYPD, with the enormous authority it wields over the population.

Recent changes in the way that civil claims for **police abuse** in Los Angeles, California, in both the city and the county, are being handled suggest that a reform in the relations between the tort system and the management of the police in New York City is overdue and will result in substantial benefits to the city. Following the notorious beating of Rodney King in 1991, the Christopher Commission examined all civil cases alleging the use of excessive force by the Los Angeles Police Department (the city police) in which there was a payment in excess of \$15,000. The Commission found disturbing patterns of abuse and failure to discipline officers for such abuses. The Commission recommended:<sup>17</sup>

LAPD management must recognize that the problem of litigation is a reflection of the more fundamental problem of excessive force, not in all cases to be sure, but in far too many of them. Prompt investigation and discipline, if appropriate, should be pursued. Information about officers' conduct that becomes available in the litigation should be used in evaluating those officers. Conduct that results in large settlements or judgments, including punitive damages awarded on the basis of egregious or intentional misconduct, should be carefully studied to determine what went wrong and why. In addition, the Department, in conjunction with the City Attorney's office and other interested bodies of City government, might consider arbitration or mediation of claims that are not routinely denied and often lead to more expensive litigation.

According to later reports, these recommendations are being implemented.

The experience in Los Angeles County, outside the confines of the city, with the LA Sheriff's Department, is still more revealing. The Special Counsel to the County and its Board of Supervisors examined the records of civil cases alleging brutality by deputy sheriffs during a period of five years, and found that there were certain repetitive fact situations that gave rise to litigation and to a serious risk of loss on behalf of the county. As a result, measures were taken both in policy and in training to reduce the risk of such cases recurring. At present, the county has a system for tracking new litigations, to determine the officer's record and to introduce information concerning the case into the department's records. Whenever there is a substantial settlement, the Sheriff's Department is required to submit a report setting forth what the department is doing to minimize the risk of repetition, through changes in procedure and/or training. Furthermore, the corrective action report and the county counsel's recommendation for a settlement are public records. As a result, the number of such cases filed dropped dramatically, and the Special Counsel has estimated that the county saved \$30 million between 1992 and 1996.

We note that the actions taken in Los Angeles go beyond those recommended from time to time by the Office of the Comptroller here in New York. The Comptroller has recommended only that the NYPD track civil cases involving alleged **police abuse** and make more systematic use of the results. It would appear that continued recommendations that the NYPD, acting alone, take action to integrate the information offered by civil claims are inadequate; the onus to make use of the results of legal claims that have been litigated by the City's lawyers and settled with the consent of the Comptroller should not be placed on the police department alone. The systematic use of such information would be a change in policy by the City that should be carried out by the Corporation Counsel, the Comptroller and the NYPD acting jointly.

Based upon the repeated recommendations of the Office of the Comptroller of the City of New York, on the continued rise in damage payments for alleged **police abuses** in our city, and upon the experience in Los Angeles, our Committee recommends the following:

1. The Comptroller and Law Department should study police misconduct cases over the last five years to identify patterns and general issues, and make recommendations for the NYPD to consider.
2. The above two agencies and the NYPD should form a liaison team, and the NYPD should appoint a specially-designated liaison officer to carry out NYPD's responsibilities under this proposal.
3. The Law Department should report the filing of a case to the NYPD liaison officer, who should maintain a databank on these cases, assess the claim and report back to the Law Department. Officers with three or more claims against them should have the cases noted in their personnel files.
4. The three agencies, working together, should develop criteria for determining when a case should be reported in detail by the Law Department to the NYPD. The criteria should include: level of culpability of the officer; some evidence of a pattern of conduct; some corroboration of the misconduct; and degree of harm to the victim. When a police misconduct case is identified that meets these criteria, a report on the matter should be prepared by the Law Department and sent to the NYPD and the Comptroller. The NYPD liaison officer should prepare a response to the report indicating whether there have been other settlements or judgments with regard to the officer in question, and what action was taken with regard to the officer or what change in policy or procedure has resulted, or is to be implemented. The amount of damages paid in a matter should be entered on the officer's record.
5. The liaison team should review reports every six months and analyze trends or other data from these actions to identify appropriate changes in policy or procedure. The team should also follow up with NYPD concerning actions taken with regard to the officers involved and with regard to training or other systemic improvements that had been recommended previously. The team should issue a report with recommendations, and a redacted version of this report, with identification of individual officers removed, should be made public.
6. The Comptroller should issue an annual report, by March 31 of the year following, with data on police conduct cases brought and settled, judgments rendered, and amount paid out. This report should be made public.

In the view of this Committee, the recommendations set forth above are essential. At present, it appears that the NYPD is failing to take curative measures and to implement changes in training and practices that would be revealed as necessary by a systematic study of past and present claims for damages. Thus the tort system is failing in one of its basic purposes, to modify the conduct of persons and organizations found liable. Most important, a change in the present policy, through which the NYPD and other parts of the City administration would make a systematic study of **police abuse** revealed through the litigation of civil claims in the Law Department and inform the public of resulting steps taken, would reduce the number of claims, increase the protections of the rights of persons in New York City, improve police-community relations and save the City and ultimately the taxpayers many millions of dollars.

March, 2000

<sup>[1]</sup>NYS Gen. Mun. Law sec. 50-k. [Return to Text](#)

<sup>[2]</sup>K. Flynn, "Record Payout in Settlements against Police," New York Times Oct. 1, 1999. This figure reflects recent increased efforts by the Office of the Corporation Counsel to settle cases.[Return to Text](#)

<sup>[3]</sup>[Return to Text](#)

<sup>[4]</sup>NYC Commission to Combat Police Corruption, "The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy" August 1999 p.35.[Return to Text](#)

<sup>[5]</sup>[Return to Text](#)

<sup>[6]</sup>D. Sontag and D. Barry, "The Price of Brutality: A Special Report," New York Times Sept. 17, 1997.[Return to Text](#)

<sup>[7]</sup>Report of the Independent Commission on the LA Police Department p. 63 (1991).[Return to Text](#)

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