ESSAY

MONELL'S UNTAPPED POTENTIAL

*Joanna C. Schwartz**

Among the most powerful barriers to relief under § 1983 is Monell v. Department of Social Services*—the Supreme Court decision recognizing that municipalities can be liable for constitutional violations by their officers but setting an exceedingly high standard for such claims. This Essay suggests a litigation strategy that sidesteps several challenges posed by* Monell*: Plaintiffs should pursue* Monell *claims based on police departments' disregard of lawsuits brought against them and their officers.*

Every circuit recognizes a police department's failure to investigate citizen complaints as a basis for municipal liability. Although lawsuits—like citizen complaints—allege officer wrongdoing, many departments do not investigate their allegations. If failing to investigate citizen complaints is a sufficient basis for Monell *liability, failing to investigate lawsuit allegations should be as well.*

Police departments' disregard of information unearthed during litigation should also be a basis for municipal liability. If internal affairs investigators fail to interview witnesses or gather relevant information, the municipality can be held liable under Monell*. Litigation files contain depositions and evidence about officers' conduct that departments routinely ignore. If failing to interview witnesses or consider relevant information during internal affairs investigations is a sufficient basis for* Monell *liability, disregarding litigation information that would fill gaps in internal affairs investigations should be as well.*

In the short term, pursuing Monell *claims based on departments' inattention to lawsuits should make it easier to plead and prove municipal liability. Longer term, effectively requiring police officials to take*

* Professor of Law, UCLA School of Law. For helpful discussions and feedback on earlier drafts, sincere thanks to Ahilan Arulanantham, Shirin Bakhshay, Karen Blum, Ann Carlson, Maureen Carroll, Beth Colgan, Joey Fishkin, Fanna Gamal, David Gans, Aaron Littman, Jerry López, Ion Meyn, Julian Davis Mortenson, Jim Pfander, Eve Primus, Lawrence Rosenthal, Margo Schlanger, Dan Schwartz, Miriam Seifter, Seana Shiffrin, Ekow Yankah, and participants in workshops at Stanford Law School, UCLA School of Law, the University of Michigan Law School, and the University of Wisconsin Law School. Thanks also to Ramzi Haddad, Zach Howard, Vasudev Mittal, and Hannah Pollack for invaluable research assistance, and to the editors of the *Columbia Law Review*—including Alexa Brady, Mohamed Camara, Isidora Echeverria, Susie Emerson, Sara Graziano, Makayla Haussler, Angela Hyokyoung Kang, Ryan Lattavo, Sydney Myers, Matthew Nola, Kenzo Okazaki, Alexandra Saueressig, Akesh Shah, Alexandria Iraheta Sousa, and Charlotte Waldman—for excellent editorial assistance.

account of litigation information may improve police departments' internal investigations and supervision of their officers.

INTRODUCTION

Among the most difficult hurdles to overcome in § 1983 litigation is the Supreme Court's standard for holding municipalities liable for the constitutional violations of their officers.[1] This Essay proposes a novel legal

1. By "§ 1983 litigation," this Essay refers to lawsuits filed under 42 U.S.C. § 1983 against government officers and local governments. For a discussion of the passage of 42 U.S.C. § 1983 during the Reconstruction following the Civil War, the development of § 1983 doctrine in recent decades, and the many challenges associated with bringing such claims today, see Joanna Schwartz, Shielded: How the Police Became Untouchable, at xvii–xx, 3–7, 10–16 (2023) [hereinafter Schwartz, Shielded].

theory—requiring only a modest extension of existing law—that will make it easier to prove municipal liability claims in the short term and may also encourage more profound and long-lasting improvements to the ways government agencies investigate and supervise their officers.

In *Monell v. Department of Social Services*, the Supreme Court first recognized that local governments can be sued for constitutional violations by their employees under 42 U.S.C. § 1983.[2] Although private businesses can be held vicariously liable for the wrongdoing of their employees, the Supreme Court held in *Monell* that local governments are only liable for their officers' constitutional violations if municipal policies or customs caused those violations to occur.[3] The evidence necessary to meet the requirements imposed by *Monell* and its progeny has proven extremely challenging to find.[4] Indeed, it is significantly more difficult to plead and prove a *Monell* claim than it is to overcome the qualified immunity defense.[5]

Many have called on courts and legislators to replace *Monell* with vicarious liability for local governments.[6] Doing so would be consistent with common understandings of the intent of those who drafted § 1983, would greatly simplify the litigation of § 1983 claims, and would improve our system of constitutional remediation in multiple ways.[7] Replacing *Monell* with vicarious liability for local governments may also be among the most politically palatable possible reforms; since 2020, Republican senators opposed to ending qualified immunity have periodically offered imposing vicarious liability for municipalities as a counterproposal.[8] Yet replacing *Monell* with vicarious liability has still proven a steep hill to climb: Only one state has enacted legislation along these lines, and neither Congress nor the Supreme Court has indicated recent interest in revisiting *Monell*.[9]

This Essay offers an alternative path around the barriers of *Monell* that does not require convincing courts or legislatures to change the law: Plaintiffs should pursue *Monell* claims based on local governments' disregard of allegations and information in lawsuits brought against them and

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2. See 436 U.S. 658, 663 (1978).

3. See id. at 691–95.

4. See infra section I.B.

5. See Joanna C. Schwartz, Municipal Immunity, 109 Va. L. Rev. 1181, 1200–13 (2023) [hereinafter Schwartz, Municipal Immunity] (examining almost 1,200 police misconduct lawsuits filed in five federal districts and finding that local governments challenged municipal liability claims more often than individual defendants raised qualified immunity and that courts dismissed *Monell* claims more often than they granted officers qualified immunity); see also infra notes 42–49 and accompanying text (detailing these findings).

6. See infra note 110 and accompanying text.

7. See infra notes 99–109 and accompanying text.

8. See infra note 111 and accompanying text.

9. See infra note 112 and accompanying text.

their employees. This Essay develops this theory in the context of suits alleging law enforcement misconduct, because I have studied police departments' inattention to lawsuits brought against them,[10] but this theory could support *Monell* claims challenging the conduct of other types of government agencies as well.

Police departments are unquestionably obligated to investigate citizen complaints alleging officer misconduct; every circuit has recognized that the failure to do so can be the basis for *Monell* liability.[11] Lawsuits, like citizen complaints, allege officer wrongdoing; as police auditors have commented, a lawsuit is, in essence, a "civilian complaint plus a demand for money."[12] Studies have found that many allegations made in lawsuits are not asserted in citizen complaints or otherwise brought to police departments' attention.[13] And even when they are, experts have found that lawsuit complaints—when drafted by lawyers—are often clearer and more comprehensive than complaints called into police departments or filled in on complaint forms.[14] Yet many police departments do not investigate allegations in lawsuits brought against them and their officers as they would allegations in citizen complaints.[15] If failing to investigate citizen complaints is sufficient basis for *Monell* liability, failing to investigate allegations in lawsuits should be as well.

Police departments' disregard of information unearthed during litigation should be an additional basis for *Monell* liability. Litigation files are chock-full of deposition testimony, audio and/or video recordings, and other evidence about officers' conduct.[16] Those who have compared litigation files with internal affairs investigations files of the same allegations have found the litigation files to be far more complete.[17] Yet many police departments do not review information from lawsuits either as part of their internal affairs investigations of officers' conduct or to inform supervision

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10. See infra notes 12, 15; see also infra section II.A.

11. See infra note 147 (describing these cases).

12. See Joanna C. Schwartz, What Police Learn From Lawsuits, 33 Cardozo L. Rev. 841, 856 & n.88 (2012) [hereinafter Schwartz, What Police Learn] (internal quotation marks omitted) (quoting Michael Gennaco, Chief Att'y, Off. of Indep. Rev., L.A. Sheriff's Dep't).

13. See infra note 122 and accompanying text (describing these studies).

14. See infra note 123 and accompanying text (describing these studies).

15. See Joanna C. Schwartz, Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking, 57 UCLA L. Rev. 1023, 1058–59 (2010) [hereinafter Schwartz, Myths and Mechanics] (describing available evidence suggesting many departments do not investigate allegations made in lawsuits); see also infra section II.A.

16. See infra notes 120–121 and accompanying text (describing the evidence generated in litigation).

17. See infra note 124 and accompanying text (describing experts' perspectives about the differences between internal investigations files and litigation files).

and training decisions.[18] Courts have ruled that perfunctory internal affairs investigations—in which investigators fail to interview available witnesses or take account of available information—can be a basis for *Monell* liability.[19] If a department systematically ignores litigation information that would fill gaps in their internal affairs investigations, that failure should be a basis for *Monell* liability as well.

These novel claims would not overcome every barrier currently posed by *Monell*.[20] They could not be employed to address all types of government wrongdoing, do not ease all challenges of *Monell* litigation, and would not prove successful in places without lawyers willing or able to bring civil rights suits. But, in jurisdictions that do not investigate lawsuit allegations or review information revealed during litigation, these claims may be easier to plead and prove than other types of *Monell* claims and so could meaningfully expand the scope of municipal liability.

These claims have an added benefit: If successful, they could prompt improvements to the way police departments investigate and supervise their officers. For decades, investigations of police departments' internal affairs processes have revealed the same shortcomings: People are discouraged from filing citizen complaints; the complaints that are filed are inadequately investigated, if they are investigated at all; discipline is rarely imposed; and those rare disciplinary decisions are often overturned in arbitration or on appeal.[21] If police departments were effectively forced by the threat of *Monell* liability to investigate lawsuit allegations and review information unearthed during litigation, those litigation materials could fill gaps in police departments' current practices without renegotiating union agreements or somehow forcing internal affairs investigators to do a better job.

Profound improvement is by no means guaranteed. It is certainly possible that, in response to the threat of municipal liability for ignoring litigation information, police departments will institute bare-bones policies to investigate lawsuit allegations and review lawsuit data, which courts will use to conclude that departments are satisfying their obligations under *Monell*, and little will change. Departments will still fail to carefully supervise their officers, and municipal liability will remain exceedingly difficult to prove. Given courts' tendencies to dismiss *Monell* claims and police departments' tendencies to ignore lawsuits brought against them, there are good reasons to adopt this pessimistic view.

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18. See Schwartz, Myths and Mechanics, supra note 15, at 1058–59 (describing evidence of police departments' disregard of information generated during litigation); see also infra section II.A.

19. See infra notes 176–179 (describing these cases).

20. For further discussion of these limitations, see infra notes 270–275 and accompanying text.

21. See infra notes 277–284 and accompanying text.

This Essay nevertheless finds cause for cautious optimism—both regarding the viability of these claims and their potential impact on police department practices—in the newfound role litigation information would play in the investigation and supervision of police. Plaintiffs and their attorneys have strong motivations to uncover evidence of misconduct and have powerful discovery tools at their disposal.[22] If police departments are effectively required to take account of the robust information about officers' alleged misconduct that is generated during litigation, plaintiffs and their attorneys will have added incentive to unearth evidence of misconduct and put it into the record. That information could either lead departments to better investigate, discipline, and supervise their officers (achieving an intended deterrent effect of municipal liability claims) or could convince courts that departments are deliberately indifferent when they fail to take more decisive action (securing municipal liability for plaintiffs). If plaintiffs and their attorneys capitalize on police departments' newfound attention to lawsuits, they can use those suits to notify police officials of misconduct and failures in supervision that they cannot afford to ignore.

The remainder of this Essay proceeds as follows. Part I describes the *Monell* doctrine, the many challenges of pleading and proof it poses, and the impact of those challenges on the system of civil rights remediation. Then, Part II proposes a novel *Monell* theory based on departments' inattention to information in lawsuits brought against them and their officers. It describes evidence that police departments disregard litigation information; sets out two different *Monell* claims that could be alleged; addresses counterarguments municipalities might raise in response; and offers an example of how litigation of these claims might play out. Part III explores the possible impact of these novel claims on plaintiffs' ability to establish municipal liability and on departments' supervision and investigation of their officers.

I. THE CHALLENGES OF *MONELL*

In *Monell v. Department of Social Services*, the Supreme Court authorized people to sue cities and counties for violations of 42 U.S.C. § 1983.[23] Yet the standard articulated by *Monell* and its progeny has made it exceedingly difficult to succeed in these claims. This Part describes the various theories of *Monell* liability that plaintiffs can pursue, the evidence that *Monell* claims rarely succeed, and the ways in which the challenges of pleading and proving these types of claims contribute to their dismal success rate. It also describes common criticisms of *Monell* doctrine, calls for reform, and challenges thus far of turning those calls into action.

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22. See infra notes 285–287 and accompanying text (describing how litigation information can fill gaps in internal affairs investigation processes).

23. See 436 U.S. 658, 690–702 (1978).

A. *Theories of* Monell *Liability*

When the employee of a private business harms someone, the law allows that person to sue the employer under a theory of vicarious liability.[24] After all, the employee was doing their job when they caused the harm and is unlikely to have the money to pay for injuries they inflicted.[25] But in 1978, in *Monell*, the Supreme Court held that there is no vicarious liability for local governments under § 1983.[26] Instead, a person seeking to hold a local government responsible for constitutional violations by its officers must show that the municipality had a policy or custom that caused the constitutional violation to occur.[27]

Supreme Court and lower court decisions have set out four broad theories of municipal liability.[28] A municipality can be held liable under § 1983 if it adopted an unconstitutional policy; if a final policymaker violated the Constitution; if the municipality had informal policies or customs that caused the constitutional violation; or if the municipality failed to act—failed to adequately screen, train, supervise, or investigate its officers—and that failure caused the plaintiff's rights to be violated.[29]

The most straightforward *Monell* claims to prove are those challenging unconstitutional misconduct at the highest levels: unconstitutional poli-

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24. See, e.g., Restatement (Third) of Agency § 7.03(2)(b) (Am. L. Inst. 2006) ("A principal is subject to vicarious liability to a third party harmed by an agent's conduct when . . . the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal.").

25. See, e.g., id. § 2.04 cmt. b ("Respondeat superior creates an incentive for principals to choose employees and structure work within the organization so as to reduce the incidence of tortious conduct. . . . Respondeat superior also reflects the likelihood that an employer will be more likely to satisfy a judgment.").

26. 436 U.S. at 691–95.

27. Id. at 694.

28. Some courts and commentators consider "failure to" claims to be a species of "custom" claims; according to this view, there are three theories of *Monell* liability instead of four. See, e.g., Connick v. Thompson, 563 U.S. 51, 61 (2011) (describing three theories of *Monell* liability—"decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law"—but also noting that a "decision not to train" can give rise to *Monell* liability). Other commentators have broken down the *Monell* doctrine into more than four theories. See, e.g., Matthew J. Cron, Arash Jahanian, Qusair Mohamedbhai & Siddhartha H. Rathod, Municipal Liability: Strategies, Critiques, and a Pathway Toward Effective Enforcement of Civil Rights, 91 Denv. U. L. Rev. 583, 588–99 (2014) (setting out five theories of *Monell* liability); Michael L. Wells, The Role of Fault in § 1983 Municipal Liability, 71 S.C. L. Rev. 293, 312–13 (2019) (describing nine types of cases that could be brought under *Monell*).

29. See, e.g., Starbuck v. Williamsburg James City Cnty. Sch. Bd., 28 F.4th 529, 532–33 (4th Cir. 2022) (setting out four theories of *Monell* liability based on (1) "an express policy"; (2) the acts of a final policymaker; (3) a failure to act that amounts to "deliberate indifference"; or (4) a widespread custom (internal quotation marks omitted) (quoting Lytle v. Doyle, 326 F.3d 463, 471 (4th Cir. 2003))); Jackson v. City of Cleveland, 925 F.3d 793, 828 (6th Cir. 2019) (setting out the same four theories of *Monell* liability (citing Burgess v. Fischer, 735 F.3d 462, 478 (6th Cir. 2013))).

cies formally adopted by the government or actions taken by final policymakers—police chiefs, mayors, and city managers, for example. Separate studies have found that plaintiffs have the most success bringing these types of *Monell* claims.[30] Yet those studies have also found that *Monell* claims alleging unconstitutional policies or constitutional violations by policymakers are less common than those alleging informal policies or customs, or "failure to" claims.[31] It makes logical sense that these types of *Monell* violations are less frequently alleged. Presumably, police departments do not regularly adopt policies that are unconstitutional on their face, and police chiefs less frequently arrest and assault people than do officers on patrol. As a result, *Monell* claims most commonly seek to hold local governments responsible for the misconduct of their officers by arguing that the municipality had an informal policy or custom, or that policymakers failed to properly screen, train, supervise, or investigate their officers.[32]

The Supreme Court first recognized the viability of a "failure to" claim in 1989, in *City of Canton v. Harris*.[33] There, the Court explained that a plaintiff seeking to prove a failure-to-train claim must show that (1) policymakers were on notice of the need to train, either because the need for that training was "obvious" given the nature of the officers' obligations or because officers "so often violate constitutional rights that the need for further training must have been plainly obvious"; (2) the policymaker's failure to act amounted to deliberate indifference to the rights of the municipality's citizens; and (3) deliberate indifference caused the constitutional violation of the plaintiff's rights, meaning that "the injury [would] have been avoided had the employee been trained under a

30. One study examined 108 appeals cases with *Monell* claims in all types of § 1983 cases and found that "[p]laintiffs won on nine out of thirty claims involving policymaker statements (30.0%); five out of eleven claims involving a written policy (45.5%); twelve out of seventy-four claims involving a widespread pattern of conduct (16.2%), and four out of thirty-three claims involving a municipal failure (12.1%)." Nancy Leong, Municipal Failures, 108 Cornell L. Rev. 345, 366 (2023) [hereinafter Leong, Municipal Failures]. Another study examined 142 summary judgment motions involving *Monell* claims in police misconduct cases and found that 50% of the motions concerning official policies and conduct by final policymakers were denied, "a denial rate much higher than the 20.2% of summary judgment motions denied regarding *Monell* claims alleging only misconduct by lower-level officers, including ratification, unconstitutional customs, or a failure to properly hire, train, and supervise." Schwartz, Municipal Immunity, supra note 5, at 1210.

31. See Leong, Municipal Failures, supra note 30, at 365 (examining 108 appeals that litigated one or more *Monell* claims and finding that "[t]hirty cases (27.8%) involved policymaker statement or action, eleven (10.2%) involved a written document or policy; seventy-four (68.5%) involved a widespread pattern of conduct; and thirty-three cases (30.6%) involved a municipal failure"); Schwartz, Municipal Immunity, supra note 5, at 1210 (examining 142 summary judgment motions involving *Monell* claims and finding that 14 concerned formal policies or acts of policymakers, while 114 concerned informal policies or customs and "failure to" claims).

32. See supra note 31.

33. 489 U.S. 378, 388 (1989).

program that was not deficient."[34] The Supreme Court has yet to confront a *Monell* claim based on the failure to supervise or investigate, but lower courts have allowed these types of claims to go forward if plaintiffs produce proof of the three requirements set out in *City of Canton*: notice, deliberate indifference, and causation.[35]

In 1997, the Supreme Court made clear that the *City of Canton*'s notice, deliberate indifference, and causation requirements can also be used to prove a *Monell* claim based on a failure to screen a job applicant properly before hiring them.[36] But when such claims are based on a single faulty hiring decision, the Supreme Court has explained that the standard for deliberate indifference is particularly strenuous; it will be met only by "a finding that *this* officer was highly likely to inflict the *particular* injury suffered by the plaintiff."[37]

Professor Nancy Leong has examined how various "failure to" claims fare in federal appeals and district courts.[38] Leong concluded, after reviewing hundreds of appellate and district court *Monell* decisions, that failure-to-screen claims were nearly impossible to bring; just three out of several hundred district court decisions ruled in favor of a plaintiff bringing a failure-to-screen claim.[39] Leong attributed these claims' low success rate to their heightened deliberate indifference and causation

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34. See id. at 389–91 & 390 n.10.

35. See, e.g., S.M. v. Lincoln County, 874 F.3d 581, 585 (8th Cir. 2017) (explaining that in both failure-to-train and -supervise claims, plaintiffs must establish that the policymakers were deliberately indifferent to the need for more or better training or supervision); Cash v. County of Erie, 654 F.3d 324, 338 (2d Cir. 2011) (explaining that the deliberate indifference standard in failure-to-train claims "applies with no less force to a supervision claim"); Cox v. District of Columbia, No. 93-7103, 1994 WL 609522, at *1–2 (D.C. Cir. Oct. 28, 1994) (affirming the district court's entry of judgment in favor of plaintiffs on their *Monell* claim based on evidence of (1) a constitutional violation; (2) "a 'custom or practice' of maintaining 'a patently inadequate system of investigation of excessive force complaints'"; (3) deliberate indifference; and (4) causation (quoting Cox v. District of Columbia, 821 F. Supp. 1, 13 (D.D.C. 1993))); see also Hazel Glenn Beh, Municipal Liability for Failure to Investigate Citizen Complaints Against Police, 25 Fordham Urb. L.J. 209, 225–26 (1998) (reporting that "[l]ower courts instantly extended *Canton* beyond failure-to-train claims to claims based upon a municipality's inadequate system of hiring, supervising, or reviewing police misconduct," including claims "challenging the adequacy of citizen complaint procedures"); Leong, Municipal Failures, supra note 30, at 372 ("Courts have indicated that some of the standards the Supreme Court has articulated in relation to the failure-to-train theory translate directly to the failure-to-supervise theory.").

36. See Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, 407–11 (1997).

37. See id. at 412.

38. See, e.g., Nancy Leong, Civil Rights Liability for Bad Hiring, 108 Minn. L. Rev. 1, 29–46 (2023) (discussing patterns identified in every federal appellate and district court opinion that adjudicated a failure-to-screen claim in 2019) [hereinafter Leong, Civil Rights Liability]; Leong, Municipal Failures, supra note 30, at 364–65 (discussing patterns identified in every federal appellate case decided in 2019 that cited *Monell*).

39. See Leong, Civil Rights Liability, supra note 38, at 42 ("[T]he plaintiff 'won' in just 3 failure-to-screen adjudications in cases initiated during the year 2019.").

standards.[40] In contrast, Leong found that failure-to-supervise claims fared far better and held unrealized promise for plaintiffs seeking to hold local governments responsible under *Monell*.[41] Yet, as the next section makes clear, even failure-to-supervise claims are challenging to plead and prove.

B. *Challenges of Pleading and Proof*

Monell claims are challenged far more often and successful far less often than are claims against individual officers.[42] A study of 1,183 police misconduct cases in five federal districts across the country found that local governments moved to dismiss almost one-third of the *Monell* claims at the pleadings stage and moved for summary judgment on *Monell* claims in more than half of the cases in which a *Monell* claim remained at that stage of the litigation; in total, municipal defendants challenged *Monell* claims in 53.8% of the cases brought against them and only 17.4% of *Monell* claims survived these challenges.[43] In contrast, individual defendants raised qualified immunity in 37.6% of the cases in which the defense could be raised,[44] and these motions were denied more than twice as often as were motions challenging *Monell* claims.[45] *Monell* claims settled less frequently than other types of claims, as well: 64.3% of the 1,183 cases in the dataset settled or were voluntarily dismissed as compared to 51.4% of the *Monell* claims.[46] *Monell* claims also less frequently made it to trial; eighty-four cases in the dataset went to trial, but just nineteen included *Monell* claims.[47] Juries found for plaintiffs in three of those nineteen trials, but one was reversed on appeal and the other two settled after trial.[48] Nine of the eighty-four trials ended in a plaintiff's verdict; in each, the *Monell* claims had previously been dismissed or abandoned by the plaintiff.[49]

This section describes why it can be so difficult to plead and prove *Monell* claims. It focuses on "failure to" claims both because they are

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40. See id. at 48–50 ("In my appellate data set, I found that the deliberate indifference standard was the most common reason that courts dismissed a complaint, resolved a motion for summary judgment in defendants' favor, or reversed a jury verdict against a municipality.").

41. See Leong, Municipal Failures, supra note 30, at 371–80 (underscoring the underdeveloped promise of failure-to-supervise claims, which are viable and firmly established in all twelve circuits).

42. See Schwartz, Municipal Immunity, supra note 5, at 1207 ("[T]here were more total cases in which local government defendants raised *Monell* challenges . . . and more total motions challenging *Monell* claims. . . . *Monell* claims infrequently survived motions to dismiss and for summary judgment.").

43. Id. at 1204–05, 1207–08.

44. Id. at 1205.

45. See id. at 1208 ("[Q]ualified immunity motions had a partial or total denial rate of 37.5%—more than twice as high as that for motions challenging *Monell* claims.").

46. Id. at 1212.

47. Id.

48. Id. at 1212–13.

49. Id. at 1213.

commonly relied upon by plaintiffs and because the solutions proposed in Part II are failure-to-supervise or failure-to-investigate claims that address several of these challenges.

1. *Proof of "Notice."*— To establish a "failure to" claim, a plaintiff must first show that the policymaker was on notice of a need to do something—more closely supervise their officers, for example, or provide better or different training.[50] To establish notice of this type of need, a plaintiff must generally point to evidence that the policymaker was aware of prior, similar constitutional violations.[51] The problem is that evidence of prior, similar constitutional violations can be hard to come by.

Lawsuits are one possible source of information about prior misconduct that can put policymakers on notice of the need for better training or supervision. But courts have repeatedly concluded that lawsuit allegations and settlements do not put a policymaker on notice of a need for different training or supervision because they are not proof of wrongdoing; only adjudications against officers suffice.[52] Some courts have

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50. See City of Canton v. Harris, 489 U.S. 378, 390 (1989) (explaining "failure to provide proper training may . . . represent a policy" if "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need").

51. The Supreme Court has ruled that a pattern of prior constitutional violations is not always needed. For example, in *City of Canton*, the Court held that an obvious need for training can be enough. 489 U.S. at 390 n.10 ("It could also be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers, who, nevertheless, are 'deliberately indifferent' to the need."). The Court reaffirmed, though very narrowly interpreted, this exception in Connick v. Thompson, 563 U.S 51, 68 (2011) (holding that "the absence of any *formal* training sessions about *Brady* [doctrine]" is not "equivalent to the complete absence of legal training that the Court imagined in *Canton*"). And when the *Monell* claim is based on a municipality's failure to investigate allegations of misconduct, courts have held that plaintiffs do not need to establish that those allegations were proven meritorious. See infra notes 256–261 and accompanying text.

52. See, e.g., Pharaoh v. Dewees, No. 14-3116, 2016 WL 2593842, at *4 (E.D. Pa. May 4, 2016) (concluding that "five settled or dismissed lawsuits contain no finding that [the officer] used excessive force and thus are insufficient to demonstrate that [the officer] had a history of using excessive force or that the City was on notice of such a history"); Hernandez v. Nielson, No. 00-c-50113, 2002 WL 31804788, at *1 (N.D. Ill. Dec. 13, 2002) (finding that prior lawsuits did not support plaintiff's *Monell* claim because they were settled); Amann v. Prince George's County, No. CIV.A. DKC99-3759, 2001 WL 706031, at *2 (D. Md. June 15, 2001) (arguing that pending lawsuits contained only "mere allegations rather than notice of actual unconstitutional behavior"); Peters v. City of Biloxi, 57 F. Supp. 2d 366, 378 ("The mere fact that other lawsuits have been filed against the City of Meridian does not provide a basis for municipal liability. The complaints do no more than suggest that the City was on notice of various civil rights abuses that had been alleged." (citations omitted) (citing Singleton v. City of Newburgh, 1 F. Supp. 2d 306, 311 (S.D.N.Y. 1998))); *Singleton*, 1 F. Supp. 2d at 311–12 ("The mere fact of other lawsuits against the City does not provide a basis for liability. The complaints do no more than suggest that the City was on notice of various civil rights abuses that had been alleged." (citation omitted) (citing Mendoza v. City of Rome, 872 F. Supp. 1110, 1118 (N.D.N.Y. 1994))); Singleton v.

allowed plaintiffs to use prior lawsuits to establish notice of the need for better supervision or training at the pleadings stage but have ruled lawsuit allegations insufficient evidence to overcome a summary judgment motion.[53] For example, in *Buckler v. Israel*, the Eleventh Circuit affirmed the district court's dismissal of plaintiffs' *Monell* claim at summary judgment.[54] The plaintiffs had pointed to eight prior excessive force lawsuits filed against sheriff's deputies as proof that the sheriff was on notice of the need for better supervision and discipline.[55] Yet the Eleventh Circuit ruled that because six of the eight lawsuits were settled or voluntarily dismissed, they could not, "without admissions of liability, put the [sheriff's office] on notice of any pattern of constitutional violations."[56]

Courts' disregard of lawsuit allegations and settlements significantly heightens the challenge of using prior lawsuits to put policymakers on notice of the need for better training or supervision. The vast majority of successful cases settle, with very few resulting in jury verdicts or any judicial finding of wrongdoing. Among the 1,183 police misconduct cases in the aforementioned study, plaintiffs succeeded in 682 (57.7%), measuring "success" as jury verdicts, settlements, and voluntary or stipulated dismissals.[57] But juries entered verdicts for plaintiffs in just twelve of those 682 successful cases; just 1.8% of all cases in which plaintiffs succeeded, and 1% of all 1,183 cases.[58] Perhaps it makes sense that lawsuit allegations ruled by a court to be meritless would not be expected to notify policymakers of a problem—although such suits may nonetheless reveal

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McDougall, 932 F. Supp. 1386, 1389 (M.D. Fla. 1996) (granting the defendants summary judgment on plaintiff's *Monell* claim, despite two prior excessive force lawsuits against the named defendants because plaintiff had "not identif[ied] a single case in which it was determined that a clearly established right had been violated").

53. See, e.g., Bagos v. City of Vallejo, No. 2:20-cv-00185-KJM-AC, 2020 WL 6043949, at *5 (E.D. Cal. Oct. 13, 2020) ("Prior incidents involving lawsuits alone, even those which do not result in a finding or admission of wrongdoing, can be sufficient for *Monell* liability purposes in the face of a motion to dismiss." (citing McCoy v. City of Vallejo, No. 2:19-cv-001191-JAM-CKD, 2020 WL 374356, at *3 (E.D. Cal. Jan. 23, 2020))); Lopez v. City of Fontana, No. EDCV19-1727-JGB(SPx), 2020 WL 6694337, at *3–4 (C.D. Cal. Sept. 17, 2020) (allowing prior lawsuits to serve as evidence of notice in a *Monell* claim at the motion to dismiss stage). But see Buari v. City of New York, 530 F. Supp. 3d 356, 398–99 (S.D.N.Y. 2021) (holding that a plaintiff can plead a custom or practice "by citing to complaints in other cases that contain similar allegations" but "[s]uch complaints must involve factually similar misconduct, be contemporaneous to the misconduct at issue in the plaintiff's case, and result in an adjudication of liability" (internal quotation marks omitted) (quoting Gaston v. Ruiz, No. 17-cv-1252 (NGG) (CLP), 2018 WL 3336448, at *6 (E.D.N.Y. July 6, 2018))).

54. 680 F. App'x 831, 832 (11th Cir. 2017).

55. Id. at 836.

56. Id.

57. See Joanna C. Schwartz, After Qualified Immunity, 120 Colum. L. Rev. 309, 328 (2020).

58. See Schwartz, Shielded, supra note 1, at 137.

information valuable to policymakers.[59] But when cases settle—and particularly when they settle for significant sums—it seems safe to assume that they indicate possible misconduct and policymakers should take note. Courts assessing *Monell* claims for failure to train or supervise do not, however, appear to share this view.

Courts have recognized that relying only on adjudicated plaintiffs' victories as evidence of wrongdoing makes it difficult for plaintiffs to succeed in their *Monell* claims. For example, in *Johnson v. City of Vallejo*, the district court granted summary judgment to Vallejo on plaintiffs' failure-to-train claim—despite the fact that Vallejo police officers had shot and killed four people within a three-month span and the police chief had taken no action in response—because none of the shootings had been ruled unconstitutional.[60] The judge recognized "the difficult task facing Plaintiffs who wish to bring a claim for failure to train" because "the constitutionality of police conduct is often not determined by an unbiased entity until years after the conduct has occurred."[61] "Nevertheless," the judge wrote, "some evidence of constitutional violations is required to maintain the *Monell* claim in this case."[62]

Citizen complaints can also put policymakers on notice of the need for better supervision or training. Yet courts do not consider unsubstantiated citizen complaints to be evidence of wrongdoing; only substantiated citizen complaints can put policymakers on notice that anything is amiss.[63] The challenge of this standard is that citizens' complaints are very rarely substantiated; recent studies of internal affairs investigations in Baltimore, Chicago, Houston, Newark, and San Diego found that fewer than 3% of citizen complaints were substantiated.[64] Complaints may be deemed unfounded because they are, in fact, without basis. But police departments' internal affairs divisions' practices suggest that low rates of substantiated complaints are at least partially the product of flawed investigations.

Over the past several decades, scores of police departments' internal affairs processes have been evaluated by blue ribbon commissions,

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59. For a discussion of the values of meritless litigation, see Alexander A. Reinert, Screening Out Innovation: The Merits of Meritless Litigation, 89 Ind. L.J. 1191, 1225–31 (2014) (illustrating how meritless litigation can develop and clarify the law, encourage legislative changes, and promote stability).

60. 99 F. Supp. 3d 1212, 1222 (E.D. Cal. 2015).

61. Id.

62. Id.

63. See, e.g., Perkins v. Hastings, 915 F.3d 512, 523 (8th Cir. 2019) (affirming district court's grant of summary judgment on plaintiff's claim of "facade investigations" because the plaintiff "has not shown a pattern of underlying constitutional violations"); Strauss v. City of Chicago, 760 F.2d 765, 768–69 (7th Cir. 1985) (ruling that unsubstantiated citizen complaints do not support a *Monell* claim because "the number of complaints filed, without more, indicates nothing" and complaints do not "indicate that the policies [a plaintiff] alleges do in fact exist and did contribute to his injury").

64. See infra note 288 and accompanying text.

journalists, civil rights attorneys, and the DOJ.[65] Again and again, these evaluations have revealed the same set of problems: People are discouraged from filing citizen complaints; the complaints that are filed are inadequately investigated, if they are investigated at all; discipline is rarely imposed; and those rare disciplinary decisions are often overturned in byzantine arbitration or appeals processes.[66]

The deficiencies in a police department's internal affairs investigations can, paradoxically, make it more difficult to prove that the department inadequately supervised its officers. Take, for example, *Stanfield v. City of Lima*.[67] On October 4, 2013, three officers assaulted William Stanfield after following his car and approaching him when he came to a stop.[68] The district court dismissed his *Monell* claim at summary judgment.[69] On appeal, Stanfield argued that the city failed to properly screen and supervise officers, amounting to a "custom of tolerance for officers who violated the constitutional rights of others."[70] In support of this claim, Stanfield pointed to eight prior citizen complaints against one of the officers for "verbally aggressive or physically violent conduct" as proof of a "clear and persistent pattern of illegal activity."[71] But the Sixth Circuit ruled that these complaints did not put the city on notice of a pattern of aggressive and violent conduct because the officer was exonerated after investigations of each of these complaints.[72] In his brief to the Sixth Circuit, Stanfield argued that the citizen complaint allegations—rather than the investigations' outcomes—were most relevant because his *Monell* claim concerned inadequate supervision.[73] He wrote:

> Logically, if the municipality is actually ignoring the problem of repeated constitutional violations, there will be no record of repeated constitutional violations. Any investigation will find no wrongdoing, since the municipality will be deliberately ignoring any wrongdoing. Thus, the only evidence of a pattern . . . in a situation like this is the complaints themselves.[74]

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65. For a description of a handful of these investigations and their findings, see infra notes 277–287 and accompanying text.

66. See infra notes 277–287 and accompanying text; see also Schwartz, What Police Learn, supra note 12, at 862–70 (describing many reasons alleged wrongdoing might not be brought to police officials' attention through citizen complaints and use-of-force reports).

67. 727 F. App'x 841 (6th Cir. 2018).

68. Id. at 843–44.

69. Id. at 843.

70. Id. at 851.

71. Id. at 851–52.

72. See id. (finding that it would be impossible for the city to have "ignored a pattern" of illegal activity because the pattern itself was never established, as the officer was exonerated of each allegation).

73. Id. at 852.

74. Id. (internal quotation marks omitted) (quoting appellant's brief).

The Sixth Circuit was unmoved. "While Stanfield's point is well taken," the Sixth Circuit wrote, "[t]he mere existence of complaints, without more, is not sufficient evidence to allow a reasonable jury to find the existence of a clear and persistent pattern of illegal activity."[75]

Even if plaintiffs put forth evidence of prior constitutional violations, their *Monell* claims may be dismissed if those prior violations are not numerous enough or similar enough to put policymakers on notice of the need for more robust supervision or different training. In *Peterson v. City of Fort Worth*, for example, the Fifth Circuit found that twenty-seven allegations of excessive force over a four-year period against a department with more than 1,500 officers were insufficient to put policymakers on notice of the need for better supervision, even if those allegations were presumed true.[76] Additionally, in *Connick v. Thompson*, the Supreme Court ruled that *Brady* violations resulting in four overturned convictions over the ten years preceding Thompson's trial did not put the district attorney on notice of the need for better supervision or training because the prior *Brady* violations were insufficiently similar to the *Brady* violation at issue in Thompson's case.[77] Given the challenges of finding numerous similar allegations of misconduct that have been found unlawful by courts or internal affairs investigators, it should come as no surprise that notice is a substantial challenge in *Monell* "failure to" claims.

2. *Proof of "Deliberate Indifference."* — Even when a plaintiff can show a pattern of proven prior misconduct that is sufficiently numerous and similar to establish notice of wrongdoing, it can be difficult to show that policymakers' response to that evidence of misconduct was constitutionally deficient. The Supreme Court has explained that failure to act is an insufficient basis for liability under *Monell* unless it reflects "deliberate indifference"—an intentional choice, not merely an unintentional negligent oversight.[78] Courts have found evidence of

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75. Id.

76. See 588 F.3d 838, 852 (5th Cir. 2009); see also, e.g., Alfaro v. City of Houston, No. H-11-1541, 2013 WL 3457060, at *14–17 (S.D. Tex. July 9, 2013) (finding that fifty complaints of sexual assault against Houston officers over a seven-year period, with eight allegations substantiated by the department, did not show a pattern of misconduct sufficient for *Monell* liability).

77. See 563 U.S. 51, 62–63 (2011). In another case, the Fifth Circuit found an insufficient pattern of prior excessive force violations despite (1) evidence that the defendant officer previously slammed someone to the ground while they were having an epileptic seizure; (2) evidence that a different officer shot an unarmed male and assaulted an inmate; and (3) two instances in which an officer shot at a moving vehicle because "[t]hese examples lack 'similarity and specificity,' and therefore they do not 'point to the specific violation in question,'" which concerned an officer shooting into a moving car. Edwards v. City of Balch Springs, 70 F.4th 302, 313 (5th Cir. 2023) (quoting *Peterson*, 588 F.3d at 851).

78. See City of Canton v. Harris, 489 U.S. 378, 389 (1989) ("'[M]unicipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives' by city policymakers." (alteration in original) (quoting Pembaur v. Cincinnati, 475 U.S. 469, 483–84 (1986) (plurality

deliberate indifference when basic forms of supervision and training are altogether absent: when, for example, a department never conducts performance evaluations or investigates allegations of misconduct, or when a department offers no training at all about the type of conduct that is the subject of the suit.[79] But courts appear more reluctant to find deliberate indifference if a department is following protocols to supervise and train its officers, even if those protocols are highly flawed.

Courts have granted summary judgment and affirmed dismissals of *Monell* "failure-to" claims, even when experts have identified widespread problems with investigations, investigative findings, or trainings, because the failures were not, in the courts' views, deliberately inadequate. For example, in *Blair v. City of Cleveland*, the plaintiffs' expert reviewed dozens of internal investigations files and found most files had one or more "investigatory deficiencies" including "(1) unexplained delay of six months or longer; (2) deficient interviews; (3) failure in witness search/contact; (4) failure to use reasonable evidence; (5) disposition accepts officers' version of events over citizens' version; (6) disposition contrary to investigation; and (7) failure to address force issues."[80] After cataloguing the expert's findings, the court granted the city's motion for summary judgment, reasoning:

> [W]hile the City's "complaint handling procedures . . . may fall some distance from the ideal . . . they do not spell a deliberate 'see no evil' policy." . . . It may even be said that in some of the cases cited by [the expert] the investigations were conducted in a negligent manner. Negligence is not enough. Random flaws in the administrative process, albeit sometimes serious, may indicate an inconsistent or imperfect system, but do not rise to the level of deliberate indifference to citizens' constitutional rights.[81]

In another case, *Berry v. City of Detroit*, the plaintiff's expert analyzed reports of 161 police shootings and found seventy-eight shootings were unjustifiable but only fifteen officers had been disciplined.[82] The Sixth

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opinion))); see also Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, 410 (1997) ("'[D]eliberate indifference' . . . requir[es] proof that a municipal actor disregarded a known or obvious consequence of his action.").

79. See, e.g., Ouza v. City of Dearborn Heights, 969 F.3d 265, 289 (6th Cir. 2020) (reversing the district court's grant of summary judgment on *Monell* failure-to-train and failure-to-supervise claims based on evidence that the city provided no training about probable cause or the use of force and did not conduct performance evaluations of its officers or "otherwise review or monitor the officers' conduct"); Vann v. City of New York, 72 F.3d 1040, 1050 (2d Cir. 1995) (finding evidence of deliberate indifference when officials did not investigate complaints filed against problem police officers who had recently been returned to active duty); see also infra notes 147–169 and accompanying text (describing cases where departments failed altogether to investigate allegations of misconduct).

80. 148 F. Supp. 2d 894, 913–14 (N.D. Ohio 2000).

81. Id. at 914 (second and third alterations in original) (quoting Carter v. District of Columbia, 795 F.2d 116, 124 (D.C. Cir. 1986)) .

82. 25 F.3d 1342, 1352–53 (6th Cir. 1994).

Circuit found that this evidence showed, "at best . . . that discipline was not as frequent or as severe as [*the expert*] would have liked"; it did "not show a consistent pattern of ignoring constitutional violations."[83]

Courts also appear reluctant to find deliberate indifference when departments offer trainings regarding the subject at issue, regardless of whether those trainings have proven effective. For example, in *Meirs v. Ottawa County*, the plaintiffs argued that the county had inadequately trained its officers about suicide prevention, pointing to the fact that "[s]everal of the officers admitted to having little-to-no memory of the suicide-prevention-training materials, either because they might have been 'skimmed through,' because the training lasted about two hours once a year, or simply because of an inability to remember details."[84] The court nevertheless affirmed the dismissal of plaintiff's failure-to-train claim, reasoning that, although "[i]t may be clear to the County now, after the trial, that alternative teaching methods should be employed to increase information retention among the officers . . . . the County's approach to training on suicide prevention cannot be said to amount to 'purposeful nonfeasance' that would result in a substantial likelihood that suicide would occur."[85]

To be sure, some courts have allowed *Monell* failure-to-supervise and failure-to-train claims to go forward when supervision and training protocols existed but were egregiously flawed—when, for example, a police department chief investigated citizen complaints without interviewing complaining witnesses or officers,[86] or when a police department's use-of-force training included materials that were inappropriate and offensive.[87] Yet the deliberate indifference requirement can foreclose relief on *Monell* claims, despite widespread problems, if those problems are understood to be the result of negligence rather than deliberate indifference.

3. *Proof of Causation.* — Causation is the third challenge for plaintiffs in "failure to" claims. In *Monell*, the Supreme Court explained that the policymaker's policy or custom must be the "moving force" behind the violation.[88] If the municipality has an unconstitutional policy, or a

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83. Id. at 1354.

84. 821 F. App'x. 445, 454 (6th Cir. 2020).

85. Id. at 455 (quoting Hays v. Jefferson County, 668 F.2d 869, 873 (6th Cir. 1982)).

86. See, e.g., infra notes 176–179 and accompanying text (describing cases in which police departments did not question witnesses or officers during internal affairs investigations).

87. See, e.g., Wright v. City of Euclid, 962 F.3d 852, 860 (6th Cir. 2020) (finding that use-of-force trainings that relied on a Chris Rock video including "highly inappropriate" comments about Rodney King and police misconduct, and "an offensive cartoon in the City's police-training manual that portrays an officer in riot gear beating a prone and unarmed civilian" sufficiently supported a *Monell* failure-to-train claim).

88. 436 U.S. 658, 694 (1978).

policymaker has violated the Constitution, "causation is straightforward."[89] But in the case of a failure-to-train claim, as the Court wrote in *City of Canton*, the causation question is, "Would the injury have been avoided had the employee been trained under a program that was not deficient in the identified respect[s]?"[90] Leong has observed that causation is easier to establish in failure-to-supervise claims, as courts have presumed that a lack of accountability "lead[s] to a culture in which officers 'kn[o]w there would be no professional consequences for their action[s].'"[91] Yet some courts have required plaintiffs to show that officers actually knew that their department's system of accountability was ineffective,[92] or that the very officer accused of misconduct in the instant case would have previously been disciplined or fired had there been an effective system of investigation and supervision.[93]

4. *Challenges at Pleading.* — Beyond the challenges of finding proof of notice, deliberate indifference, and causation that could defeat a summary judgment motion or prevail at trial on a *Monell* claim, it can also be difficult for plaintiffs to get past a motion to dismiss the initial complaint.[94]

The Supreme Court requires that a plaintiff "plausibly" plead allegations in their complaint based on facts, not legal conclusions.[95] But to the extent that evidence of notice, deliberate indifference, and causation exists in police departments' investigation files and other internal documents, this information may only become available to

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89. Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, 404 (1997).

90. City of Canton v. Harris, 489 U.S. 378, 391 (1989).

91. See Leong, Municipal Failures, supra note 30, at 379 (third alteration in original) (quoting Estate of Roman v. City of Newark, 914 F.3d 789, 800–01 (3d Cir. 2010)); see also, e.g., Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990) ("If the City is shown to have tolerated known misconduct by police officers, the issue whether the City's inaction contributed to the individual officers' decision to arrest the plaintiffs unlawfully in this instance is a question of fact for the jury."); Spell v. McDaniel, 824 F.2d 1380, 1391 (4th Cir. 1987) ("A sufficiently close causal link between . . . a known but uncorrected custom or usage and a specific violation is established if occurrence of the specific violation was made reasonably probable by permitted continuation of the custom.").

92. See Blair v. City of Cleveland, 148 F. Supp. 2d 894, 915 (N.D. Ohio 2000) (finding inadequate proof of causation when the officers were unaware of investigative deficiencies and there was no evidence that officers "tailor their actions according to the supposition that they would not be disciplined").

93. See Cox v. District of Columbia, 821 F. Supp. 1, 18–19 (D.D.C. 1993) (accepting plaintiffs' theories of causation, including that, had the District possessed a functional system of discipline, the officer would have been removed from service), aff'd, No. 93-7103, 1994 WL 609522 (D.C. Cir. Oct. 28, 1994).

94. See Karen M. Blum, Section 1983 Litigation: The Maze, the Mud, and the Madness, 23 Wm. & Mary Bill Rts. J. 913, 916 (2015) [hereinafter Blum, Section 1983 Litigation] ("Municipal liability claims have become procedurally more difficult for plaintiffs to assert since the Court's imposition of a more stringent pleading standard in *Bell Atlantic Corp v. Twombly* and *Ashcroft v. Iqbal* . . . ." (footnotes omitted)).

95. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

plaintiffs during discovery.[96] Some courts, sympathetic to these challenges, deny motions to dismiss *Monell* claims on the ground that plaintiffs do not have access to key evidence of notice and deliberate indifference at the pleading stage.[97] Other courts have recognized these pleading challenges but granted motions to dismiss *Monell* claims nevertheless.[98]

C. *Critiques of* Monell

There is a lot to dislike about *Monell*. Commentators and courts have observed that the Supreme Court's decision to reject vicarious liability for local governments in *Monell* was based on a misinterpretation of the legislative history of § 1983.[99] Some have also criticized *Monell* doctrine as

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96. See Rosalie Berger Levinson, The Many Faces of *Iqbal*, 43 Urb. Law. 529, 534 (2011) ("Because civil rights cases often turn upon the defendant's state of mind, and because of the well-recognized informational asymmetry between plaintiffs and defendants, it is not surprising that civil rights litigants have been the big losers in the post-*Iqbal* world." (footnote omitted)); Alexander A. Reinert, The Costs of Heightened Pleading, 86 Ind. L.J. 119, 123 (2011) ("Particular attention has been paid to the impact of the *Iqbal* and *Twombly* rules on civil rights litigation, where informational asymmetry is often at its highest point but where federal courts and federal law have played an important historical role in developing and adjudicating substantive rights."); Howard M. Wasserman, *Iqbal*, Procedural Mismatches, and Civil Rights Litigation, 14 Lewis & Clark L. Rev. 157, 161 (2010) ("The predictable result [from *Iqbal*] will be a significant decrease in enforcement and vindication of federal constitutional and civil rights . . . [from] imposing on plaintiffs an obligation to present substantial factual detail at the outset of litigation, even detail they do not and cannot know without discovery . . . .").

97. See, e.g., Report & Recommendation at 19, Kukoleck v. Lake Cnty. Sheriff's Off., No. 1-12-cv-1379 (N.D. Ohio July 3, 2013) (denying the county's motion to dismiss plaintiff's failure-to-train claim, noting that "it is not immediately clear what more the plaintiff could have alleged in the complaint since, without discovery, how would a plaintiff know" whether a custom or policy existed or its effect on plaintiff's rights); Keahey v. Bethel Twp., No. 11-7210, 2012 WL 478936, at *7 (E.D. Pa. Feb. 15, 2012) (denying a motion to dismiss a *Monell* claim because the plaintiff needed discovery to "prove that the Township had a pattern of engaging in constitutional violations such as those present in this case" (citing Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2004))); see also supra note 53 (describing cases in which courts have ruled that prior lawsuit complaints are sufficient to establish notice at the pleadings stage).

98. See, e.g., Jones v. Nueces County, No. C-12-145, 2012 WL 3528049, at *4 (S.D. Tex. Aug. 15, 2012) (dismissing a *Monell* claim and rejecting the argument that the plaintiff needed discovery to find prior similar allegations of misconduct because plaintiff's "'plead first and discover if there are supporting facts later' [strategy] is exactly the problem that the Supreme Court sought to remedy in *Twombly* and *Iqbal*"); Chery v. Barnard, No. 8:11-cv-2538-T-24 TGW, 2012 WL 439129, at *4 (M.D. Fla. Feb. 10, 2012) (dismissing *Monell* claim because the plaintiff had not alleged prior similar wrongdoing in his complaint).

99. For a sample of these critiques, see David Jacks Achtenberg, Taking History Seriously: Municipal Liability Under 42 U.S.C. § 1983 and the Debate Over Respondeat Superior, 73 Fordham L. Rev. 2183, 2196 (2005) (arguing that the bases for the Supreme Court's rejection of respondeat superior in *Monell* "rest on historically inaccurate assumptions about the nineteenth-century justifications for respondeat superior"); Karen M. Blum, From *Monroe* to *Monell*: Defining the Scope of Municipal Liability in Federal Courts, 51 Temp. L.Q. 409, 413 n.15 (1978) (arguing that, while the rejection of vicarious liability for municipalities "may represent a sensitive response to the fiscal plight of

highly complex and uncertain.[100] It is, in Professor Karen Blum's words, "a maze that judges and litigants must navigate with careful attention to all the twists and turns."[101] Commentators have observed that *Monell* makes it nearly impossible to succeed in claims against local governments. Proving a *Monell* claim is "exceedingly difficult" in Professor Richard Fallon, Jr.'s words,[102] and it is "exceptionally difficult" according to Professor Pamela Karlan;[103] in Professor Fred Smith's view, *Monell* "often inoculates local governments from accountability."[104] Evidence of *Monell* claims' dismissal success rate supports Fallon's, Karlan's, and Smith's concerns.[105]

The difficulty of proving *Monell* claims compromises our system of constitutional remediation in a variety of ways. Even without a viable *Monell* claim, plaintiffs can pursue § 1983 claims against individual officers; if the claims are successful and the local governments indemnify their officers,

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municipal corporations today, it should not be acknowledged as a legitimate interpretation of congressional intent in 1871"); David H. Gans, Repairing Our System of Constitutional Accountability: Reflections on the 150th Anniversary of Section 1983, 2022 Cardozo L. Rev. De Novo 90, 108–14, https://cardozolawreview.com/repairing-our-system-of-constitutional-accountability-reflections-on-the-150th-anniversary-of-section-1983/ [https://perma.cc/BZ7T-2CUY] (contesting the Supreme Court's interpretation of the legislative history of § 1983); Randall R. Steichen, Comment, Municipal Liability Under Section 1983 for Civil Rights Violations After *Monell*, 64 Iowa L. Rev. 1032, 1045 (1979) ("The Court's [respondeat superior] limitation . . . is not justified by the legislative history of section 1983 or by policy considerations."). Supreme Court Justices and lower courts have leveled this critique as well. See, e.g., Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, 431–32 (1997) (Breyer, J., dissenting) (arguing that the legislative history of § 1983 does not support the *Monell* Court's rejection of vicarious liability, "particularly since municipalities, at the time, were vicariously liable for many of the acts of their employees"); Pembaur v. City of Cincinnati, 475 U.S. 469, 489 (1986) (Stevens, J., concurring in part and concurring in the judgment) ("The legislative history indicating that Congress did not intend to impose civil liability on municipalities for the conduct of third parties . . . confirms the view that it did intend to impose liability for the governments' own illegal acts—including . . . acts performed by their agents in the course of their employment."); Vodak v. City of Chicago, 639 F.3d 738, 747 (7th Cir. 2011) ("For reasons based on what scholars agree are historical misreadings (which are not uncommon when judges play historian) . . . the Supreme Court has held that municipalities are not liable for the torts of their employees under the strict-liability doctrine of respondeat superior, as private employers are." (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978))).

100. See Susan A. Bandes, The Lone Miscreant, the Self-Training Prosecutor, and Other Fictions: A Comment on *Connick v. Thompson*, 80 Fordham L. Rev. 715, 717 (2011) ("Since the decision in *Monell*, the Court has struggled to draw the line between the *respondeat superior* liability that it has held the statute prohibits, and the supervisory liability it has held the statute permits."); see also *Brown*, 520 U.S. at 430 (Breyer, J., dissenting) (describing *Monell* as "a highly complex body of interpretive law").

101. Blum, Section 1983 Litigation, supra note 94, at 919–20.

102. Richard H. Fallon, Jr., Asking the Right Questions About Officer Immunity, 80 Fordham L. Rev. 479, 482 n.11 (2011).

103. Pamela S. Karlan, The Paradoxical Structure of Constitutional Litigation, 75 Fordham L. Rev. 1913, 1920 (2007).

104. Fred Smith, Local Sovereign Immunity, 116 Colum. L. Rev. 409, 414 (2016).

105. See Schwartz, Municipal Immunity, supra note 5, at 1207–08 (finding only 17.4% of *Monell* claims survived motions to dismiss and motions for summary judgment).

plaintiffs will at least get paid.[106] But a *Monell* claim may be the only avenue to success in the event that the municipality declines to indemnify its officer, or the officer is granted qualified immunity, or the plaintiff does not know the identity of the officers who violated their rights.[107] A plaintiff can only seek injunctive relief to change city practices if they can mount a successful *Monell* claim.[108] *Monell* claims also serve an important "fault-fixing function," in Professor Myriam Gilles's words, because they assign fault to the municipality and thereby encourage it to better supervise, train, and discipline its officers.[109]

Many have called on courts and legislators to replace *Monell* with vicarious liability for local governments.[110] But, despite the many reasons to criticize *Monell*, it is a doctrine that has, thus far, proven difficult to change. Members of Congress on both sides of the aisle have proposed federal legislation that would impose vicarious liability on municipalities, but such bills have not gained much traction.[111] In 2021, New Mexico

106. See Joanna C. Schwartz, Qualified Immunity and Federalism All the Way Down, 109 Geo. L.J. 305, 330–33 (2020) (describing local governments' indemnification decisions).

107. See Schwartz, Municipal Immunity, supra note 5, at 1227–33 (describing the purposes that *Monell* claims may serve, despite widespread indemnification).

108. See id. at 1189 ("*Monell* claims can also afford the only way to win a judgment against a local government that may create political pressure to change, and secure injunctive relief.").

109. Myriam E. Gilles, In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies, 35 Ga. L. Rev. 845, 861 (2001).

110. For a small sample of calls for vicarious liability, see Jack M. Beermann, Municipal Responsibility for Constitutional Torts, 48 DePaul L. Rev. 627, 666 (1999) ("In my view, fairness concerns as well as the policies underlying § 1983, point toward a rule of vicarious liability."); Catherine Fisk & Erwin Chemerinsky, Civil Rights Without Remedies: Vicarious Liability Under Title VII, Section 1983, and Title IX, 7 Wm. & Mary Bill Rts. J. 755, 758 (1999) (arguing that the Court has considered the applicability of vicarious liability inconsistently and that the Court should have found vicarious liability through a purposive analysis of civil rights statutes); Jon O. Newman, Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct, 87 Yale L.J. 447, 457 (1978) ("Providing for suit directly against the . . . government would accomplish more than simply informing the jury of a deeper pocket. It would enhance the prospects for deterrence by placing responsibility for the denial of constitutional rights on the entity with the capacity to take vigorous action to avoid recurrence."); Schwartz, Municipal Immunity, supra note 5, at 1235–40 (asserting that respondeat superior liability would improve upon *Monell* from a compensation, discovery, and political perspective); John Paul Stevens, Letter to the Editor, Prosecutors' Misconduct, N.Y. Times (Feb. 18, 2015), https://www.nytimes.com/2015/02/18/opinion/prosecutors-misconduct.html (on file with the *Columbia Law Review*) ("The rule of respondeat superior . . . should apply to state law enforcement agencies.").

111. See, e.g., Billy Binion, Tim Scott Is Proposing a Major Reform to Qualified Immunity, Reason (Apr. 22, 2021), https://reason.com/2021/04/22/tim-scott-is-proposing-a-major-reform-to-qualified-immunity/ [https://perma.cc/9ALZ-ZN5V] (describing Senator Tim Scott's proposal to create vicarious liability for municipalities as an alternative to ending qualified immunity during negotiations over the George Floyd Justice in Policing Act); Janice Hisle, In Wake of Tyre Nichols' Death, Sen. Lindsey Graham Suggests Policing Reform Compromise, Epoch Times (Jan. 31, 2023),

enacted a law creating vicarious liability for local governments when their employees violate the state constitution, but legislators in other states have been slow to introduce similar bills and none have been enacted thus far.[112] Although the Supreme Court seemed primed to replace *Monell* with vicarious liability twenty years ago,[113] it has not taken up a *Monell* case since 2011, when it issued a decision that made *Monell* harder, not easier, to overcome.[114] Given the current composition of the Court, and the likelihood of a conservative supermajority on the Court for decades to come, the chances of judicial reconsideration of *Monell* anytime soon seem vanishingly small.[115]

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https://www.gopusa.com/in-wake-of-tyre-nichols-death-sen-lindsey-graham-suggests-policing-reform-compromise/ (on file with the *Columbia Law Review*) (describing Senator Lindsey Graham's proposal that municipalities be held vicariously liable); Press Release, Sheldon Whitehouse, Whitehouse, Cicilline Introduce Bill to Hold Police Departments Accountable for Officers' Constitutional Violations (Dec. 23, 2021), https://www.whitehouse.senate.gov/news/release/whitehouse-cicilline-introduce-bill-to-hold-police-departments-accountable-for-officers-constitutional-violations/ [https://perma.cc/FHC8-KFG5] (describing legislation introduced by Senator Sheldon Whitehouse and Representative David Cicilline to make municipalities vicariously liable for misconduct by their officers).

112. For a description of New Mexico's law, see Nick Sibilla, New Mexico Bans Qualified Immunity for All Government Workers, Including Police, Forbes (Apr. 7, 2021), https://www.forbes.com/sites/nicksibilla/2021/04/07/new-mexico-prohibits-qualified-immunity-for-all-government-workers-including-police/ (on file with the *Columbia Law Review*) (last updated Apr. 8, 2021) (describing the New Mexico Civil Rights Act, which bars government employees from using qualified immunity as a legal defense and allows agencies to be held vicariously liable). For sample state legislation proposed by the Institute for Justice, see Inst. for Just., Protecting Everyone's Constitutional Rights Act 1–3 (Feb. 11, 2023), https://ij.org/wp-content/uploads/2023/02/02-11-2023-Protecting-Everyones-Constitutional-Rights-Act.pdf [https://perma.cc/485N-RCX8]. Similar legislation has been introduced in New Hampshire, Rhode Island, and Minnesota, but has yet to be enacted. See H.B. 1640, 2024 Leg., Reg. Sess. (N.H. 2024); H. 7636, 2024 Gen. Assemb., Reg. Sess. (R.I. 2024); S.F. 3346, 93d Leg., Reg. Sess. (Minn. 2023).

113. See Achtenberg, supra note 99, at 2184–85 (observing, in 2005, that *Monell* "hangs by a thread" and that "[p]laintiffs' civil rights lawyers wait only for the right case and a single change in the Court's personnel before urging the Court to overturn *Monell*").

114. See Connick v. Thompson, 563 U.S. 51, 62–63 (2011) (emphasizing the high standard of fault for a sufficient failure-to-train claim).

115. See Adam A. Davidson, Procedural Losses and the Pyrrhic Victory of Abolishing Qualified Immunity, 99 Wash. U. L. Rev. 1459, 1492–504 (2022) (describing the conservatism and hostility to civil rights of judges and Justices appointed by President Donald Trump in his first term); Brandon Hasbrouck, Movement Judges, 97 N.Y.U. L. Rev. 631, 639–52 (2022) (describing the judiciary's current antidemocratic and rights-hostile jurisprudence and inclinations); David Gans, From Qualified Immunity to Voting Rights, the Supreme Court Guts Civil Rights Laws, Am. Prospect (July 16, 2021), https://prospect.org/justice/qualified-immunity-voting-rights-supreme-court-guts-civil-rights-laws/ [https://perma.cc/8QS9-2FSW] (describing the Roberts Court's "eviscerat[ion]" of civil rights doctrines).

II. A NOVEL *MONELL* THEORY: MUNICIPAL LIABILITY FOR DISREGARDING LAWSUIT ALLEGATIONS AND INFORMATION

Monell's challenges are significant and set fast. The most common *Monell* claims—"failure to" claims—are some of the most difficult to advance, as they typically require proof that policymakers were on notice of prior constitutional violations; that their failure to take action was deliberate and intentional, not negligent; and that their deliberate indifference caused the violation of a plaintiff's rights.[116] Even getting to discovery on these types of *Monell* claims is difficult because plaintiffs often do not have access to evidence that would support allegations of notice and deliberate indifference at the pleading stage.[117] Many have called on courts and legislatures to replace *Monell* with vicarious liability but, as of yet, just one state has changed its law.[118]

This Part offers an expedient solution to problems posed by *Monell*: Police departments' disregard of lawsuit allegations and the information unearthed during litigation should be considered an adequate basis for a *Monell* claim for failure to supervise or investigate. Available evidence suggests that this theory could be pursued against many police departments across the country: Departments often do not investigate allegations in lawsuits as they would citizen complaints or review depositions and evidence unearthed during discovery and trial.[119] And although this theory of municipal liability is novel, it rests on well-established precedent and should make it easier for plaintiffs in many jurisdictions to succeed.

This Part describes available evidence of police departments' disregard of lawsuits, sets out this novel *Monell* theory, addresses counterarguments municipal defendants will likely try to advance, and considers how this theory might play out in the litigation of a case.

A. *Police Departments' Practices*

For a police department interested in learning about possible misconduct by their officers, lawsuits contain a wealth of information.[120] Lawsuit complaints detail allegations of wrongdoing; discovery unearths evidence that supports or undermines those claims; subject matter experts evaluate the evidence and draw conclusions based on that evaluation; summary judgment briefs curate and organize the available evidence; and trial offers a proving ground for documents, video, witness testimony, and

116. See supra notes 50–77 and accompanying text.

117. See supra notes 78–87 and accompanying text.

118. See supra note 112.

119. See infra notes 126–146 and accompanying text.

120. See, e.g., Alexandra Lahav, In Praise of Litigation 56–83 (2017) (describing the value of information and transparency generated during litigation); Joanna C. Schwartz, Introspection Through Litigation, 90 Notre Dame L. Rev. 1055, 1059–79 (2015) (describing the types of information lawsuits can reveal to organizations about their behavior).

competing theories of the case.[121] When police overseers and other experts have compared lawsuit filings with internal affairs investigations, they have found that lawsuits often include allegations that were neither submitted as citizen complaints nor reported by officers—and, so, never investigated by the department.[122] Even when a department is already on notice of a misconduct allegation, a lawsuit complaint—particularly when drafted by a lawyer—may more comprehensively and clearly set out the involved parties, the relevant facts, and the causes of action.[123] Among those claims that are investigated both by the department and during litigation, experts have found that the closed litigation files are far more comprehensive.[124]

In 2009, a report issued by the DOJ's Community Oriented Policing Services (COPS) program and the National Internal Affairs Community of Practice group—comprised of the Los Angeles Police Department and eleven major city and county law enforcement agencies—recommended that departments investigate lawsuit allegations as they do citizen complaints and review information unearthed during discovery and trial to complement internal affairs investigations.[125] Yet in a study published in

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121. See supra note 120.

122. See Schwartz, What Police Learn, supra note 12, at 864 (reporting that, in 2004, Portland's police auditor found that two-thirds of the suits filed against the department and its officers had not been brought as citizen complaints); id. (reporting that the Kolts Commission investigating the Los Angeles Sheriff's Department in the 1990s found that fewer of half of the allegations in lawsuits were investigated by the department). In Denver, approximately fifty percent of notices of claim concern uses of force that are known to the department before the claim is filed; the remainder generally concern other types of allegations—unlawful searches, discourtesy, and the like—that the department would not know about absent the notice of claim. See Telephone Interview With Wendy Shea, Special Couns., Denver City Att'y's Off., Dep't of Pub. Safety (June 14, 2024) (on file with the *Columbia Law Review*).

123. See Schwartz, What Police Learn, supra note 12, at 865 (describing observations by the Seattle Office of Police Accountability's Director and the Los Angeles Sheriff's Department's Risk Manager that lawsuit complaints are often more comprehensive than citizen complaints, which are often submitted over the phone or by filling out a form without the assistance of counsel).

124. See id. at 872 (reporting that Seattle's police auditor believed the "chances of getting new information [through the litigation process] are likely" (alteration in original) (internal quotation marks omitted) (quoting Kathryn Olson, Dir., Seattle Off. of Pro. Accountability)); id. at 872–73 (reporting that Los Angeles County's auditor believed that litigation provided "the fullest record" of police misconduct claims (internal quotation marks omitted) (quoting L.A. Cnty. Sheriff's Dep't, Fifteenth Semiannual Report 85 (2002)); id. at 873 (reporting that the Denver auditor believed the outcomes of internal investigations might have been different had they relied on litigation information); id. at 873–74 (describing the investigation into an in-custody death in Portland in which the plaintiff's attorney unearthed key evidence overlooked by internal affairs investigators).

125. See Off. of Cmty. Oriented Policing Servs., DOJ, Standards and Guidelines for Internal Affairs: Recommendations From a Community of Practice 19 (2009), https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p164-pub.pdf [https://perma.cc/G5G7-LQ5N] [hereinafter Standards and Guidelines for Internal Affairs] ("Any civil lawsuit or civil claim filed against a municipality, agency, or law

2010, I concluded that departments regularly fail to investigate lawsuit allegations or review information discovered during litigation.

That study examined the practices of twenty-six law enforcement agencies; each had been subject to a court-monitored consent decree or some form of external oversight, allowing greater access to information about their policies and practices.[126] Six of those departments—New York, Philadelphia, Nashville, San Jose, Sacramento, and New Orleans—appeared to make no effort to learn from lawsuits brought against them and their officers.[127] Instead, in these departments, when lawsuits were filed they were typically defended by the city attorney's office or outside attorneys; money to satisfy settlements and judgments was paid by insurers or taken from the central budget; and department officials did not investigate the underlying claims or review litigation files for lessons.[128]

The other twenty departments were required by consent decree or a civilian overseer's authority to gather and analyze lawsuit information in some form or another.[129] Among them, fourteen had policies or mandates to investigate allegations in lawsuits, and three had policies or mandates to review the information in closed litigation files.[130] When departments actually followed these policies, lawsuit information proved to be useful; by reviewing lawsuit allegations and information, departments were able to identify policy, training, and supervision problems and respond in ways

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enforcement personnel for misconduct on duty or off duty under color of authority should be handled as a complaint."); id. at 45 ("Civil discovery and trial may create a fuller and more complete record than typical administrative investigations. Agencies should review, and consider reopening, an internal investigation if the result of litigation contains new information indicating misconduct.").

126. See Schwartz, Myths and Mechanics, supra note 15, at 1041–45 (describing the twenty-six agencies and their various forms of oversight). Civilian oversight of law enforcement agencies takes different forms, including civilian review boards (that typically review police department investigations) and police auditors (that typically can conduct their own investigations and/or evaluations of police department practices). The power structure and authority of each entity differs by jurisdiction. For an overview of these forms of external oversight, see Samuel Walker & Carol A. Archbold, The New World of Police Accountability 179–84 (2d ed. 2014) (arguing that the police auditor model is more likely to be an effective form of external oversight than the traditional civilian review board). In contrast, a court monitor is appointed for a limited period of time to assess compliance with the terms of a consent decree. See id. at 180 (defining court monitors as "an agent of the court, [whose] investigating authority is limited to the specific terms of the consent decree, and . . . [with] a fixed life span as set by the consent decree").

127. See Schwartz, Myths and Mechanics, supra note 15, at 1045–52 (finding that these departments "do not gather or analyze information from lawsuits filed against them and their officers in any comprehensive or systemic way").

128. See id. at 1039, 1045.

129. See id. at 1052–56 (describing how twenty jurisdictions were required to incorporate lawsuit information into their early intervention systems to identify problem officers, problematic trends in claims, investigations of misconduct allegations, and disciplinary decisions).

130. See id. at 1091.

that reduced lawsuit filings and litigation expenses.[131] Yet, implementation of those policies and mandates was often frustrated by a combination of technological challenges, human error, and intentional efforts by government employees to subvert departments' obligations.[132] As a result, departments with policies to review litigation complaints and discovery often failed to follow those policies.

Although just six of the twenty-six departments regularly investigated lawsuit allegations and/or reviewed litigation information, the sample likely overrepresented the frequency with which departments engaged in this type of review. Even when departments were under consent decree or some form of external oversight, it took years to implement even the most basic systems to track litigation data.[133] One would expect that in the vast majority of jurisdictions not under court monitors' or external overseers' supervision, such policies would be adopted less frequently and followed even less often.[134] Nationwide experts confirmed that police policies to investigate lawsuit allegations and review information generated during litigation were exceedingly rare.[135]

Fifteen years later, there has been some increased recognition of the value of lawsuits as a source of information. In 2015, New York's Office of the Inspector General called on the New York Police Department to begin reviewing information from lawsuits.[136] Similar reports were issued by

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131. For example, the Los Angeles Sheriff's Department's review of lawsuits revealed clusters of claims involving prisoners being injured after they were improperly assigned to top bunks; deputies' failure to go to the correct address in response to a call; and injuries during transportation, searches, and vehicle pursuits—once identified, the department's auditor recommended policy changes and enhanced supervision to address each problem. See Schwartz, What Police Learn, supra note 12, at 853–54. Review of lawsuits filed against Portland police officers revealed several excessive force claims involving blows to the head by officers on the night shift at one station and a cluster of claims alleging officers were entering homes without a warrant; officers were retrained on both issues, and both types of allegations declined. See id. at 854.

132. See Schwartz, Myths and Mechanics, supra note 15, at 1060–66 (describing years-long efforts to implement obligations to gather and analyze litigation information).

133. See id. at 1062 ("Even departments under court order have spent several years developing their systems. For those departments without the pressures of a court order, it may take even longer." (footnote omitted)).

134. See id. at 1057–58 ("Most of the twenty jurisdictions in my study that gather information from suits do so involuntarily.").

135. Officials at the Police Assessment Resource Center, which regularly reviewed the policies and practices of police departments, were of the view that departments without consent decrees or civilian overseers rarely investigated lawsuit allegations, and only a subset of the departments subject to civilian oversight or under court supervision reviewed closed litigation files or the results of cases. See id. at 1059 (reporting that beyond departments subject to consent decrees or police auditors, most departments do not engage in information analysis).

136. See Mark G. Peters & Philip K. Eure, N.Y.C. Dep't of Investigation, Using Data From Lawsuits and Legal Claims Involving NYPD to Improve Policing 1 (2015), https://www.nyc.gov/assets/doi/reports/pdf/2015/2015-04-20-Litigation-Data-Report.pdf [https://perma.cc/99Z6-CFVP] [hereinafter Peters & Eure, Using Data] (calling for the

Washington D.C.'s Office of Police Complaints and the advisory committee overseeing New Orleans's Office of the Independent Police Monitor in 2019,[137] and by Chicago's Office of Inspector General in 2022.[138] But efforts in New York, Chicago, Washington, and New Orleans to implement these recommendations have been slow, halting, contentious, and, thus far, incomplete.[139] Moreover, in Chicago, this progress might more accurately be categorized as backsliding given that, in 2010, the city's police auditor was among the small handful of public officials that regularly paid attention to lawsuits brought against the department and its officers.[140]

Overall, the landscape in 2025 appears much as it did in 2010. I was able to gather updated information about twenty of the twenty-six jurisdictions studied in 2010. Nine of those twenty jurisdictions report regularly investigating lawsuit allegations and/or reviewing closed litigation files, although there is no proof that these practices are actually being followed and there are reports from officials in some jurisdictions that they are not.[141] In the four jurisdictions described above—Chicago,

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use of high-volume litigation data to assist the New York Police Department in taking corrective action).

137. See Off. of Police Complaints, Police Complaints Bd., PCB Policy Report #19-1: Using Litigation Data to Improve Policing 6 (2019), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Using%20Litigation%20Data%20to%20Improve%20Policing.FINAL__0.pdf [https://perma.cc/LM7Q-MR7Z] (recommending that the D.C. Metropolitan Police Department systematically review litigation data and publish reports for the beneficial reasons experienced by other jurisdiction's police departments); see also Off. of the Indep. Police Monitor, City of New Orleans, Report on Claims for Damages in 2019 and 2020, at 7 (2021), https://nolaipm.gov/wp-content/uploads/2022/03/OIPM-2020-Annual-Report-Claims-for-Damages.pdf [https://perma.cc/Z53J-YBG3] [hereinafter New Orleans Report on Claims for Damages) ("[R]eviewing claims information is an economical way to learn about the NOPD's behavior and this information produced from the claims process ought to be utilized to shape future policing policy and practice.").

138. See Deborah Witzburg & Megan Carlson, City of Chi. Off. of Inspector Gen., Use of Litigation Data in Risk Management Strategies for the Chicago Police Department 2 (2022), https://igchicago.org/wp-content/uploads/2023/08/Use-of-Litigation-Data-in-Risk-Management-Strategies-for-the-Chicago-Police-Department.pdf [https://perma.cc/VM7R-JSS2] (identifying "shortcomings related to the collection and management of litigation data involving CPD . . . [that] limit the City's ability to understand areas of litigation risk to the City and to implement responsive improvements to CPD's operations and policies").

139. For a description of ongoing efforts in Chicago, New Orleans, New York City, and Washington, D.C., see infra Appendix A: Law Enforcement Policies and Practices Regarding Litigation Data [hereinafter Appendix A].

140. See Schwartz, What Police Learn, supra note 12, at 852 (describing Chicago's practices in 2010).

141. These nine jurisdictions include: Denver, Colorado; Detroit, Michigan; Farmington, New Mexico; Los Angeles, California; Los Angeles County, California; Nashville, Tennessee; Portland, Oregon; Seattle, Washington; and Wallkill, New York. See infra Appendix A. But see Email from Jill Fitcheard, Exec. Dir., Nashville Cmty. Rev. Bd., to the author (Jan. 22, 2024) (on file with the *Columbia Law Review*) (reporting that the

New Orleans, New York, and Washington, D.C.—the police department and/or their auditor is being pushed to institute policies to investigate allegations in lawsuits and review litigation files, but those practices are not yet being followed.[142] The remaining seven jurisdictions report that their internal affairs division and/or oversight agency does not typically investigate allegations of misconduct made in lawsuits, nor do they typically review depositions and other litigation data for lessons.[143]

To supplement these findings, I sought information from police oversight officials in fifty-seven additional jurisdictions about the extent to which they and/or their police departments investigated lawsuit allegations and included information from lawsuits in their investigations. These police oversight officials are all members of the National Association for Civilian Oversight of Law Enforcement (NACOLE), and the executive director of NACOLE provided me with their contact information.[144] I heard back from officials in thirty-six agencies: Seventeen reported investigating lawsuit allegations or reviewing litigation information;[145] nineteen reported that they did neither.[146]

Nashville Community Review Board, which reviews the police department's internal affairs investigations, has not seen litigation documents—lawsuit complaints, deposition transcripts, expert reports, or other discovery—in the files they review); Email from Max Huntsman, Inspector Gen., L.A. Cnty., to the author (Jan. 21, 2024) (on file with the *Columbia Law Review*) (reporting that the Los Angeles Sheriff's Department "generally does not respond in an evidence based way to allegations or evidence produced in civil lawsuits . . . [and] [w]hen evidence is produced in civil litigation it is almost never meaningfully examined"). For descriptions of these departments' policies, see infra Appendix A.

142. See supra notes 136–139 and accompanying text.

143. These seven jurisdictions include: Albuquerque, New Mexico; Cincinnati, Ohio; Oakland, California; Philadelphia, Pennsylvania; Prince George's County, Maryland; Sacramento, California; and San Jose, California. For descriptions of these departments' policies, see infra Appendix A.

144. See Email from Cameron McEllhiney, Exec. Dir., NACOLE, to the author (Jan. 19, 2024) (on file with the *Columbia Law Review*). This Essay does not contend that these departments' practices are representative of practices nationwide. Indeed, there is reason to believe that these departments are more likely to be attentive to litigation information because they have some form of police oversight. See supra notes 133–135.

145. These seventeen jurisdictions include: Anaheim, California; Baltimore, Maryland; Berkeley, California; Boston, Massachusetts; Davis, California; Dayton, Ohio; Eugene, Oregon; Fairfax County, Virginia; Knoxville, Tennessee; La Mesa, California; Long Beach, California; Louisville, Kentucky; Pasadena, California; Richmond, California; Riverside, California; Rochester, New York; and Sonoma County, California. For descriptions of these departments' policies, see infra Appendix A.

146. These nineteen jurisdictions include: Albany, New York; Alexandria, Virginia; Ann Arbor, Michigan; Austin, Texas; Boulder, Colorado; Charlottesville, Virginia; Columbus, Indiana; Fort Worth, Texas; Fresno, California; Indianapolis, Indiana; King County, Washington; Miami, Florida; Miami-Dade, Florida; Sacramento County, California; Salt Lake City, Utah; San Diego, California; Spokane, Washington; St. Paul, Minnesota; and Syracuse, New York. Of the nineteen, six—Ann Arbor, Charlottesville, Miami, Miami-Dade, Sacramento County, and San Diego—represented that their oversight agency did not investigate lawsuit allegations or review litigation information but did not know the practices

This discussion should not be considered a comprehensive or definitive study of the frequency with which police departments across the country investigate lawsuit allegations or review information unearthed in litigation. It does reveal, though, that many police departments—including those in Albuquerque, Austin, Chicago, Cincinnati, Fort Worth, Indianapolis, New York City, Philadelphia, Sacramento, Salt Lake City, San Jose, and Washington, D.C., among other places—do not have functioning policies to investigate lawsuit allegations and review litigation information and that departments with such policies may not adhere to them.

B. *Two Possible Claims*

Police departments' disregard of lawsuit complaints and the information unearthed during discovery and trial should be considered a sufficient basis for a *Monell* claim that policymakers have failed to adequately supervise or investigate their officers. This novel *Monell* theory actually encompasses two types of claims: a failure to investigate lawsuit allegations and a failure to review information unearthed during litigation in the course of internal affairs investigations and supervision of officers.

1. *Failure to Investigate Lawsuit Allegations.* — Every circuit has recognized that a police department's failure to investigate citizen complaints made against them and their officers can support a *Monell* claim.[147] As the Ninth Circuit explained in *Hunter v. County of Sacramento*, "for purposes of proving a *Monell* claim, a custom or practice can be supported by evidence of repeated constitutional violations which went

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of their police departments' internal affairs divisions in this regard. For descriptions of these departments' policies, see infra Appendix A.

147. See Baez v. Town of Brookline, 44 F.4th 79, 83 (1st Cir. 2022) ("'[D]eliberate indifference may be inferred' if a municipality receives 'repeated complaints of civil rights violations . . . followed by no meaningful attempt on the part of the municipality to investigate or to forestall further incidents.'" (second alteration in original) (quoting Vann v. City of New York, 72 F.3d 1040, 1049 (2d Cir. 1995))); Cordova v. Aragon, 569 F.3d 1183, 1194 (10th Cir. 2009) ("A failure to investigate or reprimand might . . . cause a future violation by sending a message to officers that such behavior is tolerated."); Parrish v. Luckie, 963 F.2d 201, 205 (8th Cir. 1992) (finding a police department "discouraged, ignored, or covered up" misconduct allegations based on evidence that the department only investigated citizen complaints that were in writing and submitted under oath and did not notify the chief of uses of force unless a lieutenant or sergeant determined the force was unwarranted); Ricciuti v. N.Y.C. Transit Auth., 941 F.2d 119, 123 (2d Cir. 1991) ("The inference that a policy existed may . . . be drawn from circumstantial proof, such as . . . evidence that the municipality had notice of but repeatedly failed to make any meaningful investigation into charges that police officers had used excessive force in violation of the complainants' civil rights." (citation omitted)); Vukadinovich v. McCarthy, 901 F.2d 1439, 1444 (7th Cir. 1990) (recognizing a *Monell* claim for failure to investigate citizen complaints but finding no proof of such a claim in that case); Spell v. McDaniel, 824 F.2d 1380, 1394 (4th Cir. 1987) (affirming a jury verdict against the municipality based on voluminous evidence, including "that specific instances of police brutality during the relevant time period were frequent but that complaints about them were consistently dismissed or disregarded, frequently with but cursory investigation"); see also infra notes 148–157.

uninvestigated and for which the errant municipal officers went unpunished."[148] The failure to investigate citizen complaints has been used as evidence supportive of different theories of *Monell* liability, including an unconstitutional custom, a failure to supervise, a failure to investigate, a failure to discipline, and policymakers' ratification of illegal conduct.[149]

Consider, as just one example, *Cox v. District of Columbia*.[150] James Cox was pulled over by D.C. police officer Barry Goodwin and assaulted by Officer Goodwin and other officers on the side of the road.[151] Cox sued Goodwin and another officer for excessive force and the District of Columbia for failing to effectively investigate and discipline its officers.[152] In support of his *Monell* claim, Cox introduced evidence that the city's newly created Civilian Complaint Review Board (CCRB), responsible for investigating citizen complaints, was so underfunded and understaffed that it had a backlog of approximately 1,000 cases out of the 1,742 complaints it had received.[153] One of those uninvestigated complaints,

148. 652 F.3d 1225, 1236 (9th Cir. 2011).

149. See, e.g., Stewart v. City of Memphis, 788 F. App'x. 341, 344 (6th Cir. 2019) ("To establish that a municipality has ratified illegal actions, a plaintiff may prove that the municipality has a pattern of inadequately investigating similar claims. Importantly, there must be multiple earlier inadequate investigations and they must concern comparable claims." (citations omitted) (citing Burgess v. Fischer, 735 F.3d 462, 478–79 (6th Cir. 2013); Leach v. Shelby Cnty. Sheriff, 891 F.2d 1241, 1248 (6th Cir. 1989))); Estate of Roman v. City of Newark, 914 F.3d 789, 800 (3d Cir. 2019) (denying a motion to dismiss a failure-to-supervise claim because the complaint included allegations that policymakers refused to create a well-run Internal Affairs Department and inadequately investigated citizens' complaints); Piotrowski v. City of Houston, 237 F.3d 567, 581–82 (5th Cir. 2001) ("Self-evidently, a City policy of inadequate officer discipline could be unconstitutional if it was pursued with deliberate indifference toward the constitutional rights of citizens. . . . One indication might be a purely formalistic investigation in which little evidence was taken, the file was bare, and the conclusions of the investigator were perfunctory."); *Vann*, 72 F.3d at 1049 (2d Cir. 1995) ("An obvious need [for more or better supervision] may be demonstrated through proof of repeated complaints of civil rights violations; deliberate indifference may be inferred if the complaints are followed by no meaningful attempt on the part of the municipality to investigate or to forestall further incidents."); Vineyard v. County of Murray, 990 F.2d 1207, 1212 (11th Cir. 1993) (finding proof of a failure to supervise and discipline based on evidence that the sheriff's department did not log complaints, that the sheriff sent two officers who were the subjects of a citizen complaint to investigate that complaint, and that no police report was filed regarding the incident); Harris v. City of Pagedale, 821 F.2d 499, 501–05 (8th Cir. 1987) (finding evidence of "a municipal custom of failing to receive, investigate and act on citizen complaints" of sexual misconduct because the city received many such allegations but "did not investigate or respond to citizen complaints of sexual misconduct by police officers in any meaningful way").

150. 821 F. Supp. 1 (D.D.C. 1993), aff'd, No. 93-7103, 1994 WL 609522 (D.C. Cir. Oct. 28, 1994).

151. Id. at 4.

152. Id. at 3.

153. Id. at 7.

filed when Officer Goodwin was still a probationary employee, alleged that Goodwin had used excessive force.[154]

The district court found that the city's failure to investigate so many citizen complaints was a "patently inadequate system of investigation of excessive force complaints" amounting to "a custom or practice of deliberate indifference."[155] The district court also concluded that the city's unconstitutional practice or custom caused Cox's injuries, both because Goodwin might not have remained on the force had the city investigated the citizen complaint filed against him when he was a probationary employee and because the backlog of uninvestigated citizen complaints "permit[ted] serious misconduct to go unchecked."[156] The court of appeals affirmed, finding no fault in the district court's conclusions.[157]

A police department's systematic failure to investigate allegations in lawsuits is comparable to a police department's systematic failure to investigate allegations in citizen complaints. The D.C. Circuit concluded in *Cox* that a "pattern of uninvestigated complaints of excessive force" "necessarily show[s] a custom or practice of deliberate indifference" that "would predictably result . . . in further incidents of excessive force."[158] This same conclusion should hold whether the uninvestigated allegations of excessive force are alleged in citizen complaints or lawsuits. In other words, if Cox had been able to show that the D.C. police department did not investigate excessive force allegations in lawsuits as a matter of policy or that, as a matter of practice, most lawsuit allegations went uninvestigated, that evidence would reflect a deliberate indifference that would predictably lead to the constitutional violation of Cox's rights.

Indeed, several courts have recognized that a police department's failure to investigate lawsuit allegations can support a *Monell* claim for failure to investigate or supervise. *Fiacco v. City of Rensselaer*, a Second Circuit decision, appears to be the earliest to rule in a plaintiff's favor on this type of claim.[159] Mary Fiacco was assaulted during the course of her arrest, and she sued the officers for excessive force and the city for failure to supervise.[160] Like the plaintiff in *Cox*, Fiacco argued that the police department's failure to investigate allegations of police brutality amounted to deliberate indifference.[161] Notably, the prior allegations Fiacco alleged

154. Id. at 9–10.

155. Id. at 13.

156. Id. at 19.

157. See Cox v. District of Columbia, No. 93-7103, 1994 WL 609522, at *2 (D.C. Cir. Oct. 28, 1994).

158. Id. at *1–2.

159. 783 F.2d 319, 326–27 (2d Cir. 1986); see also Beh, supra note 35, at 230 ("*Fiacco v. Rensselaer* was one of the first cases to hold that a failure to investigate prior complaints may evidence deliberate indifference." (footnote omitted)).

160. *Fiacco*, 783 F.2d at 321.

161. See Beh, supra note 35, at 231 ("Fiacco advanced the theory that the failure to exercise reasonable care in investigating prior complaints demonstrated deliberate

went uninvestigated were not citizen complaints but, instead, "consisted principally of notices of claims that had been filed against the City alleging police brutality"—in other words, the legal notices of claims that were prerequisites for civil suits.[162] Fiacco introduced evidence of five notices of claims that had been filed in the twenty-two months before her arrest, testimony of the five claimants, and the chief's testimony that he "had conducted as much investigation as he thought necessary" with regards to these notices of claims—which in some cases amounted to speaking with the accused officer but never involved taking written statements from the claimants or adding notations in the officers' files that the claims were made.[163]

A jury ruled in Fiacco's favor on the § 1983 claims against the officers and the city; the Second Circuit affirmed the district court's denial of a directed verdict against Fiacco, concluding that a jury could reasonably have found both that the officers violated her constitutional rights and that there was "a policy of negligent supervision that rose to the level of deliberate indifference to the use by City police officers of excessive force in violation of constitutional rights."[164] In upholding the jury's verdict against the city, the Second Circuit concluded that the failure to investigate these notices of claims "would have been viewed by the officers, and should be viewed by an objective observer, as reflecting an indifference by the City to the use of excessive force."[165]

A district court in Pennsylvania similarly concluded that a police department's failure to investigate lawsuit allegations could support a *Monell* claim. In that case, Exeter Borough Police Sergeant Leonard Galli entered the plaintiff's home without permission or a warrant.[166] In support of her claim that "the municipality had a custom of allowing officers to perform illegal searches,"[167] the plaintiff introduced evidence that Sergeant Galli had been sued four times before, and that police officials did not investigate the allegations in those suits or track lawsuits filed against officers.[168] This evidence—in conjunction with evidence that the

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indifference to police brutality and the municipality's responsibility to supervise its officers.").

162. *Fiacco*, 783 F.2d at 323. New York's law requiring people to file notices of claim before filing suit can be found at N.Y. Gen. Mun. Law § 50-e (McKinney 2025).

163. *Fiacco*, 783 F.2d, at 330–31.

164. Id. at 323.

165. Id. at 331.

166. See Salerno v. Galli, No. 3:07-cv-2100, 2009 WL 3245532, at *1–2 (M.D. Pa. Oct. 7, 2009).

167. Id. at *8.

168. See Plaintiff's Counter Statement of Facts in Opposition to the Defendants' Statement of Material Facts as to Which No Genuine Issue Remains to Be Tried ¶¶ 20–22, *Salerno*, No. 3:07-cv-2100 (on file with the *Columbia Law Review*). The six people named in Plaintiff's Counter Statement of Facts previously sued Sergeant Galli in four different suits. See Complaint at para. 5, Slavoski v. Fernandes, No. 3:05-cv-00646-TIV (M.D. Pa. filed Mar. 31, 2005), 2005 WL 917187; Complaint at para. 5, Esposito v. Galli, No. 4:04-cv-0475-JEJ

department did not have policies setting out how to obtain a warrant, when a warrantless entry might be justified, or how to accept citizen complaints against officers—was enough in the court's mind to support a finding that the chief and municipality "had constructive knowledge that constitutional violations were being committed, but admittedly took no action to prevent or deter such actions from occurring."[169] Accordingly, the court denied the municipality's motion for summary judgment on the *Monell* claim.[170]

Other courts have ruled against plaintiffs on *Monell* claims alleging the failure to investigate lawsuit allegations but have suggested that such claims are viable if properly supported. For example, in *Outlaw v. City of Hartford*, Tylon Outlaw sued two Hartford police officers for using excessive force against him and sued the City of Hartford for failing to supervise its officers regarding the use of force.[171] Among the evidence Outlaw used to support his *Monell* claim was a list of sixty-six lawsuits filed against the city and its officers between 1998 and 2005, and eighty-seven legal claims submitted to the city's insurer.[172] The district court granted summary judgment to the city on the *Monell* claim and the court of appeals affirmed. The Second Circuit explained that the filed lawsuits and claims "might have led to evidence from which an inference of deliberate indifference to excessive force could properly be drawn, but as noted by the district court, there was no evidence as to the facts underlying those claims or how thoroughly they were investigated by the City."[173] Although the plaintiff lost his *Monell* claim in *Outlaw*, the Second Circuit's analysis suggests that, had he been able to show that the prior lawsuits included similar allegations of excessive force and that those allegations were not investigated by the police department, that evidence could have established a failure to investigate or supervise.

A case from the Southern District of Mississippi also suggests the viability of this type of *Monell* claim if properly supported. In *Peters v. City of Biloxi*, the plaintiff's failure-to-train claim relied on evidence of at least twelve lawsuits alleging assault, false arrest, or brutality.[174] The court concluded that the lawsuit allegations were insufficient to establish policymakers' deliberate indifference, observing that "[a]bsent additional evidence that [the city's] efforts to evaluate the claims 'were so superficial as to suggest that its official attitude was one of indifference to the truth of

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(M.D. Pa. Mar. 9, 2007), 2004 WL 2277624; Defendants' Reply to Plaintiffs' Brief in Opposition to Their Motion for Summary Judgment at 3–4, Yochem v. Exeter Borough, No. CV-00-1494 (M.D. Pa. filed Nov. 6, 2002); see also Morrison v. Galli, No. 3:96-cv-00931-TIV (M.D. Pa. dismissed Nov. 26, 1996).

169. *Salerno*, 2009 WL 3245532, at *9.

170. See id.

171. 884 F.3d 351, 356–57 (2d Cir. 2018).

172. Id. at 375.

173. Id. at 379–80.

174. See 57 F. Supp. 2d 366, 378 (S.D. Miss 1999).

the claim,' plaintiffs cannot survive summary judgment simply with evidence of prior lawsuits."[175] Although the district court dismissed the plaintiff's claim at summary judgment, its analysis—like the analysis in *Outlaw*—suggests the *Monell* claim could have succeeded with evidence that the city made no effort to investigate the allegations in those twelve lawsuits.

2. *Failure to Review Litigation Information.* — Even if a department investigates allegations in lawsuits brought against it and its officers in the same manner as it investigates citizen complaints, a plaintiff may still have a viable *Monell* claim if the department does not review available information unearthed during the course of litigation—depositions and affidavits of the parties and witnesses, documents, video evidence, expert reports, and trial transcripts—that would fill meaningful gaps in its internal affairs investigations or inform supervision of officers.

Courts have ruled that perfunctory internal affairs investigations—in which investigators fail to interview available witnesses or take account of relevant information—can be a basis for *Monell* liability. For example, in *Caldwell v. City of San Francisco*, the district court ruled that a jury could find a custom or practice of failing to adequately investigate and act on citizen complaints based on evidence that investigators did not contact witnesses and credited police officer statements over the statements of the complainants without justification.[176] In *Forrest v. Parry*, the Third Circuit found sufficient evidence to support failure-to-supervise and -discipline claims against the City of Camden because the police department's internal affairs division had a backlog of hundreds of uninvestigated claims; sustained only about 1% of complaints brought against its officers; and conducted "seriously deficient" investigations in which "the investigator did not interview witnesses, but rather solely based the determination on the incident reports authored by the officers involved."[177] In *Noble v. City of Camden*, evidence that excessive force complaints were rarely sustained and that internal investigators were not impartial and did not conduct thorough investigations led the district court to conclude that a reasonable jury could find the city had a custom or policy of inadequate investigations that amounted to deliberate indifference.[178] In *Hogan v. Franco*, a district court in the Northern District of New York found "a lack of supervision and a deliberate indifference to the truth" when, in response to an excessive force complaint, the investigation consisted of asking the involved officer to submit a written

175. Id. (citation omitted) (quoting Fiacco v. City of Rensselaer, 783 F.2d 319, 328 (2d Cir. 1986)).

176. No. 12-cv-01892-DMR, 2020 WL 7643124, at *16–17 (N.D. Cal. Dec. 23, 2020).

177. 930 F.3d 93, 102 (3d Cir. 2019).

178. 112 F. Supp. 3d 208, 223 (D.N.J. 2015).

statement; investigators never questioned the plaintiff, witnesses, or other officers.[179]

If systematically ignoring witnesses and other information during an internal affairs investigation is sufficient evidence of a failure to adequately investigate or supervise, then ignoring sworn depositions, affidavits, and other evidence in litigation files should be, as well. Admittedly, this type of *Monell* claim will not likely be successful in jurisdictions where internal affairs investigators are conducting rigorous investigations of their own—interviewing the complainant and witnesses and examining video and other evidence. Under such circumstances, litigation files might still "create a fuller and more complete record"[180] worthy of review, but failing to do so likely would not amount to deliberate indifference.[181] Yet, in a jurisdiction where investigators regularly fail to interview—or conduct cursory interviews of—complainants and key witnesses while disregarding transcripts of seven-hour, sworn depositions of those complainants and witnesses available in litigation files, that disregard should support a claim for failure to supervise or investigate. Under such circumstances, ignoring readily available information that would fill the gaps in internal affairs investigations or assist in officer supervision amounts to a "deliberate indifference to the truth."[182]

3. *Possible Counterarguments.* — Municipal defendants will likely oppose these types of *Monell* claims. Following are three possible arguments defendants might raise and reasons these arguments should not carry the day.

First, officials might argue that they do not need to investigate allegations made in lawsuits or review information unearthed during litigation because the attorneys defending the officers and city and/or their insurers are already doing this work.[183] Note that this same argument is not employed by police departments to absolve themselves of the obligation to investigate citizen complaints. In other words, police departments have not regularly or successfully argued that their failure to investigate a citizen complaint is justified by the fact that the city's attorneys defended against a lawsuit containing the same allegation. This is likely because city attorneys and insurers have different perspectives and priorities than police department internal affairs investigators. City attorneys and insurers have reason to approach lawsuit allegations with an

179. 896 F. Supp. 1313, 1320–21 (N.D.N.Y. 1995).

180. Standards and Guidelines for Internal Affairs, supra note 125, at 45.

181. See supra notes 80–83 and accompanying text (describing court decisions finding deficiencies in internal affairs investigations but ruling that the municipalities were not deliberately indifferent to their citizens' rights).

182. *Hogan*, 896 F. Supp. at 1320–21.

183. In 2004, Portland's police chief raised this objection—unsuccessfully—when the city's police auditor proposed investigating lawsuit allegations for policy violations. See Schwartz, What Police Learn, supra note 12, at 851 ("The [Portland] chief of police argued it was the job of the city attorney, not the police auditor, to investigate lawsuits.").

eye toward minimizing legal liability in a case, not with an eye toward identifying policy violations that merit retraining, increased supervision, or discipline.[184] Thus, city attorneys' investigations are no substitute for a police department's assessment of alleged wrongdoing.

If a court was nevertheless hospitable to the notion that a police department's obligations to investigate and supervise its officers can be satisfied if a city attorney or insurer examines lawsuit allegations and evidence in the course of their legal defense and passes along any relevant information to the police department, then such an argument should open up the nature of those communications to review. Relevant communications could include which lawsuit allegations the city attorney or insurer passed along for internal affairs to investigate; which litigation files the city attorney or insurer passed along for the police department to consider; and what police department policymakers did with this information.[185] A cursory review of policy violations or supervision implications in the course of defending a lawsuit should be insufficient to defeat a failure-to-supervise or failure-to-investigate claim.[186]

Second, police officials might argue that their failure to investigate lawsuit allegations or review information unearthed during discovery is an insufficient basis for a *Monell* claim if the department does investigate citizen complaints. The success of this argument should depend on the number and type of lawsuits and citizen complaints filed against the department and its officers, and the quality of the department's internal affairs investigations.

Imagine, for example, that a person was beaten by a police officer and brought a *Monell* claim against the city for failure to supervise. Imagine that only one officer from that department had been sued in the prior ten years, and that suit alleged false arrest. Imagine also that, during that same decade, one hundred citizen complaints had been filed against the

184. E.g., James G. Kolts et al., The Los Angeles County Sheriff's Department 193–94 (1992), https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/d0440b59-d911-4ce1-9355-d22c6bd240c9/KoltsOriginal.pdf [https://perma.cc/96TB-QC3E] ("We wonder at times if County Counsel, representing the LASD, can strongly advocate terminating an officer for misconduct knowing at the same time that the fact of termination may increase the exposure of the County in litigation arising from that misconduct.").

185. Discovery on this topic might raise objections on the ground that those communications are protected by the attorney–client privilege. Yet information about which lawsuit claims and discovery documents were referred to the police department should not be understood as privileged communications—discovery would concern the prior discovery and filed litigation materials, not counsel's advice or work product regarding those cases. Moreover, if a court found this information was protected by attorney–client privilege, the privilege should be waived if the police department relied on this evidence to show it adequately investigated lawsuit allegations.

186. See, e.g., Fiacco v. City of Rensselaer, 783 F.2d 319, 331 (2d Cir. 1986) (finding that the police chief's "uninterested and superficial" treatment of citizen complaints "would have been viewed by the officers, and should be viewed by an objective observer, as reflecting an indifference by the City to the use of excessive force").

department's officers, including several allegations of excessive force, and that each of those allegations had been exhaustively investigated by internal affairs. Under these circumstances, the plaintiff presumably could not establish that the department's failure to investigate the allegations in that one false arrest lawsuit amounted to deliberate indifference or caused the constitutional violation at issue in the instant case.

Yet adjusting this scenario in one or more respects should make this novel *Monell* theory more likely to succeed. Imagine, instead, that thirty lawsuits had been filed against the department and its officers over the past decade and that several of those lawsuits included excessive force allegations and/or named the officer who was a defendant in the instant case. Imagine, also, that only fifteen citizen complaints had been filed over that decade and that few of those complaints concerned excessive force allegations. Finally, imagine that the police department's internal affairs investigations were often cursory and did not involve interviewing the complainant or other eyewitnesses, and that information unearthed during litigation was far more complete. Under these circumstances, the department's failure to investigate lawsuit allegations or review litigation data should not be cured by the internal affairs investigations they did conduct—both because the department did not investigate wrongdoing directly relevant to the plaintiff's claims and because their investigations were deficient.

Ultimately, policymakers' disregard of lawsuits will be assessed by courts in conjunction with other evidence of deliberate indifference and causation, and the viability of any *Monell* claim should turn on the strength of all the relevant evidence. The fact that a department investigates citizen complaints should not immunize it from *Monell* liability when relevant information was available in lawsuits and litigation files but was ignored by policymakers and the plaintiff can show that the oversight caused the constitutional violation in question.

Third, municipal defendants might argue that internal affairs investigators do not have the capacity to do the extra work of investigating lawsuit allegations or reviewing information unearthed during discovery. How much of a burden it would actually be for internal affairs investigators to do this type of investigation and review is up for debate and would depend on how many investigators are employed by any given department and how many lawsuits are filed against that department and its officers each year.[187] Yet, even if many lawsuits were filed that needed to be investigated, police departments generally have protocols to distinguish between citizen complaint allegations that need to be fully investigated

187. A recent survey of more than two hundred large law enforcement agencies found that, on average, departments' internal affairs units had three to four full-time sworn officers and processed one hundred complaints annually. See Chris Harris & Sean Perry, Nat'l Internal Affs. Investigators Ass'n, Internal Affairs Survey Report 2 (2022), https://www.niaia.org/assets/docs/2022/Internal%20Affairs%20Survey%20Report%202022.pdf [https://perma.cc/MC4F-CMMT].

and those that allow for more perfunctory investigations, and investigators could presumably apply those same protocols to lawsuit allegations.[188] Reviewing evidence unearthed during discovery and deposition and trial transcripts would admittedly create an additional obligation but would presumably be less time-consuming for investigators than tracking down evidence and finding and interviewing witnesses. As one indication of the feasibility of such practices, multiple police departments of all sizes already have policies to investigate lawsuit allegations and/or review information unearthed in litigation.[189] Ultimately, though, departments cannot shirk their obligation to investigate citizen complaints on the ground that they have too many complaints to review;[190] this argument should be equally unavailing with regard to lawsuits.

C. *An Illustrative Example:* Glasper v. City of Chicago

To imagine how these *Monell* theories might play out in a lawsuit, consider the case filed by Antonie Glasper against the City of Chicago and nine Chicago police officers on August 1, 2016.[191]

Almost one year earlier, on August 19, 2015, Antonie Glasper was spending a quiet afternoon in his apartment on the South Side of Chicago with his eleven-year-old son, his fiancée's twenty-one-year-old autistic son, and his dog, Rozay.[192] Around 2:30 p.m., Glasper was resting and his son and his fiancée's son were playing video games when he heard a loud boom.[193] Several Chicago police officers had broken through Glasper's front door and were swarming into his apartment.[194] Glasper immediately

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188. See id. at 11 (reporting that 75% of more than two hundred large law enforcement agencies surveyed reported having a process to resolve complaints informally). For a discussion of internal affairs investigators' treatment of different types of complaints, see, e.g., Standards and Guidelines for Internal Affairs, supra note 125, at 29–33 (distinguishing between preliminary and complete investigations of citizen complaints).

189. Jurisdictions that report investigating lawsuit allegations or reviewing litigation information include: Anaheim, California; Baltimore, Maryland; Boston, Massachusetts; Davis, California; Dayton, Ohio; Denver, Colorado; Detroit, Michigan; Fairfax County, Virginia; Farmington, New Mexico; Knoxville, Tennessee; Los Angeles, California; Los Angeles County, California; Louisville, Kentucky; Nashville, Tennessee; Pasadena, California; Portland, Oregon; Richmond, California; Riverside, California; Seattle, Washington; Sonoma County, California; and Wallkill, New York. For a description of their practices, see infra Appendix A.

190. See, e.g., Cox v. District of Columbia, 821 F. Supp. 1, 7, 13 (D.D.C. 1993) (finding that the city's underfunded and understaffed Civilian Complaint Review Board, which investigated approximately 1,000 out of the 1,742 citizen complaints it had received, amounted to a "patently inadequate system of investigation of excessive force complaints"), aff'd, No. 93-7103, 1994 WL 609522 (D.C. Cir. Oct. 28, 1994) .

191. For a complete description of the allegations in this case, see Complaint, Glasper v. City of Chicago, No. 1:16-cv-07752 (N.D. Ill. filed Aug. 1, 2016), 2016 WL 317779.

192. Id. at paras 7–9.

193. Id. at para 10.

194. Id. at paras 11–15.

ran into the kitchen and grabbed Rozay.[195] When officers entered the kitchen, guns pointed at Glasper, he begged the officers not to hurt Rozay and asked for permission to put him in his cage or lock him in the bathroom.[196] The officers refused Glasper's requests and ordered him to get on the ground and let go of the dog.[197] When Glasper complied, an officer shot and killed Rozay.[198] Glasper's son and his fiancée's son were standing less than ten feet from Rozay when he died.[199] The officers then handcuffed Glasper, his son, and his fiancée's son.[200] One officer took Glasper into a front bedroom and demanded to know where his drugs were.[201] When Glasper said he did not have any drugs, the officer pulled Glasper's pants to his ankles and subjected him to an anal cavity search.[202] Although the officers did not find anything after searching Glasper's home and body, they charged him with felony possession of a controlled substance.[203] Glasper had to spend several days in jail until he could post bond.[204] Two months later, all charges against Glasper were dismissed.[205]

Glasper retained a lawyer and sued the nine officers who entered his home, shot the family dog, strip searched him, arrested him, and jailed him.[206] The suit alleged that the officers violated his Fourth Amendment rights and that the officers and the city violated Illinois state law.[207] Glasper did not include a *Monell* claim in his complaint. Yet this Essay contends that Glasper could have sued the City of Chicago under *Monell*, arguing that the Chicago Police Department's failure to investigate allegations made in lawsuits and failure to consider information unearthed during litigation amount to deliberate indifference to the constitutional rights of its citizens.

If Glasper had pursued a *Monell* claim along these lines, his attorney could have—even before filing suit—searched through publicly available records for all lawsuits filed against the officers involved in the raid of Glasper's home.[208] Court records available on Bloomberg Law and a

195. Id. at para 13.
196. Id. at paras 18–19.
197. Id. at paras 20–21.
198. Id. at para 23.
199. Id. at para 24.
200. Id. at para 25.
201. Id. at para 26.
202. Id. at paras 27–28.
203. Id. at paras 30, 35–36.
204. Id. at para 37.
205. Id. at para 41.
206. Id. at paras 43–44, 46, 52–54, 57, 60–61, 66.
207. Id. at paras 43, 68.
208. Publicly available information about lawsuits can be found on sites including Westlaw, LexisNexis, PACER, and Bloomberg Law—although these sites are incomplete and are costly to access. See Zachary D. Clopton & Aziz Z. Huq, The Necessary and Proper Stewardship of Judicial Data, 76 Stan. L. Rev. 893, 925–26, 949–51 (2024) (describing the limitations of available litigation data and proposing public disclosure of judicial data).

database of settlements compiled by the *Chicago Reporter* reveal thirty lawsuits naming one or more of the nine officers involved in the raid of Glasper's apartment filed before August 19, 2015, when the raid occurred.[209] Some of the officers involved in the search of Glasper's apartment had been sued multiple times: Officer Armando Ugarte was named in twelve suits filed before August 19, 2015; Officer Anthony Bruno was named in nine; Officer Brian Schnier was named in five; Officer William Lepine was named in four.[210] These thirty complaints tell similar stories of people being unreasonably searched and assaulted while in their homes or driving or walking down the street.[211] Some were thrown against cars or the ground; some were strip searched; some were assaulted if they did not tell the officers where they could find guns or drugs; some were arrested and held for hours or days.[212]

Glasper's attorney could also have searched through public records for information unearthed during the litigation of these thirty cases. The dockets indicate that the parties exchanged discovery in eighteen of the cases.[213] Six of the cases went to trial, where officers, plaintiffs, and witnesses testified and documents, video, and other evidence were almost certainly entered into the record.[214] Much of this testimony and evidence is not available on Bloomberg Law or other databases; discovery is not generally filed with the court, and trial transcripts are not generally printed unless one side appeals.[215] To the extent that discovery and trial materials exist but are not publicly available, Glasper's attorney could seek these materials from plaintiffs' counsel. Glasper's attorney could also access discovery materials that were filed with the court in support of summary judgment motions and oppositions. Among the thirty cases previously filed against the defendants in *Glasper*, five include summary judgment briefings with hundreds of pages of deposition excerpts and discovery appended as exhibits that are available on Bloomberg Law.[216]

Glasper's attorney could have additionally reviewed the courts' decisions. In one of the five cases with summary judgment briefing, *Foltin*

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209. For an overview of these lawsuits' allegations, litigation, and dispositions, see infra Appendix B: *Glasper* Defendants' Past Litigation [hereinafter Appendix B]. The Chicago Reporter database of settlements can be found at Settling for Misconduct: Police Lawsuits in Chicago, Chi. Reporter, https://projects.chicagoreporter.com/settlements [https://perma.cc/28TA-QKF8] [hereinafter Settling for Misconduct] (last visited Jan. 24, 2025).

210. See infra Appendix B.

211. See infra Appendix B.

212. See infra Appendix B.

213. See infra Appendix B.

214. See infra Appendix B.

215. See Clopton & Huq, supra note 208, at 915–18 (describing types of judicial data that are never recorded or made accessible); id. at 918–21 (describing the limitations of judicial data accessible on PACER); id. at 923–25 (describing the limitations of judicial data accessible on commercial databases like Westlaw, LexisNexis, and Bloomberg Law).

216. See infra Appendix B.

v. Ugarte, the district court awarded summary judgment to the plaintiffs.[217] In that case, Foltin alleged that she was the passenger in a car that was pulled over by two officers, including Armando Ugarte, one of the defendants in *Glasper*.[218] The officers told Foltin and the driver to get out of the car and began searching the car.[219] Although Foltin was wearing a lightweight summer dress, and there was no bulge suggesting she had a weapon, the officers called a female officer to come to the scene to search her "just in case."[220] A female officer arrived, instructed Foltin to put her hands on the hood of the police car, then put her hands up Foltin's dress, pulled on her bra, and subjected her to a body cavity search.[221] The officers found nothing illegal in their search of Foltin, the driver, and the vehicle, and released them without charges.[222] At summary judgment, the court ruled that the search of Foltin was unconstitutional: "Although this was a dynamic situation, the officers essentially have admitted that they had no articulable suspicion that Foltin was armed and dangerous . . . ."[223] Of the other four summary judgment motions filed in these thirty cases, one was denied in part, with the district courts concluding that reasonable factfinders could rule for either side, and three, filed by defendants against pro se plaintiffs, were granted.[224]

Finally, Glasper's attorney could have tracked down information about these cases' outcomes. Two of the thirty cases resulted in plaintiffs' verdicts against Ugarte.[225] One was *Foltin*; after the court granted summary judgment to the plaintiffs on liability, a jury awarded Foltin $11,000 in damages.[226] The total paid to Foltin and her attorneys was $162,795.[227] In the other, *McLin v. City of Chicago*, Ugarte and another officer were sued; plaintiffs alleged the officers drove up behind a man named William Hope Jr., and Ugarte's partner shot Hope when he tried to drive away.[228] The jury awarded plaintiffs more than $4.5 million in compensatory damages, and additionally awarded $10,000 in punitive damages against Ugarte and $10,000 in punitive damages against the other officer.[229] Two other cases

217. See No. 09-cv-5237, 2013 WL 3754019, at *1 (N.D. Ill. July 16, 2013).

218. Id.

219. Id. at *2.

220. Id. at *2, *4.

221. Id. at *2.

222. Id.

223. Id. at *4.

224. See infra Appendix B.

225. See infra Appendix B.

226. See Judgement in a Civil Action, *Foltin*, No. 09-cv-5237, 2014 WL 3753246.

227. See Case 09-CV-5237, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/09-cv-5237/ [https://perma.cc/7529-9EA5] (last visited Jan. 24, 2025) (detailing the facts and payment in *Foltin*).

228. See Complaint, McLin v. City of Chicago, No. 1:10-cv-5076 (N.D. Ill. Jan. 30, 2013).

229. The jury intended the $10,000 punitive damages awards to punish the officers for overaggressive policing and encourage them to "stop and think before being active with a

ended in split verdicts, with plaintiffs recovering against defendants not named in *Glasper*.[230] Nineteen cases settled before trial.[231] $6,645,503 was awarded to the plaintiffs in twenty-three cases.[232] Of the seven cases that did not resolve in plaintiffs' favor, two were defense verdicts at trial and five were litigated by pro se plaintiffs and dismissed at summary judgment or for failure to prosecute.[233]

Before Glasper's home was raided, other lawsuits were filed that alleged similar misconduct involving other Chicago police officers. Because it is challenging to search PACER or Bloomberg Law for cases that share similar characteristics—unlawful searches and arrests during warrantless searches of apartments in Chicago, for example—these cases will often be more difficult to find. As a result, lawyers may need to seek out information about factually similar cases from other plaintiffs' attorneys or news stories. But in Chicago, this task is made easier by the *Chicago Reporter*'s database of settlements, which is searchable by case type.[234] That database reveals that—between January 1, 2011, and August 19, 2015, the day Glasper's home was raided—Chicago's officers engaged in conduct that resulted in 155 settlements, totaling more than $8.5 million, in cases alleging its police officers unlawfully searched peoples' homes; sixteen settlements, totaling more than $1.3 million, in cases alleging its police officers hurt or killed family pets; and thirty-nine settlements, totaling more than $1.9 million, alleging its officers unlawfully strip searched people.[235] These prior, factually similar lawsuits could also have supported Glasper's *Monell* claims against Chicago for failure to supervise and investigate.[236]

During discovery, Glasper's attorney could have sought information about Chicago's policies and practices with regards to the investigation of

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gun." Angela Caputo, Cops Rarely Pay Punitive Damages, Chi. Trib., https://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=70a40233-a7f3-41f1-a6ae-13a2dbe8680a [https://perma.cc/7AG8-7CS7] (last visited Jan. 25, 2025) (internal quotation marks omitted) (quoting Robert Mugnaini, juror). But neither Ugarte nor his codefendant paid these punitive damages awards: Following the jury's award, the City of Chicago agreed to resolve *McLin* with a universal settlement that eliminated the punitive damages awards. See id.; Agreed Judgment Order, *McLin*, No. 1:10-cv-5076 ("It is ordered that defendant, City of Chicago, will pay $4,567,828 to plaintiff Jennifer McLin . . . . This total sum to be paid and the additional terms of the stipulation represent full satisfaction of the entire judgment in this matter against all defendants, including attorneys' fees and costs.").

230. See infra Appendix B.

231. See infra Appendix B.

232. See infra Appendix B.

233. See infra Appendix B.

234. See Settling for Misconduct, supra note 209. A similar database tracks lawsuits and other allegations of misconduct against New York City police officers. See Law Enforcement Lookup, The Legal Aid Soc'y, https://legalaidnyc.org/law-enforcement-look-up/ [https://perma.cc/M6YC-G8MV] (last visited Jan. 24, 2025).

235. See Settling for Misconduct, supra note 209.

236. See supra note 173 and accompanying text.

lawsuit allegations and the review of litigation files. Available evidence suggests that Chicago was ignoring information from lawsuits at that time. One year after Glasper filed his case, the DOJ issued a 164-page report finding widespread excessive force and inadequate investigations, accountability, and transparency.[237] One of the DOJ's many findings was that the Chicago police department did not investigate lawsuit allegations or review information unearthed during discovery.

> [I]n excessive force cases, it is not uncommon for the same conduct that [the Independent Police Review Authority (IPRA), the civilian oversight agency at the time] or [the Bureau of Internal Affairs (BIA)] has jurisdiction to investigate to be litigated in a Section 1983 civil rights lawsuit. Where there is an open IPRA or BIA investigation that is also the subject of a parallel civil case, investigators do not appropriately review and incorporate information from that parallel case into their administrative investigation. Moreover, there is no dependable procedure in which new civil lawsuits alleging police misconduct trigger investigations by IPRA or BIA. Indeed, many such complaints never make it to BIA or IPRA for consideration, and even when they do, no disciplinary investigation is automatically opened since a lawsuit is not deemed to satisfy the complainant affidavit requirement[,] [a requirement that a complainant submit an affidavit before any BIA investigation begins]. Though IPRA has the authority to override the affidavit requirement, it rarely exercises it in these circumstances.[238]

Presumably, if Glasper had litigated this *Monell* theory, he would have received information consistent with the DOJ's findings in response to document requests, requests for admission, or depositions.

During discovery, Glasper's attorney could have requested any documentation of internal affairs or civilian oversight investigations of the allegations in the thirty lawsuits against the defendants named in Glasper's case, as well as investigations of claims in all other lawsuits alleging similar misconduct. Glasper's attorney could also have sought discovery reflecting whether the police department reviewed the depositions, discovery, and trial transcripts from those cases and, if so, what actions the department took in response. The DOJ's report suggests that these investigations files would have been woefully incomplete. When the DOJ reviewed Chicago's investigations of misconduct allegations, it found that "the City fails to conduct any investigation of nearly half of police misconduct complaints,"[239] and that, among the misconduct allegations that *were*

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237. DOJ C.R. Div. & U.S. Att'y's Off. N. Dist. of Ill., Investigation of the Chicago Police Department (2017), https://www.justice.gov/d9/chicago_police_department_findings.pdf [https://perma.cc/MUG5-EG5Q] [hereinafter DOJ Investigation of Chicago].

238. Id. at 65–66. As of August 2024, the Chicago Police Department still does not have a functioning system to track lawsuits filed against officers, and the Chicago Law Department does not have a system to track and analyze litigation data. See infra Appendix A.

239. DOJ Investigation of Chicago, supra note 237, at 47.

investigated, "[i]nvestigators frequently failed to collect basic evidence needed for the investigations by failing to interview important witnesses—including the accused officer—and failing to collect information from other court proceedings involving the same incident."[240]

If, as the DOJ's report suggests, the city did not internally investigate the allegations in many or most of these prior lawsuits, Glasper could argue that Chicago's systematic failure to investigate these allegations amounted to deliberate indifference to the constitutional rights of its citizens, akin to the claims in *Cox*,[241] *Fiacco*,[242] and *Salerno*.[243] If the city did investigate some misconduct allegations in these prior lawsuits but systematically ignored information unearthed during the litigation of those cases that would have filled gaps in their internal affairs investigations, Glasper could use this evidence to support failure-to-investigate or -supervise claims, akin to those in *Caldwell*,[244] *Forrest*,[245] *Noble*,[246] and *Hogan*.[247]

Glasper would still need to show causation. In the view of some courts, the failure to systematically investigate allegations of misconduct is enough to survive summary judgment.[248] In the view of other courts, Glasper would need to show that the defendant officers knew that misconduct allegations would not result in any negative employment consequences.[249] Glasper could depose the named officers about how often they had been sued, the outcomes of those cases, and the consequences of those cases for their employment, discipline, and supervision. If the officers testified that they were not aware of the facts or outcomes of those cases, and that lawsuits did not impact their supervision or employment—as New York City police officers have testified[250]—this evidence could support causation.

Glasper might have been able to make an even stronger causation argument; at least one of the officer defendants, Ugarte, might not have remained on the force had the city properly taken account of litigation

240. Id. at 56.

241. See supra notes 150–157 and accompanying text.

242. See supra notes 159–165 and accompanying text.

243. See supra notes 166–169 and accompanying text.

244. See supra note 176 and accompanying text.

245. See supra note 177 and accompanying text.

246. See supra note 178 and accompanying text.

247. See supra note 179 and accompanying text.

248. See supra note 91.

249. See supra note 92.

250. In New York City, police officers have repeatedly testified during depositions that they are unaware of the outcome of lawsuits filed against them. See Schwartz, Shielded, supra note 1, at 212 (describing the deposition of one officer who testified he "did not know how many times he had been sued or details about any of the twenty-two lawsuits that had been filed against him"); see also Richard Emery & Ilann Margalit Maazel, Why Civil Rights Lawsuits Do Not Deter Police Misconduct: The Conundrum of Indemnification and a Proposed Solution, 28 Fordham Urb. L.J. 587, 590 (2000) ("We have deposed many officers who had been sued one, two, three times before, yet had no idea how any of those cases were resolved.").

information. Ten years after the 2012 verdict in *McLin*,[251] the Chicago police superintendent filed disciplinary charges against Ugarte and his partner for repeatedly lying before and during the *McLin* trial about the circumstances of the shooting, and recommended that both officers be fired.[252] Although five members of the Police Commission found Ugarte and the other officer not guilty, three members of the Commission penned a strong dissent, concluding that Ugarte made a knowingly false report after the shooting.[253] The Commission's report suggests the quality of its assessment was impaired by the passage of time in a number of ways: key witnesses who had testified at trial did not testify at the disciplinary hearing; video evidence available at trial was not available at the disciplinary hearing; and the truthfulness of the officers' testimony at trial turned on their statements in an unrecorded interview with a sergeant thirteen years before.[254] For these reasons, the result of the Commission's deliberations might well have been different if the superintendent had filed disciplinary charges immediately after the trial instead of ten years later. If the Chicago Police Department reviewed information from lawsuits filed against its officers, any assessment about whether to discipline or terminate Ugarte would not have turned on the *McLin* case alone. It would also have been informed by evidence that supported the district court's conclusion in *Foltin* that Ugarte and his partner conducted an unconstitutional stop and search, and the allegations pled and discovery unearthed in the ten additional cases filed against Ugarte in the years before the raid of Glasper's apartment. Had Glasper pursued a *Monell* failure-to-supervise or failure-to-investigate claim based on Chicago's disregard of all of this litigation information regarding Ugarte, as well as voluminous information from other lawsuits, a court could have had ample factual and legal basis to deny the city's motion to dismiss or for summary judgment.

III. THE REACH OF *MONELL*'S UNTAPPED POTENTIAL

If courts recognize *Monell* claims based on police departments' disregard of litigation allegations and information, such claims will make

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251. See Jury Verdict, McLin v. City of Chicago, No. 1:10-cv-5076 (N.D. Ill. Jan. 30, 2013).

252. See Tom Schuba, Two Chicago Cops Face Dismissal for Allegedly Lying About 2010 Fatal Shooting, Chi. Sun-Times (Nov. 3, 2022), https://chicago.suntimes.com/2022/11/3/23439411/chicago-police-shooting-officers-fire-dismissal-lie-lying (on file with the *Columbia Law Review*).

253. Armando Ugarte, Case No. 22-PB-3009-1, at 26–27 (Police Bd. of the City of Chi. Oct. 19, 2023) (findings and decisions), https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/22PB3009.pdf [https://perma.cc/LG65-VBUV] ("First, we believe that Respondent Ugarte willfully and falsely reported to Detective Johnson that Ugarte stopped or pulled over before entering the parking lot, as reflected on [surveillance footage].").

254. See id. at 5, 10.

it easier to plead and prove municipal liability in the short run. In the longer run, if the threat of such claims inspire police departments to begin investigating lawsuit allegations and reviewing litigation information, police departments could markedly improve the way they supervise and investigate their officers. This Part describes the potential impact of these novel *Monell* theories on municipal liability rulings and on police departments' practices. It then offers reasons to be cautiously optimistic that this *Monell* theory can both expand municipal liability and improve police departments' supervision and investigations of their officers.

A. *Expanding* Monell *Liability*

Crafting a *Monell* claim based on the failure to investigate allegations in lawsuits and/or review litigation information avoids several of the challenges of municipal liability litigation described in Part I.

First, courts considering *Monell* claims for failure to investigate or supervise often discount prior lawsuits if there has not been a judgment in the plaintiffs' favor.[255] Courts have reasoned that settled cases cannot put police officials on notice of the need for better supervision or training about the types of misconduct alleged in the suits because the settlements were entered without acknowledgement of wrongdoing.[256] Yet the outcome of a lawsuit should not be determinative when the *Monell* claim rests on police officials' failure to investigate allegations made in that suit. Instead, this sort of *Monell* claim alleges that policymakers' disregard of lawsuit allegations is, in itself, deliberate indifference to the need to investigate and supervise officers.

Relying on this logic, courts have held that the failure to investigate citizen complaints can be proof of an unconstitutional policy or custom regardless of the complaints' outcomes.[257] This same logic has also been

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255. See supra notes 52–56 and accompanying text.

256. See supra notes 52–56 and accompanying text.

257. See, e.g., Seward v. Antonini, No. 20-cv-9251 (KMK), 2023 WL 6387180, at *27–28 (S.D.N.Y. Sept. 29, 2023) (concluding that a need for more or better supervision can be demonstrated through repeated citizen complaints and lawsuits, regardless of their outcome); Miehle-Kellogg v. Doe, No. 19-cv-4943(GRB)(JMW), 2023 WL 2632452, at *9 (E.D.N.Y. Mar. 24, 2023) (concluding that a reasonable jury could find the municipality was deliberately indifferent because repeated complaints against an officer were "followed by no meaningful attempt . . . to investigate or to forestall further incidents" even though "many of the complaints [against the officer] were deemed not substantiated" (alteration in original) (internal quotation marks omitted) (quoting Vann v. City of New York, 72 F.3d 1040, 1049 (2d Cir. 1995)) (citing *Vann*, 72 F.3d at 1042–45)); H.H. v. City of New York, No. 11-cv-4905 (NG) (ST), 2017 WL 3396434, at *8 (E.D.N.Y. Aug. 7, 2017) ("Unsubstantiated allegations may form the basis of a deliberate indifference claim where there is evidence to suggest that the investigation into the allegations was inadequate."); Camberdella v. Palm Beach Cnty. Sheriff's Off., No. 14-81258-CIV-MIDDLEBROOKS/BRANNON, 2016 WL 8200464, at *2 (S.D. Fla. Oct. 17, 2016) ("[E]vidence of superficial investigations into claims of police misconduct may establish municipal liability, even when the claims have yet to be adjudicated."); Noble v. City of Camden, 112 F. Supp. 3d 208, 223 (D.N.J. 2015) ("To

applied to *Monell* claims resting on the failure to investigate allegations in notices of claims and lawsuits. In *Fiacco*, for example, the Second Circuit rejected the city's argument that uninvestigated notices of claims did not prove deliberate indifference because none had been adjudicated in favor of the claimants, explaining:

> Whether or not the claims had validity, the very assertion of a number of such claims put the City on notice that there was a possibility that its police officers had used excessive force. . . . The fact that none of the claims had yet been adjudicated in favor of the claimant was not material; if the City's efforts to evaluate the claims were so superficial as to suggest that its official attitude was one of indifference to the truth of the claim, such an attitude would bespeak an indifference to the rights asserted in those claims.[258]

In *Salerno v. Galli*, the district court reached the same conclusion: The chief's failure to investigate allegations in prior lawsuits brought against the defendant sergeant demonstrated deliberate indifference, regardless of the outcome of the suits.[259]

Based on current interpretations of *Monell*, if the plaintiff in *Glasper* pursued a standard failure-to-train or -supervise claim, a court would likely rule that the thirty suits filed against the defendants in *Glasper* did not put the city on notice of a pattern of unconstitutional searches and seizures because only two of the thirty resulted in plaintiffs' verdicts at trial.[260] But if Glasper's failure-to-supervise claim turned on the fact that internal affairs did not investigate the allegations in any of these thirty lawsuits—or the allegations in hundreds of lawsuits filed against other Chicago officers asserting improper searches of homes, unjustified strip searches, and excessive force against family pets—then Glasper should be able to argue that the failure to conduct those investigations amounts to an "official attitude . . . of indifference to the truth of the claim[s]," regardless of the outcome of the suits.[261]

A similar argument should hold regarding Chicago's failure to review information unearthed during discovery and trial. Courts have ruled that settlements are not proof of wrongdoing because a case may be settled for reasons having nothing to do with its merits.[262] But deposition testimony and other evidence exchanged during discovery may be relevant to an internal affairs investigation or the supervision of a department's officers

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demonstrate the City's knowledge and acceptance of police misconduct . . . Plaintiff need only present sufficient evidence that there were numerous allegations of abuse which Defendants knew about and failed to properly investigate.").

258. 783 F.2d 319, 328 (2d Cir. 1986).

259. See No. 3:cv-07-2100, 2009 WL 3245532, at *8 (M.D. Pa. Oct. 7, 2009).

260. See supra notes 54–56 (describing this type of analysis in Buckler v. Israel, 680 F. App'x 831 (11th Cir. 2017)).

261. See *Fiacco*, 783 F.2d at 328.

262. See supra note 52 and accompanying text.

regardless of the ultimate disposition of the case. The systematic failure to review evidence exchanged during litigation that would fill gaps in internal affairs investigations should amount to a failure to investigate or supervise, regardless of the suits' outcomes.

Basing a *Monell* claim on departments' failures to investigate allegations made in lawsuits or review litigation information also avoids common challenges in proving deliberate indifference. When it comes to *Monell* claims for failure to supervise or investigate, subpar or negligent internal affairs investigations do not meet the bar.[263] Instead, *Monell* requires deliberate indifference—as one court put it, "a showing that the official made a conscious choice, and was not merely negligent."[264] Statements made by representatives of many jurisdictions that do not investigate allegations in lawsuits and/or review closed litigation files make clear that these policies and practices are conscious and deliberate.[265] In

263. See supra notes 80–83 and accompanying text.

264. Miehle-Kellogg v. Doe, No. 19-cv-4943(GRB)(JMW), 2023 WL 2632452, at *8 (E.D.N.Y. Mar. 24, 2023) (quoting Jones v. Town of East Haven, 691 F.3d 72, 81–82 (2d Cir. 2012)).

265. See infra Appendix A. For some illustrative examples, see Email from Candee Allred, GRAMA Coordinator/Paralegal, Salt Lake City Police Dep't, to the author (Feb. 20, 2024) (on file with the *Columbia Law Review*) (stating that the Salt Lake City Police Department "does not monitor lawsuits involving officers"); Email from Dena Brown, Div. Manager, Citizen Complaint Auth., City of Cincinnati, to the author (Apr. 24, 2024) (on file with the *Columbia Law Review*) [hereinafter Brown, April 24th Email] ("Per [t]he Cincinnati Police Department, their Internal Investigation Section does not investigate lawsuits. The City of Cincinnati Law Department would handle that."); Email from Beth Commers, Deputy Dir., Hum. Rts. & Lab. Standards, St. Paul Dep't of Hum. Rts. & Equal Econ. Opportunity, to the author (Jan. 22, 2024) (on file with the *Columbia Law Review*) ("Per our City Attorney's office, our police department does not investigate civil lawsuit allegations against the department when we receive a complaint or based on specifics in discovery."); Email from Ann E. Koshy, Legal Advisor, Prince George's Cnty. Police Dep't, to the author (Aug. 21, 2024) (on file with the *Columbia Law Review*) ("Currently, the Internal Affairs Division does not investigate allegations in new lawsuits . . . ."); Email from Diane McDermott, Interim Exec. Dir./Lead Investigator, Albuquerque Civilian Police Oversight Agency, to the author (Jan. 23, 2024) (on file with the *Columbia Law Review*) ("[Internal Affairs] does not seek out information gleaned from litigation; they develop their own information."); Email from Luvimae Omana, Deputy Police Ombudsman, Spokane Off. of Police Ombudsman, to the author (Feb. 13, 2024) (on file with the *Columbia Law Review*) ("Any litigation is handled by the City Attorney's Office or the Prosecutor's Office. . . . [N]either our office nor Internal Affairs reviews information generated during litigation discovery. Internal Affairs may review those materials as needed on a case-by-case basis but not as a general practice."); Email from Richard Riddle, Deputy Chief, Pro. Standards, Indianapolis Metro. Police Dep't, to the author (May 2, 2024) (on file with the *Columbia Law Review*) ("[Internal Affairs] investigates potential departmental policy violations. An investigation by [Internal Affairs] is not dependent on the existence or pendency of a lawsuit[.] . . . We normally do not follow up on internal investigations [with information unearthed in litigation]."); Email from Anne B. Taylor, Chief Deputy City Solic., C.R. Unit, L. Dep't, City of Phila., to the author (Feb. 5, 2024) (on file with the *Columbia Law Review*) ("We certainly have some litigations that are associated with investigated complaints against police, but in terms of all litigations automatically triggering an [Internal Affairs] investigation that does not happen."); Email from LaTesha Watson, Dir., Off. of Pub. Safety

these jurisdictions, establishing deliberate indifference should be relatively straightforward.

Finally, a *Monell* claim based on the failure to investigate lawsuit allegations or review closed litigation files may be more straightforward for plaintiffs to plead and prove than other types of *Monell* claims. Plaintiffs may struggle to plead a standard failure-to-train or failure-to-supervise *Monell* claim that can overcome the Supreme Court's plausibility pleading standard because they do not have access to the department's internal affairs investigations or training materials during the complaint-drafting process.[266] But plaintiffs can track down potential defendants' litigation histories before filing a lawsuit, as was done for the defendants in *Glasper*.[267] Many pleadings, discovery documents, briefs, and decisions will be publicly available on PACER, Bloomberg Law, Westlaw, and LexisNexis, and plaintiffs can seek out the remainder from attorneys who represented the plaintiffs in those prior cases or from news sources.[268] Plaintiffs can depose police officials about whether their department investigates lawsuit allegations or reviews litigation files as a matter of policy or practice.[269] Alternatively or in addition, plaintiffs can submit requests for admission to confirm that the jurisdiction in question does not do so. Plaintiffs can also ask targeted questions during discovery about whether internal affairs investigations were opened regarding the allegations in prior lawsuits against the defendant officers or lawsuits with similar allegations, what those investigative files contained, and whether information generated during the litigation of those cases was incorporated into the department's investigations or supervision.

Although *Monell* claims based on the failure to investigate lawsuit allegations or review litigation information avoid some common challenges with *Monell* liability, they are incapable of addressing others. First, this novel theory should ease the burdens of pleading and proving *Monell* claims for failure to supervise or investigate, but it is unlikely to advance other types of *Monell* claims. Whether this limitation matters will depend on a plaintiff's goals in pursuing a *Monell* claim. Some plaintiffs pursue *Monell* claims to ensure that they will be compensated; a *Monell* claim may be the only avenue for recovery when the involved officers are

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Accountability, City of Sacramento, to the author (Jan. 25, 2024) (on file with the *Columbia Law Review*) ("[W]e do not look into anything involving lawsuits pertaining to public safety personnel. This would fall into the wheelhouse of the City of Sacramento City Attorney's Office.").

266. See Schwartz, Municipal Immunity, supra note 5, at 1213–17 (describing the challenges of pleading *Monell* claims); see also supra notes 94–98 and accompanying text.

267. See supra notes 208–216 and accompanying text.

268. See supra notes 208, 215.

269. Such depositions would likely be noticed under Federal Rule of Civil Procedure 30(b)(6), which would require the municipality to designate a person to "testify about information known or reasonably available to the organization." Fed. R. Civ. P. 30(b)(6).

unknown, will not be indemnified, or will receive qualified immunity.[270] If a plaintiff's primary goal is recovering against the municipality, it may not matter which *Monell* theory succeeds so long as one of them does. But plaintiffs also pursue *Monell* claims to challenge particular department policies and practices, uncover evidence about those policies and practices, and secure injunctions mandating change.[271] If a plaintiff's primary goal is an order requiring a police department to change its use-of-force policies and trainings, proof of the department's failure to investigate lawsuits or review litigation information may not achieve those goals.

Second, these *Monell* claims may be more difficult to pursue in civil rights ecosystems with fewer plaintiffs' attorneys and less favorable interpretations of § 1983 doctrine.[272] In such jurisdictions, lawsuits may never be filed, or they may be filed pro se and dismissed quickly, or they may be filed by inexperienced attorneys and prosecuted ineffectively. This is not to say that this theory should be reserved for cities like Chicago, which has a robust plaintiffs' civil rights bar, pays tens of millions of dollars to settle police misconduct lawsuits each year, and employs scores of officers who have been sued repeatedly.[273] Courts have found that small departments' failures to investigate misconduct allegations can be the basis for a *Monell* claim. In *Fiacco*, for example, the Second Circuit concluded that five uninvestigated notices of claims against a department that numbered around thirty officers was sufficient to establish deliberate indifference.[274] In *Salerno*, the district court found that a reasonable fact-finder could conclude the police chief was deliberately indifferent based on four uninvestigated lawsuits brought against a sergeant in a three-

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270. See supra note 107 and accompanying text.

271. See supra notes 108–109 and accompanying text.

272. For a discussion of civil rights ecosystems and their impact on whether lawsuits are brought and successful, see Joanna C. Schwartz, Civil Rights Ecosystems, 118 Mich. L. Rev. 1539, 1598–600 (2020) (recognizing that factors including the local jurisdiction's case law and bars to recovery can limit how many successful suits are brought).

273. See Heather Cherone & Jared Rutecki, Repeated Police Misconduct by 141 Officers Cost Chicago Taxpayers $142.8M Over 4 Years, WTTW (Jan. 22, 2024), https://news.wttw.com/2024/01/22/repeated-police-misconduct-141-officers-cost-chicago-taxpayers-1428m-over-4-years (on file with the *Columbia Law Review*) (reporting that of the $295 million paid to resolve lawsuits between 2019 and 2022, nearly $143 million (60%) was paid in cases that named officers whose alleged misconduct led to multiple payouts during that period). For a profile of one prominent member of Chicago's civil rights bar, see Mark Caro, What's the Price of Justice?, Chicago (Oct. 16, 2018), https://www.chicagomag.com/chicago-magazine/november-2018/jon-loevy/ [https://perma.cc/R97S-GPPY] (describing how Jon Loevy, of Loevy & Loevy, has won over $100 million in civil verdicts related to police misconduct and wrongful conviction).

274. See Fiacco v. City of Rensselaer, 783 F.2d 319, 331–32 (2d Cir. 1986). For the size of the Rensselaer Police Department in the 1980s, when *Fiacco* was litigated, see History, City of Rensselaer, https://rensselaerny.gov/police-department/history [https://perma.cc/K5RT-7D7G] (last visited Jan. 23, 2025) ("With summer help in the 1980's the force[] was believed to have peaked at thirty three officers.").

person department and a lack of relevant policies or citizen complaint procedures.[275] But in a smaller jurisdiction, or a jurisdiction with fewer civil rights attorneys, fewer lawsuits filed, and fewer lawsuits that proceed to discovery, there will be less litigation information for police officials to ignore.

Finally, although this *Monell* theory may be easier to plead and prove than other types of *Monell* claims, plaintiffs may still struggle to prove causation—particularly if the municipality receives and investigates many citizen complaints. It would be difficult to prove that a department's failure to investigate lawsuit allegations or review litigation information caused a constitutional violation if the department vigorously investigated other similar claims alleged through the citizen complaint process.

For each of these reasons, a *Monell* claim based on the failure to investigate lawsuit allegations and review litigation information will not circumvent every challenge posed by *Monell*. These theories could not be employed to address all types of government wrongdoing, would not prove successful in every jurisdiction, and do not ease every challenge of municipal liability litigation. Yet for plaintiffs whose primary goal is to establish municipal liability, these theories may prove to be a winning approach.

B. *Improving Internal Investigations and Supervision*

If courts recognize this novel *Monell* theory and begin holding local governments liable for failing to investigate lawsuit allegations or review information unearthed during litigation, police departments would, presumably, adopt policies to investigate lawsuit allegations and review litigation information. If departments were to follow such policies in earnest, this approach could have another profound benefit: Lawsuit allegations and litigation files would put information in the hands of police officials in ways that would effectively override the inadequacies of police departments' processes for investigating and supervising their own officers.[276]

Scores of investigations of police departments' internal affairs processes have uncovered many ways that departments discourage people

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275. No. 3:cv-07-2100, 2009 WL 3245532, at *9 (M.D. Pa. Oct. 7, 2009). For evidence of the size of the Exeter Borough Police Department around 2006, when the incident at issue in the case occurred, see Bureau of Just. Stats., DOJ, Census of State and Local Law Enforcement Agencies (CSLLEA), 2008, Nat'l Archive Crim. Just. Data (2008) (Aug. 3, 2011) (ICPSR 27681), http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/27681 (on file with the *Columbia Law Review*) (indicating that the Exeter Borough Police Department employed only three individuals at the time).

276. See Rachel Moran, Ending the Internal Affairs Farce, 64 Buff. L. Rev. 837, 853–68 (2016) (describing inadequacies at every stage of internal affairs investigations).

from filing citizens' complaints.[277] In some departments, complaint forms are not available in languages other than English or are difficult to access or submit.[278] In some departments, rules require that citizen complaints be accompanied by a sworn affidavit and prohibit the submission of anonymous complaints.[279] In some departments, officers harass people attempting to file complaints, tell people their complaints are not worth bringing, or refuse to accept complaints altogether.[280]

Requiring police departments to investigate allegations in lawsuits essentially allows people to submit citizen complaints through the courts. To be sure, many people who believe their rights have been violated do

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277. See Schwartz, What Police Learn, supra note 12, at 862–70 (describing the many reasons alleged wrongdoing may not be brought to police officials' attention through citizen complaints or police department reports).

278. See id. at 865 n.143 (describing several Technical Assistance letters from the DOJ to local government officials recommending that civilian complaint processes be made more accessible).

279. See C.R. Div., DOJ, Investigation of the Baltimore City Police Department 140 (2016), https://www.justice.gov/d9/bpd_findings_8-10-16.pdf [https://perma.cc/AZD4-MNKR] [hereinafter DOJ Investigation of Baltimore] ("[The Department] requires complaints alleging many common types of misconduct—including excessive force, abusive language, harassment, false arrest and imprisonment—to be signed, notarized, and filed in person at one of just a few locations throughout the City. . . . [C]omplaints alleging excessive force must be sworn under penalty of perjury."); DOJ Investigation of Chicago, supra note 237, at 47 ("There are provisions in the City's agreements with the unions that impede the investigative process, such as the general requirement that a complainant sign a sworn affidavit and limitations on investigating anonymous complaints . . . ."); DOJ C.R. Div. & U.S. Att'y's Off. W. Dist. of Ky. Civ. Div., Investigation of the Louisville Metro Police Department and Louisville Metro Government 75 (2023), https://www.justice.gov/opa/press-release/file/1573011/dl [https://perma.cc/P6Q5-HY7P] [hereinafter DOJ Investigation of Louisville] ("In the absence of a sworn civilian complaint, only the police chief may initiate an administrative investigation.").

280. See Schwartz, What Police Learn, supra note 12, at 866 n.144; see also, e.g., DOJ Investigation of Baltimore, supra note 279, at 140–41 ("[W]e found examples of BPD officers expressly discouraging civilians from filing complaints, sometimes mocking or humiliating them in the process. Some civilians wishing to alert BPD to officer misconduct had to endure verbal abuse and contact BPD multiple times before investigators would move forward with any investigation."); DOJ Investigation of Louisville, supra note 279, at 77 (finding that "LMPD's complaint intake process discourages reports of misconduct and departs from best practices"); DOJ C.R. Div. & U.S. Att'y's Off. Dist. of Minn. Civ. Div., Investigation of the City of Minneapolis and the Minneapolis Police Department 70 (2023), https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf [https://perma.cc/KMQ9-5J6Z] [hereinafter DOJ Investigation of Minneapolis] (describing a case in which a man did not pursue the misconduct complaint he filed because the sergeant assigned to investigate said "the process would take a lot of time, he would have to show up in court, and there would likely not be a consequence for the officer"); DOJ C.R. Div. & U.S. Att'y's Off. Dist. of Mass., Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau 23 (2020), https://www.justice.gov/opa/press-release/file/1292901/dl [https://perma.cc/4FP6-WRXF] [hereinafter DOJ Investigation of Springfield] (reporting that "members of the public complain that the Department fails to provide residents with clear guidance on how and where they can obtain a complaint form," with one community member reporting having to wait five hours to file a complaint).

not file lawsuits, and those who do face their own challenges.[281] But at least the protocols for filing lawsuits are not determined by police departments' internal affairs divisions and collective bargaining agreements.

The information revealed during litigation also does not suffer from the limitations of internal affairs investigations. The DOJ and other outsiders have found that internal affairs investigators regularly fail to interview key witnesses, probe officers' suspicious or incomplete police reports, or examine all available evidence.[282] As just one example, the DOJ found that Louisville Police Department Internal Affairs investigators often "wait weeks or even months before interviewing involved officers," "often ask leading questions, priming officers to give certain answers," "fail to run down leads, including neglecting to interview potential witnesses," "fail to look into" evidence of other policy violations uncovered during their investigations, and "draw inferences in favor of officers or against civilians that are not supported by the evidence, seeking to justify officers' actions."[283] Officers often enjoy union-negotiated procedural protections that limit investigators' ability to effectively interview officers suspected of misconduct, such as rules that delay any interview for hours or days; allow officers to review body camera footage and other evidence before being questioned; allow officers to take breaks during their interviews; limit the amount of time the interview can last; and limit the amount of time an investigation can take.[284]

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281. See Schwartz, What Police Learn, supra note 12, at 863–64.

282. See, e.g., DOJ Investigation of Baltimore, supra note 279, at 144 ("[I]nvestigators fail to adequately consider evidence and statements from witnesses or other officers that contradict explanations provided by officers accused of misconduct. . . . BPD investigators compromise officer interviews by failing to probe beyond reports the accused officer already provided, and performing unrecorded 'pre-interviews' with accused officers."); DOJ Investigation of Minneapolis, supra note 280, at 75–76 (finding "several files in which it appears there was no investigation at all" and that investigations often "often omit[] obvious and essential steps"); DOJ C.R. Div. & U.S. Att'y's Off. Dist. of N.J., Investigation of the Newark Police Department 38 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf [https://perma.cc/E2LE-NCCB] [hereinafter DOJ Investigation of Newark] ("[C]ommunity members reported filing complaints with IA and receiving little or no subsequent contact from investigators. . . . Even minor conflicts between complainant and witness accounts have often been deemed fatal to a complainant's credibility, whereas IA investigators have not similarly probed conflicts between officers' statements or Force Reports."); DOJ Investigation of Springfield, supra note 280, at 24 ("[Internal affairs] investigators are not using basic investigative techniques needed to accurately determine if an allegation of excessive force should be sustained. . . . Often the IIU investigator does not attempt to clarify inconsistencies between or among witness statements, or between oral interviews and officer reports.").

283. DOJ Investigation of Louisville, supra note 280, at 77.

284. For descriptions of these protections, written into Law Enforcement Officers' Bills of Rights and Collective Bargaining Agreements, see Aziz Z. Huq & Richard H. McAdams, Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation, 2016 U. Chi. Legal F. 213, 221–26; Kevin M. Keenan & Samuel Walker, An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers'

Depositions and other discovery conducted by plaintiffs' attorneys who are motivated to unearth relevant details and exploit inconsistencies can fill the gaps in internal affairs divisions' interviews and investigations. Merrick Bobb, former special counsel to the Los Angeles Sheriff's Department (LASD), who regularly compared litigation files with internal affairs investigations during the course of his work, offered this explanation for why it was so important for the Sheriff's Department to review litigation files for lessons:

> Often, with regard to an instance or allegation of police misconduct, it is litigation that produces the fullest record. Until a matter gets to court, all other ways of looking at and making judgments about an incident—the citizen's complaint, the claim, the force review, the administrative investigation—are substantially, if not in effect entirely, internal to the LASD . . . .Without suggesting that bias necessarily creeps in, we nonetheless recognize that objectivity is harder to achieve and repeat, case after case, in a closed environment where information is evaluated only by LASD personnel themselves.
>
> Litigation, on the other hand, introduces new players with very different motivations. There is a strong incentive, certainly on the part of the plaintiff, to dig deeply and generate more detailed and critical information. The civil discovery process, including the taking of depositions and the production of documents, provides even more opportunity for factual development. Cross-examination, heralded as the greatest engine for ascertaining the truth yet devised, is available in deposition as well as trial settings. If information exists, litigation is the likeliest vehicle to ferret it out.[285]

If departments begin reviewing litigation files as part of their investigation and supervision of officers, the weaknesses of internal affairs investigations will become far less consequential.

Jurisdictions that investigate lawsuit allegations and review information unearthed in lawsuits have found that lawsuits fill these very gaps in internal affairs complaints and investigations. Litigation-attentive departments learn valuable information about weaknesses in personnel, policies, training and supervision; take steps to address these weaknesses; and reduce lawsuits, payouts, and harms to community members as a result.[286] The threat of *Monell* liability could cause many more departments to begin learning these types of valuable lessons.

Bills of Rights, 14 B.U. Pub. Int. L.J. 185, 185 (2005); Stephen Rushin, Police Union Contracts, 66 Duke L.J. 1191, 1224–28 (2017).

285. L.A. Cnty. Sheriff's Dep't, Fifteenth Semiannual Report 85–86 (2002), https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/142e5b3f-c23f-4fb7-8fa9-f8d348b01948/15th%20Semiannual%20Report.pdf [https://perma.cc/WRW3-C2ZU] (footnote omitted).

286. See Schwartz, What Police Learn, supra note 12, at 859–61.

Requiring departments to review lawsuit data may also sidestep union-imposed limits on supervision and discipline. For example, some union agreements impose strict time limits within which an internal affairs investigation must be completed.[287] No such time limits apply to litigation as it is making its way through the courts. If the union-imposed window of time to investigate a claim for disciplinary purposes has elapsed, an officer presumably cannot be disciplined for conduct that emerged during the course of that litigation. But there is no limit on the amount of time that a department can take to review information about officers' conduct relevant to the supervision of that officer or the department more generally.

If the threat of *Monell* liability leads police officials to begin reviewing information unearthed during litigation, those practices could also impact departments' disciplinary decisions. In many cities, discipline is rare; recent studies have found that police departments in Baltimore, Chicago, Houston, Newark, and San Diego sustain fewer than 3% of citizen complaints.[288] Low rates of discipline may be partially attributable to the lack of information that comes out during the course of internal affairs investigations. If evidence is unearthed during litigation that supports complainants' stories or undermines officers' stories, the rate of sustained complaints could very well increase.

Monell claims based on the novel theories proposed in this Essay would not succeed against the police departments that pay attention to information unearthed in lawsuits and act on that information. Yet, in these departments, the threat of *Monell* liability would have encouraged caretaking measures that achieved the doctrine's intended deterrent effect.

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287. See Rushin, supra note 284, at 1258–65 (setting out jurisdictions whose collective bargaining agreements impose time limitations on investigations).

288. See DOJ Investigation of Baltimore, supra note 279, at 146 (finding that the Baltimore Police Department sustained just 2.2% of excessive force allegations and 2.6% of discourtesy complaints); DOJ Investigation of Newark, supra note 282, at 35 (finding that, between 2007 and 2012, Newark Police Department's Internal Affairs Division only sustained one excessive force complaint against its more than one thousand officers); Jo Deprang, The Horror Every Day: Police Brutality in Houston Goes Unpunished, Tex. Observer (Sept. 4, 2013), https://www.texasobserver.org/horror-every-day-police-brutality-houston-goes-unpunished/ [https://perma.cc/NDC6-NJN5] (reporting that, between 2008 and 2013, in Houston, "Internal Affairs sustained just 15—or 2 percent—of the 706 police abuse complaints"); Claire Trageser, Rarely Are San Diego County Police Officers Disciplined After They Injure or Kill, Records Show, KPBS (July 19, 2022), https://www.kpbs.org/news/public-safety/2022/07/19/san-diego-county-police-officers-rarely-disciplined-injure-kill-records-show [https://perma.cc/U3GH-UWCX] (finding that fewer than 3% of officers are disciplined for use-of-force incidents); Officer/Civilian, Civic Police Data Project, http://cpdb.co/findings (on file with the *Columbia Law Review*) (last visited Jan. 25, 2025) (finding that, between 1988 and 2023, just around 2% of 126,781 citizen complaints filed against Chicago Police Department officers were sustained).

C. *The Case for Cautious Optimism*

Having described the full breadth of *Monell*'s untapped potential, this section now considers the impact this novel *Monell* theory will likely have on municipal liability and police departments' practices.

At the outset, it is important to recognize the not-insignificant possibility that, despite its potential, this novel *Monell* theory would have little to no effect on municipal liability or departments' practices. Of course, courts could reject this *Monell* theory altogether. And even if courts recognized the viability of this legal theory, police departments could institute policies to investigate lawsuit allegations and review information that comes out during discovery but fail to follow them with any regularity. These policies could nevertheless be sufficient in courts' views to defeat *Monell* failure-to-investigate and failure-to-supervise claims; courts would find departments' attention to lawsuits suboptimal or even negligent, but not deliberately indifferent; and many police departments would continue to learn little from lawsuits brought against them. In this pessimistic future, plaintiffs would infrequently succeed on these types of *Monell* claims, and police departments would not change their investigation and supervision practices in any meaningful way.

Given many courts' apparent disinclination to find that even highly dysfunctional internal affairs investigation systems amount to deliberate indifference, it is easy to imagine this pessimistic view coming to pass.[289] Yet this Essay finds cause for cautious optimism in the fact that this novel *Monell* theory upends typical information asymmetries in civil rights litigation.[290] Although proof of standard municipal liability theories often resides only in police departments' files, plaintiffs' attorneys can find evidence to support this *Monell* claim by searching on Bloomberg Law or other public sites and by gathering information from other plaintiffs' attorneys. If and when this *Monell* theory is recognized by courts, it may encourage plaintiffs' attorneys, journalists, and other advocacy organizations to collect more litigation data and make it more easily accessible to plaintiffs' attorneys pursuing these types of claims—by, for example, including deposition transcripts and other materials as exhibits in motions submitted with the court (and, thus, available via Bloomberg Law or PACER) or by publishing litigation materials on websites (like that maintained by the *Chicago Reporter*).[291]

There is also cause for optimism in the newfound role litigation information would play in the investigation and supervision of police. Departments will be obligated to investigate detailed allegations of wrongdoing set out in plaintiffs' lawsuits. Police officials will also be forced to take account of information unearthed during discovery by plaintiffs'

289. See supra notes 80–83 and accompanying text.

290. For discussion of these information asymmetries, see supra note 96 and accompanying text.

291. See supra notes 208–209 and accompanying text.

attorneys with "a strong incentive . . . to dig deeply and generate more detailed and critical information" than what emerges during internal affairs investigations.[292] The notion that information unearthed during litigation may serve the plaintiff in the individual case while also educating police officials about policy or training failures should only strengthen plaintiffs' attorneys' incentives to dig deeply. Information revealed to police department officials through litigation should either lead to more thorough investigations and robust supervision of officers (thus achieving the intended deterrent effect of municipal liability claims) or more court findings that departments are deliberately indifferent when they fail to take more decisive action (thus securing municipal liability for the plaintiff).

Ultimately, the influence of this *Monell* theory will depend on the motivations and decisions of courts, police department officials, and plaintiffs' attorneys in any given jurisdiction: whether courts interpret this novel *Monell* claim to demand meaningful review of litigation by police departments; whether police department officials are willing to learn from lawsuits brought against them; and the extent to which plaintiffs and their attorneys take advantage of police departments' newfound attention to lawsuits. But in places and cases where plaintiffs and their attorneys can capitalize on police departments' newfound obligations to review lawsuits, they can use those suits to notify police officials of misconduct and failures in supervision that they cannot afford to ignore.

CONCLUSION

The *Washington Post* found that, between 2010 and 2020, more than $3.2 billion was spent to settle police misconduct claims against twenty-five of the nation's largest law enforcement agencies.[293] Almost half of that amount—more than $1.5 billion—was spent to settle lawsuits against officers named in multiple lawsuits.[294] More than 1,200 officers in these twenty-five jurisdictions had been named in five or more lawsuits. More than 200 officers had been named in ten or more. But, the *Post* found, "[d]espite the repetition and cost, few cities or counties track claims by the names of the officers involved."[295]

This Essay offers a litigation strategy that aims to change this state of affairs. In the short term, pursuing *Monell* claims for failing to investigate lawsuits or review litigation files could make *Monell* claims more feasible to bring in the many jurisdictions that systematically ignore information in

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292. Bobb, supra note 285, at 85.

293. See Keith L. Alexander, Steven Rich & Hannah Thacker, The Hidden Billion-Dollar Cost of Repeated Police Misconduct, Wash. Post (Mar. 9, 2022), https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements/ (on file with the *Columbia Law Review*).

294. Id.

295. Id.

lawsuits brought against them. This litigation strategy may also prompt longer-lasting and more fundamental improvements in police departments' supervision and investigation of their officers by bolstering anemic internal affairs investigations, circumventing union-enforced investigations limits, and putting valuable information into the hands of police department officials.

Perhaps most importantly, this *Monell* theory could achieve these benefits without having to convince courts, city councils, police departments, or union representatives to change their laws, policies, or views. Although the murder of George Floyd in May 2020 inspired police chiefs, elected officials, and judges to proclaim the need for greater police accountability, most efforts to change the law failed in the face of fierce opposition by union officials and law enforcement representatives.[296] The federal government and more than half the states introduced bills to end qualified immunity, but almost all failed.[297] Even efforts to replace *Monell* with vicarious liability—a possibility viewed by Republican senators as preferable to eliminating qualified immunity—have thus far resulted in only one state changing its law.[298] This *Monell* theory may not usher in the type of transformative change that advocates have called for, but it is an incremental, meaningful step that can be taken today. Given the current challenges of succeeding on *Monell* claims, the sorry state of many police departments' internal affairs processes, the desperate need for more government accountability, and the hostility of the Supreme Court, Congress, and state and local legislatures to reform, such incremental steps are critically important to pursue if we are ever to restore the promise of § 1983.

296. See Joanna C. Schwartz, An Even Better Way, 112 Calif. L. Rev. 1083, 1098–99 (2024) (describing the difficulty of changing the law of police accountability in the current political climate).

297. Kimberly Kindy, Dozens of States Have Tried to End Qualified Immunity. Police Officers and Unions Helped Beat Nearly Every Bill, Wash. Post (Oct. 7, 2021), https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a_story.html (on file with the *Columbia Law Review*).

298. See supra notes 111–112 and accompanying text.

APPENDIX A: LAW ENFORCEMENT POLICIES AND PRACTICES REGARDING LITIGATION DATA

The following chart sets out police departments' and auditors' policies and practices with regard to investigating claims in lawsuits and reviewing information generated during litigation. The chart is organized alphabetically by jurisdiction. A star (*) indicates the jurisdiction is one of the twenty-six studied in 2010. All emails to and interviews conducted by the author cited in this Appendix are on file with the *Columbia Law Review*.

Albany, N.Y. "To the best of my knowledge, neither my agency, the Albany Community Police Review Board (CPRB), nor my police department's internal affairs division, the Albany Police Department's Office of Professional Standards, conduct investigations into allegations raised in lawsuits. Nevertheless, the CPRB may utilize information obtained during litigation discovery to supplement investigations of officers or to identify policy and training concerns in the future." Email from Michele Andre, Program Manager, Albany Cmty. Police Rev. Bd., to the author (Jan. 22, 2024).
*Albuquerque, N.M. "When it comes to lawsuits, the director of the [Civilian Police Oversight Agency] sits in on police-related claims reviews to be aware of issues that may relate to training or policy changes. I utilize the information I learn in those meetings to see if any changes need to be made. However, in order for our agency to open an investigation, it does need to come as a result of a citizen complaint; we are unable to self-initiate investigations. Internal Affairs has at times received a referral from City Legal concerning lawsuits that require investigation, but it is relatively uncommon. . . . IA does not seek out information gleaned from litigation; they develop their own information." McDermott, supra note 265.
Alexandria, Va. The "Alexandria, Virginia PD does not" investigate allegations in lawsuits as it would citizen complaints or review information generated during litigation discovery—depositions, expert reports, etc.—to supplement investigations of the officers, or to identify policy and training concerns. Email from Kim Neal, Indep. Policing Auditor, Off. of the Indep. Policing Auditor, City of Alexandria, to the author (Jan. 24, 2024).
Anaheim, Cal. "[Anaheim Police Department (APD)] reports that the [Internal Affairs (IA)] lieutenant is notified whenever a claim or lawsuit comes in. If it happens to be an issue that has not already been on the review protocol radar screen (as, for example, a traffic accident would be), IA will gather information and determine whether a formal investigation is warranted. In short, they do appear to treat these as they would a citizen complaint. APD also reports that IA has a regular feedback loop with a counterpart in both the District Attorney's and City

Attorney's Offices. The folks meet monthly or so, and they will call each other (in both directions) if something (like a shaky testimony problem in court) comes on to the radar screen." Email from Michael Gennaco, Indep. Police Auditor, OIR Grp., to the author (May 2, 2024).

Ann Arbor, Mich. "The Ann Arbor Independent Community Police Oversight Commission generally plays no role in the investigation of incidents involved in litigation. While it is certainly possible that one of our complaints could lead to litigation, we would have no part in the discovery or other litigation processes." Email from Stefani A. Carter, Chair, Ann Arbor Indep. Cmty. Police Oversight Comm'n, to the author (Apr. 23, 2024).

Austin, Tex. "The Office of Police Oversight participates in investigations of administrative policy violations that it receives from members of the public. It does not investigate allegations in lawsuits. . . . The Office of Police Oversight does not review information generated during the discovery process. Our office considers only information provided by Complainants and witnesses and information generated during the administrative investigation process." Email from Gail McCant, Dir., Off. of Police Oversight, City of Austin, to the author (Jan. 26, 2024). The police department does not investigate lawsuit allegations or review information from lawsuits as part of its internal affairs investigations: "[A]ccording to City Legal it would be very uncommon for a new investigation to stem from a lawsuit, simply due to the timing. Per Texas Civil Service Law, we have a 180 day time limit to investigate and administer any potential discipline. Most lawsuits play out beyond this deadline." Email from Jeremy Compton, Commander, Pro. Standards, Austin Police Dep't, to the author (May 21, 2024).

Balt., Md. "Lawsuits regarding police misconduct involving a member of the public are investigated the same as a citizen complaint. If a lawsuit is sent directly to the police department, the lawsuit would be attached to a citizen complaint form and go through the disciplinary process that involves the [Administrative Charging Committee]." Email from Samuela Ansah, Police Accountability Bd. Liaison, Off. of Equity & C.R., City of Balt., to the author (May 7, 2024).

Berkeley, Cal. "We are complaint-driven . . . so when it relates to personnel complaints that may yield to discipline, we cannot simply use a lawsuit (without a complaint) to further investigate it. When there are active hearings (whether civil or criminal) we may have to toll the investigation. We would, however, utilize whatever relevant information there may be from the allegations in lawsuits or any other records there. For policy/procedures/practices reviews, we have more wiggle room and can self-initiate." Email from Hansel Alejandro Aguilar, Dir. of Police Accountability, City of Berkeley, to the author (Jan. 30, 2024).

Bos., Mass. Boston Police Department's Internal Affairs Division "generally" investigates allegations in lawsuits; a lawsuit "is usually viewed as a type of complaint, just in a different way." Email from David Fredette, Legal Advisor, Bos. Police Dep't, to the author (May 10, 2024). "[T]he Office of Police Accountability and Transparency (OPAT) is a civilian police oversight agency that investigates allegations of misconduct regarding [Boston Police Department (BPD)] personnel that have been filed with our office by Complainants . . . . [O]ur office does not have any in-house lawyers that review lawsuit allegations or review information unearthed during litigation, but we can review information generated during litigation discovery such as depositions or expert reports if it has been provided to us by the Complainant once the legal matters have concluded. Anything else related to ongoing lawsuits or litigation would be handled by the City of Boston Law Department. We do, however, make note of any policy/training recommendations made by Complainants and work with BPD leadership to try to implement those recommendations." Email from Andrew Cherry, Interim Chief of Staff, Off. of Police Accountability & Transparency, City of Bos., to the author (Apr. 30, 2024).
Boulder, Colo. "Civil litigation against the actions of Boulder Police Department members does not automatically trigger an investigation of police misconduct." Email from Sherry Daun, Indep. Police Monitor, City of Boulder, to the author (Apr. 24, 2024) (on file with the *Columbia Law Review*). Daun also responded "no" to "whether your agency, or your police department's internal affairs division, reviews information generated during litigation discovery—depositions, expert reports, etc.—to supplement investigations of the officers, or to identify policy/training concerns." Id.
Charlottesville, Va. "The [Police Civilian Oversight Board] is prohibited by city ordinance from investigating any matters involving civil lawsuits or that have the potential for becoming part of a civil lawsuit. I do not know if the police department does." Email from Inez M. Gonzalez, Exec. Dir., Police Civilian Oversight Bd., City of Charlottesville, to the author (Apr. 23, 2024). Emails to the Commander of Professional Standards went unanswered.
*Chi., Ill. In 2017, the DOJ found that the Chicago Police Department (CPD) did not investigate lawsuit allegations or review information unearthed during discovery. DOJ Investigation of Chicago, supra note 237, at 65–66. That same year, the city council created an Office of Inspector General and granted it the authority to review lawsuit settlements and judgments as part of its oversight. See Chi., Ill., Mun. Code § 2-56-230(e) (2024) (authorizing the Office of the Inspector General to "review, audit and analyze civil judgments and settlements of claims against members of the Police Department, and to issue recommendations based on its findings to inform and improve or

correct deficiencies in the conduct, or operation of the Police Department"). Two years later, in 2019, in a settlement with the state attorney general, Chicago agreed to "produce and publish an annual report describing certain legal activity involving CPD" and to "analyze the data and trends collected, and include a risk analysis and resulting recommendations." Consent Decree at paras 548–549, Illinois v. City of Chicago, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019), 2019 WL 398703. But when Chicago's inspector general attempted to analyze litigation data in 2022, she found that "the insufficiency and poor quality of collected litigation data" made it impossible "to readily identify risk areas and conduct in-depth analyses as recommended by subject matter experts." Witzburg & Carlson, supra note 138, at 14. In 2022, the Chicago Police Department, Law Department, and Mayor all issued statements agreeing with the Chicago OIG's analysis. Id. at 19–21. But, as of August 2024, the Law Department had yet to update its litigation tracking system and the Police Department had yet to implement an early warning system that tracks complaints and lawsuits filed against officers. See Cherone & Rutecki, supra note 273.

An independent agency charged with investigating misconduct allegations against CPD members, the Civilian Office of Police Accountability (COPA), also "ha[s] the authority to initiate misconduct investigations based on lawsuits that are filed against the police department and/or Chicago" and "the ability to review and incorporate discovery materials in our investigations, which can be used to prove or disprove allegations of misconduct and/or make policy or training recommendations to the police department." Email from Andrea Kersten, Chief Adm'r, Civilian Off. of Police Accountability (COPA), City of Chi., to the author (Jan. 22, 2024). The Office of Inspector General is examining the extent to which COPA is fulfilling these and other obligations. See Deborah Witzburg & Tobara Richardson, City of Chi., Public Safety 2024 Outlook on Police Oversight and Accountability 9–10 (2024), https://igchicago.org/wp-content/uploads/2024/01/2024-Public-Safety-Outlook-on-Police-Oversight-and-Accountability.pdf [https://perma.cc/LEG8-XS78]. Chicago's Community Commission for Public Safety and Accountability and District Councils—additional police oversight bodies established by the Chicago City Council in 2021—"have neither the authority nor the resources to investigate allegations in individual lawsuits." Email from Adam Gross, Exec. Dir., Cmty. Comm'n for Pub. Safety & Accountability, City of Chi., to the author (Jan. 22, 2024).

*Cincinnati, Ohio. The Cincinnati Citizen Complaint Authority "does not investigate allegations in lawsuits, nor do[es] [it] review information generated during litigation discovery—depositions, expert reports, etc.—to supplement investigations of the officers, or to identify policy/training concerns." Email from Dena Brown, Div. Manager, Citizen Complaint Auth., City of Cincinnati, to the author (Apr. 23,

2024). "Per The Cincinnati Police Department, their Internal Investigation Section does not investigate lawsuits. The City of Cincinnati Law Department would handle that." Brown, April 24th Email, supra note 265.
Columbus, Ind. "When there are lawsuits against the police department, they are handled exclusively by our insurance company in conjunction with legal. . . . I am unaware of any process, formal or otherwise for discovery, etc. review by the police department staff and I can say with certainty that in the last ten (10) years that I have been with the City, I have never been privy to such information." Email from Aida Ramírez, Dir., Hum. Rts., City of Columbus, to the author (Jan. 22, 2024).
Davis, Cal. "With regard to Davis, it is a small enough agency that I believe that any claim/lawsuit would trigger at least a review by [Davis Police Department] and potentially an investigation." Email from Michael Gennaco, Indep. Police Auditor, OIR Grp., to the author (Apr. 22, 2024).
Dayton, Ohio. When a lawsuit is filed against an officer or the department, it goes to the general counsel for the police department, who then forwards the lawsuit to the city attorney's office along with any investigative materials the department has about the allegations. The general counsel and lieutenant in charge of professional standards have not learned of any allegations of wrongdoing through litigation—they are already made aware of such allegations through officers' self-reporting and through citizen complaints. If information was unearthed in litigation not previously known to the department it would be incorporated into investigations, but the lieutenant responsible for professional standards was unaware of any instances in which new information came out during litigation. Time limits on internal affairs investigations likely mean that information that came out in litigation could not be used for disciplinary purposes. Zoom Interview with Andrew Sexton, Gen. Couns., Dayton Police Dep't, and Lieutenant Eric Sheldon, Pro. Standards Div., Dayton Police Dep't (May 2, 2024).
*Denver, Colo. When Denver's City Attorney receives a notice of claim they send that to the Office of the Independent Monitor (OIM) at the Police Department; if the allegations have not previously been investigated, Internal Affairs will decide whether to open an investigation with input from the Special Counsel and from OIM. When no notice of claim is filed, the lawsuit will be reviewed by this same group to decide whether an internal affairs investigation should be opened. All use-of-force allegations are internally reviewed, so public safety officials usually do not learn about uses of force through notices of claim or lawsuits. But other types of matters—including illegal searches or

discourtesy—often appear only in notices of claim or lawsuits. Approximately 50% of notices of claim concern uses of force, but the other 50% concern these other types of claims. Sometimes there are use-of-force allegations in notices of claim or lawsuits that have previously been investigated, but additional related allegations that are in the notice of claim or lawsuit that were not previously investigated. Closed litigation files are also reviewed; if there is information that arose during litigation that had not emerged during an internal affairs investigation, the investigation can be reopened. Denver public safety leaders also hold a quarterly trends meeting, in which they review notices of claim, lawsuits, complaints, and other information to identify any patterns that suggest policies or trainings that need to be adjusted. See Shea, supra note 122.
*Detroit, Mich. In response to a public records request, the Detroit Police Department (DPD) Office of Internal Affairs (IA) reported "IA investigates allegations of misconduct that derive from lawsuits . . . . When DPD IA receives information from the City Law Department regarding possible misconduct, it will review all relevant information to assess if there is a need for policy or training adjustments." Letter from Monique Smith, Senior Assistant Corp. Couns., Freedom of Info. Act Section, City of Detroit, to the author (Mar. 6, 2024). This appears to be a relatively recent change in policy at least partially inspired by *Washington Post* coverage of lawsuits against the department and its officers. "In Detroit, after receiving questions from The Post about the repeated payments involving [one officer] and [one incident], police officials said they have begun to use the city's claims data to monitor which officers are repeatedly named in lawsuits, to determine if they need additional training or should be reassigned or removed from the force. Christopher Graveline, director of the professional standards unit for Detroit police, said his department as of September is working closely with the city's legal department to identify officers with more than two lawsuits or claims and make sure they are 'flagged' in the department's risk management system. Since The Post started asking the city about its repeat officers in September, 13 officers have been 'flagged' for being sued multiple times and have been subject to 'risk assessments,' according to a department spokesman. 'There wasn't a good communication between the city law and police department. We weren't being aware of settlements and potential judicial findings touching upon our officers,' Graveline said. Graveline, who oversees internal affairs, said the department was often unaware of findings in civil cases, including determinations that officers had withheld evidence." Alexander, Rich & Thacker, supra note 293.
Eugene, Or. "[P]er city code, our office is supposed to receive a copy of any risk claim received by the City, so that we can appropriately follow up on any allegations therein. In practice, all risk claims that

involve police employees are entered into a database shared between our office and [the Eugene Police Department], so that is how we tend to view those allegations; if we see something that we believe requires a full IA investigation, then we can open it based on the information received in the lawsuit. Information generated during discovery is a little more difficult—typically, if the department is subject to a civil lawsuit, that is handled by the City Attorney's office or outside counsel, and we are not brought in. However, we have a very good working relationship with the City Attorney, and our office is sufficiently well-established, that I believe if any new information came up during discovery that that office believed constituted a new complaint or new policy violation (not one that our office had previously investigated), they would let us know." Email from Leia K. Pitcher, Indep. Police Auditor, City of Eugene, to the author (May 3, 2024).

Fairfax County, Va. "It is the policy of the Fairfax County Police Department (FCPD) that all [investigations of] allegations of employee misconduct be performed in a complete, thorough, and objective manner . . . . Alleged or suspected acts of employee misconduct, notices of civil claims filed against the Department or its member(s) as a result of actions performed in their official capacity, violations of Department rules or regulations, and expressions of dissatisfaction with policy, procedure, or practice shall be impartially and thoroughly investigated and documented by all investigating and reviewing authorities." Fairfax Cnty. Police Dep't, General Order: Internal Investigations 1 (2022).

*Farmington, N.M. Farmington Police Department policy provides: "Internal affairs investigations will be conducted on all tort claim notices filed with the City of Farmington related to police action. To preserve the integrity of the investigatory process in tort claim cases, the internal affairs investigation will be conducted separate from any investigation conducted by the City's legal department for claims defenses. In all tort claim cases, a reasonable effort will be made to interview the claimant or the claimant's attorney to obtain sufficient information to make an informed determination of what occurred. When necessary, tort claim investigations may be suspended until a thorough exposition of the facts is obtainable through the discovery or trial process. Tort claim investigations may also be closed, with the ongoing claim or lawsuit continuing to be monitored to determine whether pertinent new information becomes available that merits re-opening the investigation." Farmington Police Dep't, Policy Number 152–01, at 4–5 (2022).

Fort Worth, Tex. "The short answer is no" to questions about whether the oversight agency or police department investigates allegations in lawsuits to supplement investigations or supervision more generally, as they would do for citizen complaints or information unearthed in litigation. "[Fort Worth Police Department] operates with a 180 day time frame to complete an investigation from the date of INCIDENT. This timeline would significantly reduce the likelihood of involvement in civil litigation." Email from Bonycle Sokunbi, Dir., Off. of the Police Oversight Monitor, City of Fort Worth, to the author (Apr. 25, 2024).

Fresno, Cal. "Our office is limited to the review of community complaints, or department identified issues, which result in an internal affairs investigation. I believe anything related to lawsuits or litigation would be addressed by the City Attorney's Office (CAO)." Email from John A. Gliatta, Indep. Reviewer, Off. of Indep. Rev., City of Fresno, to the author (Apr. 22, 2024). "I am not part of the police department, so I am unable to comment on how they address lawsuits. I can say when I review a completed internal affairs investigation, I am able to see all evidence obtained and reviewed by the investigators when arriving at a decision. I should point out the investigation is strictly an administrative investigation in respects to potential department policy violations. The internal affairs file does not contain any material related to a pending lawsuit or civil action." Email from Gliatta, to the author (Apr. 23, 2024).

Indianapolis, Ind. "[Internal Affairs (IA)] investigates potential departmental policy violations. An investigation by IA is not dependent on the existence or pendency of a lawsuit . . . . We normally do not follow up on internal investigations [with information unearthed in litigation]. We have not always been privy to the information during the deposition phase unless there are admissions by the officer under oath." Email from Richard Riddle, Deputy Chief, Pro. Standards, Indianapolis Metro. Police Dep't, to the author (May 2, 2024).

King Cnty., Wash. "[O]ur ordinance [creating the King County Office of Law Enforcement Oversight (OLEO)] states that, as far as OLEO's powers go, only cases that involve use of force can be investigated without a complaint; otherwise, a complaint is required, whether from the community or within the Sheriff's Office. For now, that means we will require a complaint and that lawsuit allegations will not suffice." Email from Tamer Y. Abouzeid, Dir., King Cnty. Off. of L. Enf't Oversight, to the author (May 13, 2024). In response to a question about whether the sheriff's department investigates lawsuit allegations or reviews litigation information, Abouzeid replied: "In practice, I don't really recall seeing them do either; however, I would recommend asking them." Id. Emails to the sheriff's office went unanswered.

Knoxville, Tenn. "With regard to [the Knoxville Police Department], what was once called Internal Affairs has been subsumed under the Office of Professional Standards (OPS). . . . With regard to civil lawsuits, OPS reviews factual allegations made therein to determine if any new, or additional, internal investigation should be done in a particular case. OPS coordinates with the City of Knoxville Law Department in order to do this. . . . OPS reviews information generated during litigation discovery, as provided to it by counsel or the parties." Email from Bruce Guyton, Deputy Chief, Pro. Standards, Knoxville Police Dep't, to the author (May 10, 2024).
La Mesa, Cal. "Allegations that have risen to the level of a lawsuit are not investigated by the Police Department. These matters would be handled by the City Attorney's office and/or an outsourced law firm, if any. . . . [In] a situation where there is an investigation of an officer in progress, with concurrent litigation against the City regarding the same allegation(s)[,] . . . Police Department command staff would be working closely with the City Attorney's Office and/or their outsourced law firm and there would be a two-way sharing of information. Anything obtained or learned as a result pertinent to the investigation of the officer would be provided to Internal Affairs." Email from Ray Sweeney, Chief of Police, La Mesa Police Dep't, to the author (May 6, 2024).
Long Beach, Cal. The City of Long Beach's Office of Police Oversight "does not review or consider lawsuit information as part of [its] review process." Email from Francine Tournour Kerridge, Dir., Off. of Police Oversight, City of Long Beach, to the author (May 1, 2024). According to the commander of the Professional Standards Division of the Long Beach Police Department (LBPD), the LBPD is "made aware of lawsuits via the city attorney's office and if it contains misconduct allegations they will investigate it. They would use depositions and other investigatory documents if it would be helpful to the admin investigation." Email from Tournour Kerridge, to the author (May 6, 2024).
*L.A., Cal. "The [Los Angeles Police Department] does investigate allegations raised in lawsuits as they would citizen complaints . . . . If it's misconduct that's prohibited according to Department policy, then they will investigate that, even if it means re-opening old complaint investigations if new allegations come to light, or if new evidence is discovered that was not available to Internal Affairs (IA) investigators at the time." Email from Florence E. Yu, Assistant Inspector Gen., Complaints Section, Off of the Inspector Gen., L.A. Police Comm'n, to the author (Jan. 22, 2024).

*L.A. Cnty., Cal. "Civil law suits are an invaluable tool for an Inspector General to discharge their duties . . . . Civil law suits both before and after [an] incident were important in the work I have done on [deputy gangs in the Sheriff's Department] and the work done by the Civilian Oversight Commission. If you asked [the Los Angeles Sheriff's Department (LASD)] the same question they would also say [that they evaluate lawsuits for lessons]. However, I believe their answer should be no. LASD charges its 'Constitutional Policing Office' with producing corrective action plans in response to settled lawsuits and monitoring of ongoing lawsuits. This is done through a group under them called 'Risk Management.' Based on my monitoring, I have come to the conclusion that both are Orwellian in that their names do not describe their conduct and their primary function is denying misconduct. Apart from shootings, which are routinely investigated independently from civil matters in a manner that seems to substantially ignore the results and evidence from civil lawsuits, LASD generally does not respond in an evidence-based way to allegations or evidence produced in civil law suits. Their corrective action plans seem generated mainly to reduce future liability by convincing a court they are taking action when no transformative action is taken. When evidence is produced in civil litigation it is almost never meaningfully examined." Huntsman, supra note 141.
Louisville, Ky. "The Special Investigations Division reviews all lawsuits involving [the Louisville Metropolitan Police Department (LMPD)] to determine whether an investigation has been opened regarding the incident. If no investigation has yet been opened, the Major will review to determine whether a request should be made to the Chief of Police requesting that she initiate an administrative investigation. . . . [Whether the department reviews litigation information] would depend on whether the information was provided to LMPD by the attorney handling the litigation. The determination as to who would review any information provided by the attorney would depend on the type [of] information being provided." Email from Lisa Schweickart Jarrett, Assistant Cnty. Att'y, Liason—LMPD Legal Advisor's Off., to the author (May 10, 2024). "We have not used civil litigation as a source." Email from Edward W. Harness, Inspector Gen., Louisville Off. of Inspector Gen., to the author (May 6, 2024).
Mia., Fla. Adam Saper, Assistant Dir., City of Miami Civilian Investigative Panel, reports that their office has a 180–day statute of limitations to complete investigations, so it would be rare that they would receive any information about litigation or the discovery process. Telephone Interview with Adam Saper, Assistant Dir., City of Mia. Civilian Investigative Panel (May 6, 2024). A request for information from Miami police Internal Affairs went unanswered.

Mia.-Dade Cnty., Fla. The Miami-Dade Independent County Independent Civilian Panel has "only been operating about a year and, although civil liability and risk management is an area we plan to review, we do not, as yet, have any data." Email from Ursula Price, Exec. Dir., Mia.-Dade Cnty. Indep. Civilian Panel, to the author (Jan. 22, 2024).

*Nashville, Tenn. "[T]he police department reviews the allegations in lawsuits against the department or individual officers. The police department is involved in the discovery process with our attorneys, and the police department reviews the information generated during the litigation. The nature of the allegation/information would determine the nature and extent of the related 'investigation.'" Email from Cynthia E. Gross, Chief of Staff, Dep't of L., Metro. Gov. of Nashville & Davidson Cnty., to the author (June 12, 2024). The Nashville Community Review Board "currently does not review cases that are involved in litigation." Fitcheard, supra note 141.

*New Orleans, La. The New Orleans city ordinance creating the Office of Independent Police Monitor (OIPM) in 2009 provides that the monitor "shall review patterns relating to civil claims and lawsuits alleging New Orleans Police Department misconduct, payout amounts over time, units disproportionately represented as subjects of claims and lawsuits, related training, and other issues" and "shall review the investigation of the underlying incidents described in such claims and lawsuits, whether those investigations predated the filing of a claim or lawsuit or the investigations were initiated following such filings." New Orleans, La., Code § 2-1121(9) (2024). Yet, in 2019, an advisory committee overseeing OIPM noted that OIPM was not fulfilling these responsibilities and recommended that it "consider keeping in one place a database on individual officers, coordinating information from use of force, complaints, discipline, and civil suits so that it can make recommendations as to particular officers." Quality Assurance Review Advisory Comm. for the Off. of Indep. Police Monitor, Annual Review 14 (2018), https://nola.gov/nola/media/Ethics-Review-Board/Files/2019-08-26-ERB-Minutes.pdf [https://perma.cc/QG5B-TER4]. OIPM did issue a 2021 report reviewing lawsuits that had been filed against the department and its officers in 2019 and 2020. New Orleans Report on Claims for Damages, supra note 137. In its 2023 Annual report, OIPM expressed an intention to "releas[e] more informational reports on the status of force, misconduct and discipline, and lawsuits and claims." Off. of the Indep. Police Monitor, Annual Report 93 (2023), https://nolaipm.gov/wp-content/uploads/2024/06/OIPM-2023-Annual-Report.pdf [https://perma.cc/5WGJ-8Y3U]. But OIPM has not issued any reports that take account of lawsuits since 2021, and there is no indication that it has created the database recommended by the advisory committee in 2018. When I filed a public records request with the New Orleans City Attorney, seeking information about whether the

police department investigated lawsuit allegations or reviewed information unearthed in discovery and trial, the request was denied on the grounds that it would "disrupt required government operations." See Email from Pub. Recs., City of New Orleans, to the author (May 27, 2024). Emails to the OIPM went unanswered.

*N.Y.C., N.Y. For decades, the New York City Police Department (NYPD) rejected suggestions from the city's comptroller to review information from lawsuits brought against them. See Schwartz, Myths and Mechanics, supra note 15, at 1045–48. Since 2010, the calls for the NYPD to review litigation information have gotten more insistent. In 2015, the New York City Police Department Office of Inspector General (OIG) issued a report calling on the NYPD to gather and analyze information from lawsuits brought against it. See Peters & Eure, Using Data, supra note 136, at 1. In 2017, the New York City Council amended the New York City Charter to require that the Inspector General, "working with the law department, the comptroller, the police department, the civilian complaint review board" and others to identify "patterns or trends identified by analyzing actions, claims, complaints, and investigations," to compare closed Internal Affairs investigations "with information concerning any incidents alleged to have given rise to such civil actions contained in other closed actions, claims, complaints, and investigations," and to review "steps taken by the police department in response to actions, claims, complaints, and investigations." N.Y.C., N.Y., Charter ch. 34, § 808 (2025). In furtherance of these obligations, the OIG issued a report in 2018 recommending that NYPD analyze department-wide litigation trends and patterns by precinct and unit and create internal reports regarding these findings. See Mark G. Peters & Philip K. Eure, NYC Dep't of Investigation's Inspector Gen. for the NYPD, Ongoing Examination of Litigation Data Involving NYPD 3–4 (2018), https://www.nyc.gov/assets/doi/reports/pdf/2018/April/21NYPDLitData_Report_43018.pdf [https://perma.cc/FKA6-U9SJ] [hereinafter Peters & Eure, Ongoing Examination]. In 2022, the Office of Inspector General reported that the NYPD was partially complying with this recommendation, but was not tracking claims it considered to be "meritless." Jocelyn Strauber & Jeanene Barrett, Off. of the Inspector Gen. for the NYPD, Eighth Annual Report 25–26 (2022), https://www.nyc.gov/assets/doi/press-releases/2022/March/08OIGNYPDAnnualRpt_Release_3312022.pdf [https://perma.cc/9SLJ-ZZPC] (internal quotation marks omitted). In 2023, the Office of Inspector General reported that NYPD had previously been in partial compliance with this recommendation but has since rejected it altogether as unnecessary and too expensive. See Jocelyn Strauber & Jeanene Barrett, Off. of the Inspector Gen. for the NYPD, Ninth Annual Report 30–31 (2023), https://www.nyc.gov/

assets/doi/reports/pdf/2023/13OIGNYPDRpt.Release.03.30.2023.pdf [https://perma.cc/4LSK-PBNQ].

Available evidence suggests that the NYPD continues not to review lawsuit information with an eye to preventing future lawsuits or harms. In 2018, a representative for the City of New York repeatedly testified during a deposition that the NYPD does not make changes to NYPD policy based on the allegations or information in lawsuits brought against it and its officers. See Deposition of Lieutenant Dennis Glannon at 75, 151, 152, 188, Packard v. City of New York, No. 1:15-cv-07130 (AT) (SDA) (S.D.N.Y. filed Sept. 7, 2018).

Other New York City Police Department oversight agencies do not review litigation information, either. In 2017, the New York City Council gave the OIG for the NYPD authority to review patterns in lawsuits against the NYPD and make its own recommendations about the training and discipline of officers. In 2018, it conducted this type of analysis for six police department precincts as a "roadmap for more in-depth areas of inquiry that NYPD could analyze further." Peters & Eure, Ongoing Examination, supra, at 17. But, in 2024, the Office of Inspector General reported that they "would not investigate allegations contained in lawsuits, except for in instances as noted in our 2015, 2018, and 2019 where we're looking at systemic issues. Generally, we do not review depositions or other documents related to lawsuits." Email from Claire Fleischer, Dir. of Outreach, Off. of the Inspector Gen., NYPD, to the author (Feb. 14, 2024). OIG has not issued any report on this topic since 2019. See id.

The Civilian Complaint Review Board (CCRB), an independent agency that investigates misconduct allegations "does not investigate 'allegations in lawsuits as they would citizen complaints.'" Email from Jonathan Darche, Exec. Dir., N.Y.C. CCRB, to the author (Jan. 20, 2024). In 2022, the City Charter was amended to require that CCRB be notified when there is a "final adjudication that a member of the NYPD engaged in an act of bias," but the CCRB had yet to conduct such an investigation as of January 2024. Id. The CCRB will, however, use information from lawsuits if it "opens an investigation and discovers that there is parallel civil litigation." Id.

*Oakland, Cal. The Community Police Review Agency (CPRA) is not notified of lawsuits when they are filed but might separately find out about a case. See Interview with Mac Muir, Exec. Dir., Cmty. Police Rev. Agency, City of Oakland (Jan. 29, 2024). The Executive Director of CPRA does not believe that Oakland Police Department's Internal Affairs Division investigates lawsuits. See id. When CPRA has asked Internal Affairs for records from civil litigation they will "look around." Id. A public records request to the Oakland Police Department went unanswered.

Pasadena, Cal. "[T]he Pasadena Police Department does investigate allegations of misconduct made in civil complaints. . . . I have not yet discussed with the Department the need to review litigation discovery to supplement investigations—unfortunately any such supplemental investigation would likely be untimely, and in my mind there would need to be significant new information disclosed to warrant reopening or initiating an untimely investigation. . . . I will be suggesting to the Department, however, that they ensure that a Professional Standards Unit supervisor reviews all lawsuits on their conclusion (particularly where there is a significant payout) for both discipline and risk management purposes." Email from Richard Rosenthal, Indep. Police Auditor, City of Pasadena, to the author (Feb. 2, 2024).

*Phila., Pa. "We certainly have some litigations that are associated with investigated complaints against police, but in terms of all litigations automatically triggering an [Internal Affairs] investigation that does not happen." Taylor, supra note 265. "[T]he Police Commissioner and senior leadership from the Police Department meet with the Law Department on a quarterly basis to discuss any litigation trends that may be developing, which meetings supplement the routine communication between the two Departments. Further, the City of Philadelphia Law Department, during the last mayoral administration, instituted a policy by which cases subject to the policy are assessed by the litigating attorney to determine if the matter warrants an after action review, and, upon that review, whether there is policy guidance that should be counseled to the client as a result of the litigation." Id.

*Portland, Or. There are weekly reviews of tort claims and lawsuit filings with the Independent Police Review (IPR), Internal Affairs, and the City Attorney's office. See Telephone Interview with Ross Caldwell, Dir., Indep. Police Rev. (Jan. 25, 2024). Claims that indicate misconduct are investigated. See id. If the IPR sees a trend in lawsuits, it will let the Police Department know. See id. IPR also reviews closed litigation files. See id. When cases settle, there is little information in the file. See id. But IPR will review depositions, and Portland's settlement agreement with the DOJ requires that if a case goes to trial and there is a finding of liability, there must be an administrative review with the assumption that there was wrongful conduct. See id.

*Prince George's Cnty., Md. "The Internal Affairs Division investigat[es] allegations of police officer misconduct generated by both internal and external complaints. Those investigations may relate to allegations contained in a subsequent lawsuit. Currently, the Internal Affairs Division does not investigate allegations in new lawsuits, but may assist with researching and compiling relevant information." Koshy, supra note 265. In response to a question about whether the police department's Internal Affairs Division reviews information generated

during litigation discovery, the legal advisor for the police department replied: "Typically an internal investigation has been completed prior to the lawsuit being filed and served." Id. An oversight agency, the Administrative Charging Committee (ACC) for Prince George's County "reviews internal affairs investigations and conducts citizen-led deliberations to determine punishment" but does not conduct its own investigations of misconduct allegations. Email from Isabel Williams, Program Adm'r, Admin. Charging Comm., Prince George's Cnty., to the author (May 15, 2024).

Richmond, Cal. "The City Attorney shares all litigation with the police department and [Office of Professional Accountability]," which is run by a civilian who replaced the Department's Internal Affairs Division and oversees operations. Email with Eddie Aubrey, Manager, Off. of Pro. Accountability, Richmond Police Dep't, to the author (May 1, 2024). "We request any evidence as the litigations proceed[] and the City Attorney determines what within their purview and strategy they can release to us to use in our investigation." Id.

Riverside, Cal. When a lawsuit is filed against an officer or the department, the city attorney's office refers it to the police department's Internal Affairs division. Telephone Interview with Eric Detmer, Lieutenant, Off. of Internal Affs., Riverside Police Dep't, (May 6, 2024). If a lawsuit or claim refers to any of the categories listed in California's Senate Bill 2 (dishonesty related to reporting or investigation of a crime; abuse of power; physical abuse; bias; gang association; failure to cooperate with an investigation; or failure to intercede when another officer uses excessive force), Internal Affairs will start an investigation if there hasn't already been one conducted. See id.; see also S.B. 2, 2021 Leg., Reg. Sess. (Cal. 2021). Internal Affairs investigations are usually completed before a lawsuit ever goes to court. See Detmer, supra. Internal Affairs is updated about cases by the city attorney's office but does not review litigation materials. See id.

Rochester, N.Y. "[The Police Accountability Board (PAB)] does not have any system for tracking lawsuits to trigger a PAB investigation based on a lawsuit. PAB investigations are generally triggered by reporters referring misconduct to us. We are able to internally generate complaints, so it is theoretically possible that PAB could become aware of a lawsuit and generate a PAB investigation based on information contained in the lawsuit. As far as internal affairs, they function the same way. Reporters can refer them misconduct, as can the PAB, and they have the ability to investigate. I am not aware of whether they investigate based on lawsuits they become aware of . . . . [I]f we are investigating a case and know that there is civil litigation going on, we will review any publicly available discovery and consider it in our investigations. We do this by checking databases where the filings are contained such as PACER. I do believe that internal affairs would do the same thing."

Email from Benjamin J. Wittwer, Gen. Couns., Rochester Police Accountability Bd., to the author (May 13, 2024).
*Sacramento, Cal. "The Office of Public Safety Accountability has oversight of the Sacramento Police Department and the Sacramento Fire Department personnel, but we do not look into anything involving lawsuits pertaining to public safety personnel. That would fall into the wheelhouse of the City of Sacramento City Attorney's Office." Watson, supra note 265.
Sacramento Cnty., Cal. "The Office of the Inspector General, for Sacramento County, reviews completed investigations of the Sacramento County Sheriff's Office, Internal Affairs Bureau. If the report generated by the Sheriff's Office referenced litigation materials, such as those mentioned in your request, the [Inspector General (IG)] would review those materials. Also, if such materials otherwise came to the attention of the IG and would have made the Sheriff's Office investigation more thorough had they been considered, the IG would recommend that the material be considered. Again, the IG function, at least as constructed in Sacramento County, only 'reviews and makes recommendations.' Primary investigations are conducted by the Sheriff's Office." Email from Kevin Gardner, Inspector Gen., Off. of the Inspector Gen. for Sacramento Cnty., to the author (May 22, 2024). Emails to Internal Affairs went unanswered.
Salt Lake City, Utah. The Salt Lake City Police Department "does not monitor lawsuits involving officers." Allred, supra note 265.
San Diego, Cal. The Commission on Police Practices was formed in 2020 and granted the authority to review internal affairs investigations; conduct its own investigations of deaths in custody, officer-involved shootings, and deaths resulting from interactions with police; and make policy recommendations. See Telephone Interview with Olga Golub, Chief Investigator, Off. of the Comm'n on Police Pracs. (May 9, 2024). The Commission does not have the authority to investigate allegations made in lawsuits. See id.
*San Jose, Cal. "The City Attorney handles the lawsuits against the San Jose Police Department. Obviously the Police Chief is kept abreast of those cases. However the Police Department does not necessarily initiate internal investigations in all situations in which a lawsuit ensues. In the City of San Jose, internal investigations are started when one of three things happened: (1) a person complains about police conduct to the City's employee relations and/or internal affairs; (2) a person complains to this office about police conduct; or (3) the Department, through the Chief's Office, initiates an internal investigation." Email from Karyn Sinunu-Towery, Acting Indep. Police Auditor, City of San Jose, to the author (Jan. 17, 2024).

*Seattle, Wash. The Seattle Office of Police Accountability (OPA) has the authority to initiate an investigation based on a lawsuit filing. Seattle Off. of Police Accountability, Internal Operations and Training Manual § 5.1B (2021), https://www.seattle.gov/documents/Departments/OPA/Policy/2022-OPA-Manual-Final.pdf [https://perma.cc/47EP-SAQ8]. Seattle's Department of Finance is obligated to notify OPA when there has been a notice of claim filed concerning possible police officer misconduct, and Seattle's City Attorney's office is obligated to notify OPA when there has been a lawsuit filed alleging possible police officer misconduct. See Seattle Dep't of Fin. & Admin. Servs. & Off. of Police Accountability, Case Notification Joint Protocol 1 (2022) (on file with the *Columbia Law Review*); Seattle City Att'y's Off. & Off. of Police Accountability, Case Notification Joint Protocol 1 (2022) (on file with the *Columbia Law Review*).
Sonoma Cnty., Cal. "[T]he Sonoma County Sheriff's Office does an investigation akin to an [Internal Affairs] investigation of alleged misconduct [when a lawsuit is filed]. Although it does appear to me that they only do so if a suit is filed, as opposed to a [California] Tort Claim Act form being filed. In the case of a tort claim only, they seem to do a shorter/shallower look. . . . Our agency [reviews information generated during litigation discovery] in our independent investigations. Historically, it appears that our Sheriff's Office has not. There does not seem to have been a policy or established practice on this issue in the past, but of the past cases I have seen, none seem to have reviewed the depositions. They seem to [b]e reconsidering doing so in the future now that we have suggested it, but haven't yet that I know of." Email from John Alden, Dir., Sonoma Cnty. Indep. Off. of L. Enf't Rev. & Outreach, to the author (Jan. 20, 2024).
Spokane, Wash. "Internal Affairs conducts all investigations into complaints filed with both our office, the Office of the Police Ombudsman, and directly with the police. Our office's role is to monitor their investigations and then certify whether it was completed in a timely, thorough, and objective manner. Under our city charter, we can conduct independent investigations but union contract restrictions limit how and what we can independently investigate. . . . Internal Affairs investigates administrative complaints only. We can receive any and all complaints but if it is determined that there is an ongoing criminal proceeding, civil suit, or a claim filed against the city, then the complaint will be administratively suspended until the conclusion of the proceeding, suit, or claim. Any litigation is handled by the City Attorney's Office or the Prosecutor's Office. . . . [N]either our office nor Internal Affairs reviews information generated during litigation discovery. Internal Affairs may review those materials as needed on a case-by-case basis but not as a general practice." Omana, supra note 265.

St. Paul, Minn. "Per our City Attorney's office, our police department does not investigate civil lawsuit allegations against the department when we receive a complaint or based on specifics in discovery. Generally, civil cases have come from known incidents which were already investigated and considered for any adverse employment action or criminal charges." Commers, supra note 265.
Syracuse, N.Y. "Lawsuits filed against the City related to interactions with [the Syracuse Police Department] can be by those who have already filed a complaint with us or internal affairs. However, some Petitioners do not file complaints first. . . . I am not aware of either of us[,] [the Board or the police department,] seeking out information obtained during discovery phase of litigation to investigate as a complaint." Email from Ranette L. Releford, Adm'r, Syracuse Citizen Rev. Bd., to the author (May 14, 2024).
*Washington, D.C. In 2019, Washington, D.C.'s Office of Police Complaints issued a call for the Metropolitan Police Department to begin investigating lawsuit allegations and reviewing closed litigation files for trends. See Police Complaints Bd., supra note 137, at 6. According to the Executive Director of that office, four years later, the Department "says that they are 'looking at' settled cases and verdicts but there is no formal system or evidence that this is actually done." Email from Michael G. Tobin, Exec. Dir., Off. of Police Complaints, Washington, D.C., to the author (Jan. 22, 2024).
*Wallkill, N.Y. "[T]he Town of Wallkill Police Department accepts all complaints relative to the officer(s) and does take appropriate disciplinary action in all cases where an investigation substantiates a violation of law(s), order(s), rule(s), regulation(s), policy(ies), or procedure(s). The Police Department also investigations allegations in lawsuits as they would civilian complaints. However, the Police Department generally awaits for the completion of the civil litigation to ensure that . . . all pertinent information developed at the completion of the civil case is reviewed for any possible training and policy recommendations as well as any comments and/or actions concerning the officer(s) involved." Letter from Louisa M. Ingrassia, Town Clerk/Registrar, Town of Wallkill, to the author (May 14, 2024).

APPENDIX B: *GLASPER* DEFENDANTS' PAST LITIGATION

The following chart sets out the facts and outcomes of thirty lawsuits that were filed before the Glasper raid and that name one or more of the defendants in *Glasper*. This information was compiled from information available on Bloomberg Law, the website of the Clerk of the Circuit Court of Cook County, settlement information compiled by *The Chicago Reporter*, and correspondence with plaintiffs' attorneys. Defendants named in *Glasper* are in bold.

Case	Facts and Complaint Date	Discovery	Summary Judgment Motion	Trial	Case Outcome and Date
Woods v. Emanual, No. 1:15-cv-08521 (N.D. Ill. dismissed Oct. 3, 2017)	On January 14, 2014, Woods was at his apartment when plainclothes officers knocked on the door. When Woods opened his door, **Bruno** forcibly grabbed Woods, pulling him outside, and other officers searched the apartment, finding nothing. When Woods asked for medical attention, **Bruno** threatened to charge Woods with a felony if they had to take him to the hospital. Woods repeated his request to go to the hospital. The officers took Woods to the hospital and charged Woods with felony possession of a controlled substance. Woods spent approximately a month behind bars	Yes	No	No	Settled for $50,000 and dismissed by Stipulation. Minute Order (Oct. 2, 2017); Case 15-CV-8521, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/15-cv-8521/ [https://perm

	before charges were dropped. Complaint at 1–9 (Sept. 25, 2015).				a.cc/NFC2-9XTB].
Garner v. Lee, No. 1:15-cv-03721 (N.D. Ill. dismissed Feb. 16, 2016)	On July 15, 2014, Garner was standing by his car when officers, including **Schnier** and **Ugarte**, pulled up and punched, choked, and strip-searched him. "**Schnier** through [sic] me against a gray or silver looking car with great force and put a small bump on the back of my head and officer **Ugarte** start pulling my hair and smacking me and talking about give him a gun or tell us where a dope house at that got some guns in it[.] I told them I don't know[.] That's when they frame me[.]" Complaint at 4 (Apr. 27, 2015).	No	No	No	Dismissed for lack of prosecution. Minute Order (Feb. 16, 2016).
Collins v. Bond, No. 1:14-cv-05500 (N.D. Ill. dismissed Oct. 1, 2014)	On July 30, 2012, Officer **Ugarte** and other officers drove up to Collins, who was on foot. The officers got out of their car, threw Collins to the ground face first, punched him in the face, struck and kicked his body, and handcuffed him. They transported him to a police station, where he was charged with battery, resisting arrest, assault and criminal trespass. All charges were terminated in Collins's favor. Complaint at 4–7 (July 18, 2014).	No	No	No	Settled for $40,000 and dismissed by stipulation. Minute Order (Oct. 1, 2014); Case 14-CV-5500, Settling for Misconduct, https://projects.chicagoreporter.com/settlem

					ents/case/14-cv-5500/ [https://perma.cc/M3DZ-AJYG].
Jennings v. City of Chicago, No. 1:13-cv-08811 (N.D. Ill. dismissed Nov. 24, 2014)	On June 2, 2010, Jennings was waiting in line to get his car washed when unmarked squad cars pulled up. One officer pulled Jennings out of his car and handcuffed him. Officer **Ugarte** told Jennings he would "make things much easier" on him if he revealed the location of contraband. When Jennings said he didn't know about any, **Ugarte** pulled an unknown substance out of his pocket and then arrested Jennings and charged him with possession of a controlled substance. Jennings filed a complaint against **Ugarte** that "was determined to be unfounded." On October 11, 2010, a few blocks away from the car wash, Jennings was in his car when **Ugarte** and another officer drove up, pulled him out of his car, and handcuffed him. **Ugarte** said he had been looking for Jennings ever since he filed the complaint against him. The officers arrested Jennings and charged him with possession of a controlled substance with intent to	Unknown	No	No	Rule 68 Judgment accepted for $30,000. Minute Order (Nov. 24, 2014).

	distribute. Officer **Ugarte** testified falsely at trial. Jennings was acquitted in 2013. Complaint at 3–5 (Dec. 10, 2013) (internal quotation marks omitted) (quoting Ugarte).				
Dantzler v. Lee, No. 1:13-cv-08447 (N.D. Ill. dismissed Nov. 4, 2014)	On August 8, 2013, officers including **Lee** and **Schnier** executed a search warrant in Dantzler's apartment, broke into the house, and held Dantzler at gunpoint. Officers screamed at Dantzler and his step-daughter and ordered them to the ground. One officer asked Dantzler where the drugs were and when he said there weren't any he struck Dantzler in the face several times. Complaint at 2–3 (Nov. 22, 2013).	Unknown	No	No	Dismissed for lack of prosecution. Minute Order (Nov. 4, 2014).
Gordon v. City of Chicago, No. 1:13-cv-07926 (N.D. Ill. dismissed Jan. 23, 2015)	On August 12, 2013, Drake Gordon was visiting Kenneth Gordon and Andrea Gordon at their home. **Bruno** and other officers entered and searched them without a warrant. Complaint at 2 (Nov. 5, 2013).	Yes	No	No	Settled for $12,500 and case dismissed by stipulation. Minute Order (Jan. 23, 2015); Case 13-CV-7926, Settling for Misconduct, https://projects.chicagoreporter.com/settlem

					ents/case/13-cv-7926/ [https://perma.cc/AUF4-NAZD].
Jackson v. P.O. John Doe 1-2, No. 1:13-cv-04043 (N.D. Ill. dismissed Jan. 29, 2015)	On November 2, 2012, Jackson was walking home when he was stopped by Officer **Papke**, who was allegedly looking for someone else in the neighborhood. **Papke** slammed Jackson into a fence and onto the ground. Complaint at 2 (May 31, 2013).	Yes	No	No	Settled for $20,000. Order of Dismissal (Jan. 29, 2015); Case 13-CV-4043, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/13-cv-4043/ [https://perma.cc/2R3A-8X24].
McDaniels v. Vivianco, No. 1:12-cv-03608 (N.D. Ill. dismissed Nov. 25, 2014)	On January 18, 2011, McDaniels was parked in front of his home when officers parked behind him, got out of their vehicle and surrounded his car with their guns drawn. McDaniels was arrested, placed in what officers referred to as "slave cuffs," then repeatedly hit and verbally abused McDaniels as **Ugarte** and other	Yes	No	No	Settled for $10,000 and dismissed by stipulation. Minute Order (Nov. 25, 2014); Case 12-CV-3608, Settling for

	officers searched him and his car. Police released McDaniels without charging him with a crime. Complaint at 2–3 (May 10, 2012) (internal quotation marks omitted) (quoting a defendant).				Misconduct, https://projects.chicagoreporter.com/settlements/case/12-cv-3608/ [https://perma.cc/H2CK-PT3E].
Henry v. Slege, No. 1:12-cv-02487 (N.D. Ill. dismissed Apr. 9, 2013)	On April 6, 2011, Henry and a friend were sitting on the front porch of a home when officers **Schnier** and **Bruno** came inside the fenced yard and handcuffed Henry to his friend. **Schnier** began to interrogate Henry and his friend about drug sales on the block. Meanwhile, Bynum was sitting inside her parked van in front of the same residence when she was detained by officers and her vehicle was searched. Henry was charged with delivery of a controlled substance, even though the officers did not recover any drugs from him or proceeds from drug sales, and was held for about 20 days. Complaint at 2–4 (Apr. 4, 2012).	No	No	No	Settled for $50,000 and dismissed by stipulation. Minute Order (Apr. 9, 2013); Case 12-CV-2487, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/12-cv-2487/ [https://perma.cc/YR94-QXQ3].

Harper v. Bruno, No. 12-L-13135 (Ill. Cir. Ct. dismissed Oct. 24, 2014)	On November 20, 2011, Harper was arrested by Officer **Bruno** and other officers, who tased and beat him. Harper suffered a facial fracture that required surgery, among other injuries. Case 12-L-13135, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/12-l-13135/ [https://perma.cc/E49T-KNWJ]; Complaint (Nov. 20, 2012).	Yes	No	No	Settled for $75,000 and dismissed by stipulation. Stipulation to Dismiss (Oct. 24, 2014); Case 12-L-13135, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/12-l-13135/ [https://perma.cc/E49T-KNWJ].
Williams v. City of Chicago, No. 1:11-cv-06284 (N.D. Ill. dismissed June 28, 2012)	On December 22, 2010, Williams was on his front porch when he saw a police officer grabbing a man through the window of his unmarked police car and dragging him down the street. When Williams took a photo of the assault with his phone, the officer stopped his car and let go of the man. The officer told Williams it was illegal to record him. Then he and another officer pushed Williams against his house, grabbed him by the throat, and handcuffed him. Williams	Yes	No	No	Unknown settlement. Plaintiff's motion to dismiss granted. Minute Order (June 28, 2012).

	was held for half an hour, then was released. Complaint 2–5 (Sept. 9, 2011).				
Reed v. Chicago, No. 1:10-cv-07094 (N.D. Ill. dismissed Feb. 8, 2013)	Reed was arrested and detained twice under a widespread police practice in which officers conducted field interrogations in known narcotics-trafficking areas, then falsely arrested people with prior drug arrests for drug possession. First, on November 3, 2008, two officers detained Reed and falsely arrested him for drug possession. On December 10, 2008, **Ugarte** and another officer detained Reed and falsely arrested him again. Each time, Reed was in custody for three weeks. Complaint at 1–4 (Nov. 3, 2010).	Yes	No	No	Settled for $3,000 and dismissed by stipulation. Minute Order (Feb. 8, 2013); Case 10-CV-7094, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/10-cv-7094/ [https://perma.cc/N3JJ-PXMF].
Sims v. City of Chicago, No. 1:10-cv-06468 (N.D. Ill. dismissed May 18, 2011)	On August 21, 2010, officers entered Sims's apartment's gated courtyard and threatened to arrest her for holding an open container of beer. When Sims responded that it was her property, officers—including **Ugarte**—assaulted her and her husband. Sims and her husband were arrested and held in a paddy wagon	Unknown	No	No	Settled for $18,000 and dismissed by stipulation. Minute Order (May 18, 2011); Case 10-CV-6468, Settling for

	for more than two hours as the officers made other stops. Sims and her husband were charged with obstruction of justice and held overnight. The charges against the couple were later dismissed. Complaint at 2–6 (Oct. 8, 2010).				Misconduct https://projects.chicagoreporter.com/settlements/case/10-cv-6468/ [https://perma.cc/7PN9-RE7W].
McLin v. City of Chicago, No. 1:10-cv-05076 (N.D. Ill. Jan. 30, 2013)	On July 8, 2010, Hope was sitting in a car when Officers **Ugarte** and St. Clair confronted him. When Hope tried to drive away, the officers physically prevented him from leaving, and St. Clair shot Hope multiple times, killing him. Complaint at 3 (Aug. 12, 2010).	Yes	No	Yes	Plaintiff's verdict: $4,573,700 plus $10,000 in punitive damages each against Ugarte and St. Clair. Total award with attorneys' fees: $4,567,828. Order (Jan. 30, 2013).
Johnson v. Bruno, No. 1:10-cv-02606 (N.D. Ill. dismissed June 9, 2011)	On April 27, 2009, Officer **Bruno** and another officer arrested Johnson, then hit and kicked him and carried him to an unmarked patrol car. While handcuffed in the backseat, **Bruno** hit Johnson again. Johnson was charged with possession of cocaine. All	Unknown	No	No	Dismissed for failure to prosecute. Minute Order (June 9, 2011).

	charges were dismissed after one month. Complaint at 2 (Apr. 27, 2010).				
Adams v. Bruno, No. 1:10-cv-02068 (N.D. Ill. Dec. 15, 2011)	On February 12, 2010, officers, including **Bruno** and **Schnier**, entered and searched Adams Sr.'s restaurant, a Harold's Chicken franchise, without a warrant. The officers lied to employees and patrons, telling them that drugs were being sold out of the restaurant and that police were going to shut it down. Complaint 2–3 (Apr. 2, 2010).	Yes	Yes; denied. Minute Order (Oct. 6, 2011).	Yes	Mistrial as to Bruno, defense verdict as to Schnier. Minute Order (Dec. 15, 2011). Plaintiff's verdict against one defendant; judgment entered for $85,000 inclusive of attorneys' fees. Minute Order (Feb. 24, 2012).
Horton v. Rubald, No. 1:09-cv-07043 (N.D. Ill. dismissed July 17, 2012)	On October 18, 2008, Horton was walking when Officer **Ugarte** and other officers stopped and searched him without a warrant or probable cause, then arrested him and charged him with public drinking, having no firearms owner identification card, and unlawful use of a weapon. Complaint at 2 (Nov. 10, 2009).	Yes	No	No	Settled for $5,000 and dismissed by stipulation (July 17, 2012); Case 09-CV-7043, Settling for Misconduct,

					https://projects.chicagoreporter.com/settlements/case/09-cv-7043/ [https://perma.cc/98LP-ZP9C].
Guydon v. City of Chicago, No. 1:09-cv-05497 (N.D. Ill. dismissed Feb. 8, 2013)	On July 1, 2009, Officers **Ugarte** and Johnson, in plainclothes, approached Guydon while he was fueling his car. The officers searched Guydon and found crack cocaine in his possession. They arrested Guydon, charged him with possession, and impounded his car. All charges against Guydon were later dismissed for lack of probable cause. Complaint at 4 (Sept. 3, 2009).	Yes	Yes; granted with leave to amend (and plaintiff amended). Order (Apr. 2, 2012); Order (June 14, 2012); Amended Complaint (June 26, 2012).	No	Settled for $7,500. Minute Order (Jan. 31, 2013); Case 09-CV-5497, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/09-cv-5497/ [https://perma.cc/9B53-MXAN].
Foltin v. Ugarte, No. 1:09-cv-05237 (N.D. Ill. Feb. 14, 2014)	On August 14, 2009, Foltin was a passenger in a vehicle pulled over by Officers **Ugarte** and Candelario. Officers told Foltin and the driver to get out of the car and began	Yes	Yes; conditionally granted and *Monell*	Yes	Plaintiff's verdict: $11,000. Jury Verdict (Feb. 14, 2014).

	searching them and the vehicle. A female officer arrived and instructed her to conduct a search on Foltin, who was wearing a tight-fitting summer dress. The female officer instructed Foltin to put her hands on the hood of the police car, put her hands up Foltin's dress, pulled on her bra, and subjected her to a body cavity search. Officers found nothing illegal during their search of Foltin, the driver and the vehicle and released them without filing charges. Complaint at 1–4 (Aug. 25, 2009).		claim bifurcated. Minute Order, (Dec. 7, 2011); Opinion and Order (July 16, 2013).		Total settlement, including attorneys' fees, plaintiffs' verdict, and sanctions against the city negotiated by the parties: $162,795. Id.; Minute Order (Jan. 18, 2012); Agreed Order (June 2, 2014); Case 09-CV-5237, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/09-cv-5237/ [https://perma.cc/49SY-5258].
Jackson v. Ugarte, No. 1:09-cv-04188 (N.D. Ill. dismissed Sept. 7, 2010)	On April 20, 2009, Jackson was in the vicinity of 9300 South Lafayette Avenue. Officers **Ugarte** and Vivanco came upon him, threw him against a	Yes	No	No	Dismissed for lack of prosecution.

	fence, handcuffed him to the fence, and took him into custody. He was held in jail for approximately twenty-four days. Complaint at 2–3 (July 13, 2009).				Minute Order (Sept. 7, 2010).
Willis v. Lepine, No. 1:09-cv-04208 (N.D. Ill. Jan. 13, 2011)	On February 26, 2006, Willis and Owen were standing outside their home when Officer **Lepine** and other officers drove up, "threw plaintiffs on the hood of the car, cuffed, searched, and arrested plaintiffs" without a warrant or probable cause, kept Willis and Owens in the police car for almost an hour, and then took them to the station where they were publicly strip searched. Charges against them were filed and later dismissed. Complaint at 2–3 (July 13, 2009).	Yes	No	Yes	Defense verdict. Judgment (Jan. 13, 2011).
Sroga v. Decero, No. 1:09-cv-03286 (N.D. Ill. Mar. 23, 2012)	Several officers, including **Papke**, falsely arrested, used excessive force against, and/or illegally seized the property of Sroga several times in 2006, 2007, and 2009. Complaint at 2–3 (July 8, 2009).	Yes	Yes; granted.	No	Summary judgment for defendant. Judgment (Mar. 23, 2012).

McNeal v. Bruno, No. 1:09-cv-01500 (N.D. Ill. Dec. 11, 2012)	Officers, including **Barroso** and **Bruno**, entered McNeal's apartment without a search warrant, then threw him to the ground, stomped on his knee, and struck him on the left side of this head with a blunt object. McNeal, his son, and his wife were handcuffed and taken outside. Officers then searched the apartment without permission. When McNeal's wife threatened to complain about the officers' treatment, **Barroso** responded, "[Y]ou think we give a f[**]k . . . [?] Keep talking and we'll lock your f[**]king [*]ss up." McNeal was arrested and charged with a felony offense of unlawful use of a weapon. Complaint at 2–4 (Mar. 10, 2009) (internal quotation marks omitted) (quoting Barroso).	Yes	Yes; granted in part. Opinion and Order (Apr. 24, 2012).	Yes	Plaintiffs' verdict against Barroso and Bruno on some claims. Judgment (Dec. 11, 2012). Post-trial settlement: $473,630. Case 09-CV-1500, Settling for Misconduct, https://projects.chicagoreporter.com/settlements/case/09-cv-1500/ [https://perma.cc/RJQ6-YCDG].
Stevens v. City of Chicago, No. 1:08-cv-06037 (N.D. Ill. dismissed Feb. 19, 2009)	On May 3, 2008, Officers **Ugarte** and Bankus arrested Perry Stevens without lawful basis and prepared a false police report against him. Complaint at 1–2 (Oct. 22, 2008).	No	No	No	Settled for $5,000 and dismissed by Stipulation. Minute Order (Feb. 19, 2009); Email from Kenneth N. Flaxman, to

					the author (Nov. 29, 2024) (on file with the *Columbia Law Review*).
Thompson v. City of Chicago, No. 1:07-cv-06189 (N.D. Ill. dismissed Feb. 20, 2008)	On November 5, 2006, officers, including **Lepine**, stopped Thompson, drew their guns, and searched him and his car. The officers then "informed the Plaintiff that they would let him go if he provided them with information about criminal activity." When Thompson refused, he was arrested. All charges were later dropped. Complaint at 2–3 (Nov. 1, 2007).	No	No	No	Unknown settlement. Dismissed by stipulation. Agreed Order of Dismissal (Feb. 20, 2008).
Safford v. Janik, No. 1:07-cv-05276 (N.D. Ill. dismissed July 15, 2008)	On July 17, 2007, Safford was arrested. When he was brought to the police station "he was struck . . . with a rubber hose, a telephone book, and a plastic bottle" by Anthony **Bruno** and other officers. Complaint at 2–3 (Sept. 18, 2007).	Yes	No	No	Unknown settlement. Dismissed by stipulation. Minute Order (July 15, 2008).
Bowman v. Lepine, No. 07-cv-4802 (N.D. Ill. dismissed Feb. 14, 2008)	On August 25, 2006, Bowman was standing near his car with two friends when an unmarked police car drove up. Officers, including **Lepine**, ordered Bowman and his friends to put their hands on his car. Officers searched his car and handcuffed the	No	No	No	Unknown settlement. Dismissed by stipulation. Minute Order (Feb. 14, 2008).

	men, then arrested Bowman and impounded his car. After approximately two days in jail, the charges against Bowman were dismissed. Complaint at 2–3 (Aug. 24, 2007).				
Morris v. City of Chicago, No. 1:07-cv-03409 (N.D. Ill. May 26, 2011)	On July 1, 2005, defendant officers (including **Lepine**) were pursuing a car driven by decedent Tommy Morris, with Stanley Morris as a passenger. They stopped the car and ran in different directions. The officers shot Tommy Morris in the back. Complaint at 8–9 (June 18, 2007).	Yes	No	Yes	Defense verdict. Judgment (May 26, 2011).
Long v. City of Chicago, No. 1:06-cv-01960 (N.D. Ill. dismissed Feb. 8, 2007)	On December 12, 2004, Long was walking down the street when approached by officers, including **Bruno**, who grabbed the Plaintiff, placed him in handcuffs, and put him into a squad car. Complaint at 2–3 (Apr. 7, 2006).	No	No	No	Settled for $6,750. Release and Settlement Agreement (Jan. 24, 2007).
Akins v. Olson, No. 1:03-cv-03334 (N.D. Ill. dismissed Feb. 10. 2004)	On October 10, 2001, Akins was exiting his car when he was grabbed by an officer and taken into custody. He was then beaten by several officers, including Officer **Schnier**. Complaint at 2 (May 20, 2003).	No	No	No	Settled for $36,000. Release and Settlement Agreement (Feb. 9, 2004).