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ILLEGAL SEARCHES IN CHICAGO: THE OUTCOMES OF 42 U.S.C. § 1983 LITIGATION

MARK IRIS, Ph.D.*

INTRODUCTION

The theme of *Saint Louis University Public Law Review*'s Fall 2012 Symposium was "Control of Police Misconduct in a Post-Exclusionary Rule World: Can it be Done?" The conference brochure states:

In recent cases like *Michigan v. Hudson* [sic], four members of the United States Supreme Court have indicated that the exclusionary rule for Fourth Amendment violations is no longer necessary because other remedies are now effective in controlling police behavior, such as better training, civilian review boards and civil rights lawsuits.¹

In the majority opinion in the *Hudson* case (which dealt with an allegedly improperly executed search), Justice Antonin Scalia noted the exclusionary rule might be too drastic a means to address police breaches of individuals' Fourth Amendment rights.² He stated, "[a]s far as we know, civil liability is an effective deterrent here, as we have assumed it is in other contexts."³

But assumptions are not evidence. How does civil litigation work insofar as suits alleging illegal police searches are concerned? Exploring the answer to that is an empirical question, one that will be addressed in this Article.

The focus of this exploration will be a city with which the Author is familiar: Chicago. This has the advantage of being a target rich environment. The Chicago Police Department is the nation's second largest municipal police force, and there is an active plaintiff's bar.⁴ The net result—a lot of suits are filed.

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1. ST. LOUIS. U. PUB. L. REV., Control Of Police Misconduct in a Post-Exclusionary Rule World: Can it be Done? 4 (Feb. 24, 2012) (on file with the Saint Louis University School of Law Public Law Review).

2. *Hudson v. Michigan*, 547 U.S. 586, 588, 599 (2006).

3. *Id.* at 598.

4. BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, LOCAL POLICE DEPARTMENTS, 2007, 34 (2010), available at bjs.ojp.usdoj.gov/content/pub/pdf/lpd07.pdf.

As a social scientist, and not an attorney, this Author's approach was oriented towards how these suits are addressed, i.e., patterns of litigation as opposed to the attorney's client-oriented perspective of focusing on the discrete case. The key questions are: How many 42 U.S.C. § 1983 suits are filed in which plaintiffs claim Chicago police violated their Fourth Amendment rights through an improper search? What are the dispositions of those suits? And, finally, do the case dispositions present any sort of patterns that are instructive?

Two important resources aid the empirical investigation of these questions. The first are court records, which are open to the public and readily accessible either at the office of the Clerk of the Court for the United States District Court, Northern District of Illinois, or online through the PACER system.⁵ Not surprisingly, this easy access to court records is an asset taken for granted in all United States federal courts and most state courts.

The second asset, while not unique to Chicago, is certainly by no means universal. In a commitment to governmental transparency, for the past several years the City of Chicago has routinely posted online the amounts paid in settlements, judgments, and attorneys' fees or costs, for *all* civil litigation against the City of Chicago.⁶ Thus, even if court records refer to a settlement of a case with no precise amount specified, one can easily go online and locate the case in question to see how much the City of Chicago actually paid.⁷

A general rule of Freedom of Information Act ("FOIA") requests is that the expenditures of public funds are obtainable and not exempt from disclosure. However, not only do many jurisdictions not post such amounts online,⁸ this Author is personally aware of jurisdictions which explicitly deny FOIA inquiries seeking the settlement amounts for specific cases. Miller and Wright, among others, have observed the phenomenon of jurisdictions keeping the costs of police lawsuits under wraps.⁹

Thus, for Chicago, the general rule of availability of court records coincides with the local characteristics of a large number of cases, and ready availability of payment data—compounding the ability to assess patterns of

5. PACER: PUB. ACCESS TO ELEC. COURT RECORDS, <http://www.pacer.gov> (last visited Jan. 10, 2013).

6. CITY OF CHI. DEP'T OF LAW, JUDGMENT/VERDICT & SETTLEMENT REPORT, 2011 EXPENDITURES THROUGH DECEMBER 31, 2011 (2011) [hereinafter 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT], *available at* <http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2011expendituresthrough12312011.xls>.

7. *Id.*

8. 5 U.S.C. § 552(a)(2)(D) (2006) (demonstrating no statutory duty to make information available online).

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

litigation. Chicago's pattern of lawsuits may or may not be typical of national trends, but it is certainly a local context ripe for exploration.

I. COLLECTING DATA

The base year selected for study was 2009. That is the most recent year for appreciating the full scope of such suits. Late in 2009, the City of Chicago Law Department began to implement a new policy to deter allegedly frivolous lawsuits.¹⁰ The City of Chicago essentially stopped settling most cases, especially the less serious ones, and began to litigate them—even if this meant spending \$50,000 in legal bills to defend a case that could have been settled for \$10,000.¹¹ As this new policy became known, and as it became clear the policy was actually being followed, the numbers of new suits filed began to fall sharply, as will be discussed later in this Article.¹² Thus, 2009 is the most recent year representing the full filing of such suits.

Suits alleging illegal searches are normally filed in federal district court as 42 U.S.C. § 1983 suits.¹³ Sometimes police abuse and misconduct cases are filed in state court.¹⁴ However, they are now usually removed, at the City of Chicago's motion, as discussed *infra*, to a federal district court.¹⁵ Thus, the first task was a straightforward one: identify all suits against the City of Chicago filed in the United States District Court, Northern District of Illinois, in 2009.

This was more easily said than done. In theory, it should have been simple to use a standard database, and "City of Chicago" as a party search term, with the case filing date parameters set as January 1, 2009 through December 31, 2009. But identical search terms and parameters came up with different—sometimes very different—results. There are cases on PACER not listed on Bloomberg Law, many cases on Bloomberg not on PACER, and Westlaw cases not on Bloomberg.¹⁶ The City of Chicago Law Department, in response

10. Kari Lydersen, *Fighting Suits Saves Money for Chicago*, N.Y. TIMES, Jan. 27, 2011, at A25.

11. *Id.*

12. *See infra* notes 24–25 and accompanying text.

13. CITY OF CHI., *Federal Civil Rights Litigation*, http://www.cityofchicago.org/city/en/depts/dol/supp_info/federal_civil_rights/litigation.html (last visited Jan. 10, 2013).

14. *Id.*

15. *See infra* notes 91–96 and accompanying text.

16. E-Mail from Heidi Kuehl, Foreign, Comparative, & Int'l Law Librarian & Coordinator of Educ. Programming & Outreach, Pritzker Legal Research Ctr., to Chris Raghebi, St. Louis Univ. Pub. Law Review Staff, St. Louis Univ. (Sept. 16, 2012) (on file with Saint Louis University School of Law Public Law Review). As a novice in terms of using these specialized legal research databases, I enlisted the assistance of the reference librarians at the Pritzker Legal Research Center of Northwestern University's School of Law. The law library staff encountered

to an inquiry, provided its own roster of all suits filed against the City of Chicago in 2009. Intuitively, one would assume this would be the most comprehensive; after all, the City of Chicago Law Department must respond to each of these suits. Surprisingly, this Author noticed the list did not include approximately forty cases captured on these other rosters.¹⁷ *These inconsistencies should give pause to researchers who now rely so heavily upon these sorts of databases.*

Using all of these sources, it was possible to identify every case in which the City of Chicago was a defendant on at least one of these lists. The next step was to peruse each case individually, using the online records at the office of the clerk of the court, or PACER. A number of cases were eliminated in this fashion. Some involved the City of Chicago Heights, a separate suburban municipality. Others cases did not involve the police as defendants, or did not invoke the jurisdiction of 42 U.S.C. § 1983; for example, employment discrimination cases against other city agencies and special education due process cases. There was also the occasional *pro se* case so garbled as to defy classification.¹⁸

After eliminating these extraneous cases, there remained a total of 459 cases alleging civil rights violations by Chicago police officers.¹⁹ Given the vagaries of data bases noted above, there could possibly be a few additional cases not yet identified, but it would be safe to conclude the overwhelming majority of cases have been captured through this process.

Interestingly, outliers can, and do, drive up the numbers of cases. Of these 459 cases, thirty-four (7 percent) are due to just two officers who allegedly ran independent, but similar scams—falsely arresting people for driving under the influence (“DUI”) in order to generate additional overtime for the numerous

the same phenomenon. My thanks to Ms. Heidi Kuehl for her assistance and patience in responding to my many inquiries.

17. Curiously, cases listed on Bloomberg, but not captured on the City of Chicago’s own list; and similarly, those on the City of Chicago list but not on Bloomberg, were disproportionately composed of *pro se* filings.

18. One such case named the City of Chicago, along with numerous others, including Los Angeles, Manhattan; the governments of Japan, Switzerland, and North Korea; Jack in the Box; and Quentin Tarantino, as defendants. *See Caston v. Switzerland Gov’t*, No. 09-cv-06253 (N.D. Ill. Nov. 13, 2009).

19. In some instances there were additional non-police defendants, such as the Chicago Board of Education. The presence of Chicago officer(s) as defendant(s) in a case was sufficient to warrant inclusion in this count; the officer need not have been the sole defendant.

court appearances associated with these cases.²⁰ One of the two officers also allegedly targeted gay drivers for these false arrests.²¹

The sheer number of cases filed is impressive, and may reflect greater willingness to sue today compared to previous years. A prior study examined 42 U.S.C. § 1983 suits in the Southern and Eastern Districts of New York, jurisdictions that encompass both New York City and many of its suburbs, and have a combined population far greater than that of the City of Chicago.²² For five years (1983-1987), the author identified 465 police-related 42 U.S.C. § 1983 cases.²³ To put this in perspective: in 2009, *one* year of 42 U.S.C. § 1983 filings in Chicago produced almost as many suits as did *five* years in an area with at least four times Chicago's population.

As a result of the City of Chicago's adoption of a litigation stance instead of settling cases, there has been a substantial drop in new cases filed.²⁴ For 2010, new case filings were down 47 percent compared to 2009.²⁵ Continuing the trend, 2011 filings are also very much reduced. A search of Bloomberg Law identified a preliminary total of 188 42 U.S.C. § 1983 suits filed in 2011 naming the City of Chicago as defendant.²⁶ Given the vagaries of the data bases previously noted, there are almost certainly additional cases not captured in this search. Nonetheless, this represents a decline of better than 50 percent compared to the 2009 case total. The City of Chicago's policy is having the intended effect. Additionally, 42 U.S.C. § 1988 explicitly allows for fee shifting by prevailing plaintiff's counsel in Section 1983 cases.²⁷ From costs and fees awarded in those cases which have gone to trial and are won by plaintiffs—these trials (at least in Chicago) can easily cost the plaintiff \$100,000 or more in costs and legal fees.²⁸ With settlements much less likely,

20. The officers in question were Richard Fiorito and Joe Dortha Parker. *See* Noreen S. Ahmed-Ullah, *Lawsuits Accuse Cop of False DUI Arrests*, CHI. TRIB., Apr. 3, 2009, § 1, at 7; *see also* Steve Chapman, *Smile, You're on Cop Car Camera*, CHI. TRIB. (Mar. 15, 2009), http://articles.chicagotribune.com/2009-03-15/news/0903140359_1_cameras-squad-car-cop-car.

21. *See* Ahmed-Ullah, *supra* note 20.

22. David K. Chiabi, *Police Civil Liability: An Analysis of Section 1983 Actions in the Eastern and Southern Districts of New York*, 21 AM. J. CRIM. JUST. 83, 83, 86 (1996).

23. *Id.*

24. Lydersen, *supra* note 10.

25. *Id.*

26. Search results for 42 U.S.C. § 1983 cases filed against City of Chicago in 2011. *See* BLOOMBERG LAW, <http://www.bloomberglaw.com/dockets/search> (last searched Sept. 18, 2012) (enter "1983" as a keyword; search "City of Chicago" as a party, and limit to cases as a defendant; select date range from 1/1/2011 to 12/31/11, showing a total of 188 results).

27. 42 U.S.C. § 1988 (2006).

28. *See, e.g.,* Henry v. Boyd, No. 1:09-cv-05738 (N.D. Ill. Mar. 24, 2011) (jury awarding compensatory damages of \$12,500; separately the attorney originally billed for fees of \$144,686 and costs of \$3,181; subsequently negotiated down to a total of \$100,000). *See also* Gillespie v. City of Chicago, No. 1:09-cv-02733 (N.D. Ill. June 30, 2010) (jury awarding compensatory

and juries more often than not finding for the defendants, attorneys are understandably reluctant to file new cases if they know they will have to go to trial and face a very uncertain outcome. Whether the cases *not* filed are frivolous or valid is a wholly separate, but very important, question.²⁹

II. 42 U.S.C. § 1983 DATA SUMMARY

Having identified all 42 U.S.C. § 1983 cases involving Chicago police officers, the next step was to identify those which alleged illegal searches, and then to categorize these search cases: who and what was searched? This involved the straightforward, but time consuming, process of accessing court files to review the actual complaint in each of these cases.

Of those 459 cases, 186 involved allegations of illegal searches. Of these 186, 104 (56 percent) alleged searches of the person. The complaints suggested the majority of these occurred during street stops: the officers stopped an individual, typically suspected of carrying illegal drugs. An additional thirty-one cases (17 percent) alleged illegal searches of a car. For the purposes of this study, these would also subsume a search of the person, done in conjunction with the vehicle stop and search. Finally, fifty-one suits (27 percent of the total search cases) alleged illegal searches of the home or other premises, such as a garage. Similarly, home search cases could also include a search of a person or a vehicle, done along with the search of the home.

To call all of these discussed cases “search cases” is misleading. In most of these cases, especially those involving the search of the person or vehicle, the allegation was of both an illegal search *and* something else, such as excessive force, false arrest, or malicious prosecution. What role the search played in how judges, juries, and counsel assessed the overall merits of these cases is unclear.

To the extent there were freestanding search allegations (without other claims such as excessive force or false arrest), those typically occurred in home search cases, not those of the person or car. Interestingly, a number of home search cases acknowledged there was a warrant—but alleged the warrant was defective, obtained improperly, or was for a different location. This stands in sharp contrast to the cases that alleged searches of persons or vehicles. Of the

damages of \$7,500; prevailing plaintiff’s counsel submitted cost and fee petitions for \$4,152 and \$139,000, respectively).

29. A plausible rival hypothesis to explain, at least partially, the decline in suits is the ongoing economic recession. Severe local budgetary pressures have reduced the Chicago Police Department’s staffing as vacancies created through retirements and resignations remain unfilled. A significant reduction in the number of officers serving means there are just that many fewer opportunities for officers to engage with the public in situations that could potentially lead to lawsuits. See CITY OF CHI., BUDGET 2012 OVERVIEW 2 (2011), available at http://www.cityofchicago.org/dam/city/depts/obm/supp_info/2012%20Budget/2012BudgetOverview.pdf.

complaints filed in those cases (a total of 135), not one acknowledged the presence of a warrant, whether valid or invalid.

Not included in the total of search cases are the many suits that *implicitly* convey the notion that an illegal search may have taken place, but do not *explicitly* address it. If, for example, a plaintiff claimed he was illegally stopped by police, roughed up, and arrested without justification, one can reasonably infer he was also the victim of an illegal search. Would the police stop someone and arrest him without also searching that person? The answer is almost definitely not. But in a judgment call, this Author did not include these cases in the count. Reading the many complaints made it obvious that plaintiffs' counsel routinely worded complaints fully, and were not reluctant to allege a wide variety of horrible misdeeds with awful consequences for their clients. Therefore, if the search that almost certainly took place was not important enough for the attorney to mention in the formal complaint, it was not important enough for the case to be counted as one involving an allegedly illegal search.³⁰

Search of the person cases often arise from street stops conducted during anti-drug operations.³¹ Typically, if drugs are found, the resultant criminal case is colloquially referred to as a drop case.³² That is, an officer will report officially that he arrested someone whom he observed dropping a plastic bag of narcotics in plain view. Such an assertion serves two purposes: it gives officers probable cause to make the arrest, and negates any need for a search warrant. Drop cases are routine in Chicago, and in the eyes of some, very suspect. The common perception, especially among the defense bar, is that the official reports are often false—the drugs were not dropped, but the product of illegal searches. Most judges are routinely unsympathetic to defense motions to exclude such evidence, but a few are more receptive.³³ Cook County Circuit Court Judge Daniel Locallo's perceptions of these cases were shaped by insights imparted to him by his father, a retired Chicago police commander:

Locallo's father advised him that police would falsify their testimony in drug cases when they'd found the drugs after an illegal search. August Locallo [the father] recalls: "I told him, 'Danny, when these police testify that they saw a suspect walking down the street and he dropped the package, it's usually

30. In some instances, one may reasonably infer the failure to claim an illegal search is simply the result of sloppy writing. For example, there were several cases in which the complaint alleged a person was stopped, and the police did not have a search warrant. That clearly sets the stage to follow up and claim an illegal search then took place, but the attorney did not take the next step and failed to state that claim.

31. See STEVE BOGIRA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE* 122 (2005).

32. *Id.*

33. See *id.* at 183.

bullshit. You can catch a guy seven days a week by just saying he dropped it.”³⁴

This type of case generated a phenomenon, which drove up the 2009 numbers.³⁵ The 2009 total of 42 U.S.C. § 1983 suits involving searches included thirty-one cases filed by just one criminal defense attorney.³⁶ He won a motion in criminal court to exclude evidence in a drop case.³⁷ Such cases are commonplace in Chicago.³⁸ Cook County Circuit Court judges see these sorts of cases all the time, and usually deny these motions.³⁹ Atypically, in this instance, the motion was granted and this attorney then had an epiphany.⁴⁰ If

34. *Id.*

35. See Complaint, Woulard v. City of Chicago, No. 1:09-cv-08084 (N.D. Ill. Dec. 31, 2009); Complaint, Dillon v. City of Chicago, No. 1:09-cv-05251 (N.D. Ill. Aug. 26, 2009); Complaint, Taylor v. City of Chicago, No. 1:09-cv-05092 (N.D. Ill. Aug. 19, 2009); Complaint, Williams v. City of Chicago, No. 1:09-cv-04935 (N.D. Ill. Aug. 12, 2009); Complaint, Betts v. City of Chicago, No. 1:09-cv-04095 (N.D. Ill. July 8, 2009); Complaint, Wiley v. City of Chicago, No. 1:09-cv-03637 (N.D. Ill. June 17, 2009); Complaint, Ahad v. City of Chicago, No. 1:09-cv-02564 (N.D. Ill. Apr. 28, 2009); Complaint, Butler v. City of Chicago, No. 1:09-cv-02465 (N.D. Ill. Apr. 23, 2009); Complaint, Anderson v. City of Chicago, No. 1:09-cv-02311 (N.D. Ill. Apr. 16, 2009); Complaint, Hendricks v. City of Chicago, No. 1:09-cv-02268 (N.D. Ill. Apr. 14, 2009); Complaint, Smith v. City of Chicago, No. 1:09-cv-02188 (N.D. Ill. Apr. 9, 2009); Complaint, McDonald v. City of Chicago, No. 1:09-cv-02129 (N.D. Ill. Apr. 7, 2009); Complaint, Hillard v. City of Chicago, No. 1:09-cv-02017 (N.D. Ill. Apr. 1, 2009); Complaint, Sias v. City of Chicago, No. 1:09-cv-01978 (N.D. Ill. Mar. 31, 2009); Complaint, Kirk v. City of Chicago, No. 1:09-cv-01850 (N.D. Ill. Mar. 25, 2009); Complaint, Preston v. City of Chicago, No. 1:09-cv-01553 (N.D. Ill. Mar. 12, 2009); Complaint, Pierce v. City of Chicago, No. 1:09-cv-01462 (N.D. Ill. Mar. 6, 2009); Complaint, Coleman v. City of Chicago, No. 1:09-cv-01390 (N.D. Ill. Mar. 5, 2009); Complaint, Ross v. City of Chicago, No. 1:09-cv-01368 (N.D. Ill. Mar. 4, 2009); Complaint, Harris v. City of Chicago, No. 1:09-cv-01260 (N.D. Ill. Feb. 27, 2009); Complaint, Huff v. City of Chicago, No. 1:09-cv-01171 (N.D. Ill. Feb. 24, 2009); Complaint, Polk v. City of Chicago, No. 1:09-cv-01027 (N.D. Ill. Feb. 17, 2009); Complaint, Ross v. City of Chicago, No. 1:09-cv-00726 (N.D. Ill. Feb. 4, 2009); Complaint, Anderson v. City of Chicago, No. 1:09-cv-00665 (N.D. Ill. Feb. 2, 2009); Complaint, Robinson v. City of Chicago, No. 1:09-cv-00506 (N.D. Ill. Jan. 27, 2009); Complaint, Kimble v. City of Chicago, No. 1:09-cv-00376 (N.D. Ill. Jan. 21, 2009); Complaint, Stingley v. City of Chicago, 1:09-cv-00319 (N.D. Ill. Jan. 19, 2009); Complaint, Jones v. City of Chicago, No. 1:09-cv-00207 (N.D. Ill. Jan. 13, 2009); Complaint, Powell v. City of Chicago, No. 1:09-cv-00070 (N.D. Ill. Jan. 7, 2009); Complaint, Singleton v. City of Chicago, No. 1:09-cv-01081 (N.D. Ill. Feb. 19, 2009).

36. See *id.*

37. This Author recalls this anecdotal evidence after having a conversation with this particular attorney.

38. The phenomenon of police stretching the truth to evade Fourth Amendment restrictions and to justify illegal searches is of course not unique to Chicago. See, e.g., Scott Turow, *Simpson Prosecutors Pay for Their Blunders*, N.Y. TIMES, Oct. 4, 1995, at A21 (commenting on Los Angeles police practices in this regard).

39. See, e.g., *People v. Taylor*, 646 N.E.2d 1280, 1282–83 (Ill. App. Ct. 1995).

40. This Author recalls this anecdotal story being retold to him by the attorney.

the arrest was false and without any probable cause, then both the arrest and search of the person were 42 U.S.C. § 1983 violations. So he contacted others, including individuals not originally his clients, who had also won such motions to exclude evidence, and initiated civil suits on their behalf.⁴¹ He filed thirty-one such suits in 2009 alone—all virtually identical complaints alleging false arrest and illegal search of person (a few also alleged illegal searches of a vehicle).⁴² Those thirty-one suits comprised 17 percent—one in six—of all 2009 suits that alleged illegal searches. Thus, even in a jurisdiction as large as Chicago, one individual can have a sharp impact on overall litigation patterns.

Of the cases filed by this one attorney, several filed early in 2009 were settled for modest sums, usually in the \$2,000-\$6,000 range.⁴³ Subsequent cases have gone to trial, with mixed results—four with findings for the defendants—but one with a judgment for the plaintiff for \$146,000.⁴⁴ With fee-shifting, the case cost the City of Chicago \$450,000 total.⁴⁵ Another case, decided shortly before this Article was concluded, resulted in an award of \$25,000 in compensatory damages and \$50,000 in punitive damages.⁴⁶ Moreover, the bill for attorney's fee was set at \$140,000.⁴⁷

III. CASE OUTCOMES

Following *Saint Louis University Public Law Review's* Symposium, data were checked for accuracy, and updated to reflect changes in case status as of October 19, 2012. A fair number of search cases, filed in 2009, were still open as of that date. Of the total 186 search cases, 29 were open as of that date: 17 of the 104 search of person cases, 5 of the 31 search of vehicle cases, and 7 of the 51 search of home cases. Many of these have trial dates pending.

Deducting the 29 open cases from the total of 186, there are 157 cases that have been closed. What were the dispositions? Those data are presented in Table I.

41. *See supra* note 35 and accompanying text.

42. *See id.*

43. *See, e.g.*, Stipulation to Dismiss, McDonald v. City of Chicago, No. 1:09-cv-02129 (N.D. Ill. Apr. 7, 2009) (settling for \$2,500); Stipulation to Dismiss, Hendricks v. City of Chicago, No. 1:09-cv-02268 (N.D. Ill. Apr. 14, 2009) (settling for \$6,000).

44. Judgment in a Civil Case, Wiley v. City of Chicago, No. 1:09-cv-03637 (N.D. Ill. June 17, 2009).

45. *Id.*

46. Judgment in a Civil Case at 1, Dillon v. City of Chicago, No. 1:09-cv-05251 (N.D. Ill. Apr. 10, 2012), ECF No. 91.

47. *Id.*

TABLE I

42 U.S.C. § 1983 SEARCH CASES FILED IN 2009: DISPOSITIONS OF
CLOSED CASES: STATUS AS OF OCTOBER 19, 2012

	Search of Person (percent)	Search of Car (percent)	Search of Home (percent)
Closed by Plaintiff's Motion or Inaction	37 (43)	10 (38)	14 (32)
Closed through Defendant's Action	3 (3)	2 (10)	7 (16)
Settled	31 (36)	9 (35)	16 (36)
Trial: Verdict for Plaintiff	3 (3)	1 (4)	2 (5)
Trial: Verdict for Defendants	13 (15)	4 (15)	5 (11)
Total, Closed Cases	87 (100)	26 (102)	44 (100)

Note: Percentages may not add to 100 due to rounding.

The first noteworthy observation is that many cases were essentially dropped by the plaintiffs. This includes cases that were voluntarily dismissed, closed by the court due to the plaintiff's failure to meet filing deadlines, and cases dismissed for want of prosecution. This case attrition may reflect attorneys' response to the City of Chicago's more aggressive litigation policy. Of the closed search of person cases, 43 percent were closed in this fashion. For search of vehicle cases, the figure is 38 percent. For search of home cases, by contrast, the figure was the lowest with only 32 percent. This may suggest claimants value privacy in their own homes more than they do street stops and searches of the person. Alternatively, it may be that plaintiffs and their counsel believe juries would be more shocked, and more inclined to award greater damages, when presented with claims of warrantless police invasions of homes.

In a small minority of cases, defendants prevailed by successfully filing motions for summary judgment. For example, 3 percent of 2009 search of

person cases and 10 percent of search of vehicles cases were closed in this manner. Again, searches of the home were different—in 16 percent of those cases the suits ended in response to defendants’ pre-trial actions.

Additionally, cases *have* been settled. In fact, a substantial proportion of cases were resolved by settlement. For searches of the person, vehicle, and home 36, 35, and 36 percent of cases were settled respectively. The figures for cases filed in 2010 and 2011 filings will likely show significantly lower percentages as a result of Chicago’s non-settlement policy.⁴⁸

Increasingly, cases are now tried.⁴⁹ For plaintiffs, the results are not encouraging as the success rate is very low. Whether reviewing searches of the person, car, or home the percentage of success is in single digits.⁵⁰ Moreover, the raw numbers—a total of six verdicts for the plaintiffs—are so low it makes the percentage differentiations among the types of search cases meaningless.⁵¹

Significantly, on occasion, after a jury has awarded damages, the City of Chicago and plaintiff will negotiate a settlement.⁵² In return for the City of Chicago agreeing to pay promptly and not pursue any appeal or seek a new trial, the plaintiff accepts a sum less than the jury awarded damages. The City of Chicago, on its online roster of payments, officially labels this type of payment a “satisfaction.” For tabulation purposes, here, such outcomes are categorized as verdicts for plaintiffs and not as settlements. After all, absent the jury’s verdict for the plaintiff, there almost certainly would have been no settlement.

Very significantly, such negotiated satisfactions have the effect of protecting a defendant officer against whom the jury assessed punitive

48. On the other hand, the steadfastness of Chicago’s no-settlement policy may be wavering. The most recent update of this Article revealed a spate of settlements for the period May through mid-October, 2012—in five and one half months, approximately fifteen settlements in all, as opposed to only three trials in the same period. Contrast that with the eight cases settled in all of 2010.

49. For cases tried, these data represent a snapshot correct as of October 19, 2012. The results of any appeal of a verdict, motions for a new trial, etc., not resolved as of that date are *not* reflected in these tables. For a current look at judgments, appeals, and settlements *see, e.g.*, CITY OF CHI. DEP’T OF LAW, JUDGMENT/VERDICT & SETTLEMENT REPORT, 2012 EXPENDITURES THROUGH OCTOBER 31, 2012 (2012) [hereinafter 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT], available at <http://www.cityofchicago.org/city/en/depts/dol.html>.

50. *See supra* Table I.

51. *See supra* Table I.

52. *E.g.*, Agreed Motion to Vacate the Court’s 12/10/10 Order and Enter a Judgment Order *Nunc Pro Tunc* at 1–2, Rodriguez v. City of Chi. Police Officers, No. 1:09-cv-01913 (N.D. Ill. Dec. 9, 2010), ECF No. 168 (dismissing the case shortly after a judgment for the plaintiff and damages were determined).

damages.⁵³ Illinois state law bars the City of Chicago from paying any punitive damages.⁵⁴ But if there is a post-verdict negotiated settlement, then the judgment, by agreed motion, is vacated.⁵⁵ Therefore, the City of Chicago is officially paying a settlement, not a judgment, effectively setting aside the award of punitive damages.⁵⁶

As noted above, Justice Scalia opined that civil litigation is an effective deterrent to illegal searches.⁵⁷ However, from an officer's perspective that deterrent effect is often diluted. Individual police officers in Chicago, and in many other cities, are often immunized from any financial deterrent in civil litigation due to jurisdictions being required to both represent and indemnify the officer. Thus, the city or county will typically pay for the officer's attorney, any settlements or compensatory damages, and attorneys' fees.⁵⁸ Typically, only punitive damages will force the individual officer to confront the costs of his or her misconduct. The practice of negotiating settlements after an adverse verdict negates the deterrent effect of punitive damages, further insulating errant officers from accountability through civil litigation.⁵⁹

Trial verdicts for defendants are more common, as seen in Table I. Generally, whether reviewing trials of search of person, search of car, or search of home cases, the outcomes are similar. Verdicts for the defendants substantially outnumber verdicts for the plaintiff: thirteen to three for search of person cases, four to one for search of vehicle cases, and five to two for search of the home cases.

53. See, e.g., Judgment in a Civil Case at 1, *Dillon v. City of Chicago*, No. 1:09-cv-05251 (N.D. Ill. Apr. 10, 2012), ECF No. 91 (where the stipulation as to attorneys fees and costs vacated the award of punitive damages after reaching a settlement agreement).

54. 745 ILL. COMP. STAT. ANN. 10/2-302 (LexisNexis 2012) ("It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages.").

55. E.g., Agreed Motion to Vacate the Court's 12/10/10 Order and Enter a Judgment Order *Nunc Pro Tunc* at 2, *Rodriguez v. City of Chi. Police Officers*, No. 1:09-cv-01913 (N.D. Ill. Dec. 9, 2010), ECF No. 168 (example of a court setting aside punitive damages in exchange for a settlement).

56. See, e.g., *id.*; Judgment Order *Nunc Pro Tunc* at 1–2, *Rodriguez v. City of Chicago Police Officers*, No. 1:09-cv-01913, (N.D. Ill. Dec. 2, 2010), ECF No. 172 (showing the jury awarded \$34,000 in compensatory damages and punitive damages of \$33,000). Before any petition for attorney's fees and costs was submitted, the parties agreed to set aside the judgment in return for a settlement of \$150,000 total. *Id.* The City of Chicago paid the full \$150,000. *Id.*

57. *Hudson v. Michigan*, 547 U.S. 586, 598 (2006).

58. One can appreciate the rationale for this practice. Absent such protection, who would be willing to serve as a police officer? Stripping away such protection would be akin to requiring a physician to practice medicine without any malpractice insurance.

59. This Author does not know to what extent this practice (negotiating settlements to cover punitive damages) is Chicago-specific, or is followed in other jurisdictions.

IV. MONETARY COSTS

How much did this cost the City of Chicago? The available court files list judgment amounts and related attorneys' fees, but do not list the amount of settlements.⁶⁰ However, as noted previously, the City of Chicago is exceptionally transparent in this regard.⁶¹ All suits against the City of Chicago which result in payment—either settlement or judgment—are posted on the City Law Department website.⁶²

Table II is a sample extract from the 2009 payouts.⁶³ It lists the case number, plaintiff's name, the amount, a very terse description, the city department involved, and whether the result was a settlement or verdict. The last column on the right is the date the Law Department sent formal authorization to the City Comptroller's office, requesting payment. Those dates are the only means of organization of this table. Cases are sequenced not by case number or plaintiff's names, but in chronological order by date of request for payment.

60. See, e.g., Agreed Motion to Vacate the Court's 12/10/10 Order and Enter a Judgment Order *Nunc Pro Tunc*, *supra* note 55, at 2.

61. See *supra* text accompanying note 6.

62. CITY OF CHI. DEP'T OF LAW, <http://www.cityofchicago.org/city/en/depts/dol.html> (last visited Jan. 10, 2013).

63. CITY OF CHI. DEP'T OF LAW, JUDGMENT/VERDICT & SETTLEMENT REPORT, 2009 EXPENDITURES THROUGH DECEMBER 31, 2009 (2009) [hereinafter 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT], available at <http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2009expendituresthrough12312009.pdf>.

TABLE II
2009 Judgments and Settlements Paid by City of Chicago – Sample⁶⁴

Case #	Payee	Payment Amount (\$)	Fee & Costs (\$)	Primary Cause	City/ Department Involved	Disposition	Date to Comptroller
182-A04703-1	Michael Stack	494	0	Surface damage Mechanical equipment	Streets and Sanitation	Settlement	7-Aug-09
05 L 6498	Bonilla, Amelia	600	0	Fall down -sidewalk	Transportation	Settlement	12-Aug-09
05 M1 302305	Elman, Anthony	7,000	0	MVA - City Vehicle	Police	Settlement	12-Aug-09
06 L 12995	Allen, Lillian (individually and as mother of Allen, Karisma a minor)	12,000	0	MVA - Pedestrian	Police	Settlement	12-Aug-09
07 C 475	Cardenas, Samantha (as mother and guardian of Cardenas, Joshua a minor)	99,000	0	Excessive Force/Minor	Police	Settlement	12-Aug-09
07 C 7212	Gatlin, George	10,000	0	False Arrest	Police	Settlement	12-Aug-09
08 C 1636	Roman, Joselito	40,000	0	Extended Detention/Malicious Prosecution	Police	Settlement	12-Aug-09
08 C 202	Choyce, Lillie	10,000	0	Excessive Force/Minor	Police	Settlement	12-Aug-09
08 C 4715	Pope, Michael	15,000	0	False Arrest	Police	Settlement	12-Aug-09
08 C 5752	Tubbs, Demetrius	5,500	0	Extended Detention/Malicious Prosecution	Police	Settlement	12-Aug-09

64. *Id.*

Table III shows the amounts paid out, in both settlements and judgments, by the City of Chicago to resolve both state and United States federal court police-related lawsuits for the years 2008 through 2011.⁶⁵ For a city, even one the size of Chicago, the totals are staggering—in excess of \$210,000,000 for four years.⁶⁶ It was estimated that the costs of settling cases in Chicago was the highest, on a per officer basis, of several large cities.⁶⁷ For instance, the cost per officer, per year was \$2,930 in Chicago, \$2,700 in New York City, \$2,200 in Los Angeles, \$1,360 in Philadelphia, and \$697 in Denver.⁶⁸

TABLE III
Payments for Chicago Police Lawsuits, 2008-2011: Settlements, Judgments,
and Administrative Payments⁶⁹

Year	U.S. District Court	Number of Cases	State Court and Administrative Payments ⁷⁰	Number of Cases	Total
2008	40,013,648	353	41,763,311	218	81,776,959
2009	23,586,252	294	16,069,145	176	39,655,397
2010	39,034,048	87	11,243,530	230	50,277,578
2011	26,887,347	109	11,600,425	178	38,487,772
Total	\$ 129,521,295	843	\$ 80,676,411	802	\$ 210,197,706

65. See generally *id.*

66. See *infra* Table III.

67. Tom McGhee, *Spike in Cops' Lawsuit Payouts: Settlements over Allegations of Excessive Force by Denver Police Top \$1 million in 2011*, DENVER POST, Jan. 13, 2012, at B1.

68. *Id.*

69. CITY OF CHI. DEP'T OF LAW, JUDGMENT/VERDICT & SETTLEMENT REPORT, 2008 EXPENDITURES THROUGH DECEMBER 31, 2008 (2008) [hereinafter 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT], available at <http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2008expendituresthrough12312008.pdf>; 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63; CITY OF CHI. DEP'T OF LAW, JUDGMENT/VERDICT & SETTLEMENT REPORT, 2010 EXPENDITURES THROUGH DECEMBER 31, 2010 (2010) [hereinafter 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT], available at http://www.cityofchicago.org/content/dam/city/depts/dol/JudgementAndSettlementRequests/2010_expenditures_rough_12312010_accessible.xls; 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6.

70. ST. OF ILL., CIRCUIT CT. OF COOK CNTY., *Law Division*, <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/LawDivision.aspx> (last visited Jan. 10, 2013) (noting that amounts include payments for minor torts dealt with administratively and bypassing court action).

Unfortunately for Chicago, this high cost per officer is compounded by the fact that Chicago has a large police force. In fact, Chicago has the second largest municipal police force in the country with 12,244 sworn personnel.⁷¹ Chicago also has high officer strength relative to population. Chicago has an estimated population of 2,696,000⁷² and 12,244 sworn personnel. This indicates a ratio of slightly more than 4.5 sworn personnel per 1,000 people. This is definitely on the high end of the spectrum. Many cities are in the 2.5 per 1,000 range and some fairly large West Coast cities cannot even reach close to 2.0 per 1,000.⁷³ A large number of officers means increased liability exposure. That, multiplied by a high per officer cost, equates to a huge financial cost for the City of Chicago.

The mix of cases is both distinct and changing. Federal district court cases listed in the sample page shown in Table II are those with the case number prefix “09 C” (occasionally on these lists, they are listed as “09 CV”).⁷⁴ All other case number prefixes represent local claims.⁷⁵

Virtually all of the federal district court cases listed represent police misconduct alleging false arrest, excessive force, and illegal searches, among others.⁷⁶ A very small number, no more than around two cases per year, allege some other federal claim, such as employment discrimination.⁷⁷ Thus, district court payments essentially represent 42 U.S.C. § 1983 claims, even if the plaintiff alleged other statutory grounds for jurisdiction.

The non-U.S. district court police claims represent a larger variety of cases. The overwhelming majority of claims arise from auto accidents involving a Chicago Police Department squad car.⁷⁸ These are essentially

71. CHI. POLICE DEP'T, ANNUAL REPORT 2010: A YEAR IN REVIEW 54 (2010), *available at* <https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Statistical%20Reports/Annual%20Reports/10AR.pdf>.

72. *Id.* at 31.

73. BERNAN PRESS, CRIME IN THE UNITED STATES 390, 397 (4th ed. 2010). For example, San Diego (population 1,272,000) and San Jose (population 945,000) had 2008 sworn officer strengths of 1,987 and 1,383, respectively. These equate to ratios of 1.6 and 1.5 per 1,000, roughly one third of Chicago's ratio. *Id.* at 390. For 2011 and 2012, the severe budgetary constraints arising from the recession have likely reduced these ratios to even lower levels.

74. *See generally, e.g.*, 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63.

75. *See id.* The alert reader scanning the complete rosters online will notice a number of settlements for \$99,000 or even \$99,999. That figure is the result of a City of Chicago practice. The Law Department has the authority to settle cases for up to \$100,000 on its own. Once the \$100,000 threshold is reached, any proposed settlement must be approved by the City Council—an additional step that causes delay and can result in undue publicity. Thus, plaintiff's counsel may find it worthwhile to accept a settlement of \$99,000 instead of holding out for \$110,000, in the interest of time and certainty.

76. *See generally* 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63.

77. *E.g., id.* at 7, 12.

78. *See generally id.*

fender-bender claims, predominately in the \$1,000-\$3,000 range.⁷⁹ Most of these are dealt with administratively, without any court case being filed.⁸⁰ Such administrative claims are noted on the rosters with case numbers beginning with 182-A.⁸¹

However, even with the Chicago Police Department's large fleet of vehicles,⁸² there are simply not enough fender-benders to reach an annual total in the millions, let alone tens of millions of dollars.⁸³ Some auto accidents result in personal injuries, occasionally resulting in death or a permanently disabling injury. These cases disproportionately drive up the total cost of state court claims. For example, a case filed in 2001 in Cook County Circuit Court, where the plaintiff was a paraplegic as a result of his vehicle being struck by a police car, resulted in the jury awarding damages amounting to over \$20,000,000.⁸⁴ That one verdict accounted for nearly 25 percent of the City's total police-related litigation payments in Cook County Circuit Court for 2008.⁸⁵

Tort cases seeking substantial damages are filed in the Law Division, which are listed in Table II with case notation "L." Lesser tort claims (less than \$30,000) pursued through litigation are filed in the Municipal Division of Cook County Circuit Court (these case numbers are denoted with M, M1, etc.).⁸⁶

It is important to note that the 2008 and 2009 payments include a number of Cook County Circuit Court cases that incurred substantial costs—in the hundreds of thousands or millions of dollars—in which the allegation was worded in terms identical to a 42 U.S.C. § 1983 claim, e.g., "excessive force."⁸⁷ In reviewing 2009 United States district court filings, it is clear the City of Chicago would petition to remove to the United States district court those state court cases where the substance of the allegations were in essence

79. *See generally id.*

80. *See generally id.*

81. *See generally* 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63.

82. In 2010, the Chicago Police Department had an inventory of approximately 3,100 vehicles. CHI. POLICE DEP'T, *supra* note 71, at 62.

83. *See* 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63.

84. *Hudson v. City of Chicago*, 881 N.E.2d 430, 433 (Ill. App. Ct. 2007). The jury's award of \$17,682,374.05 plus costs resulted in an ultimate cost to the city of \$20,923,609. *See* 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 7.

85. *See* 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 7. Payment was delayed pending an appeal and the Illinois Appellate Court upheld the verdict and judgment in late 2007. *Hudson*, 811 N.E.2d at 463. Payment was finally authorized in April 2008. *See* 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 7.

86. *See, e.g.,* 2009 JUDGMENT & SETTLEMENT REPORT, *supra* note 63, at 1–2.

87. For example, there was a \$3,900,000 payment in case 04 L 10585 to Roland Mullins for an "Excessive force/serious" verdict, payment authorized April 24, 2008. 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 10.

42 U.S.C. §1983 claims. Given the time lag between filings and eventual settlements or judgments, the net result was that 2011 payments showed almost no payments for police-related civil rights violations arising from Cook County Circuit Court cases, and only one involving substantial (i.e., greater than \$100,000) payments.⁸⁸ All other substantial state court payments in 2011 arose from vehicle accident or personal injury claims.⁸⁹ Thus, it appears that 2010 and 2011 Cook County Circuit Court payments are much smaller relative to United States district court payments than they were in 2008 or 2009.

Why did the City of Chicago change its practice and remove police misconduct cases from the Cook County Circuit Court to a United States district court? As a federal claim is involved, any 42 U.S.C. § 1983 case brought in state court could be removed at the defendant's request to a United States district court.⁹⁰ What criteria, if any, are used to assess whether a particular case should or should not be the subject of a motion for removal to a United States district court? Unfortunately, that information was not readily available, despite various inquiries.

During this Author's tenure as Executive Director of the Police Board, for years in the 1980s and into the 1990s, this Author estimated the police litigation costs for 42 U.S.C. § 1983 cases averaged \$6,000,000 annually. However, by 2000, this Author noticed the figure increasing sharply. The 2008 total of over \$40,000,000 in United States federal court payments was driven in large part by payments of over \$13,000,000 to settle four suits in wrongful conviction cases, suits dating back to 2003.

The much lower litigation cost of 42 U.S.C. § 1983 cases in prior years is not unique to Chicago. David Chiabi's analysis of five years' worth of cases in the New York City area found damages awarded in ninety cases, totaling \$4,538,000.⁹¹ That 1980s five-year total for all of New York City and most of its suburbs equates to a moderately bad month in Chicago in the 2008-2011 period.⁹²

While the City of Chicago's practice of actively litigating cases instead of settling may be reducing the number of new cases, the savings may be offset by the high costs of those cases that go to trial, especially those in which the City of Chicago loses.⁹³ Moreover, in terms of overall litigation cost control, 2012 does not look very promising for Chicago. There was a \$25,000,000

88. See 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 2, 4-6, 18.

89. See *id.*

90. 28 U.S.C. § 1441(a)-(b) (2006).

91. Chiabi, *supra* note 22, at 92. Note that Chiabi's analysis did not capture expenditures for settlements. See generally *id.*

92. For example, Chicago paid \$5,031,428 in damages in the month of February 2008 for police-related claims. 2008 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 3-5.

93. See *supra* note 26 and accompanying text.

judgment recently returned in a wrongful conviction case.⁹⁴ The City Council also approved a settlement of more than \$12,000,000 to protesters arrested during anti-war demonstrations in 2003.⁹⁵ If the \$25,000,000 judgment stands, that and the anti-war demonstration settlement alone will bring the City of Chicago close to its total police litigation costs for all of 2011.⁹⁶

Using a combination of PACER records and the Chicago Law Department's online payment roster, it was a straightforward matter to ascertain the amounts paid by Chicago in judgments and settlements for the search cases enumerated above. PACER records would note when a jury delivered a verdict, or the date the parties filed a notice in court that a settlement agreement had been reached. As shown in Table II, *supra*, payments are listed on the Law Department's roster in chronological order. Using the PACER date (for the settlement or verdict) as a starting point, this Author scanned the Law Department roster from that date forward. Usually, the payment was recorded on a date within three months of the PACER date.⁹⁷

These 2009 search cases, whether through settlement or judgment, cost the City of Chicago a total⁹⁸ of \$2,188,231.⁹⁹ That total will definitely grow, as additional amounts already agreed to are made known to the public, as the winning party's attorneys' fees are submitted, and as pending cases result in a verdict or settlement for the plaintiff.

How does the context of the case affect the cost? These payment data again show a clear distinction between home search cases and searches of person or car.

Searches of the person are relatively cheap to settle. As of October 2012, thirty-one of these cases had been settled, as noted on Table I, *supra*. Of those, there are amounts available for twenty-three such cases, with total settlements

94. Jeremy Goner, *\$25 Million for Unjust Conviction*, CHI. TRIB., Jan. 25, 2012, § 1 at 11.

95. Hal Dardick, *Aldermen Settle Iraq War Protest Lawsuits for \$12 Million*, CHI. TRIB. (June 06, 2012), http://articles.chicagotribune.com/2012-06-06/news/chi-aldermen-settle-iraq-war-protest-lawsuits-for-12-million-20120606_1_protest-aldermen-police-conduct.

96. 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6.

97. For instance, PACER records for 09-CV-440 (Hernandez, plaintiff) show the case dismissed due to a settlement as of March 16, 2009. The Law Department records show payment authorized as of March 26, 2009.

98. The total includes both awards to plaintiffs, and payments to plaintiffs' counsel for fees and costs.

99. 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63; 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69; 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6; 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49. Data for several recently settled cases were not available for inclusion in this analysis, as there is a lag of several months in securing settlement amounts. First, there is a lag from when a case is settled until the Law Department authorizes the City Comptroller to issue payment. Followed by an additional lag from when the payment is authorized until it is posted on the City of Chicago Law Department website.

of \$393,897—an average of almost \$17,126 each.¹⁰⁰ Contrast this with likely attorney's fees in excess of \$100,000, plus damages, should the City of Chicago lose the case at trial.

Trials are, not surprisingly, more costly. Three cases went to trial, with verdicts for the plaintiffs. Counting attorneys' fees and costs, one case cost the City of Chicago \$450,000 and another cost \$150,653.¹⁰¹ The third case,

100. Complaint, *M. v. Chicago Bd. of Educ.*, No. 1:09-cv-00436 (N.D. Ill. Jan. 23, 2009); Complaint, *Preston v. City of Chicago*, No. 1:09-cv-01553 (N.D. Ill. Mar. 12, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 15; Complaint, *Keys v. City of Chicago*, No. 1:09-cv-04162 (N.D. Ill. July 10, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 4; Complaint, *Jones v. City of Chicago*, No. 1:09-cv-04776 (N.D. Ill. Aug. 5, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 8; Complaint, *Powell v. City of Chicago*, No. 1:09-cv-00070 (N.D. Ill. Jan. 1, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 9; Complaint, *Jones v. City of Chicago*, No. 1:09-cv-00207 (N.D. Ill. Jan. 13, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 9; Complaint, *Robinson v. City of Chicago*, No. 1:09-cv-00506 (N.D. Ill. Jan. 27, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 15; Complaint, *Ross v. City of Chicago*, No. 1:09-cv-01368 (N.D. Ill. Mar. 4, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 13; Complaint, *Coleman v. City of Chicago*, No. 1:09-cv-01427 (N.D. Ill. Mar. 6, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 19; Complaint, *Kimble v. City of Chicago*, No. 1:09-cv-00376 (N.D. Ill. Jan. 21, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 15; Complaint, *Polk v. City of Chicago*, No. 1:09-cv-01027 (N.D. Ill. Feb. 17, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 7; Complaint, *Singleton v. City of Chicago*, No. 1:09-cv-01081 (N.D. Ill. Feb. 19, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 19; Complaint, *Huff v. City of Chicago*, No. 1:09-cv-01171 (N.D. Ill. Feb. 24, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 10; Complaint, *Kirk v. City of Chicago*, No. 1:09-cv-01850 (N.D. Ill. Mar. 25, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 10; Complaint, *McDonald v. City of Chicago*, No. 1:09-cv-02129 (N.D. Ill. Apr. 7, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 12; Complaint, *Hendricks v. City of Chicago*, No. 1:09-cv-02268 (N.D. Ill. Apr. 14, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 15; Complaint, *Rufus v. City of Chicago*, No. 1:09-cv-04883 (N.D. Ill. Aug. 10, 2009); 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49, at 1; Complaint, *Boyd v. City of Chicago*, No. 1:09-cv-04392 (N.D. Ill. July 22, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 5; Complaint, *McGhee v. City of Chicago*, No. 1:09-cv-01282 (N.D. Ill. Feb. 27, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 5; Complaint, *Ware v. City of Chicago*, No. 1:09-cv-06809 (N.D. Ill. Oct. 29, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 11; Complaint, *Ross v. City of Chicago*, No. 1:09-cv-00726 (N.D. Ill. Feb. 4, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 15; Complaint, *Carroll v. Bernichio*, No. 1:09-cv-02162 (N.D. Ill. Apr. 8, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 19; *Bass v. Hansen*, No. 1:09-cv-01087 (N.D. Ill. Feb. 19, 2009); 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49, at 6.

101. Complaint, *Wiley v. City of Chicago*, No. 1:09-cv-03637 (N.D. Ill. June 17, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 8 (showing a verdict for plaintiff and subsequent costs of \$450,000); Complaint, *Gillespie v. City of Chicago*, No. 1:09-cv-02733

recently decided, resulted in awards of \$25,000 in compensatory damages and \$50,000 in punitive damages.¹⁰² The City of Chicago agreed to pay the \$25,000 in compensatory damages plus attorneys' fees for \$140,000—for a total of \$165,000, with the parties agreeing to set aside the judgment for punitive damages. Thus, the average cost for these three cases is \$255,217. Comparing cases tried versus those settled is a shaky proposition. There could be significant factual differences between the two groups. Nonetheless, the difference between average cost of settlements and average cost of judgments—roughly \$17,000 versus over \$255,000—is massive.

Cases involving search of one's vehicle, which often occurs along with a search of the person, were similar in cost "to search of person cases." Five cases were settled for a total of \$53,000 for an average of less than \$10,600 each—close to the average for search of person settlements.¹⁰³ One car search case resulted in a verdict for the plaintiff, with a total bill for the City of Chicago of \$152,000.¹⁰⁴

Home search cases, on the other hand, were distinctly more costly. There were sixteen cases settled as of October 2012, with the amounts paid available for twelve of those: a total of \$548,000, for an average of \$45,666.¹⁰⁵ Unlike

(N.D. Ill. May 5, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 12 (showing a verdict for plaintiff and subsequent costs of \$150,653).

102. Complaint, *Dillon v. City of Chicago*, No. 1:09-cv-05251 (N.D. Ill. Aug. 26, 2009); Stipulation as to Judgment, Attorneys Fees and Costs, *Dillon v. City of Chicago*, No. 1:09-cv-05251 (N.D. Ill. June 1, 2012) (noting that although the City of Chicago has yet to pay the specified amount, the parties have agreed to a definite sum to resolve the case).

103. Complaint, *Turner v. Parker*, No. 1:09-cv-01177 (N.D. Ill. Feb. 24, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 5; Complaint, *Mayo v. City of Chicago*, No. 1:09-cv-01293 (N.D. Ill. Mar. 2, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 13; Complaint, *Lewis v. Liebhaber*, No. 1:09-cv-02219 (N.D. Ill. Feb. 16, 2009); 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49, at 5; Complaint, *Hopkins v. Unknown Chicago Police Officers*, No. 1:09-cv-06877 (N.D. Ill. Nov. 2, 2009); 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49, at 2; Complaint, *Abbott v. Parker*, No. 1:09-cv-05893 (N.D. Ill. Sept. 22, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 11.

104. Complaint, *Hale v. Cooper*, No. 1:09-cv-04918 (N.D. Ill. Aug. 11, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 9.

105. Complaint, *Ameismaier v. City of Chicago*, No. 1:09-cv-00241 (N.D. Ill. Jan. 14, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 10; Complaint, *Pride v. City of Chicago*, No. 1:09-cv-00388 (N.D. Ill. Jan. 21, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 9; Complaint, *Martin v. City of Chicago*, No. 1:09-cv-01903 (N.D. Ill. Mar. 26, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 10; Complaint, *Chilcutt v. City of Chicago*, No. 1:09-cv-01421 (N.D. Ill. Mar. 6, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 2; Complaint, *Hernandez v. Plewa*, No. 1:09-cv-00440 (N.D. Ill. Jan. 23, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 5; Complaint, *Horan v. City of Chicago*, No. 1:09-cv-00505 (N.D. Ill. Jan. 27, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 3; Notice of Removal, *Hawkins v. City of Chicago*, No. 1:09-cv-01574 (N.D. Ill. Mar. 13, 2009); 2010

the search of person cases, in which one case went to trial with a total cost of \$450,000, an extreme outlier did not skew the home search settlement average.

Two additional home search cases resulted in trial verdicts for the plaintiffs, with one costing \$150,000¹⁰⁶ and the other \$125,681.¹⁰⁷

Thus, just looking at settlements (not judgments), and combining search of person cases and search of car cases, there is an average settlement cost of \$15,961 per case—*roughly one-third the average settlement (\$45,666) for home search cases*. Thus, clearly, *the context of the illegal search, e.g. whether it occurred in an individual's home—helps determine the amount at stake in settlement negotiations*. However, that insight must be qualified by other factors. For example: Did the search of the person also involve an illegal arrest? Were the homeowners held at gunpoint during the search of their premises? The unique facts of each case, and the relatively small numbers of such cases, make it impossible to control for these additional variables.

V. CONCLUSION

Do these suits cost the City of Chicago a large amount of money? The answer is clearly yes. Do they serve to deter future misconduct? That answer is much less clear.

One informant, an attorney who has litigated some 42 U.S.C. §1983 cases, described to this Author an interaction he had with an accused officer on the witness stand. He asked the officer, “suppose you lose this case, and the jury awards my client \$100,000? What will happen to you at work?” The officer replied, “nothing.”¹⁰⁸ Unless punitive damages were awarded—a rare occurrence—the cost would be paid by the City of Chicago, not the accused officer.¹⁰⁹ Moreover, as noted above, it is not unusual for the City of Chicago

JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 4; Complaint, Ammons v. Matthews, No. 1:09-cv-02961 (N.D. Ill. May 15, 2009); 2009 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 63, at 16; Complaint, Gayden v. Mariano, No. 1:09-cv-07557 (N.D. Ill. Dec. 4, 2009); 2010 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 69, at 12; Complaint, Pickett v. Velazquez, No. 1:09-cv-03100 (N.D. Ill. May 22, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 6; Complaint, Richardson v. Does, No. 1:09-cv-04993 (N.D. Ill. Aug. 14, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 18; Complaint, Corder v. Turrise, No. 1:09-cv-00157 (N.D. Ill. Jan. 11, 2009); 2012 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 49, at 6.

106. Complaint, Rodriguez v. Does, No. 1:09-cv-01913 (N.D. Ill. Mar. 27, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 2.

107. Complaint, McCadd v. Murphy, No. 1:09-cv-01958 (N.D. Ill. Mar. 30, 2009); 2011 JUDGMENT/VERDICT & SETTLEMENT REPORT, *supra* note 6, at 11.

108. This attorney noted that as a young man, he had a summer job working at Wendy's, and once overcooked and ruined a batch of french fries. He believes he received more counseling and supervisory instruction and attention for that batch of ruined fries than does an officer who costs the City \$100,000-plus for an illegal search.

109. See *supra* notes 54–55 and accompanying text.

to effectively cover punitive damages by negotiating a post-verdict settlement.¹¹⁰

Separate from financial costs, an officer typically has no fear of any suspension or other disciplinary action that might arise from a negative verdict. This is consistent with this Author's recollections of twenty-one years of service as Executive Director of the Chicago Police Board. The Board serves as a civil service commission, adjudicating disciplinary cases.¹¹¹ The Chicago Police Board has jurisdiction over all cases in which the employee's discharge was sought, and most cases involving suspensions of more than five days.¹¹² This Author distinctly recalls that of the many hundreds of cases adjudicated during his term, a very few—single digits—involved allegations of an illegal search, whether of the person, home or car.

Thus, this Article has provided a snapshot view of how one year's worth of illegal search civil suit cases against the Chicago Police Department have been processed. Clearly civil litigation *is* a remedy for such actions. Whether it is an *adequate* remedy is open for discussion.

110. See *supra* notes 54–56 and accompanying text.

111. CHI., ILL., MUN. CODE § 2-84-030 (3) (2011), available at http://www.cityofchicago.org/content/dam/city/depts/cpb/supp_info/MCC.pdf.

112. *Id.*; CHI. POLICE BD., ALLEGATIONS OF POLICE MISCONDUCT: A GUIDE TO THE COMPLAINT AND DISCIPLINARY PROCESS 2 (2011), available at <http://www.cityofchicago.org/content/dam/city/depts/cpb/PoliceDiscipline/AllegMiscond201107.pdf>.

