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# Civil Liability and the Response of Police Officers: The Effect of Lawsuits on Police Discretionary Actions

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# Civil Liability and the Response of Police Officers: The Effect of Lawsuits on Police Discretionary Actions

## **Abstract**

The purpose of this study was to determine if there is a relationship between police discretion in carrying out arrests and the fear of retaliation litigation. Quantitative methods were used to examine the concerns of 88 police officers and first-line supervisors regarding civil litigation and the impact these concerns have on the discharge of their duties. The results indicate that the police officers in the study were not significantly concerned with the deterrent effects of lawsuits on their arrest activity, but there was a difference between the opinions of the police officers and their superiors regarding civil liability. A significant finding was that almost half of the respondents indicated they possessed a bachelor's degree, but over one third of the respondents indicated they had never received any formal training in civil liability. The study recommends strengthening the training curriculum in civil liability for all police academy attendees and through proper policy development and effective training programs through in-service activities for veteran police officers. In addition, employing risk managers in police agencies would allow for a systematic review of liability issues facing the agencies and the ability to mitigate those issues. Recommendation for future study would be to determine the current level of support for lawsuits by police officers and superiors, given the ever-changing environment in which policing occurs. Also recommended for future study would be to correlate between years on the job and how the concern of lawsuits changes respondents' arrest decisions over time.

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Civil Liability and the Response of Police Officers: The Effect of Lawsuits on  
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By

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Submitted in partial fulfillment  
of the requirements for the degree  
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Supervised by

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## **Dedication**

This project is dedicated to my loving wife, Bernadette Chiarlitti. It is through her selflessness, patience, great love, and support that I was able to complete this journey. You proved to be my rock in some very difficult times, and I would not be where I am today without you. I love you with all my heart.

I also dedicate this work to my two wonderful sons, Anthony and James. Each of you has always brought me great joy in your own individual ways. I know that you both have made many sacrifices growing up because of my career. You have made even more as I completed my studies. I am very proud of all that you both have accomplished. I could not be prouder that both of you followed in my footsteps and became police officers. These are difficult times for our profession, but I know you will remain focused and carry out your duties with honor. I hope that you both will consider what I have accomplished in this program and, once again, follow in my footsteps and continue your educations as well.

To my father, Mario, and my late mother Shirley, for all of your love and support in both my career and as I continued my education. I love you both dearly.

To my Committee Chair, Dr. Josephine N. Moffett, for your counsel and support through both my coursework and this project. My Committee Member, Dr. Michael Muffs, for your guidance, counsel, and assistance in helping shape this work. A special note of thanks to my advisors, Dr. Janice Kelly and Dr. Jeff Wallis, for your help and support throughout the process.

Last, but certainly not least, to my fellow Cohort 6 members and C-Suites team mates at St. John Fisher College, New Rochelle Campus. Each of you had an impact on my life that words cannot adequately express. What a magnificent experience!

## **Biographical Sketch**

Anthony P. Chiarlitti is currently the Director of Training and Employee Development at Century Protective Services, Inc. in White Plains, NY. He is also an adjunct professor in the Department of Criminal Justice and Security at Pace University, Pleasantville, NY, and he is an adjunct professor in the Behavioral and Human Services Department, Criminal Justice at State University of New York Westchester Community College. Mr. Chiarlitti attended SUNY Westchester Community College and graduated with an Associate of Police Science degree in 1977. He attended Iona College and graduated with a Bachelor of Science degree in Criminal Justice in 1988, and he graduated with Master of Science degree in Criminal Justice in 1999. Prior to his security and teaching career, Mr. Chiarlitti had over 33 years of law enforcement experience including serving for 19 years at the rank of Chief of Police. He came to St. John Fisher College in the spring of 2014 and began doctoral studies in the Ed.D. Program in Executive Leadership. Mr. Chiarlitti pursued his research in civil liability and the impact on police officer discretionary actions under the direction of Dr. Josephine N. Moffett and Dr. Michael Muffs.

## **Abstract**

The purpose of this study was to determine if there is a relationship between police discretion in carrying out arrests and the fear of retaliation litigation. Quantitative methods were used to examine the concerns of 88 police officers and first-line supervisors regarding civil litigation and the impact these concerns have on the discharge of their duties. The results indicate that the police officers in the study were not significantly concerned with the deterrent effects of lawsuits on their arrest activity, but there was a difference between the opinions of the police officers and their superiors regarding civil liability. A significant finding was that almost half of the respondents indicated they possessed a bachelor's degree, but over one third of the respondents indicated they had never received any formal training in civil liability. The study recommends strengthening the training curriculum in civil liability for all police academy attendees and through proper policy development and effective training programs through in-service activities for veteran police officers. In addition, employing risk managers in police agencies would allow for a systematic review of liability issues facing the agencies and the ability to mitigate those issues. Recommendation for future study would be to determine the current level of support for lawsuits by police officers and superiors, given the ever-changing environment in which policing occurs. Also recommended for future study would be to correlate between years on the job and how the concern of lawsuits changes respondents' arrest decisions over time.

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## **Chapter 1: Introduction**

### **Introduction**

The past several years have proven to be quite difficult for the police. News media reports of anti-police agitation in communities throughout the United States, in the wake of several controversial police-involved deadly force incidents have focused attention on police activities (Oppel, 2015). An alarming rise in attacks against police officers related to anti-police sentiment has occurred in communities throughout the United States (Disis, 2014). Controversies surrounding proactive police practices, such as the aggressive practices associated with the broken windows theory, stop and frisk, deadly force incidents involving the police, and civil disturbances in several major cities in the United States, only serve to underscore the difficult situations in which police officers often find themselves embroiled (MacDonald, 2015). Add to this the increasing call for far greater oversight of the police to limit perceived abuses of individual rights by the police (Harmon, 2009) and outside review of police involved deadly force incidents (Remnick, 2015), and it becomes clear that police work is a difficult and often onerous task in a free society.

The methods of police oversight in use today are relatively common for all police agencies throughout the United States. Most police officers and their agencies face oversight in the form of three primary review methods: internal, external, and legal/civil/criminal (Roberg, Novak, Corder, & Smith, 2012). Internal police oversight is the review of agency and agency personnel conducted by the agency itself, and it

typically starts as the result of either a complaint filed by a citizen or an agency member. Most agencies have an internal review process that is typically conducted by an internal affairs bureau (IAB). External police oversight or review is typically conducted by an outside or citizen review board that is made up of appointed individuals from the community and, perhaps, members of the police agency acting as representatives to the board (Roberg et al., 2012).

The final method of police oversight is legal oversight, occurs in two ways. The first method of legal/civil/criminal oversight or review that occurs when a police officer engages in conduct that does not satisfy specific constitutional requirements and, because of that, evidence seized by the officer is not permitted to be entered into trial (Roberg et al., 2012). This oversight is provided through the application of the Fourth Amendment “exclusionary rule.” The exclusionary rule requires that evidence seized illegally cannot be used in trial (Swanson, Territo, & Taylor, 2012). The second method of legal oversight is when a lawsuit is filed against an officer and his or her superiors and agency, in an attempt to hold the officer civilly liable for his or her actions. Legal oversight of the police comes at a significant cost in both time and resources for the agency, not to mention the stress on the officers involved (Roberg et al., 2012). Stevens (2000) noted concerns expressed by some officers as to the police agency backing them—regardless of the nature of the lawsuit. This research confines itself to examining the impact on police officer attitudes and actions concerning civil liability as a method of oversight.

There is evidence to suggest that the fear of libelous claims against police officers could affect their behaviors toward enforcing the law (Ferdick, 2013; Garrison, 1995; Stevens, 2000). However, what is not clear is whether the fear of municipal lawsuits

affects their work. A troubling trend for law enforcement agencies and administrators is the increase in litigation, coupled with an increase in monetary awards, in police misconduct litigation (Swanson et al., 2012). A report by the Comptroller of the City of New York (2013) provides an example of the prevalence of civil claims against the police. In fiscal year (FY) 2012, a total of 5,601 claims were filed against the police, representing a 22% increase over the 4,584 claims that were filed in FY 2011, against the most frequent type of personal claim filed in FY 2012, and "...it accounts for the fourth largest claim payout in FY 2012" (Liu, 2013, p. 30). An article in *The Wall Street Journal* (Elinson & Frosch, 2015), based on public record data for 2014, notes that the 10 U.S. cities with the largest police departments paid out a total of \$248.7 million dollars in settlements and judgements. This number represents a 48% increase over the \$168.3 million paid-out in 2010 (Elinson & Frosch, 2015). It is important to note that while not all of the departments involved showed increases in police misconduct, the current scrutiny that the police are under is having an impact on the resolution of lawsuits (Elinson & Frosch, 2015). While this data speaks to the impact of the tremendous costs to police agencies, there are still questions what about the impact on the police officers' professional reputation and how they perform their duties.

Research on the issue of police civil liability has examined the impact that liability has on both police agencies and police officers in terms of cost as well as emotional stress. Lee (1987) noted the potential cost to a "governmental entity or its officials" (p. 167) no matter the outcome of the lawsuit. Indeed, it has been noted that the police and law enforcement officers have suffered the most exposure to, or have been the subject of, lawsuits—more so than any other public servants (Kappeler, 2001). Barker

(1999), in her study of Los Angeles police officers, recounted the experience of a police officer who became reluctant to take police action because of his experience with having been sued for his actions in an earlier incident. This phenomenon, known as “depolicing” (Roberg et al., 2012) is something that is both interesting from a practitioner’s point of view as to how a police officer approaches his or her duties, and it is troubling from an academic point of view as to the impact depolicing could potentially have on the justice system. While the interest in naming depolicing as a phenomenon may be viewed as purely academic, the implications on the administration of justice may prove to be more significant and could potentially impact entire communities (Oliver, 2015).

Depolicing happens in several different ways. In one way, as identified by Barker (1999), police officers who have been the subject of a lawsuit decide they will no longer involve themselves in discretionary situations which may, in the officers’ opinion, bring about another lawsuit. A second circumstance is where a police officer (or officers) do not take action due to concerns associated with racial profiling (Cooper, 2006) or in response to some negative experience (Oliver, 2015). Cooper (2006) highlighted a significant issue regarding that particular phenomenon when in New York City, during the 2003 Puerto Rican Day Parade, police officers sat idly by while women were sexually assaulted by groups of minority men. The answers provided by these officers for their inactivity had to do with the officers’ fears of being criticized for racial profiling—essentially depolicing men of a racial minority (Cooper, 2006). In a more recent case, a Birmingham, AL police officer was pistol-whipped with his own gun and beaten unconscious by a suspect in a traffic stop. The officer reported that he hesitated to use force to protect himself against the suspect for fear of being labeled a racist (MacDonald,

2015). This paper limits itself to the first of these depolicing issues, which is the issue of police officers avoiding discretionary police actions for fear of being sued.

Several studies have been conducted in an attempt to measure the attitude of police officers and to determine if the threat of lawsuits has any effect on their daily law enforcement activities. Garrison (1995) conducted a study of three different types of police agencies, in a single state, to measure the attitudes of those officers surveyed toward the threat of civil liability and to attempt to determine if that threat negatively impacted police officers' work. Other researchers have attempted to determine the attitudes and concerns that individual police officers have concerning lawsuits, based on various factors related to the law enforcement field, such as jurisdiction (Garrison, 1995), time in service (Brodsky & Scogin, 1991), rank (Vaughn, Cooper, & del Carmen, 2001), and the law enforcement profession (Hall, Ventura, Yung, & Lambert, 2003). At the time of this writing, most of these studies are well over 10 years old, and they do not take into account the existing environment in which police find themselves operating today. The police and law enforcement profession, however, have not been alone in dealing with the issue of lawsuits.

An interesting parallel involves research that shows that practitioners in the medical and mental health professions are concerned with the issue of liability in the area of malpractice, and they suffer an emotional impact from these lawsuits (Brodsky & Cramer, 2008; Schumacher & Ritchey, 1995). Using a modified litigaphobia scale, developed by Breslin, Taylor, and Brodsky (1986) to measure the excessive fear of litigation, Schumacher and Ritchey (1995) conducted a survey of 356 physicians, employed at a major southeastern U.S. university health science center, to determine the

extent of fear these physicians had towards being sued. The researchers found that the fear of litigation was associated with factors including physicians “who were female, young, not board certified, less clinically active, defendants in prior lawsuits, and in high risk specialties” (Schumacher & Ritchey, 1995, p. 1). In another study of medical practitioners, Brodsky and Cramer (2008) surveyed 72 medical and mental health professionals attending a continuing medical education seminar to determine the level of concern these practitioners had of being threatened with a lawsuit, knowing that someone in their practice had been sued or they were being sued themselves. The findings of this study support the idea that the fear of lawsuits has an impact on both medical and mental health practitioners (Brodsky & Cramer, 2008).

Of particular interest in the medical field is the impact of lawsuits on obstetricians and gynecologists (OB/GYN). A 2012 survey on professional liability conducted by The American Congress of Obstetricians and Gynecologists (ACOG) (2012) reported on a survey of 32,238 Fellows and Junior Fellows representing 10 ACOG Districts throughout the United States in obstetrics and gynecology practice to determine the impact of medical malpractice liability on their practices. Of the 32,238 surveys provided to practitioners, 9,006 (35.8%) were completed and coded utilizing Statistical Package for Social Sciences (SPSS) software for the time period January 1, 2009 through December 31, 2011 (ACOG, 2012). Results from the study reported on the changes in physician practice due to the affordability or availability of medical liability insurance and changes in practice as the result of the risk or fear of liability claims or litigation (ACOG, 2012).

The results of the study speak to the significant impact that lawsuits have on OB/GYN practices. Of the 9006 OB/GN practitioners surveyed, 57.9% had made at least

one change to their practice as a result of the potential risk and fear associated with liability and litigation. Another 18.1% of obstetricians and 27.4% of gynecologists surveyed significantly decreased the number of high risk obstetric patients they served (ACOG, 2012). Most significant is the fact that between 5% of obstetricians and 6% of gynecologists that responded to the survey reported having completely stopped obstetrics practice (ACOG, 2012). As the ACOG (2012) survey report indicates, is a deprivation of well-trained medical professionals in the field of women's health.

Another practice area identified in the literature with some level of concern toward litigation is the mental health field. Wilbert and Fulero (1988) conducted a quantitative study to determine the level of concern that Ohio psychologists had toward litigation. A survey was mailed to 350 licensed psychologists in the state of Ohio and 71% (235) were returned, including 66 that were from "nonpracticing or nonclinical psychologist . . . leaving a sample of 169 usable questionnaires" (Wilbert & Fulero, 1988, p. 380). The results of the questionnaire indicated that the majority of those responding (58%) indicated that they did not have a significant concern toward being sued. A small number (14%) did indicate that they had a significant level of concern toward being sued (Wilbert & Fulero, 1988). What is significant from a professional standpoint is the impact on how the psychologists had modified their practice to reduce the chance for lawsuits. A number of respondents (57%) reported that they had made changes in their practice to protect themselves from litigation with another 27% indicating that they had "consulted an attorney or attended a workshop on malpractice risk management" (Wilbert & Fulero, 1988, p. 381). It is significant that psychologists surveyed in Ohio did have

some level of concern and that concern did have an impact on how they conducted their professional practice.

While the medical practice has been affected by lawsuits, the police still remain in the forefront of public agencies that are impacted by civil litigation. It can be argued that the police are rather unique when it comes to civil liability issues. The City of New York, for instance, has adopted legislation that specifically permits a person or persons to bring a civil lawsuit not only against the police department, but also against an individual officer, in the event of an alleged biased-based policing incident. Few, if any, professions work under such permissive liability legislation. An important consideration in this study is the fact that, at the time of this writing, most of the studies conducted on police officer attitudes and concerns toward lawsuits are more than a decade old and were conducted at a time when public confidence in the police was higher (Jones, 2015).

An important factor that the research considers is the role the exercise of discretion plays in police officers' daily activities. Discretion has always been a fundamental part of police work (Walker, 2001). Discretion is exercised by police officers in their decisions to take enforcement action as well as to not take enforcement action (Archbold, 2013). While the exercise of discretion by police officers often has a positive side, there is also significant potential that discretion could be misused by police officers in situations such as racial profiling (Archbold, 2013). This use and potential misuse of a police officer's discretionary powers and the perception of the community also were considered in this research, particularly regarding aggressive police practices.

## **Problem Statement**

Because the threat of litigation is continually present in law enforcement, it is difficult to determine how the fear of litigation impacts a police officer's discharge of his or her duties, professional standing in the police department, and, ultimately, the public's safety.

## **Theoretical Rationale**

In researching this topic, there are other issues that must be examined to provide a more complete understanding of this phenomenon and how it impacts police officer attitudes and actions. This is particularly relevant when examining the broken windows theory (Kelling & Wilson, 1982), the aggressive policing methods associated with this theory (Roberg et al., 2012), and the response by public institutions to the community backlash from these practices. In particular, the researcher looks at New York City and the city government's response to the New York City Police Department's (NYPD) use of *stop and frisk* through the adoption of restrictive legislation.

**Broken windows theory.** In an article published in the *Atlantic* magazine in 1982, the broken windows theory was first proposed by George L. Kelling and James Q. Wilson (1982). The theory is based on an earlier experiment conducted by Stanford University Sociologist, Philip Zimbardo (1969). The theory suggests that "at the community level, disorder and crime are inextricably linked, in a kind of developmental sequence" (Kelling & Wilson, 1982, p. 3). Using the metaphor of a broken window left unrepaired, the authors suggest that soon all of the other windows in the building will be broken. The basic premise being "one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing" (Kelling & Wilson, 1982, p. 3). In

order to combat this perception, Kelling and Wilson (1982) put forth the notion that the police should first concentrate on low-level criminal behavior to have an impact on the more serious crimes that plague neighborhoods. In order to effectively accomplish this the police must aggressively pursue low level criminals who engage in so called quality-of-life or public order violations (Harcourt, 2002).

The first major police agency to focus on the broken windows theory, as a police practice, was the New York City Police Department in the 1990s under the command of Commissioner William Bratton. The concept was initially used to target quality-of-life crimes in the city's subways, and it eventually led to a substantial increase (50%) in arrests of persons who were wanted on outstanding warrants for other more serious crimes (Harcourt, 2002). The theory, however, has not been without its critics. One of the most vocal and primary critics of the broken windows theory is Bernard E. Harcourt (2002) who cited the anecdotal nature and lack of empirical evidence in assessing the effect on crime associated with this type of policing in New York City. Harcourt (2002) posited that the crime reduction experienced by New York City during the 1990s had more to do with other factors, including better economic conditions, a shift from crack cocaine use to heroin, and an increase in deployed police personnel, than it did with the broken windows theory. Many other large cities in the United States had also seen notable decreases in crime during this period without resorting to the aggressive zero-tolerance practices associated with the broken windows theory (Roberg et al., 2014).

From a theoretical perspective, the broken windows theory (Kelling & Wilson, 1982) provides important insight into how the police function and the types of policies that impact police-citizen relations. The connection to the research relates to the impact

that the application of the theory has on lawsuits filed against the police and individual police officers who engage in these order-maintenance activities. In researching this topic, there are other issues that must be examined to provide a more complete understanding of this phenomenon and how it impacts police officer attitudes and actions. To accomplish this, the researcher also examines, as a mid-level theory, Robert K. Merton's (1936) theory of the unanticipated consequences of purposive social action or, as it is also known, the theory of unintended consequences.

**Theory of unintended consequences.** The theory of unintended consequences was first put forth by Harvard sociologist Robert K. Merton (1936) in a paper entitled "The Unanticipated Consequences of Purposive Social Action." Merton's (1936) paper was presented as a means of scientifically analyzing a concept that had been previously explained through discussions "ranging from theology to technology" (Merton, 1936, p. 894). Merton (1936) attempted to provide the basis for a scientifically systemized analysis of the effects of purposive actions and the unintended consequences of these actions that result from ignorance and incomplete information. Norton (2008) noted the impact the theory has on the criticism of government programs as well as the economic consequences that legislation has had on the U.S. steel industry. As sociological theory, unanticipated consequence in this research was utilized to inform the researcher about the possible unintended consequences that the fear of lawsuits had on police officer activities.

### **Statement of Purpose**

The purpose of this study is to find out if there is a relationship between police discretion in effecting arrests and the fear of reprisal litigation. There is evidence to

suggest that the fear of lawsuits affects the work of police officers and how they discharge their duties. What is not clear, however, is the overall effects of this fear regarding their work as well as their perceptions on how lawsuits will impact their careers. This study examines the overall perception that individual police officers have with regard to lawsuits. The concerns that individual police officers have over the possibility of a lawsuit could prevent them from fully exercising their duties, and it could have an effect on public safety in a community.

### **Research Questions**

This research study addresses the following questions:

1. To what degree are police officers concerned about the impact that litigation may have on their pensions?
2. To what degree does the fear of litigation affect how far a police officer is willing to go to make an arrest?
3. To what degree do police officers feel that litigation could impact their future promotion opportunities?
4. To what degree does the concern about litigation have on the number and types of arrests made by police officers?
5. Will concerns about litigation cause a police officer to leave police work or defect to another police agency?

### **Potential Significance of the Study**

This study informs the public, police administrators, and public officials about the significant concerns that police officers have regarding legal liability and how those concerns impact the exercise of their police duties. First, the information developed from

this study attempts to provide police administrators and public officials with a better understanding of the concerns that police officers have toward lawsuits in relation to their emotional and job security. Second, the information developed from this study will help to educate public officials and police administrators with a better understanding of how police officers' concerns about lawsuits could potentially impact the exercise of their law enforcement duties. Third, the information developed from this study attempts to educate the public, police administrators, and public officials about the impact that concerns of police officers toward lawsuits have on public safety.

### **Definitions of Terms**

The review of the literature provided in Chapter 2 informed the basis for the following definitions of terms relevant to the research on this topic.

*Civil Liability* – involves action taken in public court seeking a private remedy based on contract or tort (Gifis, 1984).

*Color of Law* – the misuse of power by an individual. In the case of this study, a police officer or police sergeant who possess power derived from the state (Roberg et al., 2012).

*Discretion* – a choice by a police officer of what laws will be enforced and how the officer will enforce them (Roberg et al., 2012).

*Defendant* – an individual. In the case of this study, a police officer or superior, defending against a lawsuit.

*Felony* – a serious crime punishable by a fine, probation, or in extreme cases, death (Schmallegger, 2007). In New York State, felonies typically carry a prison term of 1 year or more.

*Indemnification* – legal and financial protection provided by the municipality to police officers and other members of a police agency in the event of a lawsuit or in the event of a compensatory judgement against a member of the agency.

*Infraction* – relatively minor violations of the law in which a person receives a ticket and is released (Schmalleger, 2007).

*Qualified Immunity* – protects police officers from having to go to trial in regard to a lawsuit. Qualified immunity is usually granted by a judge very early in the lawsuit process and only allows a lawsuit to continue where it is established that the officer violated a clearly established constitutional or statutory right (Legal Information Institute, n.d.).

*Misdemeanor* – a minor crime usually punishable by less than 1 year in jail (Schmalleger, 2007).

*Plaintiff* – the individual bringing the lawsuit.

*Police Officer* – a sworn member of an established law enforcement agency with law enforcement and arrest powers granted by the state.

*Probable Cause* – action taken by a police officer based upon the reasonable belief that a crime has been or is about to be committed.

*Sergeant* – a sworn member of an established police agency with law enforcement and arrest powers granted by the state as well as supervisory responsibility over police officers. Sergeants are also referred to as first-level supervisors who are responsible for directing the work of subordinate police officers (Iannone, 1987).

## **Chapter Summary**

Police officers are subject to a number of different oversight mechanisms designed to control their behavior. Most significant is the legal oversight through the use of civil liability through the use of lawsuits. Lawsuits appear to be increasing as society becomes more litigious, and civil liability remains a significant concern to police officers and their agencies. The increased costs can be measured in both financial terms, as police officers and agencies deal with defending these cases, as well as the emotional toll they exact on the individual officers. The emotional toll could influence a police officer to possibly not take action where it is justified essentially leading to depolicing for fear of liability. Barker (1999) provided a graphic description of the concerns voiced by a police officer and his reluctance to take action after experiencing a lawsuit in a previous incident.

## **Chapter 2: Review of the Literature**

### **Introduction and Purpose**

The idea that lawsuits play a significant role in controlling police behavior is something that has been well documented and studied by police professionals and academics for many years. Lawsuits are one of the primary and most common methods of police oversight, along with internal administrative control and external civilian control (Roberg et al., 2012). While internal control involves the investigation of wrongdoing on the part of a police officer by the officer's agency (typically by a police internal affairs bureau), and external review occurs through some type of citizen review board (Roberg et al., 2012), lawsuits are one form of legal review (the other being criminal prosecution of a police officer when warranted) brought either in state court or the federal court system (Roberg et al.).

A further dimension in the issue of lawsuits against the police is the source of the lawsuit. Lawsuits against police officers and their supervisors and agencies, can come from external sources, such as citizens alleging a civil rights violation or in an increasing number of cases from police officers, themselves, against their agencies or chiefs who are alleging violations of workplace norms or policies concerning issues such as sexual harassment, employment discrimination, disciplinary actions, and other alleged violations (Vaughn et al., 2001). Vaughn (1996) highlighted the potential for lawsuits that police officers face in situations where an officer retaliates against an individual for "vocally challenging and criticizing the police" (p.68). No matter the source or cause of the

lawsuit, one issue is clear: lawsuits are one of several methods, and the most popular method, intended to influence police behavior (Hughes, 2001).

### **Studies on Policing**

A number of studies have been conducted to attempt to measure the attitude of police officers and to determine if the threat of lawsuits has any effect on their daily law enforcement activities. Finding a void in the literature when comparing police agency types, Garrison (1995) conducted a quantitative study of three different types of police agencies in a single state to measure the attitudes of those officers surveyed toward the threat of civil liability and to attempt to determine if that threat negatively impacted police work. In particular, Garrison (1995) focused on lawsuits arising under the Civil Rights Act of 1964, Title 42 USC, § 1983, which are brought in federal court. Title 42 USC § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (Civil Rights Act (1964)).

This section of the Civil Rights Act provides the basis for a citizen to bring suit against law enforcement officers in federal courts for an alleged violation of that citizen's civil rights (Garrison, 1995). Lawsuits arising out of 42 USC § 1983 claims have become the

primary method of bringing an action against police and criminal justice system officials (Worrall, 2001).

In contrast to state and municipal police officers, federal law enforcement officers are subject to civil lawsuits under a different legal concept known as a Bivens Action. A typical lawsuit under 42 USC § 1983 against a state or municipal law enforcement agency is brought against both the officer in his or her official capacity and his or her municipality (and, often, the officer's superiors). A Bivens Action is directed at a federal law enforcement officer as an individual and not the federal government (*Bivens v. Six Unknown Federal Narcotics Agents*, 1971). The attitudes of federal law enforcement officers are not considered in this study because of the differences in the lawsuit criteria.

**Analysis of lawsuit content data.** To develop an understanding of police civil liability, researchers have attempted to analyze the content of lawsuits against police officers and their agencies using different data sources such as court records and newspaper accounts (Archbold, Lytle, Weatherall, Romero, & Baumann, 2006; Kappeler, Kappeler, & del Carmen, 1993). Archbold et al. (2006) attempted to provide an understanding of lawsuits filed against the police without a nationwide data-collection process by using newspaper accounts. Kappeler et al. (1993) conducted an analysis of 1359 police civil liability cases under 42 USC § 1983 adjudicated in United States Federal District Courts from 1978 through 1990 involving the police using data from West Publishing Companies Federal Supplement. Their findings indicate that while there were two significant increases in the number of cases filed against the police during the period studied, "the actual percentage of cases resulting in a finding of liability was less than 48 percent" (Kappeler et al., 1993, p. 333). Additionally, the researchers indicated

that in the vast majority of the cases in which the police were successful, the success was the result of procedural protections that are afforded to police defendants in these cases (Kappeler et al., 1993). Other researchers have attempted to determine the attitudes and concerns that individual police officers have toward lawsuits based on various factors related to the law enforcement field, such as jurisdiction (Garrison, 1995), time in service (Brodsky & Scogin, 1991), rank (Vaughn et al., 2001), and the law enforcement profession (Hall et al., 2003).

Fishel, Gabbidon, and Hummer (2007) conducted a quantitative study of wrongful death lawsuits involving the police in the United States for a 10-year period from 1995-2005. Utilizing a Lexis-Nexus data search, the researchers examined a total of 369 cases filed against police and sheriffs' agencies in an attempt to examine the both the outcomes as well as key characteristics of the lawsuits. The results of the study were presented in nine statistical tables that detailed the top 10 states with wrongful death suits involving the police, the season when the incident occurred, the time of the incident, the nature of the claim, as well as the results of a multivariate and logistic regression analysis, to analyze verdicts and awards in wrongful death suits (Fishel et al., 2007). Data from the study indicate that the courts had ruled in favor of the police in approximately two-thirds of the cases while, in the remaining cases, the courts ruled for the plaintiffs because of the egregious nature of circumstances surrounding the case (Fishel et al., 2007).

**Jurisdictional differences and perceptions on liability.** In an attempt to address concerns that law enforcement had been negatively affected by the threat of civil liability in the two decades prior to his study, Garrison (1995) surveyed a total of 50 patrol officers from a state police agency, a university police agency, and a municipal police

agency, all located within the state of Delaware, to determine their attitudes regarding lawsuits against police officers and the police. Garrison (1995) utilized a survey comprising both true and false questions and a 7-point Likert scale that was designed to measure police officer attitudes through each question. The survey also included a demographic piece that requested educational experience from each study participant, which was reported in the study findings by agency type. A weakness of this study, which was based on officer self-reporting, is that while the survey attempted to measure the officers' concerns in a number of areas involving police officer liability, a majority of the officers surveyed indicated that while lawsuits do have somewhat of a deterrent effect on misconduct, the fear or threat of lawsuits did not overly impact the surveyed officers' interaction with the public (Garrison, 1995). This, Garrison pointed out, is in direct contrast to what other researchers in this area have suggested, and it led him to suggest that lawsuits do not represent a significant concern in the daily thinking of the average police officer (Garrison, 1995). Interesting to note in this study is that a "strong minority..." of the officers surveyed believe that civil liability does pose an "impediment to effective law enforcement" (p. 30).

While noting the limitations of the study based on a relatively small sample size, Garrison (1995) pointed out the importance of the study was in examining police behavior related to lawsuits. The findings from the study indicate that constituency plays a role in how officers from different types of police agencies perceive civil liability. Garrison (1995) specifically noted the importance of the findings in explaining the differences in the perception concerning civil liability of campus police officers who are associated with a public safety approach to policing as opposed to the more traditional

law enforcement approach associated with state and municipal police officers. While several researchers have looked at jurisdictional differences in attitudes and effects of lawsuits on police officers, others have examined liability issues affecting the police outside of the United States.

Freckelton (2008) conducted a case analysis of a 2008 judicial decision by the Victorian Court of Appeals, New South Wales, Australia. The case, *Kirkland-Veenstra v Stuart (2008) VSCA 32*, involved the suicide of a 37-year-old male, Ronald Hendrik Veenstra, who at the time of his death was under investigation for fraudulent business dealings (Freckelton, 2008). Early on the morning of his death, Mr. Veenstra was found in an apparently depressed state by two plainclothes police officers in a remote public parking lot. After speaking to Mr. Veenstra, the two officers observed a vacuum cleaner on the floor in the rear of the car but found no indication of either exhaust fumes, drugs, alcohol, or medication (Freckelton, 2008). Prior to leaving the area after a police data search turned up no wants or warrants for the vehicle or Mr. Veenstra, the officers offered to contact a crisis team to which Mr. Veenstra declined noting that he would contact his own physician at a later time (Freckelton, 2008). Mr. Veenstra went home, and later that day, after speaking to his wife, committed suicide by attaching a vacuum hose to the exhaust of his car with the engine running (Freckelton, 2008).

Tania Kirkland-Veenstra, the wife of the decedent, subsequently brought a suit against the two officers alleging that they had failed to exercise their common law duty to take reasonable steps to protect her husband from harming himself and that the officers also owed a common law duty to Mrs. Kirkland-Veenstra to protect her from the psychological injury that she suffered as a result of her husband's suicide (Freckelton,

2008). Mrs. Kirkland-Veenstra also brought a vicarious liability action against the State of Victoria (Australia) based upon the conduct of the two plainclothes police officers and their failure to protect her husband (Freckelton, 2008). While the lower court that originally heard the case found for the two plainclothes officers and the State of Victoria, the Victorian Court of Appeals found for Mrs. Kirkland-Veenstra and permitted recovery on her claim "...by virtue of statute of the capacity to protect vulnerable people with mental illness against the consequences of their psychotic symptoms" (Freckelton, 2008, p. 176). The significance of the case is the finding that those with statutory authority possess a duty to act to protect persons from harm by detaining them if necessary to avoid "foreseeably adverse consequences" (Freckelton, 2008, p. 176).

**Police recruits' perceptions on liability.** In their study on the fear of litigation among law enforcement officers, Brodsky and Scogin (1991) surveyed 101 police trainees comprising 90 men and 11 women, who were attending a regional police academy, using a five question instrument, and they found that the trainees reported "moderate to severe distress" when informed of lawsuits involving another officer (p. 43). Most significant was that 84% of the officers in the regional academy indicated that they believed that, contrary to Garrison's study, their fear of civil litigation was not irrational or excessive (Brodsky & Scogin, 1991). While the study examined younger officers with minimal experience as opposed to veteran police officers, this particular fear of litigation on the officers' parts is a concern because it adds to the stresses that already exist in law enforcement (Brodsky & Scogin, 1991).

An important consideration in the study results is the implication for law enforcement that the researchers identified. Brodsky and Scogin (1991) made note of the

importance of both pre-service and in-service training on liability and the process surrounding litigation for police officers. They said that the training should be structured to provide information on litigation statistics as well as to demonstrate the agency's support of the officer during the litigation process. Most significant from the point of the research project was the cautionary comment concerning the possibility that the fear of litigation could produce in police officers "overly conservative and avoidant law enforcement behavior . . . antithetical to the human services commitment that is a major incentive for law enforcement work" (Brodsky & Scogin, 1991, pp. 44-45).

In contrast to Brodsky and Scogin (1991), Hughes (2001) conducted a quantitative study at a large municipal police agency (the Cincinnati Police Division in Cincinnati, Ohio) and surveyed 147 officers using a 4-point Likert scale questionnaire to determine how police officers "perceive the impact of civil liability on their actions in the field" and to further consider "how officers feel about administrative measures used by departments to reduce liability" (p. 240). The survey was conducted as part of a multi-year study of the Cincinnati Police Department to judge the outcome of the agencies' community policing program. Both community policing officers and patrol officers were included in the study (Hughes, 2001). Results were reported in a series of detailed statistical tables included in the report.

The study by Hughes (2001) is significant because it set out to attempt to conduct an in-depth analysis of how police officers perceive civil liability and the effect that perception has on officers carrying out their law enforcement duties. Most interesting for a municipal police agency the size of the Cincinnati Police Division (780 non-supervisory officers on December 31, 1997) is the fact that the most of the officers (81.5%) had never

been sued in their professional capacities. A large segment (over two-thirds), however, of the randomly selected sample knew of someone who had been sued in their professional capacity (Hughes, 2001). Hughes also found a relationship with time on the job to the incidence of lawsuits. The numbers for officers with more than 20 years of service who had been sued was nearly four times that of officers with 5 or less years of experience (Hughes, 2001). A surprising finding in this study is the fact that there were contradictory responses concerning whether civil liability is an impediment to effective law enforcement. While the results indicate that most of the officers surveyed felt that it was an impediment, most believed that "...the police should be exposed to civil accountability" (Hughes, 2001, p. 253).

Seeming to build on the Hughes (2001) study of the Cincinnati Police Division (CPD), Novak, Smith, and Frank (2003) examined data collected by observers between April 1997 and April 1998 of the same police agency. Observers "conducted 442 systematic social observations" (p. 357) of both community-oriented police officers and regular police officers who were assigned patrol duties in the CPD officers. After completion of the observation period, the officers were administered an "88 item, self-administered survey . . . to collect information on officers' attitudes, job satisfaction, perceptions of their assigned neighborhood, and attitudes towards civil liability" (p. 357). Responses were separated into tables and the represented responses to the Likert type questions asked. The study cites five different measures, or dependent variables, and seven independent variables related specifically to attitudes toward civil liability. The study was different than other studies, because the officers involved were not only administered a test to measure their attitudes but also were followed by the trained

observers. The two most significant findings from the study are that lawsuits do not appear to have a significant impact on the behavior of police officers as well as the finding that a large number of the 147 officers surveyed agreed that citizens should have the right to sue police officers.

The impact of Hughes' (2001) research in this area is significant because he looked at several variables that were not included in other studies to include police officer race and gender when discussing officer attitudes toward liability. The study was conducted as part of a multiyear study of community policing efforts involving ride-along observers, and it took into account both patrol officer attitudes as well as officers assigned to community policing efforts. The fact that trained graduate students acted as ride-along observers who utilized the data collected and coded as a part of the community policing study, provides support for the quantitative findings through qualitative means.

Similarly, del Carmen (1993) took up the cause of litigation involving the police and noted the extent to which police agencies across the United States have been subjected to civil litigation in both state and federal court. Quoting from a variety of news reports, del Carmen (1993) noted there was an overall lack of reliable information concerning the actual numbers of lawsuits filed against law enforcement agencies in the United States, and that the economic consequences for the public regarding some of the more high-profile cases of that time against the police were significant. He also made note of Brodsky and Scogin's (1991) study and others who have researched the issue of police fear of litigation and noted that "although the fear of lawsuits is more often exaggerated than warranted, the effect on police officers can be real" (del Carmen, 1993, p. 87). It is important to note that del Carmen's (1993) study is related to *reforming*

police practices through the effective use of lawsuits. The issue of civil liability has enhanced police professionalism through better training and recruitment practices as well as through the widespread use of policy manuals.

Ferdick (2013) conducted a qualitative study involving 23 police officers from a 300-officer police agency in the southeastern United States to gain perspective on civil liability by officers who had experience with this practice. Subjects for the study were obtained by using a purposive sampling of agency police officers recruited by the Assistant Chief and Assistant Deputy Chief. In-depth, semi-structured interviews were conducted utilizing open-ended questions, which were based on a guide that was developed that reflected past surveys and proactive policing techniques with the analysis of the resulting qualitative data accomplished by Atlas.ti analysis software (Ferdick, 2013). A total of 30 topic areas were subsequently identified from the interviews using the analysis software, which was ultimately limited to four specific categories of concern with subcategories (Ferdick, 2013).

The four categories of concern were identified as: (a) perceived risk; (b) consequences; (c) defense measures against civil liability; and (d) positive aspects of civil liability (Ferdick, 2013). The first category, perceived risk, included subcategories for: perceived risk-college students, which was related to the officers concerns with dealing with students from a local college who were often times confrontational with the police; perceived risk-media and technology, which involved the belief that the media presents a negatively biased account of police activities and the concern with the proliferation of smartphone-type devices capable of recording incidents involving the police; perceived-risk insufficient training, which involved the perception that the training the officers had

received was not sufficient to prepare them for the situations encountered on the street; and perceived-risk inexperience and complacency, which involved the concern that less experienced officers face a greater risk of being sued than their more tenured peers (Ferdick, 2013).

The second category, consequences, included subcategories for: loss of self-confidence and/or passion for the job, based on either an officer's personal experience with civil litigations or hearing stories from other officers on their experiences dealing with lawsuits; occupational apprehensiveness, where the officer fails to take action for fear of a potential lawsuit; and loss of support/professional isolation, which could possibly result from other officers not wanting to associate themselves with someone being sued (Ferdick, 2013). The third category, defense measures against liability, included the subcategories: relying upon guidelines, which many officers believed to be an important aspect of protecting police officers from potential liability; and procedural defense mechanisms, which included courtesy summonses used by officers instead of an arrest; putting assets into a spouse's name to protect valuables against seizure in the event of a lost lawsuit; and membership in a police union that provides professional liability insurance (Ferdick, 2013). The fourth and final category, positive aspects of liability, included the subcategories: accountability, in which some of the officers indicated that holding officers civilly accountable for their actions was a necessary constitutional protection for the public as well as necessary for developing the police profession; and higher-quality police officers (Ferdick, 2013).

The study conducted by Ferdick (2013) represented a different approach than many of the other empirical studies examined in the literature on police civil liability. All

of the other studies consulted on this topic utilized quantitative methods emphasizing statistical data, and there was very little narrative to indicate officer perceptions. In speaking to the police officers individually, Ferdick (2013) relied on qualitative measures to obtain “worldview interpretations of how liability affects not only their occupational lives, but their personal lives as well” (p. 8). The strength of a qualitative approach in the case was reflected in several places in Ferdick’s study. He noted that during the course of the interviews, “many of the interviewees became emotional when discussing how civil liability has impacted their lives and the lives of some of their colleagues” (p. 10). This worldview, as well as the comments made by Los Angeles police officers in Barker’s (1999) study, helped to underscore the personal feelings of police officers who may not have been reflected in a study using quantitative methods alone.

**Rank and perceptions of liability.** While researchers have looked at agency jurisdiction (Garrison, 1995), organizational type (Garrison, 1995), and agency size (Hughes, 2001), the perception of police officers (Ferdick, 2013), and officer characteristics and tenure (Brodsky & Scogin, 1991; Hughes, 2001), other researchers have studied the perceptions and attitudes on the liability of police chiefs and agency executives. Citing the concept of “deep pockets,” del Carmen (1989) noted the increasing use of lawsuits by plaintiffs against police supervisors for the actions of subordinate police personnel. The strategy allows a person to name, in a lawsuit, not only the officer as a defendant, but the officer’s immediate supervisor, the chief of police, as well as the municipality, thereby taking advantage of the greater financial resources of the additional defendants (del Carmen, 1989).

In an attempt to develop an understanding of the impact and perceptions of liability on the part of police executives, Vaughn et al. (2001) conducted a quantitative survey of police executives attending a statewide training program in the state of Texas. Surveying 916 participants, the study represented the largest study conducted at that time on this topic (Vaughn et al., 2001). The study is significant because of the size of the police population surveyed and the fact that it involved a statewide population and that 92% (740) of the executives, in contrast to the other studies previously indicated, supported the right for citizens to have access to lawsuits against the police (Vaughn et al., 2001). This study shows that a significant difference exists on the attitudes of police officers on civil liability compared to senior police executives.

**Comparison of police officers and correction officers.** In an attempt to further develop an understanding of the attitudes of police officers on the subject of lawsuits and provide a comparison across different law enforcement disciplines, Hall et al. (2003) surveyed 975 police and correction officers who represented both the municipal police departments and county sheriff's office in a county in a southern state in the United States. Notable in this quantitative study is that a positive relationship was found between the level of education, as well as time on the job, that a law enforcement officer (police as well as correction officer) had and the likelihood of being sued. The more time on the job an officer had, the more likely it was for him or her to either be sued or know of someone who had been sued. In addition, police officers—more so than correction officers—were likely to be sued (Hall et al., 2003).

Similarly, Lambert, Hall, and Ventura (2003) conducted an exploratory and descriptive study of correction officers in a Florida county jail to determine their attitudes

and perceptions concerning civil liability based upon their experiences and knowledge of lawsuits brought against other sworn staff members of the facility. The study attempted to measure the impact civil liability had on correction officer performance, actions in emergency situations, what these officers felt about civil liability for public safety officers and agencies, and whether civil liability was effective in protecting the civil rights of citizens (Lambert et al., 2003). The study involved providing surveys to 175 sworn officers employed at a facility. Of the 175 surveys distributed, 107 (60%) completed surveys were returned and used in the study (Lambert et al., 2003). The survey instruments collected a large amount of information related to the demographics of the participants, as well as a 5-point Likert-type scale and yes/no/unsure answers with the results being provided in two tables in a descriptive (mean, median, standard deviation) statistical format (Lambert et al., 2003).

Similar to other studies on police officer feelings about civil liability (Garrison, 1995; Hughes, 2001; Vaughn et al., 2001), this study found that the majority of correction officers (74%) strongly agreed or agreed that public safety officers should remain accountable through civil liability. In addition, 59% of those who responded believed that public agencies should be held liable for rights violations, and 64% believed that the agencies should be subject to civil liability for the negligent acts of their officers (Lambert et al., 2003). An interesting finding from this study is the fact that, similar to findings in other studies (Vaughn et al., 2001), the data show that only 7% of the sworn employees had been sued, while 31% knew of someone who had been sued. Seniority and rank also played a role in knowing someone who had been sued because officers of

rank would necessarily be more aware of issues relating to previous civil lawsuits within the facility (Lambert et al., 2003).

These studies represent an interesting viewpoint because they distinguish attitude differences between two different groups of personnel with different job titles and responsibilities within the field of law enforcement: police officers and correction officers. The results of the studies also show some consistency in results across a number of variables related to civil liability in law enforcement. Significant in the correction officer studies is that recognition was given to the different work environment that police officers and correction officers operate within. The question as to the deterrent effect of lawsuits on law enforcement officer conduct and actions has also been the subject of research.

**Deterrent effects of lawsuits.** As indicated above, there is some disagreement as to the affect lawsuits have on individual officers. What is missing from these studies is the impact that lawsuits have on the police agencies that employ police officers and what is learned to limit future litigation. Archbold and Maguire (2002) noted the lack of empirical research on lawsuits against the police because of the often sensitive nature of the topic as well as the variations in data collection on this issue among the many police agencies in the United States. This lack of research and information makes it difficult to effectively determine the number of lawsuits filed against the police as well as determine the settlement and judgment amounts dispersed to citizens who have brought suit (Archbold & Maguire, 2002).

In an attempt to deter future lawsuits, Schwartz (2010) conducted a study of 26 law enforcement agencies throughout the United States to determine the way these police

agencies collected and analyzed lawsuit data. Citing technological problems and human error issues in reporting data, Schwartz (2010) found that the majority of police surveyed agencies and sheriffs' offices that employ more than 1,000 sworn officers do not have any computerized system to track lawsuits brought against the agency or municipality. What is more significant is that while some law enforcement agencies do not conduct investigations of the claims made in the lawsuits, other agencies go so far as to ignore any information learned from the lawsuits (Schwartz, 2010). This led her to conclude that law enforcement agencies, for the most part, lack sufficient information with which to develop solutions for future litigation; however, the relatively limited amount of agencies that do consistently gather lawsuit data were more effective in preventing future litigation (Schwartz, 2010). Not all researchers agree with this finding.

Johnson (2012-2013) disputed Schwartz's (2010) conclusions, and used data from LexisNexis on the 26 departments originally surveyed by Schwartz (2010) regarding Section 1983 suits and attempted to further clarify the issue of deterrence. By applying officer-to-lawsuit ratios to the departments, Johnson (2012) found that gathering lawsuit data on a consistent basis did not result in a lower officer-to-lawsuit ratio, thereby refuting Schwartz's finding and showing that gathering data did not have a deterrent effect on lawsuits.

**Community-oriented policing and lawsuits.** In response to the move by many police agencies away from the more traditional paramilitary style of policing, many law enforcement agencies have decided to adopt a more community-oriented policing style. Emphasizing closer relationships with the public, as well as a broader more engaged role by line police officers, community-oriented policing allows police officers greater use of

discretion in solving neighborhood and community problems (Roberg et al., 2012). A key aspect of organizational change associated with community-oriented policing is to push decision making further down the chain of command to the lowest level possible. This move toward a flatter organizational structure from the traditional tall structures with multiple levels of supervision and oversight, known as *decentralization*, and it assumes a greater role for the street-level police officer to be more actively engaged in problem-solving activities at the neighborhood level (Roberg et al., 2012). It also represents an area that has the potential for increased civil liability for police officers and their agencies (Kappeler, 2001; Worrall & Marenin, 1998).

Citing concerns as to the possible consequences on civil liability for agencies that have adopted a community oriented philosophy, Worrall & Gutierrez (1999) attempted to conduct a quantitative study of 165 municipal attorneys in cities that employed more than 100 sworn police officers on their police forces. Utilizing a brief survey mailed to the 165 city attorneys who represented law enforcement agencies that were actively utilizing at least 10 measures of community-oriented policing in their police operations, Worrall & Gutierrez (1999) attempted to determine the impact that the adoption of community-oriented policing had on civil liability in their cities. This study is significant for a number of reasons. First, it appears to be the first such attempt to measure the impact on civil liability for agencies that have adopted community-oriented policing. Second, the researchers surveyed the municipal attorneys who were responsible for defending claims against the police agencies, because the individuals would have the most accurate information on liability claims (Worrall & Gutierrez, 1999).

As indicated earlier, 165 surveys were mailed by the researchers who noted that they received 50 completed surveys for a response rate of 30%, “a less than desirable response” (Worrall & Gutierrez, 1999, p. 65). This comment is consistent with other researchers who indicated that “surveys that achieve a response rate of 70 percent or higher are generally thought of as being high-quality surveys” (Wholey, Hatry, & Newcomer, 2004, p. 284). Data from the survey represented lawsuits filed against the surveyed cities in both state and federal court during a 4-year period from 1992-1996. Of interest in this study is that the researchers took into account lawsuits from outside, as well as inside, the agency by examining data representing both “citizen-initiated legal actions and employee-initiated legal actions” (Worrall & Gutierrez, 1999, p. 65). Results were summarized in three tables representing a breakdown by year, type of complaint (to include citizen-initiated and employee-initiated complaints) and status/disposition of the suits. Statistical values were represented by mean, median, minimum, maximum, and total (Worrall & Gutierrez, 1999).

Worrall and Gutierrez (1999) indicated that the results of the study were inconclusive as to establishing a connection between community policing and an increase in lawsuits against police agencies. Emphasizing the exploratory nature of their study based on the limited response size, the authors encouraged further research on the topic (Worrall & Gutierrez, 1999).

**Risk management in policing.** Addressing the idea of risk management as a method of controlling liability, Archbold (2005) conducted a quantitative study involving a telephone survey of 354 of the largest county and municipal police agencies in the United States that employed more than 200 sworn officers to gather “descriptive

information about roles, duties, and placement of risk managers within each police organization” (p. 30). What is most surprising is that given the costs associated with police liability issues, of the 354 agencies surveyed, only 14 (0.039%) considered risk management as a method of controlling liability within their agencies. Of the 14 agencies that were initially identified in the telephone interviews and provided a follow-up survey sent to the agency risk managers, only 10 (71%) completed the survey with three not completing the survey and one agency declining to participate (Archbold, 2005). In discussing her findings, Archbold (2005) indicated that limiting factors for agencies in developing significant risk management protocols include limited resources and training as well as a lack of information and literature on risk management processes for the police.

An important consideration in police liability is the impact that lawsuits, particularly Section 1983 suits, have on police agencies. Amadi (2010) studied the impact of Section 1983 civil liability in specific cases on policies and practices of the Memphis Police Department (MPD) and the Maryland State Police (MSP). In the case of the Memphis Police Department, Amadi (2010) examined the impact of the case *Tennessee v. Garner* (1985), which involved the fatal shooting of an unarmed 15-year-old juvenile who was in the process of fleeing the police when an MPD shot him in the back of the head. A subsequent police department investigation and grand jury review of the incident found that the officer acted in accordance with both Tennessee law and departmental policy in the exercise of deadly physical force (Amadi, 2010). In the case of the MSP, Amadi (2010) examined the impact of the case of *NAACP et al. v. Maryland State Police et al.* (2008), which involved the racial profiling practices that had been in

effect in the MSP as far back at 1988. The case was brought by the NAACP on behalf of 11 plaintiffs, as well as an African American attorney who, along with his family, were stopped and ultimately subjected to “an illegal, race-based search” (Amadi, 2010, p. 8) by the MSP on May 8, 1992. The NAACP filed the lawsuit in response to the nationwide concern involving police racial profiling practices in highway drug enforcement and “for enforcing the ‘offense’ of ‘driving while black’,” a practice that had been banned by the Maryland Court of Appeals in 1992 (Amadi, 2010, pp. 7-8).

Using the two cases cited above, Amadi (2010) posited that Section 1983 lawsuits “have a significant impact on police operations in the United States” (p. 9). In the *Garner* case, police agencies throughout the United States made significant changes in policies and procedures related to the exercise of deadly physical force by police officers (Amadi, 2010; Tennenbaum, 1994). While the NAACP case against the MSP was ultimately settled in favor of the plaintiffs, the case did have a substantial impact on police practices in the state of Maryland, and it served to send a message to other police agencies in the nation about the significant costs associated with racial profiling (Amadi, 2010).

Tennenbaum (1994) examined the effect that the *Garner* case had on police who were involved in shootings prior to and after the Supreme Court’s decision. Using data originally collected from the Federal Bureau of Investigation’s (FBI) Supplemental Homicide Report (SHR) and processed by the Inter-University Consortium for Political and Social Research (ICPSR) for the years 1976-1988, Tennenbaum (1994) conducted a quantitative analysis of 156 police-involved shootings and found that the number of police-involved shootings in felony situations had dropped significantly since the *Garner*

decision. Tennenbaum (1994) examined, specifically, the impact of *Garner* on states that declared their state's deadly force laws unconstitutional after *Garner* versus those states that did not declare their laws unconstitutional. The primary statistical methods utilized in the Tennenbaum study were interrupted time series analysis and auto regressive integrated moving average (ARIMA) models (Tennenbaum, 1994). Tennenbaum noted that "The most extensive use . . ." of interrupted time series analysis "has been to test the influence of new laws on changing public behavior" (p. 246), while ARIMA models represent, "the most popular way to estimate the effect of a specific event" (p. 247) for the purposes of the study. Data from this study were displayed in four graphs and three tables as well as in narrative form. The focus of the study was the effect that legislation has on police behavior, particularly in the high-liability and controversial area of police deadly force incidents.

**Data sources on lawsuits against the police.** A common theme in the literature on police civil liability is the methods employed by researchers to gather data on police-involved lawsuits. Archbold and Maguire (2002) conducted a detailed statistical analysis of available data collected in 1992 by Pate and Fridell (1995) on police use-of-force reporting in order to test several hypotheses on lawsuits against the police. Pate and Fridell (1995) sent surveys to a "stratified random sample" of 1,697 law enforcement agencies identified through 1990 U.S. Government Census data. The researchers received 1,111 completed questionnaires for a response rate of 65.5% (Pate & Fridell, 1995). In order to further limit the data collected by Pate and Fridell (1995), Archbold and Maguire (2002) examined the data relating to 699 of the municipal police agencies in that 1992 study of agencies employing at least one full-time police officer.

Significant in the Archbold and Maguire (2002) study is the comment the authors made that the Pate and Fridell (1992) study suffered from “selection bias and missing data” (p. 240). Archbold and Maguire went into great detail in both statistical and non-statistical terms to point out the difficulty in collecting data and interpreting it when certain key questions with regard to police involved lawsuits remained unanswered by the survey respondents. The researchers presented their findings concerning missing data and its impact on the study of police civil liability in several tables. The data support their findings as to the statistical impact that missing data have as well the inability to adequately apply some of the more common statistical models for estimating the impact of incomplete data. Offering support for future research on this issue, Archbold and Maguire (2002) noted that many unanswered questions existed because of a lack of empirical research on the topic.

Noting that there was a lack of a nationwide method of data collection concerning lawsuits against the police, Archbold et al. (2006) examined lawsuit data for the 10-year period from 1993-2003 by conducting a review of newspaper articles published in three major U.S. newspapers: Los Angeles Times, The New York Times, and Chicago Sun Times. Each of these papers were chosen because of their high circulation rates, their geographical representation of three different locations in the United States, and the focus on lawsuits against the police by the media in each city (Archbold, et al., 2006). The search was conducted by using ProQuest and LexisNexis using specific search phrases to obtain relevant newspaper articles, and they identified a total of 634 lawsuits (Archbold et al., 2006). After eliminating duplicate articles, articles on lawsuits outside of the noted metropolitan areas, and those not specifically involving the police, the remaining articles

were examined and coded into specific categories for statistical reference. Results were provided in three tables as well as in the text of the report (Archbold et al., 2006).

The Archbold et al. (2006) quantitative study presents some interesting findings from a research perspective. Data from the newspaper analysis provided important details of lawsuits that other data sources had not provided. Important information, including demographic information on plaintiffs, descriptive data of the events leading up to the lawsuit, and changes in police accountability, were identified through this study (Archbold et al., 2006). Notable is the statistic indicating that of the 634 lawsuits identified in the study, 73% were filed by citizens against the police, whereas 27% were filed by police employees against their agencies or fellow members (sworn and civilian) alleging employment-related issues such as sexual harassment (Archbold et al., 2006).

The study attempted to fill the gaps in the research that were found in other studies on police liability. Archbold et al. (2006) noted that newspaper accounts of lawsuits provide important information that traditional survey data fail to provide because of issues, such as survey return rates, incomplete responses on surveys, and the fact that, often times, the individuals completing the surveys did not have the data available to them to adequately complete those surveys. Additionally, the strengths identified in this type of study include the ease of access to newspaper records by interested researchers through common university databases as well as the ability to conduct longitudinal studies because of the availability of archival material going back many decades (Archbold et al., 2006). Weakness noted include media biases in reporting that could affect accuracy, sample selection bias in the search terms used in the study, and the sizes

of the cities in which the selected newspapers were based, making the findings in the study not generalizable to other cities in the United States (Archbold et al., 2006).

An existing project that is tracking lawsuits against the police that are related to officer-involved shootings is The Statistics Help Officer Tactics (SHOT), which is a multi-faceted project at Pace University to develop a national database of police-shooting incidents, with robust attributes on the suspect, officer, and incident (Arslan & Farkas, 2015). The database consists of officer-involved shootings since the year 2000. The SHOT project brings a different approach by gathering data from open sources, and it analyzes and records data in a specific set of database variables. Not only does the database expand the number of variables that examine the police decision-making behavior during a deadly encounter, but it also collects nationwide shooting incidents. One of the variables in the data set is lawsuits. Basically, SHOT is inquiring about the number of lawsuits brought by the families who lost their loved ones during those police shooting incidents. According to the SHOT database, there are 243 lawsuits, and the majority of the lawsuits took place in the state of California, which is followed by New York and Illinois (Arslan & Farkas, 2015).

Another important consideration that has been addressed by researchers is the role of the police officers' organizations in liability. In studying the impact of organizational factors that impact police deadly force situations, Lee and Vaughn (2010) conducted a detailed analysis of 86 police deadly force cases involving Section 1983 liability that were filed in the U.S. District Courts and the U.S. Courts of Appeals. Using disorganization theory to frame their qualitative study, Lee and Vaughn (2010) hypothesized that "managerial failure may spur litigation for police excessive deadly

force” (p. 194). The study involved using cases identified through a Westlaw database search that involved situations involving municipal liability that was relevant to a number of cases to include the constitutionally significant cases of *Monell v. New York City Department of Social Services* (1978) in which the Court ruled that cities could be sued under 42 USC Section 1983; *Tennessee v. Garner* (1989), which limited how police officers are able to exercise deadly physical force; and *City of Canton v. Harris* (1989) involving failure to train police officers. Utilizing these and several related U.S. Supreme Court cases to examine decisions rendered in the 86 U.S. District Courts and U.S. Court of Appeals cases, the researchers determined that factors related to police agency organizational structure play a role in police agency civil liability related to deadly force situations.

A potential method of reducing liability risk is to provide for a better trained and educated police officer. Basing their study in part on an earlier research project conducted by the Police Executive Research Forum (PERF). Carter and Sapp (1989) conducted an analysis of the content of police liability cases to discover recurring “trends in allegations and remedies” (p. 155). Additionally, the researchers examined police officer education to determine the impact that education has on officer attitudes and behavior. The case analysis, coupled with educational research, led to a comparison of attitudes and behaviors and their relationship to civil complaints examined in the case analysis (Carter & Sapp, 1989). The study addresses a gap in the literature concerning the effects of educated police officers and the impact of higher education on police liability.

While Carter and Sapp (1989) were unable to find any research that specifically addressed the impact of higher education on police liability, they were able to find related research that allowed them to acknowledge that a better educated police officer could potentially reduce police liability. Specifically, they noted that their study found that respondents in the PERF study indicated that better educated officers (with 2 or more years of college) had fewer citizen complaints, were the subject of fewer disciplinary problems, were more sensitive to minority groups, were better decision-makers, and they were more professional (Carter & Sapp, 1989). Carter & Sapp posited that based upon the findings in the PERF study and their analysis of police liability cases, an officer with higher educational experience will mitigate the effects of liability on the police in the high liability areas that their study identified: failure to train, failure to supervise, failure to protect, and failure to direct.

Ross & Bodapati (2006) conducted a detailed longitudinal analysis of historical data collected by the Michigan Municipality Risk Management Authority (MMRMA) related to civil claims filed against law enforcement and correction agencies insured by the MMRMA to determine both trends in litigation and common themes over a 15-year period. The data collected represent civil cases filed against the 151-member municipal law enforcement, sheriff departments, and village and township police agencies of the MMRMA for the 15-year period 1985-1999 (Ross & Bodapati, 2006). The researcher examined a total of 2,929 cases representing 26% of cases that were separated from an original data set of 11,273 files against Michigan law enforcement agencies. Results were categorized in three ways: incident claims, claims with an attorney, and litigated claims. Detailed statistical data was further broken down and reported in four tables

representing: annual trends of claims and costs; annual trends of clearing times and losses paid; comparison of claims types by frequency; and severity, defensibility, and annual trends of cases by agency (Ross & Bodapati, 2006).

Most significant in this study is the focus of the researchers on the frequency and severity of claims against the Michigan law enforcement agencies involved and the possible policy implications going forward (Ross & Bodapati, 2006). When comparing the 11,273 total number of claims filed and noted in the original data set, with the diverse job functions of law enforcement officers and the total number of police contacts with citizens over the 15 years examined, the numbers of cases filed appear to be relatively low (Ross & Bodapati, 2006). The researchers identified several areas that had been frequent sources of claims against the Michigan agencies, to include: “property and mishandled property, auto accidents (with and without injury), excessive force, and pursuits without injury” (Ross & Bodapati, 2006, p. 51). Interesting to note is that the data does not reveal a significant pattern of large awards against the law enforcement agencies involved.

From a policy standpoint, the researchers identified, from the data they examined, six specific areas where agency administrators should have been focusing their efforts to reduce future litigation. These areas include, areas that involve administrative responsibilities, motor vehicle operations, officer competence in safely operating vehicles and equipment, a growing number of employee initiated civil cases involving agency administrators as plaintiffs (discrimination, sexual assault/harassment), the decision making processes of law enforcement officers related to, among others, the decision to arrest or not arresting, and the detention issues specific to detention facilities (Ross &

Bodapati, 2006). The researchers pointed to the usefulness of the findings in the study by allowing administrators to develop risk management strategies to prevent civil litigation in the future based on the identified trends and for law enforcement trainers to develop training strategies that serve to limit liability in the categories identified (Ross & Bodapati, 2006).

### **Chapter Summary**

From the studies reviewed, it is clear that lawsuits are perceived in different ways by different members of the law enforcement profession. Factors, such as tenure, rank, agency size and law enforcement discipline, have an impact on the attitude of police officers when it comes to lawsuits and civil liability. A lack of reliable data also appears to be a significant issue that only further adds to the concerns in studying this issue. A review of the literature studying the attitudes and concerns of psychologists and physicians may help to further refine and direct this present research study.

Most notable in the review of the literature on police officer attitudes toward lawsuits is that the overwhelming number of studies in the review are significantly dated. Many of these studies took place during a time period when police officers were not required to have any college credits prior to appointment. Many changes in policing, such as stricter operational policies that often limit police officer discretion, and in many agencies, a transition to community-oriented policing, essentially increasing police officer discretion, have occurred since most of these studies were conducted. In order to develop a more detailed analysis on this subject to effectively inform today's law enforcement professionals, it is critical to take these changes into account and revisit this subject in order to provide more informed and timely research on this issue.

From a research perspective, it should be noted that all but one of the studies identified in the literature review involve quantitative research methods. One study (Ferdick, 2013) involved a qualitative analysis, and one case (Freckelton, 2008) involved a case analysis based on a judicial decision outside of the United States. All of the studies make note of the need for additional research on this topic in a number of areas. Very little qualitative material was noted in the reviewed studies as to the real-world experiences of actual participants in policing regarding lawsuits and civil liability.

## **Chapter 3: Research Design Methodology**

### **Introduction**

The review of the literature related to how police officers perceive lawsuits, and the impact they have on the exercise of their duties has provided mixed results. Several studies have been conducted on this topic, however, most occurred over 10 years prior to the beginning of this study, and they do not take into account changes in public perception of the police as a result of recent events. This survey was designed to collect data from a sample population of uniformed police officers assigned to patrol duties from three suburban New York State police agencies.

The problem this research focused on is the impact that lawsuits have on the exercise of police discretionary activities and the concerns of police officers on the impact lawsuits could have on their law enforcement careers.

This research study addressed the following questions:

1. To what degree are police officers concerned about the impact that litigation may have on their pensions?
2. To what degree does the fear of litigation affect how far a police officer is willing to go to make an arrest?
3. To what degree do police officers feel that litigation could impact their future promotional opportunities?
4. To what degree does the concern about litigation have on the number and types of arrests made by police officers?

5. Will concerns about litigation cause a police officer to leave police work or defect to another police agency?

### **Research Context**

The study involved three police agencies all located in the same geographic region in southern New York State. At the time of this study, each agency was the principal agency for the provision of law enforcement services within their jurisdiction. The county in which the police agencies are located is in close proximity to New York City and comprised 45 separate municipalities. There are a total of six cities, 16 towns, 22 villages, and three villages/towns (County of Westchester, 2010). The number of participants from each agency was based on the size of the patrol division for each participating agency. The largest municipal police agency was a city police department that employed over 194 sworn police officers with a uniformed patrol force consisting of approximately 150 sworn officers (Crime in the United States, 2014). The city had a total population of 56,853 people and covered a 9.77 square mile area (U.S. Census Bureau, n.d.). The mid-size municipal police agency was a town police agency and comprised 36 sworn officers with a uniformed patrol force consisting of approximately 24 sworn officers (Crime in the United States, 2014). The town had a total population of 17,569 and covered a 23.24 square mile area (U.S. Census Bureau, n.d.). The smallest of the three municipal police agencies was a village and comprised 21 sworn officers with a uniformed patrol force consisting of approximately 16 officers (Crime in the United States, 2014). The village had a total population of 7019 and covered a 1.82 square mile area (U.S. Census Bureau, n.d.). The researcher anticipated that a total of approximately 80 sworn police officers would participate and complete the surveys. Fowler (2014)

advised that large sample sizes, such as that anticipated for this study, help to reduce sampling errors. The data collection activities occurred over a 1-month period from February 2016 through March 2016. After completion of the online survey, data analysis followed using a statistical analysis program.

The researcher in this study was the Chief of Police (retired) in one of the agencies located in the county in which the study was being conducted. At the time of this writing, the researcher is employed in the security and risk management field and is an adjunct professor of criminal justice in both a private college and local community college in the same county. The geographical area in this study represented a 450-square mile area that comprises 45 individual municipalities with their own governing bodies (County of Westchester, 2010). Excluding federal and state law enforcement agencies, there were a total of 44 municipal police agencies located within the geographical area of the study (Directory of New York State Criminal Justice Agencies, 2015). There were six city police agencies representing the five cities in the geographical area, one county police agency that provided highway patrol, criminal, and civil law enforcement services, a technical support services group throughout the county, and 22 town and village police agencies that provided primary law enforcement services in their respective municipalities (Directory of New York State Criminal Justice Agencies, 2015).

The research involved a study of the impact that civil litigation has on the exercise of discretionary actions on the part of police officers in this study area. The online surveys were administered to police officers and sergeants employed in each of the three selected police agencies. The goal of the research was to determine if lawsuits had a negative impact on police activities and to add to the data on this subject. Specifically,

the quantitative data offers potential insight into how civil litigation impacts police officers both professionally and personally.

### **Research Participants**

The research participants for this study were uniformed police officers and supervisory patrol sergeants assigned to the patrol division of the agencies who were responsible for general law enforcement duties within the context of their job descriptions. Patrol officers were chosen because they are the members of a police agency who are most often in daily contact with the public, and they are involved in both law and order and order maintenance activities (Roberg et al., 2012). The referenced police agencies were chosen because of the researcher's previous law enforcement experience in the specific county in which the agencies were located. Each of the selected agencies were representative of the various models of police agencies within the county in question.

### **Instruments Used in Data Collection**

This study involved a quantitative survey-based research methodology. Data collection for the study was accomplished by using an online survey (Appendix A) that was designed to measure police officers' attitudes and concerns about lawsuits in relation to the research questions and how the threat of lawsuits impacts the discharge of a police officer's duties. Most of the studies in the literature, at the time of this research, on police liability concerns of police officers were over 10 years old. Rossi, Lipsey, and Freeman (2004) noted the efficacy of using surveys to determine the extent of a problem when credible data is lacking. The survey consisted of three parts: Part I was designed to develop demographic data using descriptive statistics on the participants (age, sex, rank,

number of years as a police officer, and education level) and information regarding the three agencies with which the participants were employed. Part II consisted of yes or no questions concerning any previous experiences the officer may have had with lawsuits (including knowing another police officer who had been sued). The Part III questions used 4-point Likert style questions designed to measure officer attitudes and concerns relating to the research questions and to look for relationships between the concern over lawsuits based on Part I and Part II questions (Appendix A). Descriptive statistics using one-way ANOVA for correlation were used to report study findings.

In order to further enhance the validity and reliability of the survey questions, an expert panel of 10 law-enforcement chief executives from the subject county and two Criminal Justice Department chairs from a local community college and private university with criminal justice programs were assembled to evaluate the instrument. The law enforcement chief executives all had over 15 years of law enforcement experience. The academic department chairs both had terminal degrees as well as extensive law enforcement and academic research experience. This panel pre-tested the survey and provided feedback. Adjustments to the survey were made based upon the panel's recommendations.

The participants for this study were recruited through the agencies' patrol commanders (Appendix B). The patrol officers wishing to participate during roll call, prior to assuming their daily patrol duties, were provided with a link to the online survey to complete. In the researcher's experience, allowing time during roll call is the most effective means of conducting a police survey because all of the members of a shift are present, and there is typically time set aside within roll calls to conduct brief in-service

training or to complete surveys of various types. Besides the low copy of a computer-based survey, an added benefit to having a survey completed during roll call is a higher response rate, which is typically associated with group-administered surveys (Fowler, 2014). A potential disadvantage, as Fowler (2014) pointed out, is the difficulty in controlling the answers to questions by those completing the surveys that might be asked by the commanders who administer the exam. In order to protect the identities and respect the rights of the participants, the surveys were anonymous. On the opening page of the survey, notice was given to individuals participating that completion of the survey indicated their consent (Appendix C) to participate.

### **Procedures for Data Collection and Analysis**

Data from the participants' online responses were captured using Qualtrics Survey Software with the resulting data transferred into a statistical analysis software to provide a quantitative analysis of survey results. The statistical analysis software, IBM Statistical Package for Social Sciences (SPSS) Software, Version 22, provided by St. John Fisher College, was used to interpret the survey data and to provide a correlation coefficient to indicate the degree to which agency type and concern about lawsuits were related. Correlation coefficients are expressed in a range from  $-1$  to  $+1$  to show "the degree to which two variables are related" (Vogt & Johnson, 2011, p. 78). The survey data were reported in basic contingency tables as well as in a narrative. Presenting the data in basic contingency tables provides a user friendly mode of reporting on the survey results (Wholey et al., 2004). Vogt and Johnson (2011) stated that contingency tables allow for the "identification and interpretation of relationships between categorical variables" (p. 73) via the inclusion of column and row percentages that sum to 100%. The data

presented in the tables represent response rates and rates among any subgroups. Descriptive statistics have been used in presenting data concerning percentages, minimum scores, maximum scores, means, and standard deviations.

Further analysis was conducted using the chi-square test, which is a commonly used for determining if the data are fairly representative of the target population (Wholey et al., 2004). To determine the degree of relationship between agency type, years of service completed, and police officer attitudes concerning lawsuits, a Pearson's *r*, or the product-moment correlation, was computed. Pearson's *r* is based on a test's ability to show a linear relationship between two variables (Vogt & Johnson, 2011). Pearson's *r* is one of the most commonly computed coefficients of correlation (Guilford & Fruchter, 1973). A one-way analysis of variance (ANOVA) was computed to compare whether the mean opinions expressed in Part III of the survey for the officers who had been sued were different from those who had not been sued.

### **Summary**

This chapter provided an explanation of the quantitative methods that were used in the study to provide an understanding of the impact that the potential for lawsuits has on police officers' discretionary actions. The objective of this study is to provide updated data on a topic in which limited current research is available. For the present study, the data may provide a better understanding of the impact that lawsuits have on police behavior in a region in which data on the topic is not reflected in the literature. The results of this study will provide a better understanding of the impact that the concern for lawsuits has on police officers, and it will offer opportunities for police managers and trainers to consider when developing policies and procedures, as well as giving help in

the areas of recruitment and in-service training programs. Additionally, the results of this study will provide insight to public and elected officials about the unintended consequences of lawsuits on police actions and the potential impact those concerns may have on public safety.

## **Chapter 4: Results**

### **Research Questions and Participant Demographics**

Chapter 2 of this study reflected the need to study the concerns that police officers have in discharging their duties and whether those concerns impact the types of discretionary arrests that police officers make. A review of the literature on this topic reveals that police officers are only moderately impacted by this concern and, in some cases, they support the civil litigation process as a means of curtailing the abuse of authority. The purpose of this study was to determine the relationship between police discretion in effecting arrests and the fear of reprisal litigation, by examining the attitudes and concerns that uniformed police officers and sergeants, from three suburban municipal police agencies, had regarding lawsuits and the potential for civil liability. This study also sought to determine the perceptions that officers and sergeants had concerning the impact of civil litigation on their future promotional opportunities and ultimately their pensions.

Each of the participating agencies is representative of the different types of municipal agencies in the county (city, town, and village) and each is the principal agency for the provision of law enforcement services within their jurisdiction. The county in which the three police agencies are located is in close proximity to New York City. The participants in this study were 88 police officers and sergeants employed by those agencies. This chapter is organized to reflect the research questions, the results of the study, and it concludes with a summary of the results. The research questions are:

1. To what degree are police officers concerned about the impact that litigation may have on their pensions?
2. To what degree does the fear of litigation affect how far a police officer is willing to go to make an arrest?
3. To what degree do police officers feel that litigation could impact their future promotion opportunities?
4. To what degree does the concern about litigation have on the number and types of arrests made by police officers?
5. Will concerns about litigation cause a police officer to leave police work or defect to another police agency?

The data for the study were collected through the use of a survey that recorded the answer of individual police officers and sergeants with respect to the research questions. To elicit adequate answers to the research questions, the research study used descriptive and correlation statistics. Reliability of the survey was determined by using Cronbach's alpha (a coefficient of reliability), and it was computed that the survey was very reliable with an .89 score. Scores above .70 indicate that items in a survey are reliable (Urdu, 2010; Vogt & Johnson, 2011). Validity of the survey was provided by a review of the survey questions conducted by an expert panel of police administrators, police officers, and university professors. One survey question was removed from the survey based on feedback from the panel. Data from the survey responses were analyzed using SPSS, V. 22. Descriptive statistics were computed to measure demographic data on the participants, their concerns with lawsuits, and impact on the discharge of their duties.

Three separate one-way analysis of variance (ANOVA) were conducted to measure the group differences of concern regarding lawsuits by years working as a police officer/sergeant, job title, and the number of times sued. Urdan (2010) notes the utility of using a one-way ANOVA in analysis that include various independent variables that have been divided into two components “...the variance attributable to between-group differences, and the variance attributable to within-group differences, also known as the error” (p. 106).

### **Data Analysis and Findings**

Table 4.1 provides staffing figures for each of the police agencies surveyed as well as the number of survey participants by agency type. The staffing numbers represent the total number of full-time sworn police personnel (excluding civilian employees) based on the existing NYS Division of Criminal Justice (NYS DCJ) and agency data.

Full-time uniformed police officers and sergeants represent sworn police personnel assigned to law enforcement duties that are consistent with order maintenance and patrol activities, which is typically associated with uniformed police personnel. The total number of participants represents the total number of sworn officers of both ranks from each agency who participated in the survey. A total of 75% of the participants in the study were police officers, and the remaining 25% were sergeants. For all of the agencies represented in the study, the rank of police officer had the largest number of personnel, which is consistent with staffing in law enforcement agencies nationwide where the number of personnel at the rank of sergeant is less than the total number of police officers in an agency. Table 4.1 provides a breakdown of sworn police personnel

representing both ranks included in the study by agency and number of participants in the study.

Table 4.1

*Sworn Police Personnel by Agency*

Total Sworn	Agency Type		
	City	Town	Village
Sergeants	11	7	5
Police Officers	74	32	14
Total Participants	39	25	14

*Note.* Based on NYS DCJS and Agency Data.

**Demographics.** The age range of the respondents (N = 88) were from 21 to over 51 years of age with the median age falling in the 36-40 range. Responses to the question concerning gender (N = 88) indicate that the respondents were primarily male, with 81.8% ( $n = 72$ ) indicating male, and 9.1% ( $n = 8$ ) identifying as female. Table 4.2 depicts the gender and percentages for all of the respondents in the study. Reflecting minimum college education requirements for entry-level police officers in New York State, slightly more than one-half of the respondents (N = 88) indicated that they had a college education, with 18.2% indicating they had an associate degree, 42.0% a bachelor's degree, and 1.1% a graduate degree. A further 29.5% indicated they possessed a high school or GED diploma as their highest level of education. The participants were also surveyed through an opened ended questionnaire as to the number of years of experience they had as a police officer. The range of responses extended from 1 year to 36 years of experience with a median of 13 years of experience as a police officer indicating a varied level of police experience.

Table 4.2

*Gender*

	Gender	Number	Percent	Valid Percent
Valid	Male	72	81.8	90.0
	Female	8	9.1	10.0
	Total	80	90.9	100.0
Missing		8	9.1	
Total		88	100.0	

**Research question 1.** To what degree are police officers concerned about the impact that litigation may have on their pensions?

Analysis of the responses from the survey using descriptive statistics shows that 19.2% ( $n = 15$ ) of the total respondents ( $N = 78$ ) indicated that they were *Not at All Concerned* with the impact that litigation might have on their pensions. A further 30.8% ( $n = 24$ ) indicated that they were *Somewhat Concerned* with the impact that lawsuits might have on their pension with a further 28.2% ( $n = 22$ ) reporting that they are *Moderately Concerned*. Only 21.8% ( $n = 17$ ) reported that they were *Very Concerned* with the impact that litigation might have on their pensions. Most significant in these responses is that out of all of the response categories, 59% ( $n = 46$ ), or slightly over one-half of the total respondents to this question, indicate that uniformed police officers and sergeants from the three agencies are at least somewhat to moderately concerned that lawsuits might have an impact on their pensions.

**Research question 2.** To what degree does the fear of litigation affect how far a police officer is willing to go to make an arrest? For research question 2, the participants were asked to rate the extent to which they believed that the concern over lawsuits could

impact other officers' arrest rates. The responses revealed that 17.0% ( $n = 15$ ) of the total respondents to the survey question ( $N = 78$ ) were *Not at All Concerned* that the fear of lawsuits could have an impact on other police officers' arrest rates. Another 37.5% ( $n = 33$ ) indicated that they were *Somewhat Concerned*, and 20.5% ( $n = 18$ ) were *Moderately Concerned* that the fear of lawsuits could impact other officers' arrest rates. Of the total respondents to this question, 13.6% ( $n = 12$ ) reported that they were *Very Concerned* about the potential that lawsuits could have on other officers' arrest rates. Table 4.3 depicts a breakdown of the percentages of the concerns of the officers surveyed that lawsuits could have over the arrests rates of police officers other than themselves.

Table 4.3

*Concern That Suits Will Affect Other Police Officers' Arrest Rates*

Level of Concern	Number	Percent	Valid Percent	Cumulative Percent
Not at All Concerned	15	17.0	19.2	19.2
Somewhat Concerned	33	37.5	42.3	61.5
Moderately Concerned	18	20.5	23.1	84.6
Very Concerned	12	13.6	15.4	100.0
Total	78	88.6	100.0	
Missing	10	11.4		
Total	88	100.0		

**Research question 3.** To what degree do police officers feel that litigation could impact their future promotion activities? The responses demonstrate that 32.1% ( $n = 25$ ) of the total respondents to the survey question ( $N = 78$ ) were *Not at All Concerned* with the impact that litigation might have on their future promotion opportunities. A further 30.8% ( $n = 24$ ) indicated that they were *Somewhat Concerned* with the impact that

lawsuits might have on their future promotion opportunities with 28.2% ( $n = 22$ ) reporting that they were *Moderately Concerned* that being sued might have an impact on their future promotion opportunities. Only 9% ( $n = 7$ ) indicated that they were *Very Concerned* with the impact the lawsuits might have on their future promotion opportunities. As in the case of research question 1, regarding the concern that police officers and sergeants had with the impact that being sued might have on their pensions, 59% ( $n = 46$ ), or slightly more than one-half of the total respondents to this question, indicated that they were at least *Somewhat* to *Moderately Concerned* that being sued might have an impact on their future promotion opportunities. Only a very small number of the police officers and sergeants had any significant concerns over the impact of being sued on their future promotion opportunities. Table 4.4 depicts the percentages of concern that lawsuits might affect promotions for all of the respondents in the study.

Table 4.4

*Concerned That Lawsuits Will Affect Promotions*

Level of Concern	Number	Percent	Valid Percent	Cumulative Percent
Not at All Concerned	25	28.4	32.1	32.1
Somewhat Concerned	24	27.3	30.8	62.1
Moderately Concerned	22	25.0	28.2	91.0
Very Concerned	7	8.0	9.0	100.0
Total	78	88.6	100.0	
Missing	10	11.4		
Total	88	100.0		

**Research question 4:** To what degree does the concern about litigation have on the number and types of arrests made by police officers? Research question 4 looks at the fear that the police officers and sergeants had concerning being sued and having lawsuits change both the type and number of probable-cause arrests they made based on the severity of the crime by classifications (infraction, misdemeanor, and felony) in New York State. Research question 4 was broken down into five separate questions in the survey (questions 16, 17, 18, 19, and 20) to reflect the individual crime classifications as well as the number of arrests that a police officer or sergeant would consider making in the course of discharging his or her duties.

When considering the influence that lawsuits might have on the decision to effect an arrest for an infraction, 38.5% ( $n = 30$ ) of the respondents to the survey question ( $N = 78$ ) indicated that the fear of being sued had *No Influence* on their decision to effect a probable cause arrest. A further 34.6% ( $n = 27$ ) indicated that the fear of being sued had *Little Influence* on their decision to conduct a probable-cause arrest for an infraction, with an additional 15.4% ( $n = 12$ ) indicating that there was *Moderate Influence* regarding the fear of being sued on their probable-cause arrest decision making. A minority of respondents, 11.5% ( $n = 9$ ), indicated that the fear of lawsuits had a *Significant Influence* on their decision to make a probable-cause arrest for an infraction. Most significant in these responses is that out of all of these categories, 50% ( $n = 39$ ), or one-half of the total respondents to this question, indicated that the fear of lawsuits had at least a little to moderate impact on their decision to effect a probable-cause arrest for an infraction.

Regarding the fear expressed by the participants when considering the decision to make an arrest for a misdemeanor offense, 33.3% ( $n = 26$ ) of the respondents to the

survey question (N = 78) indicated that the fear of a lawsuit had *No Influence* on their decision to make a probable-cause arrest for a misdemeanor. Another 43.6% (n = 44) indicated that the fear of lawsuits had *Little Influence* on their decision to effect a probable-cause arrest for a misdemeanor, and 17.9% (n = 14) indicated that the fear of lawsuits had *Moderate Influence* on their decision to effect a probable-cause arrest for a misdemeanor. A relatively small number of respondents, 5.1% (n = 4), indicated that the fear of lawsuits had a *Significant Influence* on their decision to effect a probable-cause arrest for a misdemeanor. A significant number of the responses, 62% (n = 48), indicate that the respondents were influenced, at least a little or to a moderate level, about being sued.

The responses were analyzed regarding the fear the police officers and sergeants had regarding lawsuits when making a decision about effecting a probable-cause arrest for a felony, the most serious classification of crime in New York State, indicate that 39.7% (n = 31) of the respondents (N = 78) indicated that the fear of being sued had *No Influence* on their decision to effect an arrest for a felony. Almost an identical number of police officers and sergeants 38.5% (n = 30) felt that the fear of lawsuits had *A Little Influence* on their decision to make a probable-cause arrest for a felony. In contrast to the other crime categories (infraction and misdemeanor), only 12.8% (n = 10) expressed that the fear of being sued had a *Moderate* influence on their decision to make a probable-cause arrest for a felony. A small number of police officers and sergeants, 9.0% (n = 7), indicated that the fear of being sued influences their decision to make a probable cause arrest for a felony. Notable in this question is the fact that one-half of the respondents to

this question, 51% ( $n = 40$ ), indicated that the fear of being sued had *A Little to Moderate* influence on their decision to make an arrest for a felony based upon probable cause.

In addition to the concerns about lawsuits regarding the type of crimes the police officers and sergeants might have encountered and effected probable-cause arrests, the survey also sought to determine the impact that lawsuits had on the number of arrests police officers made. Of the total number of responses to this question,  $N = 78$ , 19.2% ( $n = 15$ ), believed that the police officers and sergeants were *Not at All Concerned* with lawsuits when considering the number of arrests that a police officer or sergeant makes. The most significant number of respondents, 42.3% ( $n = 33$ ), indicated that they believed that police officers and sergeants were *Somewhat Concerned* with lawsuits when considering the number of arrests made, while 23.1% ( $n = 18$ ) indicated that they believed police officers and sergeants were *Moderately Concerned* with lawsuits when considering the number of arrests made. A small number, 15.4% ( $n = 12$ ), believed that police officers and sergeants were moderately concerned when considering the number of arrests made. Significantly, 65% ( $n = 51$ ) believed that police officers and sergeants were *Somewhat to Moderately Concerned* with the number of arrests made when considering lawsuits. These number are cause for concern when compared with the overall number of respondents to the survey.

**Research question 5.** Will concerns about litigation cause a police officer to leave police work or defect to another police agency? Research question 5 relates to the fear that the police officers and sergeants had concerning being sued and the extent to which they considered transferring to another agency or leaving police work altogether.

Research question 5 was broken down into two separate questions in the survey (questions 21 and 22) to reflect the different subjects of the research question.

An analysis of the responses from the survey shows that 85.7% ( $n = 66$ ) of the total respondents ( $N = 77$ ) to the question: “How much has the threat of lawsuits caused you to consider transferring to another police agency?” indicated *Not at All* in their answers. Of the total number of respondents that answered this question, 9.1% ( $n = 7$ ) responded that they had only *Somewhat* considered transferring to another agency, and 3.9% ( $n = 3$ ) had only *Moderately* considered transferring. A very small number, 1.3% ( $n = 1$ ), indicated that they had given *Very Much* consideration into transferring to another agency.

In response to the question: “How much has the threat of a lawsuit caused you to consider leaving police work altogether?” the responses were somewhat different. Of the total number of respondents to this question ( $N = 77$ ), 61% ( $n = 47$ ) answered *Not at All*. A further 24.7% ( $n = 19$ ) answered *Somewhat*, and 13% ( $n = 10$ ) answered *Moderately* to considering leaving police work, altogether, because of the threat of lawsuits. A very small number 1.3% ( $n = 1$ ) indicated that they had given *Very Much* consideration into transferring or leaving police work altogether.

### **Summary of Questions Comprising Concerns**

To determine the most significant concerns that the police officers and sergeants had concerning lawsuits regarding the research questions in this study, analyses were conducted to determine the mean value of the responses. Table 4.5 depicts the concerns that the police officers and sergeants had concerning lawsuits, in descending order of concern, based on the mean score. From this, it can be determined that most of the police

officers and sergeants were concerned with the effect that lawsuits might have on their pensions, arrest rates, and promotions. These findings are important considering the research questions.

A summary of the nine concerns regarding lawsuits were computed to have a coefficient alpha reliability of .89, and they are included in Table 4.6. The survey failed to find any significant correlation between years worked and the police officers' and sergeants' concerns about lawsuits ( $r = -.05$ , which is not significant). In an effort to determine differences in concerns of the effect of lawsuits based on job title, an ANOVA was computed to determine between group differences between sergeants and police officers. Table 4.7 provides a summary of the differences in concerns between the police officers and the sergeants.

Table 4.5

*Summary of Questions Comprising Concerns Scale*

	N	Min.	Max.	Mean	Std. Deviation
Concerned being sued will affect pension	78	1	4	2.53	1.0
Suits affect other officers' arrest rates	78	1	4	2.35	1.0
Concern suits will affect promotions	78	1	4	2.14	1.0
Suits impacting infraction arrests	78	1	4	2.0	1.0
Suits impacting misdemeanor arrests	78	1	4	1.95	0.9
Suits impacting the types of arrests I make	78	1	4	1.92	1.0
Suits impacting felony arrests	78	1	4	1.91	0.9
Suit concerns causing police to leave work altogether	77	1	4	1.55	0.8
Suit concerns causing consideration of transfer	77	1	4	1.21	0.6

Table 4.6

*Sum of Nine Concern Items*

	N	Min.	Max.	Mean	Std. Deviation
Concerns About Lawsuits	76	9.0	34.0	17.5	6.0

Table 4.7

*Differences in Concern Scale – Between Police Officers and Sergeants*

Job Title	Mean	N	Std. Deviation
Police Officer	17.9	56	6.2
Sergeant	16.4	18	5.8
Total	17.5	74	6.1

Table 4.8 provides details of the results of the ANOVA, measuring group difference in concern by job title. The results of the ANOVA indicate that the police officers might have been more concerned about lawsuits than the sergeants; however, the difference is not statistically significant. This is an important finding with respect to this study. Conventional thinking would support the fact that sergeants would be significantly more concerned about lawsuits based on the possibility that sergeants may be exposed to liability not only for their own arrest activity, but also for that of their subordinates. These finding, however, indicate that this may not always be the case.

Table 4.8

*ANOVA Measuring Group Differences by Job Title*

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	31.547	1	31.547	.856	.356
Within Groups	2652.831	72	36.845		
Total	2684.378	73			

The data analysis included an examination of the level of concern between two groups of officers and sergeants ( $N = 77$ ), based on those who had never been sued ( $n = 45$ ) and those who had been sued at least once ( $n = 32$ ). The survey data indicates that 51.1% of the respondents had never been sued as a result of a line-of-duty incident. A further 36.4% had been sued at least once, with 17.1% of that group having been sued more than once. Table 4.9 provides a summary of the differences in the number of times the participants had been sued as a result of a line-of-duty incident.

Table 4.9

*Concern Differences Between Groups (Never Sued and Sued at Least Once)*

Ever Sued?	Mean	N	Std. Deviation
No	18.2	44	5.7
Yes	16.7	31	6.5
Total	17.6	75	6.0

Table 4.10 details the results of the ANOVA that measured group differences between those who had never been sued and those who had been sued at least once in their careers. Based on the ANOVA results, those officers who have never been sued were more concerned than those officers who had been sued in the past. This is an

interesting finding considering that one would believe that those who have been sued in the past and experienced the litigation process would be more concerned than those who have never been sued. Important to consider is the fact that 48.2/% of the respondents have 13 years or less time as a police officer or sergeant. The lack of personal experience with lawsuits and the fact that almost one-half of respondents have 13 or less years of service would to indicate that concerns about lawsuits for at least some of the respondents may be based not entirely on personal experience but on the anecdotal experience of other police officers and sergeants that have been the subject of a lawsuit. This would seem to indicate a fear of the unknown as far as dealing with a lawsuit on a professional level.

In both of the ANOVA analysis, measuring group differences between those who have never been sued and those sued at least once as well as in measuring group differences in concern by job title, we do see a difference in concern. The difference, however, in both cases is not statistically significant. Both of these findings are surprising and seem to be counterintuitive based on experience and the literature.

Table 4.10

*ANOVA Measuring Group Concern Differences*

Differences in Concern		Sum of Squares	df	Mean Square	F	Sig.
Ever Sued?	Between Groups	41.160	1	41.160	1.136	.290
	Within Groups	2645.320	73	36.237		
	Total	2686.480	74			

## **Summary of Results**

The overall number of police officers and sergeants who participated in this study were experienced law enforcement personnel with a median of 13 years on the job. As far as educational level is concerned, well over one-half of the participants had some college-level experience with 42.0% possessing a bachelor's degree. The overwhelming majority of the respondents were male with very few of the respondents identifying themselves as female. The largest number of responses were from police officers with significantly less having identified themselves as holding the rank of sergeant. One-half of the respondents were from the city agency, with more than one-half of the remaining police officers and sergeants, who were representing the next largest agency, the town, and the smallest number representing the village police agency. Notable from the responses is that more than one-half of the respondents ( $N = 88$ ) had never been sued as the result of a line-of-duty incident; however, the overwhelming majority of the respondents (98.7%) knew of other officers who had been sued.

This study suggests that police officers and sergeants are not significantly concerned with the impact of lawsuits on their professional career or arrest behavior. In examining the relationship between the number of times an officer was sued and their concerns on the impact on their pension, potential promotions, and the penal law crime categories identified relevant to the research questions, no significant relationships were found. The study did, however, find that a large minority of officers are at least moderately concerned about the impact that lawsuits could have on their career and arrest behavior. This level of concern on a minority of officers could have a serious impact on the operation of the police agency as well as public safety.

## **Chapter 5: Discussion**

### **Introduction**

The purpose of this study was to determine the concerns that police officers and sergeants have regarding lawsuits and the impact of those concerns in carrying out their law enforcement duties. The final chapter of this dissertation summarizes the results of the study and the major findings in comparison to previous research on this topic and in relation to the theoretical framework of the study. Implications on the impact that civil liability has on public policy, service, and police practice are discussed along with recommendations for future study to better inform police managers, public officials, and the public. The findings in this study suggest that the threat of lawsuits does not have a significant impact on police probable-cause arrest activities for the majority of police officers and sergeants in the three participating agencies.

### **Implications of Findings**

The implications and findings in this study develop a better understanding of the perceptions that police officers and their first-line supervisors (sergeants) have regarding the discharge of their duties and the potential for reprisal litigation based on five research questions. The five research questions represent areas of concern that the researcher identified as significant from a review of the literature on this topic as well as from previous law enforcement experience. This chapter provides an understanding of the findings in the study in comparison to previous research on this topic as well as in relation to the theoretical framework of the study. The limitations identified in this study

include the fact that all of the agencies that participated provide indemnification and protection to their personnel in the event of a lawsuit. The study was specific to concerns about lawsuits and not about the ability of lawsuits to control aberrant behavior on the part of the police officers and sergeants, and the possibility that the respondents tempered their responses for fear of having the responses traced back to them.

**Research question 1.** To what degree are police officers concerned about the impact that litigation may have on their pensions? The majority of the police officers and sergeants reported that they are least somewhat concerned about the impact of civil liability on their pensions. The fact that the majority of the respondents were not more concerned may be indicative that a police officer's pension in New York State is granted based upon the number of years served by an officer, and it is based on their start date and the pension system tier, and it typically is not impacted in any way by performance or civil liability issues (Office of the New York State Comptroller, 2016). Slightly less than one-quarter of the respondents (21.8%) indicated that they were *Very Concerned* with the impact that litigation might have on their pensions. A consideration that should be taken into account in analyzing this concern may be the stress over the potential financial impact of lawsuits that police officers and sergeants may have with regard to their pensions. These concerns could impact and officers decision to retire causing them to leave law enforcement at the earliest possible time to avoid being named as a defendant in a lawsuit.

Regarding pensions, the researcher thought it would be difficult to make a connection between them and lawsuits, given the fact that potential for litigation and the granting of a pension at the completion of a specified number of years are not closely

aligned. Pension attainment in New York State for police officers is more a function of years served than of the amount of litigation a police officer has experienced. Police officers and sergeants may, however, give consideration to the potential effect of liability on their economic security should they suffer a punitive damage decision as they approach retirement.

Retirement from service after completing the minimum number of years, 20 years in New York State for most serving police officers and sergeants, is a major accomplishment. The personal experience of this researcher is that it is also a milestone that almost all police officers hold near and dear to their hearts. The thought of anything, including a lawsuit, getting in the way of reaching that milestone is likely to draw considerable concern as one approaches retirement. Aside from the economic threat, there is also the prospect of having to return to testify, often without financial compensation for the time spent, to explain one's actions in pre-trial depositions, or to defend oneself in a civil trial.

Oftentimes a police officer is sued in his or her official capacity as well as being sued personally (Kappeler, 2001). When sued in their official capacity, police officers and sergeants are typically indemnified for compensatory damage verdicts against them by the municipality for which they work. In cases of a punitive damage finding, however, the municipality does not cover any personal judgement against the officer.

Punitive damage awards carry with them the potential of causing personal economic harm to officers given that they are not insurable in most states in the United States. The police agencies in this study are located in New York State and, thus, fall under the jurisdiction of not only the federal courts but also the state courts. New York

State is one of 17 states in the United States in which punitive damages are not insurable (Sauter, 2013).

Sergeants serving in their supervisory role may suffer the added burden of being sued as a result of their subordinates' actions, based on the theory of "deep pockets" (del Carmen, 1989, p. 108) as well as the legal principle of vicarious liability. Early in this researcher's career as a police chief, a patrol sergeant visited the researcher's office and commented that he would be retiring within the following several weeks. One of the reasons he cited for his decision was to get out before he got sued again. The sergeant was a decorated 25-year police veteran and Vietnam era combat veteran. He had been named in a lawsuit earlier in his police career while working in another highly active municipal police agency, and he recounted to me the frustration of dealing with the process and the worry even though the suit was ultimately dismissed. He did not want to deal with the emotional issues that go along with litigation, and he feared the possible economic consequences on him and his family.

His assessment supports and compares with studies on the impact of litigation and the concerns of civil liability on physicians and mental health professionals. Poythress and Brodsky (1992) conducted a case study on the impact of a lawsuit upon mental health professionals and hospital procedures relating to the early release of a substance-abuse patient from a state psychiatric hospital. The patient went on to commit a murder a short time after release from the facility. The case, which resulted in an \$11.75 million judgement for the plaintiffs, was ultimately overturned by the State Supreme Court, and the defendants were all granted qualified immunity. The psychological stress and fear caused by the litigation upon the staff, however, were not as easily dismissed. Staff

members, both those involved and those not involved in the lawsuit, “reported experiencing symptoms of psychopathology in association with the litigation” (Poythress & Brodsky, 1992, p. 168).

In an earlier study based on physician self-reports, Charles, Wilbert, and Kennedy (1984) surveyed physicians from six counties surrounding Chicago who had been sued from 1977 through 1981 to determine the impact of litigation on their personal and professional lives. They found that the physicians suffered a number of issues related to their experiences. Anger, changes in mood, inner tension, frustration, and feelings of worthlessness were the most significant issues reported by the physicians as a result of their experiences with the litigation process (Charles et al., 1984). Given the close relationship in the literature between the medical field and law enforcement on the topic of concerns about lawsuits, the sergeant’s comments and concerns should not be surprising.

The impact and emotional toll of lawsuits on law enforcement officers and their agencies cannot be taken lightly or examined in a statistical vacuum. There has to be consideration given to the personal concerns that police officers have with regard to civil litigation and the impacts that those concerns have both on the desire to remain in law enforcement as well as on the discharge of their duties. When a highly decorated sergeant with significant real life and law enforcement experience walks into a police chiefs’ office and cites the concern over being sued as a primary reason for retiring, then something is wrong. The loss of his professional and institutional knowledge was felt in the agency for some time after his retirement.

It is almost certain that the sergeant offered the same reasoning for retiring to his fellow sergeants and subordinates. The deleterious effect of such comments from such a respected supervisor are almost certainly not good for the morale of the agency. Those who were waiting in line for promotion would have to reconsider accepting a promotion. Others who were approaching retirement, and there were several, would also have had to think about the same issue only further exacerbating the potential loss to the agency and the community.

**Research question 2.** To what degree does the fear of litigation affect how far a police officer is willing to go to make an arrest? The majority of the respondents to this question (61.5%) reported that they were not overly or even somewhat concerned about the fear of possible litigation having any significant impact on their arrests rates. A further 23.1% indicated that they were at least moderately concerned, with 15.4% indicating that they were very concerned. This last analysis involving those officers that who indicated they were moderately to very concerned, when combined, provides a more meaningful number to discuss. Data from this study indicate that a combined total of 38.5% of those surveyed were at least moderately to very concerned over civil litigation that could prove to be an impediment to police officers making arrests.

In his study, Stevens (2000) found that a small percentage of respondents (11%) reported that obstacles to arrests (which included civil liability as well as other law-enforcement and organizationally related issues) encouraged police officers to resort to alternatives in situations that otherwise permitted the officers to make an arrest. While this study did not seek to measure alternatives to arrest with respect to civil liability, it did find that 15.4% (12) of the respondents were *very concerned* that arrest activities

could possibly be impacted by civil litigation concerns. While Stevens (2000) had a larger sample of officers (658), compared to this study (N = 88), the percentages are strikingly similar.

These numbers seem to indicate that a majority of the police officers out on the street conducting street-level law enforcement activities do not seem to be overly concerned, in general, about civil litigation regarding arrest situations. These findings, however, can be viewed from two different perspectives. If a significant number of police officers are not concerned about the impact of a lawsuit, then perhaps as some in the literature notes, lawsuits are of limited value as a method of oversight. In contrast, slightly over one-third of the respondents indicated that they were moderately to very concerned about the impact of possible civil liability in law enforcement activities.

The researcher's experience in law enforcement suggests that the implications based on these findings could prove problematic from an agency and public safety policy point of view. While the results may not be statistically significant, they may be operationally significant from a public policy perspective. With just over one-third of the officers indicating some level of concern above moderate, probable-cause arrests could dip significantly with police officers and sergeants essentially turning a blind eye (depolicing) to some amount of criminality that they encounter in the community just to avoid being sued. One must consider the potential impact that such numbers have with respect to public safety in a community when one-third of the police officers are concerned to the point that they may not enforce the law.

As an analogy, consider a private company that provides a product for public consumption. That company likely has a marketing department that is responsible for

advertising their product and a sales force responsible for selling the product. Now consider that one-third of that company's sales force is too timid or concerned about being criticized or rejected to go out and actively sell the product. The sales numbers at the end of the quarter are likely to reflect those lost sales, likely significantly impacting the profitability and survival of that company. So too will having a police force in which one-third of the police officers are concerned about the possibility of an arrest causing a lawsuit. This time it is not a company's profits that may suffer, but the safety of the community.

This is not to say that all situations that the police encounter should result in an arrest. In fact, it is quite the opposite that is argued here. Discretion in arrest situations remains an important option in the police officers repertoire of responses. Not all teenage trespassers need to be arrested and ultimately have a criminal record, albeit minor, that will follow them around for life. Those decisions on the part of the police officer to exercise discretion and not make an arrest should be determined by the circumstances at hand and not the fear of being sued.

Despite the increasing use of technologies such as citizen cell phone video, in-car police video, and police body worn cameras, much of what happens in law enforcement situations happens beyond the public eye. In many instances, no one will ever know if a police officer turned away from taking police action to a possible crime in progress because they are overly concerned about being sued. Not arresting a trespasser most likely will have little effect on the overall public safety of the community. Not arresting a trespasser whose intent may be to burglarize or rob a business is another story.

**Research question 3.** To what degree do police officers feel that litigation could impact their future promotion opportunities? This question sought to determine the concern that a police officer or a sergeant had regarding civil litigation impacting future opportunities for promotions. Minimal research has looked at police officer concerns with regard to civil liability and promotions. A total of 62.9% of the respondents in this study indicated that they were either not at all or only somewhat concerned that a lawsuit could affect their promotions. A notable percentage (37.2%), however, did express at least a moderate level of concern, which indicates that a large minority of police officers and sergeants are concerned about the impact lawsuits could have on their careers.

The issue most closely related to this concern has to do with the need for police agencies to thoroughly investigate citizen complaints and allegations in lawsuits against members of their agencies. Barker (1999) addressed the issue of citizen complaint investigations and the possible delay of promotions in her qualitative study of LAPD officers and noted that disagreements between police officers and citizens had the potential to result in a lawsuit. These citizen complaints she noted, however, “pale in comparison to one of the street officers’ most dreaded nightmares, the lawsuit” (Barker, 1999, p. 104).

Consider the findings of this study. A slight majority (58.4%) of the respondents’ have never been sued in the line of duty. Almost one-quarter (22.1%) have been sued at least once. Another 19.5% have been sued two or more times. Most significant is the fact that 98.7% of the respondents indicated that they know another officer who has been sued. Any police officer with a just few years of experience under their belts would interpret these findings to indicate that some number, perhaps one-third, of the

respondents has knowledge at least some other police officer whose chances of promotion had been impacted in at least some way because of an in-progress or pending lawsuit.

While information shared between the police and the public is often minimal, the information shared between police officers flows far and wide. The agencies involved in the present study are located within the same county and there are likely to be times when officers from these agencies as well as others within the county cross paths and talk about similar occurrences. From personal experience, it is safe to assume that someone, somewhere, in the respondents' network of police associates a police officer had his promotion impacted in some way by a lawsuit. Bad news travels fast – especially in police work. The opinion of many in this case, therefore, may be clouded by the experience of a few.

Internal investigations are onerous from the perspective of the officer under investigation. More significantly, these investigations could have the effect of delaying a promotion until the internal police department investigation has been completed. The language in the summons and complaint that announces a lawsuit usually contains serious allegations of civil rights violations and wrong-doing on the part of the officers and police agency involved. While the allegations are argued later through motion practice or in depositions by the agency's attorneys, the agency must still conduct an investigation in order to develop a defense to the allegations. There are times when the local print and broadcast media receive copies of the summons and complaint, generously shared by the plaintiffs' attorneys, and report on the allegations. These media reports become the basis

of fact for many in the community despite the findings of an internal investigation or the eventual outcome of the case.

The researcher's experience in these cases supports the fact that these cases are handled essentially the same as a citizen complaint filed against a member of the service. Evidence is often gathered and reviewed, interviews conducted, and reports by investigating officer written and provided to the agency chief executives. These reports are ultimately turned over to rather the agency's insurance carrier or attorneys. These investigations are often time consuming and from a police officer's perspective stressful. If an officer is named in the summons and complaint while perhaps in the process of being promoted, a delay in the promotion could occur in order to determine the veracity of the allegations.

From the responses to this question, it is apparent that a majority of the respondents had not experienced this issue or that they were not concerned to any significant extent with the possibility of having their promotions delayed. One-third of the respondents remain moderately to very concerned about the impact of a lawsuit on their careers, particularly with respect to promotional opportunities. These concerns cannot be dismissed based on the highly competitive, and sometimes highly subjective, nature of the police promotional process.

Police officers often spend months, sometimes years preparing for promotional exams to elevate them to the rank of sergeant. Much time is devoted to police officers becoming acquainted to State statutes. Rules of evidence and criminal procedure are studied and memorized as if preparing for an exam in law school. Police supervisory books written by key theorists are purchased, read, highlighted, and read again. Money

and time are redirected from leisurely pursuits with family and friends (both of which are often limited given the pay grades of most police officers and the nuances of the around the clock police schedule). Sergeants looking to promotion to lieutenant likewise spend considerable time studying the same material as well as reading all of the key management books and journal articles. All of this to take a civil service promotional exam that is usually offered once every 4 years. Competition among peers at both ranks for the highest grades and civil service list rankings is tremendous.

Agency management is busy as well once the results of the exams are announced. Summons activity for police officer sergeant candidates are tallied. Arrest activity for self-initiated (direct observation arrests) and pick-up arrests (arrests based on an eyewitness) are examined to determine how active the police officer is on the street. Personnel folders are opened to review candidate pre and post-hire qualifications. Training records are scoured to determine competency across a broad range of police duties. Citizen complaint and internal investigation records are reviewed to round out the potential promotional candidates file. Citizen complaint and internal investigation records, possibly the same files that contain the records of the investigations related to a lawsuit. Local community leaders may also weigh in on the process and the candidates for selection – the same ones that read the local newspapers.

And therein lies the paradox for the police officer or sergeant. Make only a minimal number of probable cause arrests and I am considered a marginal employee. Make too many probable cause arrests and I increase my chances of being sued. Be sued and have my name broadcast on the local media. Become the subject of too many lawsuits and I run the risk of being viewed as a liability to my municipality and my

agency. Or, do I just make the easy arrests and not the more difficult ones that may prove controversial and result in a lawsuit, despite the legal merits of the case. Thus, allowing me to allowing me to stay just under the radar without jeopardizing my future promotional opportunities.

**Research question 4.** To what degree does the concern about litigation have on the number and types of arrests made by police officers? The survey participants were asked three questions relating to effecting probable-cause arrests. Each question was related to the concerns that the survey respondents had with effecting a probable-cause arrest based on the classification of crimes committed as defined in the New York State Penal Law: infraction, misdemeanor, or felony.

The first sub-question asked the survey respondents to identify how much the fear of being sued impacted their decision to make a probable-cause arrest for an infraction. An infraction is the lowest penal law category in New York State for which an officer can make an arrest. Penalties for these convictions typically result in a monetary fine and/or 15 days or less in jail. Infractions are typically public order or minor trespass violations. The majority (73.1%) indicated that they were not at all to only moderately concerned in this regard. The number indicating that they were moderately to very concerned (26.9%) represented just slightly more than one-quarter of the respondents. Similar results were found for the other two questions relating to officers effecting probable-cause misdemeanor and felony arrests.

The second sub-question asked the survey respondents to identify how much the fear of being sued impacted their decision to make a probable-cause arrest for a misdemeanor. A misdemeanor is the next level of penal law category crime above an

infraction. Penalties for conviction carry anything from a fine and/or 15 days to 1 year in jail. The majority of the respondents (76.9%) indicated that they were not at all to moderately concerned about the impact on the arrests police officers make for this category of crime. Another 23.0% report that they were moderately to very concerned.

The third sub-question in this category asked the survey respondents to identify how much the fear of being sued impacted their decision to make a probable-cause arrest for a felony. A felony is the most serious of the penal law category of crime above a misdemeanor in New York State. Penalties for conviction carry penalties from a fine to 1 year or more in prison (Schmallegger, 2007). The majority of the respondents (78.2%) indicated that they were not at all to moderately concerned about the impact on arrests police officers make for this category of crime. Another 21.8% reported that they are moderately to very concerned.

The majority of officers indicated the fear of being sued did not have a significant impact on the discharge of their arrest duties. Of concern is the number of officers and sergeants who indicated that they were moderately to very concerned about the impact of lawsuits on arrests in all three penal law categories referred to in this study. The fact that almost one-quarter of the participants showed this level of concern could represent at least some level of depolicing on the part of police officers on the street.

**Research question 5.** Will concerns about litigation cause a police officer to leave police work or defect to another agency? A large percentage of the respondents (87.5%) indicated that they had not considered leaving police work due to concerns about civil litigation. In contrast, a small minority of officers (15.4%) indicated that they would consider leaving police work altogether. It is notable that an overwhelming number of

the respondents (94.8%) in this study indicated that they were not at all or only moderately concerned about civil litigation to the point that they would consider transferring to another agency.

This sentiment on the part of the respondents may reflect the fact that lawsuits are an almost-inevitable part of police work (Barker, 1999; Stevens, 2000), and most municipalities and their insurers tend to settle lawsuits out of court (Archbold, 2013) rather than risk a costly trial and the possibility of a large jury award (Roberg et al., 2012). Data from this survey with respect the number of cases reported going to trial supports these findings. Respondents to the survey indicated that 71.0% of the lawsuits reported did not proceed to trial. Most (78.1%) were dismissed prior to trial with an additional 43.3% settled out of court by the municipalities involved. In essence, all agencies appear to have handled the lawsuits pretty much the same way, and transferring to another agency would not be much different.

The small percentage of the respondents who indicated they would consider transferring to another agency may be the result of the impression that the police agencies they work for are not supportive enough when they are sued or that the agency settles these cases too quickly when the officer feels that the agency should have fought the lawsuit. The officers interviewed in a recent qualitative study on depolicing (Oliver, 2015) noted the concerns they had about their police agencies settling lawsuits even when the circumstances may have supported the police and the impact that action has on potentially fostering depolicing. The results in this study, however, suggest that the majority of officers are not concerned enough over the threat of litigation to the point of transferring or leaving police work altogether. An important fact to consider from the

results of this study is that slightly more than one-half of the officers (51.1%) had never been sued as the result of a line-of-duty incident. Their lack of significant concern might very well have been because of limited personal experience in how their agencies handled lawsuits.

### **Limitations**

The results of this study cannot be generalized to all police officers. The agencies selected were all located in a specific county in New York State that was within close proximity of New York City. Indemnification of police officers by their respective agencies in this region is the norm. The researcher is unaware of any agency in the county that does not provide indemnification. It would be difficult, therefore, to apply these same results to officers in other regions of the United States in which indemnification is not the norm and where officers may be required to acquire their own professional liability policy to protect them from at least a compensatory judgement claim. In addition, this study was not designed to look with any degree of specificity at the efficacy of civil liability and lawsuits in controlling aberrant police behavior and, as such, limited the value in that regard.

Another limitation was the number of responses to the survey by police officers and sergeants. Out of a possible sample size of 118 police officers and sergeants, 88 participated in the study. Further limiting the sample was the fact that of those 88 who participated, not all answered every question in the online survey. After the researcher acquired permission from the agencies' Chiefs of Police, the survey was distributed directly to the selected police agencies via an online link to the Qualtrics survey. E-mails with a link to the survey were sent by the respective police agency executives to all police

officers and sergeants. Despite the fact that anonymity was guaranteed in the opening of the online survey, police officers—by their very nature—tend to be suspicious, and they might have tempered their responses due to concerns that police management would be able to trace their responses back to each individual participant.

Previous studies on this topic included questions concerning race. A shortcoming in this study was not asking participants to identify their race. Having participants identify their race would have permitted an additional correlation to be calculated between concern and race. This would have helped identify possibly different levels of concern between Black and White police officers and sergeants.

A final limitation involves the methodology employed to conduct the study. This study involved a quantitative analysis of police officer and sergeants concerns with regard to civil liability. A problem statement and five research questions were created to provide a framework for the study. What the study lacks, however, is a qualitative component to give voice to the participants. Qualitative studies provide a richness to the experience that statistical data does not reflect. Hearing directly from the officers on how they are or have been impacted by lawsuits would have put a face to the numbers.

### **Recommendations**

This study sought to determine the impact that civil litigation has on police activities in relation to five research questions. The results support the findings of earlier studies which found that the majority of police officers are not significantly concerned about the impact of lawsuits on police activities. This study found that police officers and sergeants are somewhat concerned that civil litigation might have an impact with regard to three of the five research questions: their pensions, arrest rates, and promotions.

As is evident from the analysis, the top three concerns were, in fact, the effect of lawsuits on pension, police officer arrest rates, and promotions.

The responses from the participants in this survey with respect to pension concerns indicate that the majority of police officers and sergeants appear to have some level of concern with lawsuits. More significant, however, is the fact that 21.8% of the respondents indicated that they are *Very Concerned* with the impact that litigation might have had on their pensions. While pensions are not affected by lawsuits, this level of concern indicates both the possible financial impact that respondents were concerned about and that the lawsuits would continue until they were either adjudicated, dismissed, or settled beyond the completion of their careers in laws enforcement. The majority of officers, however, were not significantly concerned with regard to lawsuits' impact on their pensions.

The second major area of concern related to the research questions pertained to the concerns of the police officers and sergeants with respect to police officer arrest rates. The majority of respondents (61.5%) did not appear to be overly, or even somewhat, concerned about the fear of possible litigation having any significant impact on police officer arrests rates. Another 23.1% indicated that they were at least moderately concerned with 15.4% indicating that they were very concerned. The percentage of police officers and sergeants reporting that they were at least moderately concerned is similar to that reported in the literature among other agencies.

**Recommendations for policy.** A significant finding from this study concerned the level of education of the respondents. Almost half of the respondents (46.3%) indicated that they possessed a bachelor's degree, and another 20.0% indicated that they

possessed an associate degree. While the survey did not seek to identify the academic disciplines that the degrees represented, the fact that well over one-half of the participants in this study had completed at least some level of college is significant. There exists a growing body of literature supporting college educational requirements for entry level police officers as a result of the growing complexities of modern policing (Roberg et al., 2012). The same can be said for police supervisors when considering the effect of higher education and a better understanding of the supervisory role with respect to a wide range of social and personnel issues (Carter & Sapp, 1989). Many civil service commissions and police agencies require completion of a minimum level of college credits for entry-level police officers, and these numbers most likely reflect the requirement.

Minimum college educational requirements should be adopted by all civil service commissions and U.S. police agencies. It has been the researchers' experience that police officers and sergeants with a college backgrounds have a better understanding of the complex social and demographic issues that affect modern day law enforcement operations in the community. Most criminal justice curriculums for instance require completion of at least a minimum number of credits in psychology and sociology. The classroom debates and discussions that occur along with the readings at the undergraduate level help to provide aspiring police officers with perspectives that are critical in preparing entry level police officers for work in often very diverse communities.

**Recommendations for service to the public.** The results indicate that the police officers in this study were not significantly concerned with the deterrent effects of lawsuits on police arrest activity. A minority of officers did, however, express some

level of concern. This is significant from a social justice perspective when considering the idea of depolicing, where officers can choose to not enforce the law and essentially engage in depolicing, particularly in those areas that might need enforcement the most. Schmallegger (2007) talked about social justice and how the concept comes into play in a wide range of relationships embodying “the highest personal and cultural ideals” (p. 14). Maintaining a consistent level of police service also requires support from the community and effective leadership from police agency executives.

Leadership from within police agencies is best expressed by conducting fair, politically unbiased, and timely investigations of incidents involving the police. The cultural perception of police officers with regard to internal agency investigations is often that the process is meant to punish police officers rather than to uncover wrongdoing within the agency (Archbold, 2013). The perception of the public, on the other hand, is that internal police investigations are not fairly conducted (Swanson et al., 2012). These perceptions can be countered with an effective investigation policy and transparency in the process for both the officer and the public. Transparency in investigation policy development and outcomes is critical to citizen support of police activities.

**Recommendations for practice.** Training in legal liability represented another significant finding in this study. A surprising 37.7% of the respondents indicated that they had never received any formal training in civil liability. It is hard to reconcile this finding with the fact that entry-level police officers (recruits) are required to attend a police recruit school (police academy) at the time they are hired by an agency. Civil liability is a mandated part of the curriculum for the police academy. The fact that 37.7% percent of the respondents indicated that they had not received any formal training on this

topic raises concerns as to the effectiveness of such training in the police recruit schools in New York State.

The New York State Division of Criminal Justice Services (NYS DCJS) guidelines for the Basic Course for Police Officers (2014) specifies a minimum of 649 hours of pre-deployment training for entry-level recruit police officers. Of those 649 hours relating to a wide variety of topics of necessity to police officers, 58 hours are dedicated to training in laws specific to New York State. Significantly, only 2 of the 58 hours are dedicated to civil liability and risk management (NYS DCJS, 2014). With 37.5% of the respondents in this survey indicating that they had not received any formal training in legal liability, 2 hours on this topic is clearly not sufficient.

Given the concerns the number of lawsuits filed against police agencies, the financial implications of defending lawsuits, and the financial ramifications to the agency and municipalities involved in the event of a settlement or judgement, it difficult to reconcile that police officers only receive 2 hours of training on legal liability in recruit school. What is more difficult to grasp is the fact that 37.5% of the respondents indicating that they did not have any formal training in legal liability. This would indicate that either the training was not effective or more than one-third of the officers were not paying attention during this part of the training. This question was not intended to differentiate between formal training in recruit school from that which may occur during in-service training. The question was simply intended to determine if the officers received training on civil liability at any level. These responses indicate that these officers did not participate in any in-service training on legal liability in either recruit school or through in-service training.

A recommendation is to significantly strengthen the training curriculum in civil liability for all police recruit school attendees. At least 4 hours training should be dedicated to this important topic in the Basic Course for Police curriculum. In-service training should also be included on a semi-annual basis for personnel at all levels of the police department. This in-service training could be consolidated into legal update training or any other training similar in nature that is classroom based.

Archbold (2005, 2013) spoke in-depth about the issue of risk management in police agencies. She noted the efficacy of having trained and dedicated risk managers capable of monitoring activities related to civil liability and for them to be available to assist in, among other issues, the development of policy and training to lessen the impact of liability in policing. A review of the literature on the subject of police liability makes it apparent that most police agencies in the United States do not have individuals dedicated to serve as risk managers. The addition of a risk manager in a police agency allows for a systematic review of liability issues facing the agency and the ability to mitigate those issues through proper policy development and effective training programs both at the academy level and through in-service activities for veteran police officers.

**Recommendations for future research.** A future topic of research would be to repeat the same study within the same geographical region with the addition of specific questions that measure the level of police officer support for citizen lawsuits against the police. This study did not find a significant correlation ( $r = -.05$ ) between years working as a police officer and the concern over lawsuits. Another recommendation for future study would be the correlation between years on the job as a police officer and how the concern of lawsuits by the respondents may have changed their arrest decisions over

time. Similar to earlier studies on civil liability and arrest decisions (Stevens, 2000), an examination of the correlation between tenure and the decision to arrest may prove useful to police executives and public policy makers, particularly when factoring in the several high-profile, police-citizen situations that have occurred in cities such as Ferguson, MO and Baltimore, MD, which served to influence my desire to conduct this research.

This study asked about the concerns of civil liability on the police officers and sergeants based specifically on the perceived impact on their pensions, chances of promotion, and how lawsuits impact the number and types of arrests they made. The study did not ask the participants to indicate whether the police officers and sergeants believed that they should be subject to civil liability for their actions in the line of duty. Earlier studies (Garrison, 1995; Hughes, 2001; Vaughn et al., 2001) found that officers and police chiefs supported lawsuits by citizens against the police for negligent police actions. Determining the current level of support for lawsuits by police officers and chiefs, given the ever-changing environment in which policing occurs, would prove interesting and perhaps insightful.

While the study examined the concerns of police officers and sergeants regarding the effect of civil litigation from three separate police agencies of different sizes and community orientation (city, town, and village), differences between concerns were not considered in the statistical analysis. Garrison (1995) surveyed police officers from three different police agencies within the state of Delaware and found notable differences in attitudes across several variables. Each of the agencies in the present study is a municipal police agency, however, they serve jurisdictions that are significantly different in population, racial and ethnic make-up, and geographic size. Examining attitudes

across the various agencies would have provided an interesting look at concerns similar to that of Garrison (1995) and would have permitted more in-depth analysis of the subject.

Race and ethnicity of the respondents was not taken into account in this study. Earlier studies on this topic included questions regarding the race of the respondents. Race and ethnicity represent an important variable that was not considered at the time the study was conducted. Given the recent high profile incidents between police officers and minority members of the community, attempting to determine the concerns of police officers and sergeants based upon their race or ethnicity would serve to further inform the literature.

## **Conclusion**

The purpose of this study was to determine if there is a relationship between police discretion in effecting arrests and the fear of reprisal litigation. This research examined the concerns that police officers and first-line supervisors (sergeants) had regarding civil litigation and the impact these concerns had on the discharge of their duties. Three police agencies located in a county contiguous to New York City were chosen to participate in the study. The three selected police agencies represent one of the three types of primary municipal law enforcement present in the county in which the study was conducted: a city, town, and village police agency. Prior literature on this topic is dated and does not address the specific concerns of police officers that is related to the impact of civil litigation on issues important to them: pension, promotion opportunities, and arrest rates.

The study involved an Internet-based study using Qualtrics survey software that was accessed via a link provided to the subject police agencies. Anonymity was guaranteed to both the agencies involved and the survey respondents. The results of the survey responses were analyzed using IBM SPSS, V22 software provided through St. John Fisher College, Rochester, NY. Descriptive statistics were used in presenting the data concerning percentages, minimum scores, maximum scores, means, and standard deviations. Reliability of the survey was determined using a coefficient alpha and computed to be .89, indicating that the survey was very reliable. Three separate one-way ANOVA's were computed to compare whether the mean opinions expressed in Part III of the survey of officers who have been sued are different from those who have not been sued. Additionally, since two different job titles were represented in the study (police officers and sergeants) an ANOVA was computed to measure group differences by job title.

**Theoretical framework of the study.** The theoretical frameworks for this study involved the impact that the broken windows theory (Kelling & Wilson, 1982) and the theory of unanticipated consequences of purposive social action (Merton, 1936) had on civil litigation involving the police and how the police carry out their duties in effecting probable cause arrests. The choice of these theories to examine the impact of civil litigation stems from aggressive police practices that were occurring during the researcher's tenure as a police chief and the responses of the communities and certain members of the public, in attempting to curb these aggressive activities and hold the police accountable for their actions. While a number of options exist, depending on

jurisdiction for communities to hold their police officers and agencies accountable, one option that seems to be universally accepted is civil litigation.

Novak et al. (2003) examined the correlation between civil liability and aggressive police practices. Their study noted some of the concerns that are typically attached to more aggressive policing practices, such as quality of life and zero tolerance policing, and the possibility of these practices increasing the chances of law suits against the police. This, the researchers noted, has been the case in New York City where both lawsuits and civilian complaints against the police have increased with the adoption of aggressive policing practices (Novak et al., 2003). Roberg et al. (2012), however, noted that lawsuits do not have an impact on aggressive practices by police officers including those officers who have been sued in the past.

One issue of importance to consider with respect to the theoretical foundations of this study is that none of these agencies selected for this study appears to be involved in practicing the aggressive police tactics spoken of in the media. The police agencies in this study more closely represent the typical community policing model of service without the more aggressive zero-tolerance component of problem-oriented policing. While some concern exists in the literature about the potential for increased liability in community-oriented policing because of increased police-public contact and the exercise of enhanced discretionary power by line-level police officers (Roberg et al., 2012), that concern does not seem to have impacted the officers and sergeants in this study.

All of the agencies represented in this study appear to have maintained positive relations with their communities and have provided many of the ancillary services that major urban police agencies rarely are able to provide. Quality of life and maintaining

community status quo seem to be the norm for these agencies. Contrary to an earlier study (Stevens, 2000), the results of this study support the fact that the police in these agencies appear to be more concerned with controlling crime and effecting arrests across a broad category of penal law crimes, when the situation presents itself, as opposed to being overly concerned with potential litigation. Still, the concern that some officers expressed regarding the issue of civil liability cannot be dismissed.

The selection of Merton's (1936) theory, what is sometimes referred to as the theory of unintended consequences, for this study was to attempt to determine what the unintended consequences of lawsuits are related to probable-cause arrest situations. The fact that a review of the literature, coupled with the findings in this study, were not significant as to the effects of lawsuits on probable-cause arrests, indicates that Merton's (1936) theory does not have a significant impact in this situation. This theory does, however, appear to have an impact on at least a minority of officers and sergeants who expressed concern, across a broad range of penal law categories.

A majority of the respondents (58.4%) reported that they had never been sued as the result of a line-of-duty incident. Almost all (98.7%) reported that they knew someone who had been sued as the result of a line-of-duty incident. The fact that such a large percentage of police officers and sergeants in this study have never been sued may be a reflection of the more robust hiring practices in place in each agency participating in the study. As stated earlier, two of the agencies are New York State Accredited enforcement agencies. One of the agencies is not accredited, however, the agency's policy reflect state accreditation standards. Accreditation standards require police agencies to have robust candidate selection and hiring practices in place with a focus on

selecting the best candidates for entry level police positions. Rigorous selection methods combined with college educated officers appear to be a significant dividend when considering liability issues in a police agency.

Reflecting on the fact that policing remains a male-dominated profession, 90.0% of the respondents reported that they were male, while 10.00% indicated that they were female. The study found that while police officers may be more concerned than sergeants with regard to lawsuits, results of the ANOVA measuring the differences between groups were not significant. Almost one-quarter of the police officers and sergeants in this study report that they were moderately to very concerned that lawsuits would impact arrests across all three categories of penal law crimes. This fact should give pause to those who rely on the police to protect their neighborhoods and communities. The findings in this study support the idea that police officers are concerned about lawsuits and engage in depolicing, at least to some extent, as it concerns civil liability. From this researcher's perspective, this finding is cause for concern on the part of police administrators and public policy makers.

A more troubling aspect of depolicing not discussed here must also be considered. Much of the media reporting and a significant body of literature speaks to depolicing concerns related to lawsuits in minority neighborhoods. Recent media commentary has talked about police officers engaging in depolicing in these neighborhoods because of the fear of being labeled a racist as well as for civil liability concerns. These two concerns represent a major reason for the research to undertake this study. The possibility also must be considered that police officers may engage in depolicing with regard to lawsuit concerns in other more troubling ways.

Taking into account the fact that any number of persons in minority communities may have only limited access to effective legal services while the opposite may be true in non-minority communities, consideration has to be given to the idea that police officers may decide to depolice those who have a greater chance of suing them and engaging in aggressive enforcement against those who have less of a chance to sue them. In other words, the minority teenage son of a blue collars worker may have a significantly better chance of being arrested for trespassing than the non-minority teenage son of the white collar executive with the financial resources to hire a good civil attorney. The prospect of this occurring and the potential impact on the overall administration of justice requires significant oversight and monitoring of police activities from both within and outside the police agency.

Events that have occurred simultaneously while this dissertation was being finalized in the cities as diverse as Baton Rouge, LA; Falcon Heights, MN; and Dallas, TX, underscore the need for a better understanding of the issues and concerns that both the public and police officers have in providing effective law enforcement to our communities. If past experience can be considered a reliable predictor of future actions, there is cause to be concerned that each of these tragedies will end up in a similar place: litigation as the result of a lawsuit. Police officers and their sergeants will, no doubt, be named among the defendants in those. Depolicing as a result of concerns over lawsuits cannot be allowed to influence police actions to the extent that the community and public safety is jeopardized.

Effective pre- and in-service training that is focused on risk management activities, and an increased oversight of line operations by police managers, along with

support from the agency and community may, be the best antidote for these concerns.

Additionally, the focus on hiring college-educated officers cannot be overstated. The law enforcement profession and the communities that the police officers serve are becoming more complex and requiring a more diverse skill set than that traditionally provided in the police academy. An understanding of community concerns as well as the volatile and dangerous situations that police officers often confront has to be a part of that equation as well. Support by police administrators and their local political entities for increased training and educational programs, and funding for police personnel at all levels and ranks within police agencies, is more critical now than at any time in the past.

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## Appendix A

### Attitudes on Lawsuits for Police Officers

Title of study: "Civil Liability and the Response of Police Officers: The Effect of Lawsuits on Police Discretionary Actions."

Purpose of study:

The purpose of this study is to find out if there is a relationship between police discretion in effecting arrests and the fear of reprisal litigation. What is not clear, however, is what are the overall effects of this fear regarding their work as well as their perceptions that in how lawsuits will impact their careers. This study will examine the overall perception that individual police officers have with regard to lawsuits. The concerns that individual police officers have over the possibility of a lawsuit could prevent police officers from fully exercising their duties and could have an effect on public safety in a community.

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Please answer the following questions:

Part I: Demographic Questions.

- 1) What is your age range?
  - a) 21 – 25 yrs. b) 26 – 30 yrs. c) 31 – 35 yrs. d) 36 – 40 yrs. e) 41 – 45 yrs.
  - f) 46 – 50 yrs. g) 51 – 55 yrs. h) over 56 yrs.
- 2) Sex?
  - a) Male b) Female
- 3) What is your education level?
  - a) High School Diploma/GED b) Associates Degree c) Bachelors' Degree
  - b) Graduate Degree
- 4) Number of years of experience as a sworn police officer?  
\_\_\_\_\_ years.
- 5) Your title?
  - a) Police Officer b) Police Sergeant
- 6) What is the approximate number of sworn personnel in your police agency?

- a) More than 100   b) More 50 but less than 100   c) More than 20 but less than 50

Part II: Background Questions.

- 7) How many times have you been sued as the result of a line of duty incident?  
\_\_\_\_\_ times.

**Note: If you have never been sued, please skip questions 8, 9, and 10 and go to question 11.**

- 8) Were any of these cases dismissed prior to trial?
  - a) Yes                      b) No
- 9) Did any of these cases proceed to trial?
  - a) Yes                      b) No
- 10) Were any of these cases settled by the police agency/municipality prior to going to trial?
  - a) Yes                      b) No
- 11) Do you know any other sworn police personnel that have been sued as a result of a line of duty incident?
  - a) Yes                      b) No
- 12) Have you ever received any formal training in legal liability?
  - a) Yes                      b) No

Part III: Opinion Questions.

On a scale from 1 to 4 where 1 = Not at All Concerned and 4 = Very Concerned, please indicate:

- 13) How concerned are you that being sued will have an impact on your pension:  
1                      2                      3                      4
- 14) How concerned are you that being sued could have an impact on your future promotional opportunities:

1                      2                      3                      4

On a scale from 1 to 4 where 1 = No Influence and 4 = Significant Influence, please indicate:

15) How much does the fear of being sued have an impact on your decision to make a probable cause arrest for an infraction

1                      2                      3                      4

16) How much does the fear of being sued influence your decision to make a probable cause arrest for a misdemeanor

1                      2                      3                      4

17) How much does the fear of being sued influence your decision to make a probable cause arrest for a felony

1                      2                      3                      4

On a scale from 1 to 4 where 1 = Not at All Concerned and 4 = Very Much Concerned, please indicate your concern regarding:

18) The concern of a lawsuit impacts the number of arrests that a police officer makes

1                      2                      3                      4

19) The concern of a lawsuit impacts the types of arrests that I make

1                      2                      3                      4

20) How much has the threat of lawsuits caused you to consider transferring to another police agency or leaving police work altogether

1                      2                      3                      4

21) How much has the threat of lawsuits caused you to consider leaving police work altogether

1                      2                      3                      4

## Appendix B

### Invitation to Participate in Study

Please allow me to introduce myself, my name is Anthony P. Chiarlitti and I am a doctoral student (Ed. D. in Executive Leadership) at St. John Fisher College (Cohort 6, College of New Rochelle, NY Campus). My dissertation is on the impact that lawsuits have on police officer discretionary actions (including probable cause arrests).

My interest in this topic is based on my 33 years of law enforcement experience, including 19 years as a chief of police (retired May, 2011) in the Pleasantville, NY police department, and my professional experience in dealing with lawsuits. I am currently employed in the security field as a Director of Training and Employee Development as well as a security consultant in a security and risk management firm in White Plains, NY. I am also an adjunct professor of criminal justice at Pace University and Westchester Community College in New York.

While there have been several other studies done on this topic, most are over a decade old and to my knowledge have never involved police agencies in Westchester County, NY. I believe that this research is particularly important now given the changing climate in the US concerning police officers and how they go about doing their jobs. My hope in conducting this research is to inform the public, police administrators and public officials about the significant concerns that police officers have concerning legal liability and how those concerns impact the exercise of their police duties.

I am writing to respectfully request that you participate in this study by completing the attached “Informed Consent to Participate in Research” signifying your rights as well as willingness to participate and completing the online Qualtrics research survey. The survey may be completed by opening the following link: [https://sjfc.co1.qualtrics.com/SE/?SID=SV\\_57pbwYKhrRP5ciN](https://sjfc.co1.qualtrics.com/SE/?SID=SV_57pbwYKhrRP5ciN). The survey should require no more than 20 minutes of your time to complete. Please note that because of the time constraints in this research study, this link will only remain active for 45 days – from now until March 31, 2016. Thereafter, the link will be closed and the data will be analyzed and reported on in the completed dissertation. Once the dissertation has been successfully defended and approved by St. John Fisher College (on or about March 2017), I will be willing to provide a copy of my findings to any interested police officer or study participant.

I would like to thank you in advance for considering my request and I am hopeful that you will participate in this study so that your feelings on this important topic as individuals and as police officers can be known. If you have further questions regarding this study, please feel free to contact me at (914) 860-4570 or by e-mail at [apc03381@sjfc.edu](mailto:apc03381@sjfc.edu).

Very truly yours,

Anthony P. Chiarlitti  
Doctoral Candidate

## Appendix C

### St. John Fisher College

#### Informed Consent to Participate in Research

**Title of Study:** “Civil Liability and the Response of Police Officers: The Effect of Lawsuits on Police Discretionary Actions.”

**Researcher:** Anthony P. Chiarlitti

**Dissertation Chair:** Dr. Josephine M. Moffett

**Committee Member:** Dr. Michael Muffs

#### **Introduction:**

You are being asked to participate in a research study being conducted by Anthony P. Chiarlitti for a doctoral dissertation under the supervision of Dr. Josephine M. Moffett of the Ed. D. in Executive Leadership Program at St. John Fisher College. You are asked to participate because you are a uniformed police officer in a suburban New York police department. In this study, participants receive an internet based survey designed to obtain information on the impact that lawsuits have on the exercise of discretionary police activities. Participants will also be asked to voluntarily participate in a follow-up telephone interview to expand on their survey answers. Participants may agree to only participate in the survey anonymously and not participate in a follow-up interview. It is hoped that police officers will be willing to share their views relating to the survey and interview questions.

Please read the form carefully and ask any questions that you may have before deciding whether to participate in the study.

#### **Purpose of the Study:**

This study will assess the impact that the concern of lawsuits has on the police exercise of discretion and inform the public, police administrators and public officials about the significant concerns that police officers have concerning legal liability and how those concerns impact the exercise of their police duties.

#### **Study Procedures:**

Your participation in this study is strictly voluntary. If you agree to participate in this study, you will be asked to complete an online survey that will take approximately 10-15 minutes to complete. The survey is designed to gather background information about you and your agency as well as the ways in which the potential for being sued impacts the action you take in the line of duty. The identifying data from these surveys will be destroyed once the data is transcribed and coded.

**Approval of Study:** This study has been reviewed and approved by the St. John Fisher College Institutional Review Board (IRB).

**Risks and Benefits:** The researcher will protect the confidentiality and anonymity of all research data. There is no risk involved in participating in this research.

**Confidentiality/Privacy:** All information collected in this study will remain confidential. In order to maintain the utmost confidentiality of the participants in this study, the names of research participants will not be collected. No data will be released identifying participants or their police agencies. All research will be conducted with the highest ethical standards for confidentiality. The researcher will maintain any records associated with this study in a locked cabinet for a period of four years following the completion of research and then the records will be destroyed

The researcher acknowledges that recalling the events associated with a lawsuit may cause emotional distress to a participant in this study. For any reason during your participation in this research study, you may discontinue your participation. You may refuse to answer any question in this research study.

**Your rights:**

As a research participant, you have the right to:

1. Have the purpose of the study, and the expected risks and benefits fully explained to you before you choose to participate.
2. Withdraw from participation at any time without penalty.
3. Refuse to answer a particular question without penalty.
4. Be informed of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to you.
5. Be informed of the results of the study.

I have read the above, and by electronically participating in this survey, I agree and consent to participate in the above named study.

If you have further questions regarding this study, please contact the researcher, Anthony P. Chiarlitti at 914-860-4570 or by e-mail at [apc03381@sjfc.edu](mailto:apc03381@sjfc.edu).

Concerns or complaints about this study may also be addressed to the Institutional Review Board (IRB) at St. John Fisher College, 3690 East Avenue, Rochester, New York 14618, (585) 385-8000 or by e-mail at [irb@sjfc.edu](mailto:irb@sjfc.edu).