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Settling for Efficiency:  
Power and the People Left in Its Wake

By

Theodore D. Forsyth

A Capstone Project Submitted in Partial Fulfillment of the  
Requirements for the Degree of Master of Science in Criminal Justice

Department of Criminal Justice  
College of Liberal Arts

Rochester Institute of Technology  
Rochester, NY  
May 12, 2021

# RIT

## **Master of Science in Criminal Justice**

### **Graduate Capstone Approval**

Student: Theodore D. Forsyth

Graduate Capstone Title: **Settling for Efficiency: Power and the People Left in Its Wake**

Graduate Capstone Advisor: **Dr. Irshad Altheimer**

Date:

## **Abstract**

This study examines claims data, prepared by an insurance carrier and obtained through an open records request, of police-involved incidents in Rochester, New York from 2001-2012. The dataset includes information about the incidents and financial outcomes accepted by claimants. Eighteen independent variables are broken up into three categories: claimant characteristics, claim characteristics, and situational characteristics. The research question guiding this study is: What, if any, claimant, claim, or situational characteristics impact final settlement amounts for claims stemming from police-involved incidents? Four theories are utilized to explain the phenomenon examined in this study: social capital, power differentials using Donald Black's behavior of law, bureaucratic efficiency, and the postindustrial policing thesis. Descriptive statistics and bivariate analyses are conducted on the dataset ( $n = 453$ ) and subset ( $n = 260$ ). An Ordinary Least Squares regression was used on the subset; it identified five key predictors for final settlement amount: claims that last longer than 3 months; claims offered an immediate payout of greater than \$500; claimant vehicle involved; auto impound or auction involved; and child involved. Over the course of 12 years, the City of Rochester limited its losses for police-involved claims to \$4.9 million. Fifty-nine percent of claimants received a settlement and 73% of claims resolved within three months. The study indicates that the City prioritizes bureaucratic efficiency over fairness. Policy recommendations are offered. A future research agenda includes interviewing stakeholders, testing hypotheses, and gathering data from similarly-sized municipalities to see if the findings in Rochester hold in other cities in order to make informed generalizations about mid-sized municipalities and their claims processes.

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## Introduction

“Are you ready to get your ass kicked?” (Transcript of Oral Argument, 2019i, p. 1265). Before Benny Warr could answer, Rochester Police Department (RPD) officer Joseph Ferrigno pepper sprayed him in the eyes, while officer Anthony Liberatore “pushed over Mr. Warr’s motorized wheelchair” (Transcript of Oral Argument, 2019a, p. 23) causing damage to his left side and stump (Transcript of Oral Argument, 2019f, p. 28). The two officers then “kicked, punched and kneed him in the stomach, chest, head, back neck, and other areas while he lay on the sidewalk” (Burkwit Law Firm, 2015, p. 2). Then-Rochester City School Board Commissioner Mary Adams was at the scene and testified that she saw Sargent Mitchell Stewart approach Mr. Warr in “a walking stride” and kick him in the head (Transcript of Oral Argument, 2019e, p. 577). Mr. Warr waited 25 minutes, handcuffed and on the ground, for an ambulance to arrive (Transcript of Oral Argument, 2019b, p. 25).

Two years from the incident (~24 months), the City of Rochester<sup>1</sup> offered Mr. Warr and his wife, Pastor Nina Warr, \$35,000 to settle their civil lawsuit; the Warrs declined opting instead for a jury trial (Craig, 2019). About five and a half years from the incident, a jury in federal court heard the case; in the end, the jury determined that only officer Liberatore had used excessive force; the Warrs were awarded nominal damages of \$1.00 (Forsyth, 2019).

Mr. Warr’s case is routine; it is not exceptional. It did not garner a multi-million-dollar payout from the City.<sup>2</sup> The officers involved continue to patrol city streets. Jefferson Avenue,

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<sup>1</sup> Throughout this study, I refer to the City of Rochester as the “City.” I also use the words “municipality” and “city” interchangeably. There is a degree of legal difference between the word “municipality” and “city;” a municipality means that the city is incorporated as a legal entity with a City Charter and a local governing body composed of elected and appointed public officials. All of the cities discussed in this study are municipalities.

<sup>2</sup> There are plenty of exceptional, multi-million dollar settlement cases in the news: Rekia Boyd, \$4.5 million (ABC7, 2013); Freddie Gray, \$6.4 million (Alexander, 2015); William Green, \$20 million (Alexander & Chason, 2020); Akai Gurley, \$4 million (Associated Press, 2016); Walter Scott, \$6.5 million (Botelho & Moghe, 2015); Aiyana Stanley-Jones, \$8.25 million (Brand-Williams, 2019); Eric Garner, \$5.9 million (Conlon, 2015); Breonna Taylor, \$12 million (Craig & Iati, 2020); Philando Castile, \$3 million (Forliti, 2017); George Floyd, \$27 million

where the Warrs lived at the time of the incident, is one of the most impoverished (50% below the federal poverty line) and racially segregated (98% non-white) neighborhoods in the City (The Opportunity Atlas, 2021a; The Opportunity Atlas, 2021b). The neighborhood has an earned reputation for violence and open-air drug sales. The officers in Mr. Warr’s trial called the neighborhood “Angry Town” because of “the amount of violent crimes and the amount of things that happen down there . . . it’s just very hostile, very angry, very anti-police” (Transcript of Oral Argument, 2019h, p. 1141). Officers on May 1<sup>st</sup> were breaking up groups of people standing on the sidewalks and moving them along in order to reduce the chances of criminal activity occurring (Transcript of Oral Argument, 2019g, p. 1140). Mr. Warr was eating ice cream when officers rolled down Jefferson Avenue telling people to move along; he crossed the street to wait for a bus. As he waited, officers approached him and told him to move; Mr. Warr replied that he was waiting for the bus. Officer Ferrigno replied “I said fucking move!” (Transcript of Oral Argument, 2019d, p. 257). He was then assaulted and arrested. Spencer Ash, the City attorney who defended the officers, characterized Mr. Warr as “blight” and a “nuisance;” the interaction that the officers had with Mr. Warr was routine. It was just an average day for the officers involved (Transcript of Oral Argument, 2019c, p. 35).

When people without social capital, or the funds required to retain an attorney, want compensation for police misconduct, they have the option of moving through the civil claims process—alone. In other words, they proceed through the claims process as individuals without

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(Griffith & Brewster, 2021); Tamir Rice, \$6 million (Hodges, 2016); Sandra Bland, \$1.9 million (Kennedy, 2016); and Michael Brown, \$1.5 million (Patrick, 2019).



legal representation. This study focuses on these claimants<sup>3</sup>, the claims process, and the settlement<sup>4</sup> outcomes for people who experience police-involved incidents. These persistent people, who proceed through the process, must navigate the drafting and filing notices of claim, participate in settlement negotiations with City bureaucracy, and make difficult personal choices to determine if their experiences are worth the time, effort, and potential settlement offers made by the City. In some cases, going through the process could leave the claimant with no settlement offer, and consequently, no compensation for sustained injuries or damages arising from a police-involved incident.

## **Background**

Rochester's history of disproportionate policing of Black, Hispanic, and poor people spans decades. In the early 1960s, three high-profile cases<sup>5</sup> led to the creation of the Police Advisory Board—Rochester's first civilian oversight effort (Hill, 2010, pp. 106-107; Forsyth, 2015). In 1962, Rufus Fairwell was a gas station attendant who was severely assaulted by police in and out of custody. As he was closing up the station, two officers rolled onto the lot and demanded to know what he was doing. He told the officers he worked at the station and he showed them his key. One of the officers replied "What's a nigger like you doing with that key?" After the racist insult, the assault started. Two of Fairwell's vertebrae were broken in addition to other injuries he sustained during the assault (Hill, 2010, p. 74); he received a settlement \$12,000 (Democrat and Chronicle

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<sup>3</sup> When a person is injured (financially or physically) by a City employee or through action or inaction, the claimant can file a notice of claim against the City for compensation. The notices of claim must include the claimant's name and address, the claimant's attorney's name and address (if they have one), the time, date, and location of the incident, and a description of the damages or injuries and how they were sustained. The claim—a written letter—must be witnessed by a Notary Public or Commissioner of Deeds (City of Rochester, n.d.-b).

<sup>4</sup> I use the terms "settlement" and "payout" interchangeably throughout the study. A settlement is an agreed upon amount of money that the municipality pays to claimants (i.e., compensation) to resolve claims made against it from police-involved incidents.

<sup>5</sup> Aside from the Fairwell case, there were the cases of A.C. White who was beaten terribly by police in and out of custody and the arrests of several Nation of Islam members during a religious service based on a tip that a gun was in their mosque; these two cases occurred in early 1963 (Hill, 2010, pp. 74-77).

Staff, 1966). Criminal charges filed by Fairwell against the involved officers and counter charges filed by the officers against Fairwell were dismissed in criminal court. Two years later, the newly established Police Advisory Board was not able to prevent the civil unrest of 1964. In that year, an act of police violence during a block party set off three days of what some have characterized as a race rebellion, and others a riot. There was massive property damage, nearly 1,000 arrests, and hundreds of people injured. By the end, the National Guard patrolled city streets. A confluence of factors led to the uprising: racism and discrimination; lack of jobs; poor housing stock; and a limited number of available housing units (Christopher & Eison, 2006; Gillon, 2018; Kerner & Wicker, 1968). Social advocacy and support organizations like FIGHT (Freedom-Integration-God-Honor-Today), Action for a Better Community, and the Urban League came into existence shortly after the rebellion (Buttino & Hare, 1984) in order to start ameliorating the conditions that led to the unrest in 1964. Disparate treatment of communities of color by the police persisted even as these civic organizations became local institutions.

During the era of the late 1980s and early 1990s, Rochester was grappling with high levels of gun crime and drug sales and usage; the police department created a vice unit called the Highway Interdiction Team (i.e., HIT or the HIT squad) to enforce laws against people engaged in low-level drug sales and use (Special Criminal Investigation Section [ca.1988]); the Jamaican community was a noted target (Taylor & Sopko, 1993) in the department's HIT application for federal funds. HIT had a three-prong approach to preventing the sale, and use, of drugs. Prong one was heavy and aggressive enforcement of drug laws against low-level dealers and users (p. 2). Prong two consisted of getting search warrants for what were called gatehouses (i.e., locations where drugs would be stored and relayed to dealers on corners to sell), raiding these gatehouses, and then threatening landlords to kick out their tenants or risk legal action (i.e., asset forfeiture) to

seize the properties (p. 3). The third prong assumed that evicted dealers would buy homes and continue their trade in drugs; the police department would obtain search and arrest warrants and seize the properties increasing the assets of the department (p. 4). The HIT strategy led to abuses of power and excessive force allegations.

In 1991, five vice officers and the former chief of police were subject to a 19-count federal indictment, which alleged that the officers engaged in a “virtual reign of terror” (Appelman, 1991), where excessive force was regularly used against suspects in violation of their constitutional rights (Forsyth, 2013). The chief of police pleaded guilty to embezzlement and knowledge of the unconstitutional activities of the HIT squad. The five vice cops were acquitted after a jury trial.<sup>6</sup> At least 10 civil lawsuits directly related to the HIT’s actions were filed against the City for violations of civil rights (Forsyth, 2013). Maurice James received a settlement of \$625,000 due to his arrest and assault by HIT officers for drug charges; his conviction was vacated after serving two years in state prison (Democrat and Chronicle Staff, 1993). Ernest Foxx was assaulted by police during a HIT drug raid; he received a settlement of \$95,000 (Democrat and Chronicle Staff, 1992).

Rochester also saw a series of high-profile police killings and incidents of excessive force that targeted primarily Black and Hispanic people from 1975 to 2021. Justice—criminal or civil—was rarely served for the families of the victims (Fanelli, 2020); the most recent injustices were the killings of Daniel Prude (Allen, 2021) and Tyshon Jones (WHAM, 2021). After each incident, going back decades, the community demanded police reforms (e.g., better reporting of incidents; more precise policies and procedures over use of force; expansion of civilian services for social

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<sup>6</sup> Michael Mazzeo, one of the acquitted five vice cops, now leads the Rochester Police Locust Club (Rochester Police Locust Club, n.d.)—the collective bargaining unit for Rochester police officers at nearly every rank (Hargrave & Miller, 2004, p. 114).

issues; civilian review boards; training; residency requirements; a more racially diverse police force; community interviews of potential recruits; community power to fire police officers including the chief; neighborhood service centers; consolidating the force; decentralizing the force; clergy on patrol; PAC-TAC; Police Athletic Leagues; officers on bicycles, among others). Following the police killing of Denise Hawkins in 1975, the *Citizens Committee on Police Affairs* report was released in 1976. The report outlined over 100 reforms recommended for immediate implementation by the police department (Crimi & Willis, 1976); the department adopted 87 of the recommendations. The officer who killed Ms. Hawkins was cleared by a grand jury (Democrat and Chronicle Staff, 1975). In the wake of Hawkins' death, a lawsuit was filed that called for use of force training for RPD officers (Lovely, 1975). United Church Ministries released its plan to reform the police<sup>7</sup> (Gordon, 1989), after the police shooting death of Calvin Green in 1988, which was five years after police killed Alicia McCuller in 1983. Green's civil case settled for \$600,000, which was divided between members of his family (Democrat and Chronicle Staff, 1989). In 2002 the local chapter of the New York Civil Liberties Union released a report on the use of Field Information Forms (FIFs) in Black and Hispanic neighborhoods (Klofas, 2002) displaying disparate surveillance of communities of color. In 2004, the report *Pathways to Better Police-Community Relations in Rochester* reflected on police and community relations in relation to police violence and killings of civilians since the release of the Crimi Committee Report in 1976 (Hargrave & Miller, 2004) and made recommendations to "reduce conflicts, provide greater public safety, and improve the quality of life throughout Rochester's different communities" (p. ii). The report came out after the police killings of Vandre "Vandy" Davis (2001), Craig Heard (2002),

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<sup>7</sup> The Civilian Review Board proposed by United Church Ministries included the powers to appoint the chief of police; determine policy for the department; approve police budgets; investigate complaints of misconduct; and discipline officers if allegations of misconduct were sustained.

and Lawrence Rogers (2002). Craig Heard's mother received a settlement of \$350,000 (Editorial Board, 2006). In 2017, Enough Is Enough and the Coalition for Police Reform released a joint report calling for the creation of a community-control-of-police-type of oversight agency with disciplinary power (Lacker-Ware & Forsyth, 2017). In 2019, Rochester City Council, and then the voters of the city via referendum, passed one of the most progressive pieces of police oversight legislation in the country; the Police Accountability Board (CITY News, 2021). Most recently, a class-action lawsuit (Snyder & Romine, 2021) alleging a pattern and practice of abuse against Black and Hispanic residents was filed by members of the community engaged in Black Lives Matter demonstrations during the summer and fall of 2020 after the death of George Floyd and the subsequent news of Daniel Prude's murder at the hands of RPD officers—including the months-long concealment of his death by City officials (Deliso, 2021).

The history suggests at least three conclusions: 1) there is a deeply rooted, intergenerational distrust of police within some communities of color; 2) high-profile incidents of police abuse seem to be cyclical appearing every 7 to 10 years; the police reforms that get implemented—especially as they relate to use of force and deadly force—come and go with seemingly little impact on police misconduct; and 3) the cases touched on above were outliers; in other words, they were exceptional in the media attention they attracted, the community support they garnered, and the amount of money they received through settlements. This study investigates the unexceptional: civil claims made against the City for a variety of police-involved incidents *not* reported through the nightly news, the local newspaper, or social media.

### **Statement of Purpose**

This study is an examination of claims data, prepared by an insurance carrier, of police-involved incidents. Some incidents involve the use of force, false arrest, and deaths of claimants,

while others are related to traffic accidents, the auto impound lot, and property damage. Variables fall into three different categories: claimant characteristics (i.e., specifics about the individual filing the claim, or the claimant), claim characteristics (i.e., specifics about the claim), and situational characteristics (i.e., specifics about the incident). The site of the study is Rochester, New York; the claims being examined are from the years 2001-2012. The data were obtained through a Freedom of Information Law (FOIL) request (i.e., an open records request) from 2017. The unit of analysis is the claim filed against the City for a police-involved incident. Settlement amounts represent monetary payouts made to claimants prior to the filing of lawsuits or, if a lawsuit is filed, prior to the conclusion of a trial. The research question guiding this study is: What, if any, claimant, claim, or situational characteristics impact final settlement amounts for claims stemming from police-involved incidents?

It is important to express my biases before moving forward. My experience as a community organizer and activist informs my understanding of justice. My assumption is that settlements are a form of justice for individuals who are harmed by police officers. These settlements should be adequate to make the individual who is harmed whole again. Assumptions that value cost savings and bureaucratic efficiency due to officer harms are, from my perspective, not fair or just.

The paper will progress as follows: first, I will use theory to help explain the claims process and its financial outcomes. Then, I will examine the police civil liability literature and related topics. Third, I will describe my methods, analytical strategy, and results from my univariate, bivariate, and multivariate analyses. Finally, I will discuss my results, explain the limitations of the study as well as its implications, and share some thoughts on future research directions.

## **Theoretical Framework**

There is no single theory to explain why some individuals and not others file notices of claim for police-involved incidents, the reasons for the outcomes of those claims, or the behavior of municipalities and their police departments when faced with such claims. My hypothesis is that the City prioritizes efficiency over fairness. Claims filed against the City are adjudicated in a speedy fashion with as little money as possible paid out in settlements. This strategy leads to a conservation of City resources that can be spent in other ways such as development and revitalization efforts to improve City revenue streams. In this section of the paper, I integrate theory to explain the process and outcomes related to civil claims process and case outcomes. First, I discuss the claims process from the perspective of the claimant followed by the City's motivation and strategy for adjudicating claims, which explains the theory behind the hypothesis.

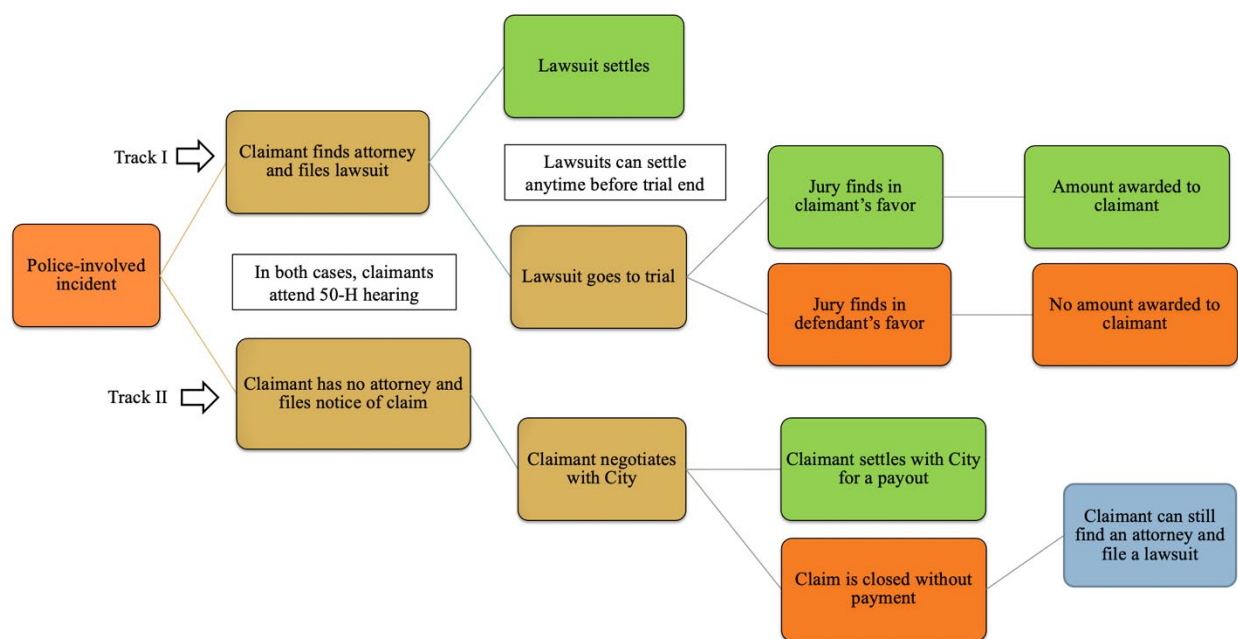
### **The Claimant Perspective**

Imagine an individual in the City finds themselves in a police-involved incident; this could mean that they have experienced a raid on their home, a stop and frisk encounter, a traffic accident, an arrest, a use of force encounter, or some form of property damage caused by police action. The incident does not end well from the perspective of the individual. The probability of civilians filing police-involved civil claims rises "when police officers fail to perform their assigned duties, perform them in a negligent fashion, abuse their authority, or just make poor decisions" (Kappeler, 2006, p. 1). To remedy the wrong, people can use one of the most permissive avenues available for finding justice in this society: filing a lawsuit (pp. 12-14).

Some questions come to mind regarding civil claims and lawsuits: Are claimants conversant in the process and their rights? Do they know attorneys or other legal professionals, in their social networks, who could give them free advice or represent them in a legal action? Finally,

do they have the financial resources to hire an attorney? An attorney filing a lawsuit is a lot like a civilian filing a notice of claim:<sup>8</sup> both put the City on notice for injury or damage suffered by the claimant. Further, the notice of claim or lawsuit is requesting restitution for the wrong; in other words, the claimant wants money for the losses they have suffered (i.e., compensation). This does not exclude the claimant from making a formal complaint to an oversight body at the same time or later in the process. Figure 1 displays two tracks of how cases move: via lawsuit (track I) or notice of claim (track II).

**Figure 1**



Track I starts with the filing of a lawsuit. Once the lawsuit is filed, which outlines the alleged actions taken by the police officer against the claimant, the City has the right to conduct a 50-H hearing.<sup>9</sup> These hearings give municipalities the space to gather facts about the allegations

<sup>8</sup> Notices of claim give the City notice that the claimant has been damaged in some way (e.g., personal injury, property damage); these claims need to be made 90 days from the date of the incident (City of Rochester, n.d.-b).

<sup>9</sup> In New York State, 50-H hearings occur if the claimant has filed a lawsuit through an attorney or a notice of claim on their own; in either case, municipalities in New York have the right to investigate claims through these hearings. Municipalities “shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, which examination shall be upon oral questions unless the



found in lawsuits. In some cases, the City might earmark an amount of money to offer to claimants prior to any further negotiation or litigation. This earmarked pool of money is called the reserve settlement amount. If the claimant accepts the offer, then claim is resolved. Reserve settlement amounts are not offered in every case. If no reserve settlement amount is offered then the municipality and the claimant continue to negotiate for a settlement prior to trial but after the 50-H hearing; in some cases, a settlement may be accepted during the trial. If this happens, then the case is dismissed and the municipality pays the settlement.

On the other hand, if the case goes to trial and no settlement is reached, then a jury hears the case and makes a verdict. If the verdict is in the claimant's favor, the jury awards monetary damages to the claimant. If the jury finds for the municipality and their police officer (the defendants), then the claimant receives no award. The cases can be appealed through higher courts until the appeals process is exhausted or the higher courts rule in the claimant's favor.

Track II shows a similar process if the claimant files a notice of claim. If the notice of claim is filed within the statute of limitations (City of Rochester, n.d.-b; New York State Senate, 2021b), then the claim moves forward with a 50-H hearing. The municipality might offer a reserve settlement amount to resolve the claim. If the claimant accepts the offer, then the claim is settled. If the offer is rejected or no reserve settlement amount is offered, the two parties continue to negotiate at regular intervals until a settlement is reached or the claim is closed without payment. A claim might be closed without payment if the claimant withdraws the claim or there is an impasse between the parties. During negotiations, a lay person may inadvertently offer damaging information (e.g., they were partially responsible for what happened) that City attorneys could use to pressure the claimant to withdraw the claim or close it without payment. A closed claim is not

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parties otherwise stipulate and may include a physical examination of the claimant by a duly qualified physician" (New York State Senate, 2021a).

the end of the process assuming the claimant can find an attorney and file a lawsuit within the statute of limitations. In this case, the claim could become a lawsuit and go through the process laid out in Track I.

Nondisclosure agreements (NDAs)—agreements that hide settlement amounts and claimant information from public scrutiny—are generally not applicable regardless of whether or not the settlement is an initial offer or is offered after negotiation. This is because payouts are made with taxpayer money and taxpayer expenses are subject to state open records laws (Freeman, 2007).<sup>10</sup> In order for an NDA to be signed between a municipality and a claimant, the municipality would need to articulate explicitly why a claim should be subject to an NDA. This rarely occurs and has been challenged in the courts on several occasions.<sup>11</sup>

### ***Social Capital and Power Differentials***

Access to legal resources and the power differential between the claimant and the City may impact the claimant's ability to find success in the legal arena. A lack of social capital might explain why 91% of claimants do not have legal representation in the claims reviewed in this study.

Social capital “represents the resource potential of a social group” (Scott, 2002, p. 152); Social groups could mean neighbors in a neighborhood or tenants in a housing complex. Social capital represents access to people with decision-making powers (e.g., politicians, police administrators, or city bureaucrats). Trust, regular social interactions, and shared social customs, among members of the social group, create strong interpersonal relationships, which leads to increasing social capital. As social capital rises so does the action potential of the social group

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<sup>10</sup> If NDAs *were* required of claimants by the City to settle claims, then there would be no results to report in this study because the data would have been withheld from me by the City.

<sup>11</sup> See New York State Committee on Open Government Advisory Opinions regarding confidentiality agreements: [https://search.its.ny.gov/search/search.html?q=Confidentiality%2C+Promise+of&btnG=Search+FOIL+Advisory+Opinions&ie=&site=dos\\_foil\\_collection&output=xml\\_no\\_dtd&client=dos\\_nysdos\\_frontend&lr=&proxystylesheet=dos\\_nysdos\\_frontend&oe=](https://search.its.ny.gov/search/search.html?q=Confidentiality%2C+Promise+of&btnG=Search+FOIL+Advisory+Opinions&ie=&site=dos_foil_collection&output=xml_no_dtd&client=dos_nysdos_frontend&lr=&proxystylesheet=dos_nysdos_frontend&oe=)

(Carr, 2005, p. 46). A group with a high level of social capital—and “collective action potential” (Scott, 2002, p. 152)—has a higher probability of access to people in power, or those with technical expertise, which equates to more leverage over the claims process where the probabilities of winning a claim increase.

Social capital is important to this discussion because if claimants have no social capital, they are less likely to know a legal professional, in their social network, who might provide advice on a legal matter (e.g., filing a claim against the City). In cases where a claimant is not represented by an attorney, they might feel coerced to accept an offer from the City or defer to the City out of ignorance of their rights or the process. It is also possible that some claimants might feel a general distrust toward the legal profession and instead represent themselves—regardless of social capital.

Further compounding the civil claims process is the power differential between the City and the claimant. Donald Black (2010) presents a sociological, quantified theory of law using five propositions. The theory does not explain the behavior of individuals but rather of law. Power differentials are important to consider when police misconduct occurs; a police officer is protected by the law and represented by municipalities with political and economic resources not available to individual claimants. The power differential between the municipality and the claimant may impact how the claimant is treated, what kind of offer is made (if any), and how fast the claim is resolved.

Black’s propositions are not explicitly about the claims process and claimants; that said, I have applied each proposition to a different aspect of the claimant. A claimant with more power may have more influence over the process. The first proposition is stratification. Stratification is the “vertical aspect of social life;” it is the “uneven distribution of the material conditions of existence” (p. 11). The more wealth one has, the greater the vertical distance. As this relates to the

quantity of law, those with more wealth have more law; the inverse is also true: those with less wealth have less law (p. 17). Law punches downward; deviance, therefore, is more serious if it moves upward (i.e., if someone from a lower socioeconomic status violates someone of higher status then more law is applied against the violator). Stratification, for the purposes of this study, can be understood in the context of a claimant's socioeconomic status. Someone who is wealthy has a much better chance of winning a claim than someone who lives in poverty.

Morphology is the second proposition of Black's behavior of law. This is the "horizontal aspect of social life—the distribution of people in relation to one another" (p. 37). This means that law between spouses, for example, is "inactive . . . [but] increasing as the distance between people increases but decreasing as this reaches the point at which people live in entirely separate worlds" (p. 41). Morphology also explains that "the larger and denser a community . . . the higher will be its rate of litigation" (p. 46). People "in or near the center of social life have more law than those farther out" (p. 49); those people who exist in "marginal groups have less law among themselves" (p. 49). For example, claimants that are Black, disabled, and female have a decreased chance of winning a claim or being offered a substantial settlement because they are considered marginal, not central to social life, by the dominant culture.

The third proposition is culture. There is a direct relationship between culture and law. When culture is sparse, so is law. When culture is abundant and thriving, so is law (p. 63). Law is greater in the direction of less culture; in other words, the quantity of law increases against individuals, groups, or societies that are deemed to have less culture (pp. 65-66). Another aspect of culture is conventionality. This refers to how closely individuals or groups adhere to common societal patterns (i.e., the mainstream or dominant culture). If an individual is extremely eccentric, then their conventionality would be low as compared with conventional people. People that adhere

to the dominant cultural patterns of existence are people with high conventionality. Law, as a quantity, is greater when it moves toward those with low conventionality (p. 69). In other words, those people who file claims and are not a part of dominant cultural groupings will have a harder time winning a claim than a claimant who is very conventional.

The fourth proposition is organization. This proposition can be understood as the “presence and number of administrative officers, the centralization and continuity of decision making, and the quantity of collective action itself” (p. 85). The quantity of law is greater in the direction of less organization than more. For example, if a business calls the police about a potential shoplifter the police are more likely to respond and make an arrest. Inversely, if an individual calls the police because a business is polluting a river, it is unlikely that the police will show up—let alone arrest the business owner. Municipalities are corporate bureaucracies; as such, according to Black, they have more law on their side because they are a well-organized entities. The size and complexity of the City as an organization means that a claimant has less chance of winning a claim as an individual versus a police officer who is employed and represented by a municipality, which has a glut of resources and expertise to draw on to defend the officer against allegations of wrongdoing.

The last proposition is social control. Law is greater or stronger where other forms of social control are weaker (p. 107). Social control “defines and responds to deviant behavior, specifying what ought to be: What is right or wrong, what is a violation, obligation, abnormality, or disruption” (p.105). While law is a type of social control, other forms exist as well: “etiquette, custom, ethics, bureaucracy, and the treatment of mental illness” (p. 107). Social control defines deviance and it also defines respectability; “the more social control, the less respectable the offender” (p. 111). Black suggests that a person who is subject to social control through the

criminal courts is less respectable. The level of respectableness decreases with the severity of the crime. A person who has a prior criminal record—a less respectable person—will have a harder time winning a claim against the City compared with a claimant who does not have a criminal record.

Empirical testing of Black's propositions finds mixed support (Avakame et al., 1999; Chappell & Maggard, 2007; Gottfredson & Hindelang, 1979; Hembroff, 1987; Lessan & Sheley, 1992; Sampson, 2012; Xie & Lauritsen, 2012). What is important here, is his conceptualization of law as a quantity and how the quantity of law applies to claimant, claim, and situational characteristics. The greater the amount of law afforded to a municipality that defends itself from claims, the less chance there is that the claim will succeed. These power differentials, as described by Black, as well as the discussion of social capital may explain why some people take settlements and others do not or why some people prevail substantially in their cases and others do not. These two concepts might also explain why individuals never file their claims in the first place.

But how do Black's propositions work when applied to an unexceptional case? In the introduction, I discuss the Benny Warr incident. Mr. Warr is a disabled, Black man (proposition 2). At the time of the incident, he lived in an impoverished neighborhood and did not have a lot of money or resources at his disposal (proposition 1). Instead of staying home and watching his TV, Mr. Warr went outside and parked his wheelchair at an intersection with a reputation for being a violent intersection and an open-air drug market. He ate ice cream and talked with people from the neighborhood. His actions that day, his race, and his disability impacted what others (white, able-bodied people who do not hang out at "rough" intersections) consider normal (proposition 3). When the police arrived, he knew it was time to go but instead of leaving the intersection, he stayed and waited by the bus stop. The officers, representing the City and carrying their own stereotypes

and threat assessments of the people who visit the intersection, determined that people were loitering and needed to move on. When Mr. Warr refused to leave as he waited for the bus, the state responded in a violent and organized fashion (proposition 4). Finally, during trial, the defense attorney entered into evidence that Mr. Warr had filed civil lawsuits in a few other incidents to recover monetary damages for injuries he sustained. The defense attorney characterized Mr. Warr as having a record of gaming the system—filing lawsuits to make a living; he was in it for the money not compensation for the injuries he sustained by police officers (proposition 5). Based on Black’s propositions, they predict that Mr. Warr’s chances of winning his claim were low. In fact, he lost his civil trial and was awarded nominal damages of \$1.00.

According to Rappaport’s (2016) police misconduct typology, what happened to Mr. Warr should be characterized as a high-dollar, short-tail case. Rappaport distinguishes misconduct in two dimensions; first he considers “the dollar value of the legal claims” for each kind of legal claim and then he considers “the length of time between the occurrence of misconduct and the filing of a lawsuit” (p. 2). The typology includes four claim types: high-dollar, short-tail; high-dollar, long-tail; low-dollar, short-tail; and low-dollar, long-tail. Excessive force is an example of a high-dollar, short-tail claim; the officer inflicted substantial damage and the physical injuries are instantly apparent (p. 2). Wrongful convictions represent high-dollar, long-tail claim. The damage, being wrongfully imprisoned, takes a lot of time (i.e., “The average exoneree spends over thirteen years wrongfully incarcerated” (p. 3)), whereas the dollar amounts can be extremely high (p. 3). “Failure to give Miranda warnings before custodial interrogation” (p. 4) is an example of a low-dollar, short-tail claim. There is not any physical damage and it is immediately apparent to the claimant that their rights are being violated. The last category is low-dollar, long-tail; Rappaport cites racial profiling cases as one example of this type of claim. It is long-tail because claimants

need time to gather statistical evidence from multiple cases to support the claim; it is low-dollar because claimants are “unlikely to recover much in damages” (p. 4).

Mr. Warr was severely injured; it became immediately apparent from the cell phone videos that were posted on social media. Rappaport suggests that the nature of the incident predicts a high-dollar payout. But that did not happen in Mr. Warr’s case; this might be because of the power differentials at play (Black, 2010) between himself, the City, and eventually the jury that heard the case. Rappaport’s typology should not be dismissed. Rather, it means that there might be more complexity in these situations than his typology can discern.

### **The City Perspective: Bureaucratic Efficiency Over Fairness in the Postindustrial City**

Mr. Warr’s case feeds into a larger narrative of City bureaucratic efficiency over fairness to claimants. Municipalities are bureaucracies with jobs to do: administer cities. The complexity and flexibility of government bureaucracy is dependent upon the size of the organization and its division of labor to achieve its goals (Gulick, 2017). Merton (2017) states that “bureaucracy involves a clear-cut division of integrated activities which are regarded as duty inherent in the office” (p. 100). Representatives of bureaucracies, especially public bureaucracies like local governments, can be identified by their impersonal nature. These representatives can come in conflict with members of the public when they “minimize personal relations and resort to categorization,” which, in turn, leads to the “peculiarities of individual cases” being ignored (p. 104). These representatives hold the “power and prestige of the entire structure,” which can make members of the public perceive the bureaucrat as having a “domineering attitude which may only be exaggerated between his position within hierarchy and his position with reference to the public” (p. 104). One function of bureaucrats is to streamline government and make it more efficient.



Efficiency entails “getting the most for the least, or achieving an objective for the lowest cost” (Stone, 2012, p. 63). Stone continues by saying that efficiency is not a goal in itself, but rather “helps us attain more of the things we value” (p. 63). Efficiency, according to Simon (2012), is the selection of a course of action that “leads to the greatest accomplishment of administrative objectives” (p. 136), but “involves the least expenditure” (p. 137). Public policy theory that is steeped in neoliberalism argues that there is a trade-off between efficiency and fairness. The greater the efficiency, the less fairness. If there is more fairness, the system will operate less efficiently. Stone describes the neoliberal argument in favor of efficiency, and free-market economics, to help those at the bottom of society: “redistributive policies” like settling claims for police-involved incidents “reduce[s] efficiency . . . That means lower productivity, lower employment, lower economic growth, and lower social welfare” (p. 80). The solution, as Stone explains the argument, is to allow “the competitive free-market economy [to] run at top efficiency, unfettered by government restrictions” (p. 80). Economic growth raises the quality of life for all, even those at the bottom. This analysis complements the postindustrial theory of policing.

The postindustrial theory of policing helps explain the City’s efforts at efficiency and revitalization over fairness and associated policing strategies (Laniyonu, 2018; Sharp, 2014). The theory asserts that “deindustrialized” or “rustbelt” cities<sup>12</sup> struggle to develop new revenue streams that can be used to rebuild and stabilize city finances; cities focus on specific industries that develop “tourism, cultural amenities, shopping, and cultural districts” in the service of attracting “highly educated, talented and productive individuals” (Sharp, 2014, p. 341) who will be the engine behind the economic revitalization; in doing the work of attracting wealthy individuals and businesses, the municipality engages in “quality of life” and “zero tolerance”

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<sup>12</sup> Rochester lost a large amount of manufacturing jobs with the downsizing of Kodak, Xerox, and Bausch and Lomb; it also lost a significant portion of tax revenue.

policing strategies—also called order maintenance policing—that "enables urban policymakers to enforce conceptions of public order consistent with those held by populations and industries thought to promote urban growth" (Laniyonu, 2018, p. 903). Laniyonu, using geospatial data from New York City, found "the association between gentrification and Stop and Frisk to be strong and positive . . . Gentrification in a [housing] tract does not necessarily induce heightened policing in the tract that experienced it, but significant policing in adjacent or neighboring tracts" (p. 920). Rochester used "zero tolerance" ordinances to impose curfews on predominantly Black youth in the City (Memmott, 2005) and to prevent panhandling (Blackwell, 2005). An improved tax base presupposes additional resources for services and funding for the projects of elected leaders. Claims of police-involved incidents that run contrary to this narrative are best resolved quickly and quietly for the least amount of money possible (i.e., bureaucratic efficiency over fairness). This strategy leads to a conservation of City resources that can be spent in other ways such as development to improve City revenue streams.

Lawsuits filed against the City have less chance of prevailing in federal court because the system draws its jurors from the Western District of New York. The Western District includes cities, towns, and villages west of Rochester to Buffalo and south to places like Jamestown where there is a good chance that jurors have had little, if any, interaction with the City, its inhabitants, or its issues with police violence, systemic racism, poverty, intracommunal gun violence, and drug sales and use. The lack of juror experience with the City means that jurors may be persuaded by City attorneys who stoke racist prejudices and stereotypes while defending their clients (i.e., the police officers and municipality) in order to frame claimants and their grievances as nuisances that besmirch the good reputation of the police department in its efforts to keep the inhabitants of the City safe.

The theories described in this section explain the power dynamics involved between the claimant and the City. This section also offers a reason for why the City seems to prioritize efficiency over fairness in police-involved incident claims—namely conservation of resources for other revenue generating purposes. The claims process can be a lonely experience if the claimant has no legal representation. A lack of legal representation may indicate that a claimant has social capital, which prevents access to legal professionals with the necessary knowledge and technical skills to win a case. Black’s *The Behavior of Law* (2010) provides a way to think about law as a quantitative measure that impacts final settlement amounts because of power differentials between the claimant and the City. Claimants who have little power are potentially less likely to win a claim against the City. This power differential is wielded by the City in order to maximize efficiency (i.e., conservation of financial recourses) over fairness (i.e., compensation); it wants to preserve as many resources as it can in order to use the savings on other, potentially more lucrative projects. The postindustrial policing thesis demonstrates how “rustbelt” or “deindustrialized” cities use revitalization, development, and safety to attract “highly educated, talented and productive individuals” (Sharp, 2014, p. 341) who will drive the new economic model of the municipality. The money saved from the efficient handling of police-involved claims provides more resources for the City administration to make financial decisions that will, in theory, benefit the economic stability and viability of the City in lieu of compensation for damages and injuries to claimants caused by police actions.

### **Literature Review**

The literature review is separated into two parts. Part I reviews literature that describes different aspects of police liability insurance. Rappaport (2017) provides a thorough examination of how the commercial police liability insurance industry works. Papachristos and Kirk (2016),

Rozema and Schanzenbach (2019), Robinson (2020), Maule (2015), and Archbold (2005) all discuss aspects of high-profile cases as they relate to lawsuits and settlement amounts. Schwartz (2014) reviews the impact of police officer indemnification. Indemnification shields officers from financial accountability should they be found guilty of an offense by a jury or if a municipality pays out settlements to claimants to resolve cases. In either case, the municipality pays, not the officer. Ouss and Rappaport (2020), Robinson (2020), Maule (2015), and Kappeler et al. (1993) discuss the trends in lawsuits and settlement amounts. Worrall (1998) discusses one strategy to reduce the number of filed claims.

Part II discusses the literature around the situational characteristics of police-involved incidents that appear in this study. The extant literature indirectly touches on many facets of this study, usually with a strong focus on lawsuits; however, no studies directly relate to civil claims. This study will fill a gap by offering a quantitative analysis of variables found in claims data. The literature mentioned in part II includes subjects like traffic accidents with and without injuries; police vehicles striking pedestrians and bicyclists; involved children and family dogs; the auto impound lot and auction; use of force; false arrests; claimants killed; claimant as RPD officer; and officer name listed. No lawsuit outcomes are reported here.

The police liability literature includes studies that report on the amounts, frequencies, and types of police misconduct lawsuits that end in settlements or jury awards. Robinson (2020) examines the “relationship between citizen, situational, and lawsuit factors and police misconduct litigation,” (p. 49). She reports that “lawsuit payout amounts tend to be higher when the alleged police misconduct involved physical violence . . . has been recorded . . . involve the death of a citizen . . . [and] a citizen complaint was previously lodged against the police officer in question” (pp. 49-50). This is important because some of the same variables are captured in the present study.

Robinson's study is valuable in two other respects: first, it offers an analysis of lawsuits and settlement amounts broken down by different factors or characteristics; and second, her study reveals the indicators that lead to higher lawsuit settlement amounts. It would be unsurprising if similar findings became apparent in this study. Maule (2015) reports that over the time period he investigates (i.e., 1997-2005), the "increasing financial impact" was due to the "increase in the number of lawsuits" stemming from incidents of police misconduct (p. v). Maule reports that "false arrests were the most numerous allegation type comprising 54.14% of all violations . . . followed by allegations of police assault" (p. 53). Together, these misconduct types "accounted for 95.7% of the total number of allegations made and 74.3% of the City's total civil liability for police misconduct" (p. 53). In other words, nearly three quarters of payouts were directly related to false arrest and police assault claims. Both studies add to the literature in that they present evidence of increases in payout amounts and individual lawsuits filed<sup>13</sup> as well as indicators that impact lawsuit settlement amounts. These studies indicate that perhaps a similar phenomenon will be detected in this study.

## **Part I: Police Liability Insurance**

Many municipalities around the country purchase some form of police liability insurance to protect themselves from civil claims. From the perspective of the municipality (i.e., the insured), Rappaport (2017) provides a foundational understanding of insurance. Insurance is the arrangement between the insurer (i.e., the insurance company) and the insured (i.e., the municipality), where "upon the *occurrence* of certain events specified in an insurance policy [*italics in original*]," (p. 1551) the insurer covers the costs of any losses (e.g., attorneys' fees, out-

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<sup>13</sup> The research sites might have something to do with the numbers of filed claims and the payout amounts; Robinson (2020) and Maule (2015) focus their work on two of the largest cities in the country, Chicago and New York City, respectively. This study focuses on a mid-sized, northeastern city, Rochester, New York, which might impact the number of filed claims and payout amounts.

of-court settlements, jury awards) incurred by the insured as stipulated in the policy. In return, the insured pays a regular premium for the services of the insurer (pp. 1551-1552). Municipalities purchase police liability insurance to “indemnify themselves against liability for the acts of law enforcement officers” (p. 1542). Police liability insurance shields governments and officers from “financial responsibility,” which includes “punitive damages” arising from “common law and constitutional torts” (p. 1542).<sup>14</sup> Aside from punitive damages and torts, Kappeler (2006) points out that police liability can arise when officers are “performing a complicated task or mak[e] an honest error in judgment” (p. 1).

There are typically three types of municipal liability insurance as outlined by Rappaport (2017): commercial insurance, intergovernmental risk pools, and self-insurance. Commercial insurance is insurance found on the marketplace of commercial carriers; municipalities shop around to figure out which plan offers the best coverage for the lowest cost (p. 1555).

For small municipalities, where there might not be commercial insurance carriers, smaller municipalities (e.g., towns, villages, hamlets) might band together with other small municipalities to form an intergovernmental pool to combine their risk and resources (Rappaport, 2017, p. 1557). A pool is not an insurer. It does not issue insurance policies nor is it regulated by a state-level commissioner. The municipalities in the pool own and govern the pool (p. 1557). In lieu of an insurance policy, Rappaport explains that “a pool writes a *coverage memorandum* to a member in exchange for a contribution [*italics in original*]” (p. 1558). The memorandum stipulates the coverage provided to member municipalities; these pools act as “small mutual insurers” (p. 1558).

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<sup>14</sup> According to Kappeler (2006), “The term tort is derived from the Latin word *tortus*, which means twisted or bent. ... Torts are now civil legal actions between private parties not arising from written contract [*italics in original*],” (p. 17).

For municipalities with populations of more than 500,000 people (e.g., New York City, Chicago, and Los Angeles), self-insurance may be the preferred strategy to cover losses, while maintaining organizational autonomy. This allows the municipality the autonomy to fashion its own proactive risk management strategy without the threat of forced reforms or loss of insurance coverage. Rappaport (2017) explains that “Self-insurance involves setting aside an amount of money – calculated much like a premium – sufficient to cover future potential losses” (p. 1561). The claims under investigation in this study are claims that came from a registry, prepared by Gallagher Basset Services, Inc., for the City.<sup>15</sup>

**High-profile cases.** Payouts in police misconduct cases regularly garner national and international attention. High-profile cases describe egregious acts committed by law enforcement officers against civilians; these cases alert the public to ongoing litigation, sizeable payouts, and can lead to police reform. High-profile cases also have an impact beyond payout amounts. Papachristos and Kirk (2016) report that residents are far less likely to call police for criminal activity after high-profile cases—specifically of excessive force being used on unarmed Black men—are publicized. Observing records of officers involved in high-profile cases of police misconduct, Rozema and Schanzenbach (2019) find “a strong relationship between allegations and future civil rights litigation” (p. 225)—especially for officers with misconduct records. Robinson (2020), Maule (2015), and Archbold (2005) all use high-profile cases to help drive the narratives of their respective studies.

The present study, with the exception of one high-profile case over a 12-year period, does not tell the story of large, regular payouts for police misconduct. Rather, in line with the

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<sup>15</sup> Gallagher Basset Services is a one-stop, global claims services provider. They do business with corporations and municipal governments covering them in areas such as workers’ compensation, general liability, auto liability, professional liability, medical malpractice, and property ([www.gallagherbasset.com](http://www.gallagherbasset.com)).

bureaucratic efficiency over fairness hypothesis, this study looks at police-involved claims, including misconduct claims, that rarely make it to high-profile status. These are average people who are forced to accept small amounts of compensation for the damages or injuries they have sustained from police-involved incidents. Claimants may have accepted small payouts because of a lack of resources to fight City Hall in the courts or a lack of social capital to solicit the expertise needed to substantially prevail in their cases. This increases cynicism of local government and police, while unaddressed trauma lingers in the community (Brunson & Miller, 2006; Desmond et al., 2016). Even if the case is not one of physical force or false arrest, a claimant's car, that is accidentally sold at the auction, can radically transform that individual's prospects for navigating life (Perla & Silva, 2018). The unintended consequences can accumulate. As cases are processed without scrutiny or fanfare, the systemic failings continue with no reform ever considered.

The one case that did become high-profile in Rochester was picked up by the Innocence Project,<sup>16</sup> an external legal entity that uses DNA evidence to exonerate the wrongfully incarcerated. The case involved the false arrest and imprisonment of a man convicted of murder. He was wrongfully incarcerated for nearly 10 years before the Innocence Project was able to get the court to vacate his conviction based on DNA evidence. The claimant filed on the date of his release from prison and settled with the City for \$3.75 million five years later. The settlement was ~25 times larger than the next highest settlement amount over a 12-year period. The case, the work of the Innocence Project in exonerating the claimant through DNA evidence, and the settlement amount made local and national news. As stated above, contrary to popular

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<sup>16</sup> According to the website: "The Innocence Project, founded in 1992 by Peter Neufeld and Barry Scheck at Cardozo School of Law, exonerates the wrongly convicted through DNA testing and reforms the criminal justice system to prevent future injustice" (Innocence Project, 2021).



assumptions, high-profile cases coupled with high-dollar amount settlements are rare occurrences for the City.

**Indemnification.** Schwartz (2014) explains that “municipal liability doctrine” is based on the idea that the defendant “officers—not their employers—are financially responsible for settlements and judgements in police misconduct cases” (p. 895); her study, however, finds that this occurs in *only* 0.02% of cases, which means that the municipality (i.e., the taxpayers) pays those awards and settlements in 99.98% of cases, not the defendant officers. The money might be set aside in order to make direct payments to claimants in cases of self-insurance or pooled insurance; in cases where the municipality has acquired liability insurance from a commercial carrier, the taxpayers—through the city—pay the insurance premium. Indemnification shields officers from the financial sanction of being personally responsible for paying their legal defense fees and any settlement or judgement that is found against them.<sup>17</sup> This is not the exception, but rather the rule: “indemnification appears to be standard throughout the U.S. in that most municipal employers indemnify their police officers for any settlement or jury award that resulted from a lawsuit when the police officer acted under color of law” (Davis et al., 1979, as cited in Maule, 2015, p. 18).

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<sup>17</sup> Similar to the research and language used to describe indemnification clauses in this section, the collective bargaining agreement between the City of Rochester and the Rochester Police Locust Club uses virtually the same language in its sections on indemnification: Section 8 (A) “The City shall pay reasonable and necessary attorney’s fees at rates prevailing in the local legal community, disbursements and litigation expenses incurred by a police officer in his defense in a criminal proceeding in a state or federal court arising out of any alleged act or omission that occurred or allegedly occurred while the employee was exercising or performing or in good faith purporting to exercise or perform his powers and duties. The police officer shall be entitled to private counsel of his own choice, except that the Corporation Counsel may require that appropriate groups of police officers be represented by the same private counsel,” (City of Rochester, 2016, p. 43).

Section 8 (D) “The City shall indemnify and save harmless a police officer in the amount of any judgment obtained against the police officer in a state or federal court or administrative agency, or in the amount of any settlement or a claim, provided that the act or omission occurred while the police officer was exercising or performing or in good faith purporting to exercise or perform his powers and duties,” (City of Rochester, 2016, p. 43).

**Trends in payouts.** Settlements, jury awards, and their trends are prominent measures found in studies looking at police civil litigation processes and claimant outcomes. Ouss and Rappaport (2020) find that even though lawsuits and payouts have trended up, insurance claims have declined; they argue that the behavior of police is not getting worse, but rather, “society has grown increasingly intolerant of policing harms” (p. 29). Robinson (2020) reports a rising trend of police-misconduct lawsuits, settlements, and jury awards (p. 3); she also finds that payout amounts are higher when police misconduct lawsuits allege “physical violence;” (p. 49). Maule (2015) finds that New York City paid out \$176.6 million from 2001-2005 and \$193 million from 2006-2010. His results indicate that there is an increase in the *frequency* of complaints from police interactions over the time period 2006-2010 (p. 57) and *not* an increase in the magnitude of payout amounts. Kappeler et al. (1993), looking at trends from the 1980s, find “two major increases in the volume of police liability cases” (p. 336) in 1981 and 1986. Worrall’s (1998) study sought effective administrative remedies that would reduce the number of lawsuits against police; his findings indicate that an agency-wide community-oriented policing (COP) strategy leads to reductions in filed lawsuits: “Departments that were highly committed to community-oriented policing were .90 times as likely to be sued than departments with a lower commitment” (p. 307).

## **Part II: Situational Characteristics**

The part II of this section moves from a broader perspective to a granular focus on the literature related to the variables being examined in this study. Situational characteristics are concerned with the specific circumstances of police-involved incidents. The situational characteristics are drawn from the claims in the subset ( $n = 260$ ). The literature pertaining to those variables is presented below.

**Claimant vehicle involved.** Senjo's (2011) study finds that officer fatigue can have dangerous outcomes. The study looked at conditions that "induce dangerous levels of fatigue" in law enforcement officers; his findings indicate that officers work "extraordinarily high numbers of hours" outside of their fulltime employment as police officers coupled with the fact that officers "receive remarkably insufficient or otherwise poor rest" (p. 235). This combination of little sleep and excessive work "heightens the risk of officer injury, compromised public safety, and the possibility of significant civil liability damage awards for avoidable accidents" (p. 235).

James' (2015) study focuses on officer distractedness while driving through the use of a driving simulator and simulated breaks representing patrol work outside of the vehicle. During distracted driving shifts, the mobile data computer (MDC) creates word searches for officers to complete as they drive (p. 509); the word searches are meant to be proxies for the normal work officers did on their MDCs as they moved from job to job. James finds that "law enforcement officers' driving performance is degraded by distraction, in that continuing to allow officers to drive distracted may place officers, their passengers, and other road users at greater risk" (p. 513). Chu (2016) also finds that distracted driving "while on patrol . . . was found to increase the probability of crashes causing injuries" (p. 499) by 23% (p. 497).

Langham et al. (2002) discuss the concept of "looked but failed to see" accidents. They find that there are five reasons why the participants in their studies collided with parked cars: 1) a failure of vigilance; 2) driver fatigue; 3) the participant may have detected the vehicle in front of them but misinterpreted its movement; 4) false hypotheses (e.g., losing vigilance because one is close to home); and 5) distracted driving (pp. 179-181). The research by Senjo (2011), James (2015), and Chu (2016) corroborates some of the findings of Langham et al. (2002); these studies may explain the prevalence of officer traffic accidents in the present study.

**Injuries from accident.** Browne and Schmit (2008) find a rising trend in attorney use and legal claim filings from 1977 to 1997 in auto liability incidents involving police (p. 96). Carlin (1986) argues that in cases of high-speed pursuits that end in crashes causing seriously bodily injury or death, police officers and the cities they work for should be held liable because of their negligent actions (p. 125). Chu (2016) studies “risk factors associated with police cars on routine patrol and/or on an emergency run and their effects on the severity of injuries in crashes” (p. 495). The findings of the study indicate that officers who drive at “excessive speeds [(+31%)] and violat[e] traffic signals [(+3%)] . . . were found to increase the probability of crashes causing injuries” (p. 499); in addition, officers who were distracted “while on routine patrol” significantly increased the “probability of crashes causing injuries by 14%” (Beanland et al., 2013 and Weiss et al., 2014 as cited in Chu, 2016, p. 498). Chu’s findings demonstrate that important factors such as officers who are distracted while driving, run traffic signals, and drive at excessive speeds, threaten public safety by putting other drivers in danger.

**Pedestrian or bicyclist hit.** Ralph et al. (2019) report an increasing trend in traffic crashes where the victim is either a pedestrian or a bicyclist; they focus their attention on how news media reports these incidents and assign blame. Agran et al. (1990) report that police appear to underreport traffic accidents where pedestrian children (0-4 years of age) are involved (p. 368) and bicyclists struck (p. 365); the authors contend that the problem is more severe than police data suggests due to the exclusion of reports for incidents on private property (p. 368), the discrepancies between injury severity indices between the hospital and the police agency (p. 369), and the lack of age reporting of victims (p. 368). Reporting on children as pedestrians and bicyclists, who are hit by police vehicles, is related to this study because children riding bicycles are involved in more

than half of the cases involving children. The limited number of studies identified pertaining to pedestrians and bicyclists hit by police vehicles speaks to the gap in this research.

**Auto impound or auction involved.** When an individual has their vehicle towed and impounded due to police action, the claimant's vehicle becomes the temporary property of the police department. It is the department's obligation to ensure the vehicle is safe and that property within the impounded vehicle is secured from theft and damage. When the vehicle's owner is able to pay to get their vehicle released from the impound lot, the police department is obligated to return the vehicle in the condition that it was received (Helmholz, 1992). Some claims in this study involve the auto impound lot or the auction, which are managed by the RPD; claims revolve around damages and thefts to vehicles while impounded and/or the improper auctioning off of vehicles. In order to be compensated for losses, the claimant must file a claim and proceed through the process. In addition to the losses suffered from damage, thefts, or the wrongful auctioning off of the claimant's vehicle, impound lot and towing fees can become a barrier for people attempting to release their vehicles (Cooper et al., 2002), though more research needs to be conducted in this area. Claimants who have their vehicle wrongfully sold, or are unable to pay to get their vehicle out of the impound lot, must face the reality of limited transportation options (Perla & Silva, 2018).

**Child involved.** When children have negative interactions with police, civil claims may be filed. The childhood trauma associated with negative interactions with police officers (e.g., a drug raid; watching their parent or guardian be arrested, assaulted, or killed by police; witnessing the killing of a family pet) can have negative, life-long impacts over their physical and mental health as adults and increase their distrust of law enforcement (Smith Lee & Robinson, 2019). Weitzer et al. (2008) find that Black families with children living at home expressed more concern than white families about police misconduct and the potential for an adverse interaction between their children

and police based on their recognition of the problem of police violence against Black people in their city (p. 416).

**Family dog involved.** Bloch and Martínez (2020) find that officer-involved shooting data includes instances of police shooting at canines; these shootings happen in low-income communities of color. The authors argue that police shootings of dogs are an “expression of larger trends in police violence that routinely takes place during the serving of search warrants, as a part of stops and frisks of pedestrians,” and traffic stops (p. 153). Lee (2018) reports that some “10,000 pet dogs” are killed by police “in the line of duty each year” (p. 171) and that the reported number of dogs killed is an undercount; further, these killings are not just split-second decisions under pressure, but in some cases are deliberate killings under suspicious circumstances (p. 171).

**Raid, search, or warrant involved.** Raids, “warrant work,” and searches can be traumatic and terrifying experiences for claimants (Urbanik & Greene, 2020) accompanied with the heightened possibility of deadly outcomes. The rise of the “War on Drugs” in the 1980s through the 1990s (Alexander, 2012, pp. 74-78; Balko, 2013, pp. 191-193) created conditions where perhaps the most common type of police raid in the United States involved searching for drugs (Alexander, 2012; Balko, 2013; Bass, 2001, p. 164; Sherman et al., 1995, pp. 759-760; Urbanik & Greene, 2020, pp. 3-4). There was an exponential rise in the use of special weapons and tactics (SWAT) teams for drug raids: “in 1972, there’re just a few hundred paramilitary drug raids per year in United States . . . by 2001 there were 40,000” (Balko, 2006, as cited in Alexander, 2012, p. 75). Alexander (2012) shares the basic idea of a raid involving SWAT teams:

Drug raids conducted by SWAT teams are not polite encounters. In countless situations in which police could easily have arrested someone or conducted a search without the military-style raid, police blast into people’s homes, typically in the middle of night,

throwing grenades, shouting, and pointing guns and rifles at anyone inside, often including young children. (p. 75)

Raids may involve the SWAT team (e.g., evictions) or not (e.g., drug raids) (Forsyth, 2011; Jones & Manilov, 2011; Galloway, 2013)—in either case, private residences are damaged (Urbanik & Greene, 2020, pp. 10-12), residents traumatized (p. 16), and positive perceptions of the police reduced (pp. 15-19).

Raids, searches, and warrants can “erode police legitimacy thereby further harming police-community relations” (Urbanik & Greene, 2020, p. 19). These types of police actions confirm the biases of people who already have negative perceptions of police (pp. 15-19). Sherman et al. (1995) studied deterrence effects associated with police raids on crack houses and found that “effects were quite small and decayed in two weeks” (p. 756). Urbanik and Greene cite several researchers who find that “raids have little to no impact on reducing crime” (p. 4). There are gaps in the research the need to be filled like the economic impact of raids, for both the claimant and the police department, and the lasting impact of police raids on communities.

**Property damage.** When property damage occurs as a result of police action, individuals are likely to file civil claims for compensation for damages. Property damage can occur during a stop and frisk where a cellphone might be damaged. Property damage to homes and business can occur from police raids and aggressive drug enforcement operations (Alexander, 2012; Galloway, 2013; Special Criminal Investigation Section, [ca.1988]). Officers sometimes use their power to engage in corruption (Walker, 1992) leading to property damage or theft of personal property. Officers sometimes make honest mistakes because they were distracted while driving, which can cause minor to severe damages and/or injuries (Dasher, 2016; James, 2015; Wolfe, et al., 2015).

In all of these cases, individuals may file claims to receive compensation for property damage caused by police action.

**False arrest.** When a false arrest claim is filed, it is alleging that the “constitutional rights [of an individual] were violated by a police officer” (Rozema & Schanzenbach, 2019, p. 231); in other words, the officer made an arrest without probable cause. In his research on the deterrent effects of civil litigation, Littlejohn (1980) examines the rising trends in false arrests from the 1960s through the end of the 1970s. Trends in false arrest claims and litigation continued to increase through the 1980s and 1990s (Collins & Brown, 1998). Lawsuits for false arrest sometimes claim officers were improperly trained when they falsely arrested the claimant (Ross, 2000). False arrests are usually paired with excessive force or false imprisonment claims; because the claims get entangled with other violations of constitutional law, it can be harder to discern what exactly is being reported in the literature. Other gaps in the literature exist such as some studies not reporting arrestee characteristics, arrest location data, or the impact—personal and financial—on the claimant.

**Physical force involved.** Terrill and McCluskey (2002) find that officers with a high rate of civilian complaints of police misconduct are more likely to use force. Kappeler et al. (1993) find that excessive force claims are the second most frequent claim raised in the federal courts. Police officers have the discretion to use the least amount of force necessary when warranted for lawful purposes (Walker & Archbold, 2014). When more force is used than what is required, force becomes excessive (McEwen, 1996), which can have terrible consequences for police legitimacy (Chavis & Degnan, 2017; Koenig, 2018; Terrill et al., 2018) to say nothing of the lasting impact of injuries and trauma on the claimant.



Locally, RPD officers are required to fill out Subject Resistance Reports (SRRs) whenever force—verbal or physical—is used.<sup>18</sup> Over the time period of this study, according to an open records request for the aggregate number of SRRs filed per year, RPD officers filed 9,055 SRRs for uses of verbal and physical force over a 12-year period. Excessive force claims tend to garner media attention when they are made public by the claimant, bystanders, or the department.

**Claimant killed.** People of color (Alang et al., 2017) and people experiencing mental health crises (Hanna, 2017) are more likely to be shot by police. The killings of Black civilians by Rochester police, some in crisis, is not a random or rare occurrence (Fanelli, 2020; see also Christopher & Eison, 2006; Crimi & Willis, 1976; Hargrave & Miller, 2004; Lacker-Ware & Forsyth, 2017). As presented in the introduction to this study, each decade since the 1960’s has involved police killing Black and Hispanic individuals: Denise Hawkins (1975); Alicia McCuller (1983); Calvin Green (1988); Vandre “Vandy” Davis (2001); Craig Heard (2002); Lawrence Rogers (2002); Patricia Thompson (2006); Hayden Blackman (2011); Israel “Izzy” Andino (2012); Richard Gregory Davis (2015); Daniel Prude (2020); and Tyshon Jones (2021). This list is not exhaustive; it includes high-profile cases. In each case, the community demanded better of the department and supported the victims and their families. In some cases, commissions were empaneled and reports were written. The names in the list are carried and passed throughout the Rochester community. Deaths caused by police action have profound impact on the victim’s family, friends, and community.

**Claimant is RPD employee.** Ross (2018) studied ~1,500 failure to train lawsuits from 1988-1999. “Failure to train” legal actions are constructed within Section 1983<sup>19</sup> lawsuits where

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<sup>18</sup> See RPD’s General Order #335 Subject Resistance Report (Ciminelli, 2016, pp. 321-332).

<sup>19</sup> Section 1983 lawsuits (42 U.S.C. 1983) are civil rights actions that can be filed by an individual whose civil rights has been violated. When the violation occurs, the officer must be acting “under color of law;” in other words,

the claimant alleges that the police administrator failed to “direct officers through policies and procedures . . . to supervise and discipline officers” (p. 170). The analysis revealed several findings: several types of personnel-related claims became apparent (e.g., sexual harassment/assault; discrimination based on race, gender, age, ability; wrongful termination); 64% involved claims against municipal police departments—the largest segment of cases; and claimants won their claims most often when “operating the police vehicle in emergency situations” (p. 182) was involved. Law enforcement employee claims are not unique or rare; Slonaker et al. (2001) focus their study on 15 years of law enforcement employment discrimination claims in Ohio; they reviewed over 7,000 claims and used a random sample of 79 claims made by sheriffs’ deputies against employers. Claims were filed based on different types of discrimination ranked highest to lowest: race, retaliation, sex, disability, age, and no basis. The outcomes indicate that “no probable cause was found in 80% of the claims” (p. 297); 15% of claimants settled with their employer; “probable cause was found in just two of the claims” (p. 297), and one person withdrew their claim in order to get a “right-to-sue letter” so that they could file a formal lawsuit (p. 297).

**Officer name listed.** General Order #345 “Police Fleet Vehicle Accidents” explicitly commands officers to engage in documentation and investigation of any police fleet vehicle accidents (Ciminelli, 2016). In cases that involve loss of life or personal injury or if the damage sustained is greater than \$1,000, the involved officer must file a New York State Department of Motor Vehicles (NYS DMV) accident report, or, MV-104A (p. 354). The seven-page form requires the officer to list their name and detailed information about the accident for state records and insurance purposes. It appears that both the insurer and the DMV require the City to share the

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they were acting in the capacity of a police officer. “Failure to train” actions can be incorporated into Section 1983 claims.

names of officers involved in certain vehicular accidents as a way to monitor police officer driving records. Specifically, General Order #345 states that any “police fleet vehicle accident” must be reported “as soon as possible” in order “to ensure that members are not subject to penalties imposed by the NYS DMV for failure to file” (p. 353). In other words, an external agency of the state requires the RPD to investigate, document, and report any accident involving a police vehicle in a timely manner in order to avoid officer sanctions.

### **Methodology**

In order to better understand the data and the variable relationships, descriptive statistics are run on both the dataset and the subset; bivariate correlations are reported using Pearson’s  $r$  on the subset, and Ordinary Least Squares (OLS) regressions are conducted on the subset to explore how the independent variables impact the dependent variable. OLS regressions make it “possible to test whether two variables are linearly related, and to calculate the strength” of the relationship (Menard, 1995, p. 1). In order to determine which statistically significant, independent variables are key predictors of changes in final settlement amount, an OLS regressions is used. The regression estimates the effect of the independent variable (i.e.,  $x$ ) on the dependent variable (i.e.,  $y$ ). Coefficients describe the strength and direction of the relationship. The intercept is the expected mean value of the dependent variable when all of the independent variables equal zero. There are several assumptions that must be met to use OLS regressions: there must be a normal distribution of data; the data must be homoscedastic; no multicollinearity issues can be present; and errors are normally distributed. Regression diagnostics are reported later in this section.

In order to run the regressions, the data were transformed using the natural log. The natural log is a mathematical function whereby the data are rearranged in such a way as to alleviate skew and produce a normal distribution. The regression analysis of the subset, described later in this

section, also used the process of Winsorizing, which is applied to the 5 highest payout amount outliers. Charles P. Winsor came up with the Winsorizing procedure: “When he found an ‘outlier’ in a sample he did not simply reject it. Rather he changed its value, replacing its original value by the nearest value of an observation not seriously suspect” (Tukey, 1962, p. 18). Additional regressions were run to see if the model changed when outliers were deleted from the subset—rather than Winsorized—post-transformation of the dependent variable using the natural log. Diagnostics are reported later in this section. Transformation of the data created a normal distribution for the linear regressions, which is a required assumption for running an OLS regression.

## **Research Site**

The site of this study is Rochester, New York. The City has a population estimated at 205,695 (U.S. Census Bureau, 2010). The City’s racial composition includes 39.8% Black or African American, 36.7% white and non-Hispanic, and 8.6% other races (i.e., American Indian/Alaskan Native, Asian, Native Hawai’ian/Pacific Islander, and Two or More Races) (U.S. Census Bureau, 2010). People of Hispanic ethnicity represent 19.2% of the City’s population (U.S. Census Bureau, 2010). In terms of gender, the City’s population is 51.5% female (U.S. Census Bureau, 2010). The median household income is \$35,590 and 31.3% of the population live in poverty (U.S. Census Bureau, 2010).

The RPD’s jurisdiction covers the City—31.7 square miles—and is one of New York State’s largest law enforcement agencies (City of Rochester, n.d.-a). It employs 862 people; 701 are sworn officers and 161 are civilians (Rochester Police Department, 2020). Ninety-four percent of sworn officers live outside of the City limits whereas 6% live within the city limits; 87% are white, and 77% are male (Rochester Police Department, 2020). Eighty-five percent of sworn

officers are non-Hispanic (Rochester Police Department, 2020). The median total compensation for sworn officers in 2020 was \$131,091 (City of Rochester, 2021). These statistics reveal that RPD officers are commonly non-Hispanic, white males that are over represented when compared with the race, ethnicity, and gender of city residents. Nearly all sworn officers live outside of the city limits. Further, there is a substantial gap between what RPD officers earn in pay and benefits compared with what inhabitants of the City earn through employment.

## **Data**

The data for this study were developed from information contained in a hard copy claims and settlements registry of Rochester police-involved incidents obtained through a Freedom of Information Law (FOIL) request. The data was broken up into two sets: the dataset contains all 453 claims, from 2001-2012, which have 3 common variables; the second, a subset of the dataset, contains 260 claims containing 19 shared variables (i.e., 1 dependent variable and 18 independent variables).

Table 1 shows the frequency of claims filed against the City for police-involved incidents from 2001-2012. The frequencies include claims ending in payouts and claims that were closed without payment. There are not enough data to provide any substantive explanation for why 63% of claims are contained between the years 2007-2010, before the frequency decreases by 16% in 2012.

**Table 1**

***Frequency of Police-involved Claims Filed by Year 2001-20012 (n=453)***

<b>Year</b>	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
2001	6	1.3%	1.3%	1.3%
2002	4	0.9%	0.9%	2.2%
2003	6	1.3%	1.3%	3.5%
2004	10	2.2%	2.2%	5.7%
2005	14	3.1%	3.1%	8.8%
2006	13	2.9%	2.9%	11.7%
2007	38	8.4%	8.4%	20.1%
2008	44	9.7%	9.7%	29.8%
2009	86	19.0%	19.0%	48.8%
2010	115	25.4%	25.4%	74.2%
2011	95	21.0%	21.0%	95.1%
2012	22	4.9%	4.9%	100.0%
Total	453	100.0%	100.0%	

**Variables**

**Dependent variable.** The dependent variable for this study is operationalized as final settlement amount, which is continuous and measured in dollars. These are monetary payouts made by the City to claimants in order to resolve claims filed against the City for police-involved incidents. The frequency (*f*), mean, median, and standard deviation (SD) are reported for both the dependent variable and the independent variables.

**Independent variables.**

***Claimant characteristics.*** Claimant characteristics are attributes that identify the individual who files the claim. The first characteristic captured is claimant gender. This is a dichotomous variable, which includes females (coded as 0), males (coded as 1). Several studies have pointed out that men have more involuntary contact with police (Brunson & Miller, 2006; Lundman, & Kaufman, 2003), file more police misconduct complaints (Pate & Fridell, 1993; Terrill & Ingram, 2016), and file more lawsuits (Maule, 2015; Robinson, 2020). When women do file claims,

Doerpinghaus et al. (2008) find that “female claimants receive lower payments than men, controlling for injury, severity, wage loss, claimant fault, and a variety of other factors” (p. 547).

The second claimant characteristic asks if the claimant is a corporation. This is a dichotomous variable with No (coded as 0) and Yes (coded as 1) values. Research shows that there is an upward trend in claimants and insurance companies retaining attorneys and filing legal claims in auto liability incidents (Browne & Schmit, 2008).

Age was excluded based on a lack of data. The claims registry did not capture race or ethnicity variables either; as such, there is nothing to report.

***Claim characteristics.***<sup>20</sup> Claim characteristics are attributes that describe the claims themselves. Some claims in the subset are “in suit” meaning that litigation has been initiated against the City. This is a dichotomous variable using the values No (coded as 0) and Yes (coded as 1). Claims, where litigation is initiated, are important to include for a few reasons. First, capturing claims and police incident data at the local level makes the City and the department more transparent, while disclosing trend information. The literature shows increasing trends in the frequency of lawsuits filed and successful litigation against police officers and their departments, since the 1960s (Kappeler, 2006, pp. 3-4). Second, reporting this data may shine some light on an obscured process and the types of characteristics involved, which could be used to improve police policy and procedures (Schwartz, 2010; Schwartz, 2012).

The variable claim duration >3 months is a dichotomous variable, whereby claim duration is split between those claims that resolve from 0 months to 3 months and those claims that resolve beyond 3 months. Three months is selected as the cutoff because it is the median when the variable

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<sup>20</sup> Claim type is excluded as a claim characteristic because the data is not organized in a way that is readily understandable to individuals who do not work for the insurance carrier. I do make some rough claim categories later on using the limited claim descriptions paired with each claim. Claim status is also excluded as a claim characteristic because there is no clear definition of an “open” or “closed” claim.

is analyzed as a continuous variable. Claim duration measures the difference between the last reported status update and the original filing date of the claim in months.

The variable reserve settlement amount is dichotomous; if amounts are equal to or less than \$500, then the value is No (coded as 0). If the amounts are greater than \$500, then the value is Yes (coded as 1). This amount is selected as a cutoff because \$500 is the median when the variable reserve settlement amount is analyzed as a continuous variable. Reserve settlement amounts are payouts that the City has earmarked for the resolution of claims prior to any ongoing negotiation with the claimant. It appears that reserve settlement amounts are a tool that the City can deploy to quickly dispose of claims without spending money on in-house legal expenses. If the incident is egregious enough, resolving claims quickly allows the City to dispose of claims that could draw public ire. This information is valuable because it helps explain the City's settlement strategy of efficiency over fairness.

***Situational characteristics*** Situational characteristics identify attributes about the specific incident that led to the filing of the claim. Whether or not the claimant's vehicle is involved in the incident is a dichotomous variable which includes the values No (coded as 0) or Yes (coded as 1). The claims made against police point to officer fault for traffic accidents. Langham et al. (2002) address the concept of "looked but failed to see" accidents, which might account for accidents involving parked cars. Senjo (2011) and Vila et al. (2002) report that a contributing factor to traffic accidents caused by police officers is lack of sleep and overwork.

Claims are made when police-involved accidents cause bodily injuries. Injuries from the accident is a dichotomous variable; if injuries are not present then the value is No (coded as 0) or, inversely, Yes (coded as 1). Research suggests that there is an increasing trend in injuries resulting from police auto liability incidents (Carlin, 1986; Browne & Schmit, 2008).



Pedestrians and bicyclists hit by police vehicles is a dichotomous variable. In cases where no collision with pedestrians or bicyclists occurs, the value is No (coded as 0); if a collision occurs, then the value is Yes (coded as 1). Research suggests that this is an important variable to include because such incidents “appear to be underreported by police” (Agran et al., 1990, p. 368) and those that are reported through the media tend to be framed as isolated (Ralph et al., 2019, p. 669), which may not be the case.

The auto impound or city auction involved variable is dichotomous; reported values are No (coded as 0) and Yes (coded as 1). Claimants’ vehicles can be vandalized or damaged while in police custody at the auto impound lot. In other cases, vehicles are sometimes wrongfully sold at auction. Barriers to getting vehicles out of auto impounds and the obligations of the police departments to maintain vehicles are in need of more research (Cooper et al., 2002; Helmholz, 1992).

The dichotomous variable child involved means that the claim records a child or children involved in the incident (coded as 1); the absence of children from the claim means no children were reported as being involved (coded as 0). No one wishes to see children hurt or killed; they are priceless and innocent (Smith Lee & Robinson, 2019; Weitzer et al., 2008).

The variable family dog involved is a dichotomous variable with reported values as No (coded as 0) and Yes (coded as 1). This variable pertains to the claimant’s dog—a family pet—not if a law enforcement dog was involved in the incident. This dichotomous variable helps illuminate the circumstances where dogs are shot, and sometimes killed, by police.

Raid, search, or warrant involved, a dichotomous variable, asks if the claim included any information about a police raid, warrant, or search (e.g., of an individual or a residence)—this includes damage to interior and exterior dwelling doors and the use of a SWAT team. The values

are either No (coded as 0) or Yes (coded as 1). Capturing data on this variable is important because raids can be both traumatic and destructive for the people targeted, which can lead to a further erosion in trust in law enforcement (Urbanik & Greene, 2020).

Property damage is a dichotomous variable; reported values are No (coded as 0) and Yes (coded as 1); the property damage variable includes the destruction or damage of cell phones. Research suggests that this is an important variable to measure because of the negative impact it can have on individuals and families—especially those living in poverty (Alexander, 2012; Dasher, 2016; Galloway, 2013; James, 2015; Special Criminal Investigation Section, [ca.1988]; Walker, 1992; Wolfe, et al., 2015).

The false arrest variable is dichotomous; its reported values are No (coded as 0) and Yes (coded as 1). A false arrest can cause life-long trauma—especially if use of force is involved or wrongful imprisonment occurs. Gathering information on this variable is important for training issues (Ross, 2000), understanding if officers had probable cause to arrest in the first place, and to check current arrest policies and procedures (Littlejohn, 1980; Rozema & Schanzenbach, 2019).

The physical force used variable is dichotomous; its reported values are No (coded as 0) and Yes (coded as 1). Excessive force claims are the second most frequent claim filed in federal court (Kappeler et al., 1993). Use of force can traumatize and permanently injure individuals, which can lead to life-long physical and mental trauma and disability as well as a decrease in the legitimacy of the police department (Chavis & Degnan, 2017; Kappeler et al., 1993; Koenig, 2018; McEwen, 1996; Terrill et al., 2018; Terrill & McCluskey, 2002; Walker & Archbold, 2014).

The variable claimant killed by police is a dichotomous variable, where the reported values are No (coded as 0) or Yes (coded as 1). Previous research suggests that the death of a claimant has significant impact on settlement amount (Maule, 2015; Robinson, 2020). Further, deaths of

civilians by police can have long-lasting impact on public health (Alang et al., 2017; Hanna, 2017) and creates intergenerational trauma (Christopher & Eison, 2006; Crimi & Willis, 1976; Fanelli, 2020; Hargrave & Miller, 2004; Lacker-Ware & Forsyth, 2017; Smith Lee & Robinson, 2019).

The variable claimant is an RPD employee is a dichotomous variable, where the reported values are No (coded as 0) or Yes (coded as 1). Ross (2018) finds 64% of personnel claims are filed against municipal police departments—the largest segment of claims for law enforcement employees (Ross, 2018; Slonaker et al., 2001).

The variable officer named is a dichotomous variable, where the reported values are No (coded as 0) or Yes (coded as 1). Officer names might indicate a more thorough investigation of incidents; they might also represent the requirements of external organizations on the police department to gather and report information about certain types of incidents.

## **Diagnostics**

Intracoder reliability refers to one person rating the data multiple times to measure agreement and then reporting the mean between the different reliability tests (Nieuwenhuys et al., 2017). Reliability ratings can be poor if categories are not well defined or those doing the ratings are given confusing or poor instruction on how to interpret the data (de Raadt et al., 2019). The raw percent agreement (i.e., the percent of agreement on coding decisions between coders) is reported in many studies because of its simplicity; a substantial weakness exists with this model in that it fails to “account for agreement that would occur simply by chance” (Lombard et al., 2002, p. 590). Cohen’s Kappa, on the other hand, “accounts for chance agreement” (p. 591). The Cohen’s Kappa coefficient has a scale that runs from -1.0 to 1.0. A zero means that there is no agreement between the raters aside from expected chance; a -1.0 is worse than chance, whereas a 1.0 means that there is perfect agreement (MacPhail et al., 2016). MacPhail et al. note that researchers

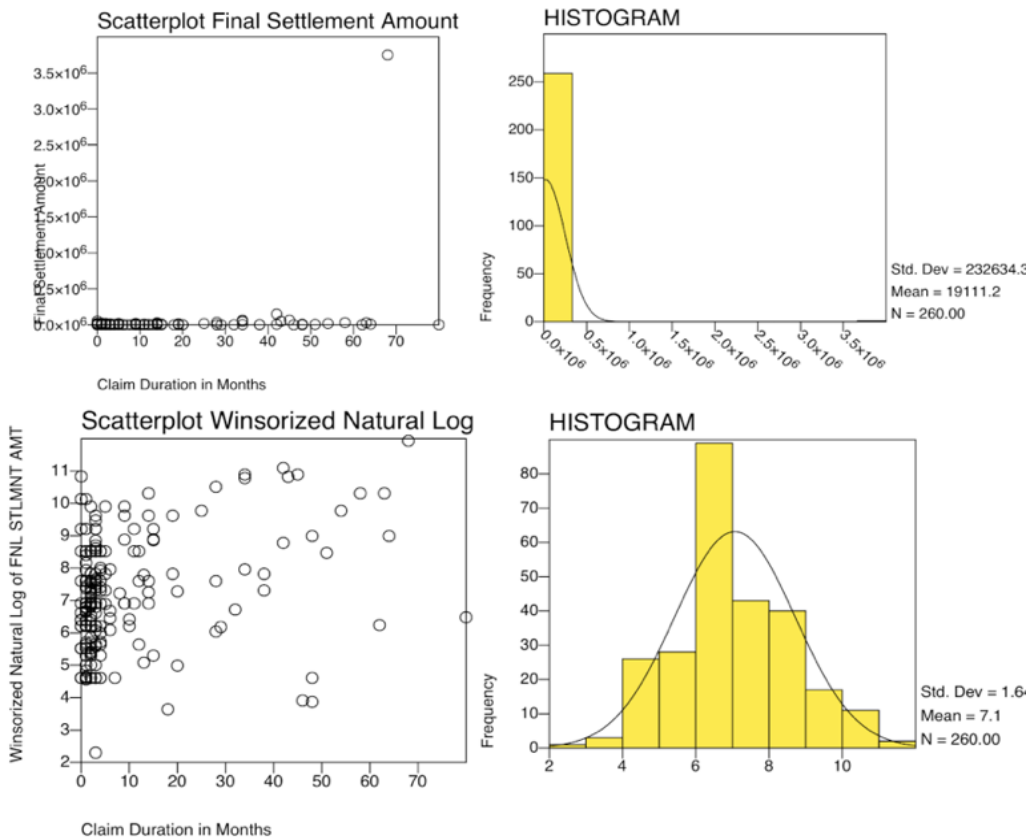
consistently use a Kappa coefficient of .70 as a good measure of agreement in exploratory research (p. 3). Cohen's Kappa was obtained on 3 different tests; the mean of Kappa is .94. Kappa is near perfect for this study.

Before running the OLS regressions, the dependent variable had to be transformed in order to meet the assumption of a linear regression. Reported below are multicollinearity and homoscedasticity of the data after transformation. The pre-transformed dependent variable did not have a normal distribution. Using the natural log and Winsorizing 5 outliers,<sup>21</sup> the post-data transformation of final settlement amount succeeded in creating a normal distribution that accounted for the positive skew of the data. Figure 2 displays the pre-and-post data transformation scatterplots and histograms.

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<sup>21</sup> I use  $x + .01$  to the next lowest value of the natural log for final settlement amount. For example, if the highest outlier is 14.12 and the next highest is 12.01, I would Winsorize the highest value down to 12.02. This allows the outlier to retain its distinctiveness while fitting better with the other data points. I used this method for the 5 highest values.

**Figure 2**

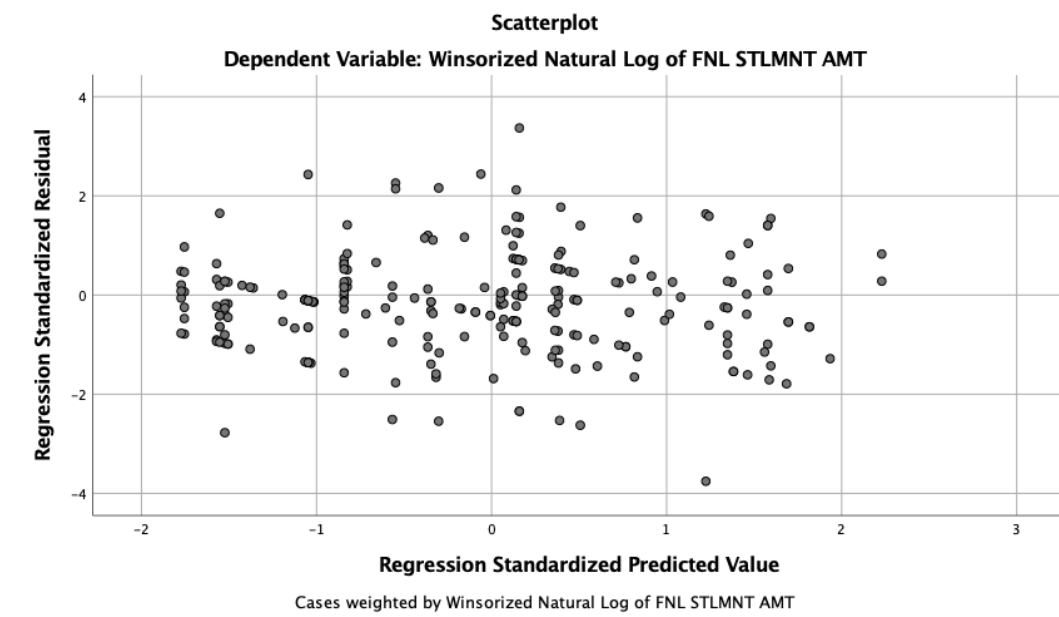


Multicollinearity occurs when independent variables are highly associated with each other. The strength of the associations can suppress the effects on the dependent variable. Multicollinearity can be detected through visual inspection of the correlation matrix, variance inflation factors (VIFs), or tolerance statistics. Generally, VIFs greater than 10 or tolerance statistics less than .01 could indicate collinearity, though there is some debate in the literature (Schroeder et al., 1990, pp. 178-181; Thompson et al., 2017, p. 83). The dataset contains no multicollinearity. Property damage has the largest VIF at 4.345 and a collinearity tolerance of .230. No other variables have a larger VIF. One way to handle multicollinearity issues is to remove the flagged variable and re-run the analysis. To test whether property damage was causing multicollinearity issues, I ran several regressions that excluded property damage. There was no

significant change in the model after its removal, therefore, it was retained as a variable in the regression.

For an OLS regression to work, there must be homoscedasticity (i.e., randomly dispersed error) in order to make sure that coefficients are not being pulled toward datapoints that have undue influence. Scatterplots of residuals and predicted values show if heteroscedasticity is present. Heteroscedastic data is visible when scatterplots show definitive patterns (e.g., fans or cones); homoscedasticity occurs when the scatterplots of predicted values and errors are randomly displayed. A rectangle can be drawn around the data points in a homoscedastic plot. Figure 3 shows a homoscedastic scatterplot for the dependent variable in the linear regression for this study.

**Figure 3**



## Analytical Techniques

I used GNU PSPP version 3 and IBM SPSS Statistics version 26 to perform the quantitative analyses, which included univariate, bivariate, and multivariate analyses. PSPP was used for the

descriptive statistics but SPSS proved to be a more powerful statistical program for the bivariate and multivariate analyses.

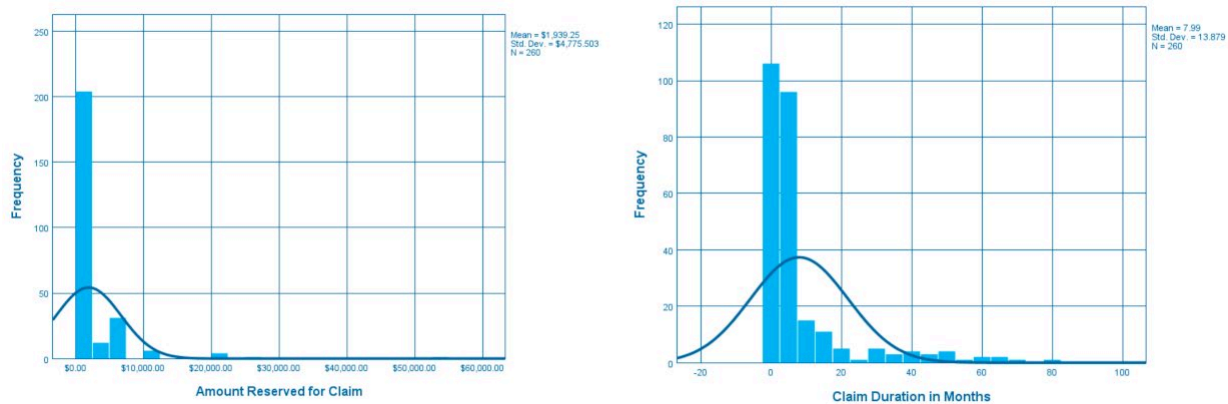
Outliers are observations “whose dependent-variable value is unusual” based on the value of the independent variable (Hamilton, 1992). Outliers can unduly influence the results of a regression analysis causing the analysis to fail to gather important characteristic data. Outliers can be detected using different diagnostic measures like Cook’s Distance and DFFITS. Cook’s D measures the change in effect if an outlier is deleted. DFFITS measures the predicted values for observations if they were deleted; a large DFFITS value indicates a high effect on other values near its point. Multiple regressions were executed using Cook’s D to identify and remove the five largest outliers; another series of regressions were run where the five largest outliers were removed using the DFFITS technique. In all cases, the model did not change significantly.

The analyses are conducted as follows. First, the descriptive statistics are displayed for the continuous, dependent variable final settlement amount with two other independent variables: lawsuit initiated and claim duration >3 months. These are the three common variables found among the dataset ( $n = 453$ ). The mean is skewed by outliers; therefore, the median is reported because it is a more accurate measure. The cutoff for independent variables is the median when they are run as continuous variables.

Second, descriptive statistics for the subset ( $n = 260$ ) is displayed. The continuous dependent variable final settlement amount is the only dependent variable. The 18 independent variables include claimant, claim, and situational characteristics. The cutoff for each dummy variable (i.e., claim duration >3 months, and reserve settlement amount >\$500) is anything greater than the reported medians. In other words, the median for claim duration is 3 months and for reserve settlement amount it is \$500. Medians were selected as cutoffs for reserve settlement

amount and claim duration because they were more accurate representations of the data. These variables, when run as continuous variables, skewed the data, as shown in figure 4.<sup>22</sup>

**Figure 4**



Third, for bivariate relationships, a Pearson’s correlation matrix containing correlation coefficients is presented using the subset data. Bivariate correlations “measure the linear relationship between two variables” (Bachman & Paternoster, 2017, p. 343). If a correlation is statistically significant, then it means that there is high (95%) confidence that a relationship exists between a pair of variables. Pearson coefficients report the direction and strength of the association; the scale is -1.0 to 1.0. 1.0 is a perfect linear relationship, 0 is no relationship, and a -1.0 is a perfect inverse relationship. Strong relationships between independent variables may indicate multicollinearity issues. Multicollinearity exists when independent variables are highly

<sup>22</sup> Using the natural log and Winsorizing the outliers was not an option for reserve settlement amount because 33% of the subset contains zero values. The graph clearly shows its positive skew at the zero point. When attempting to use the natural log and log10 transformations, an error occurred because of the presence of zero values. I was able to perform a quadratic transformation, but obviously, the zero values were still present. I was unable to locate a method to account for this; instead, I replaced it with the variable reserve settlement amount >\$500. The median of the continuous variable, \$500, was selected as the cutoff for this dichotomous, independent variable.

Regarding claim duration in months, 6.5% of the subset contained zero values and 67.7% of claims lasted in duration from 0 to 3 months showing a positive skew. This data does contain over 50% of the data—a quantity of data clearly not fit for Winsorizing. Even after transforming the data into the natural log and then Winsorizing the 5 farthest data points to the left and right of the mean, the distribution was still not normal. I was unable to find a method to ameliorate this issue so I replaced this continuous variable with the dichotomous variable claim duration >3 months. The median of the continuous variable, 3 months, was selected as the cutoff for this dichotomous, independent variable.



associated with each other; in other words, they have such a strong association that the effects on the dependent variable are suppressed.

Finally, an OLS regression is utilized to determine which independent variables are key predictors of final settlement amount (i.e., the dependent variable for the regression). OLS regressions test linear associations between y and x variables where coefficients predict the best value on the dependent variable. A block entry method for OLS regression is utilized. The block entry method introduces groups of independent variables into the model in their characteristic blocks (i.e., claimant, claim, and situational). When independent variables in each block do not contribute to the regression they are removed. This process is useful for simplifying data, removing predictors that do not contribute to the regression, and enhancing the regression's accuracy.

Three different blocks or models are used for the analysis. The first model is **claimant characteristics**, which include male claimant and corporate claimant. The second model is **claim characteristics**, which include lawsuit initiated, claim duration >3 months, and reserve settlement amount >\$500. The third model is **situational characteristics**, which include claimant's vehicle involved, injuries from accident, pedestrian or bicyclist hit, auto impound and/or auction involved, child involved, family dog involved, raid, search, or warrant involved, property damage, false arrest, physical force involved, claimant killed by police, claimant is RPD employee, and officer name given.

Block entry method can separate the impact of groups of independent variables on the dependent variable. The present study is looking at three categories of dichotomous variables related to final settlement amount. Each group is entered into the regression in order to see how much the variance changes based on the type of characteristics entered and if the model is significant. Each model is compared to the last as more variables are entered; significance of

variables is determined by each additional model added to the regression. Interpretation is limited because the continuous, dependent variable has been transformed.

## **Results**

This section discusses the findings from the statistical analyses. First, I describe the descriptive statistics for the dataset ( $n = 453$ ) and then the subset ( $n = 260$ ). Then I analyze the bivariate correlations of the subset. Last, I report the findings from the OLS regression performed on the subset.

### **Descriptive Statistics**

Table 2 displays the descriptive statistics for the three common variables found within the dataset ( $n = 453$ ) from 2001-2012. These include the continuous, dependent variable and two dichotomous, independent variables. Examining the dependent variable first, results show that 266 claims, or 59%, received a payout. Claims that resolve within 3 months account for 73% of the dataset. Based on claim descriptions, the three most prevalent claims filed were: vehicular damage (38%), false arrest (30%), and non-vehicular property damage (15%). Of the claims that received a payout, 74% received \$1,000 or less. In 91% of claims, payouts are made at, or under, \$5,000. The monetary values of payouts range from \$0 to \$3,750,050. The highest monetary value in the range—\$3,750,050—is the largest outlier case found in the final settlement amount data. The claimant was represented by the Innocence Project. The payout was ~21 standard deviations greater than the mean. The sum of all payouts made for claims in the dataset from 2001-2012 is \$4,977,939. Because of indemnification clauses in the contract between the City and the Rochester Police Locust Club, all payouts, jury awards, and attorney services for defendant officers are covered by the City—and by extension—the taxpayers. If the largest monetary outlier case is

removed, the City limited its police liability losses for all other claims over a 12-year period, to \$1,227,889.

**Table 2**

*Descriptive Statistics (n=453)*

Variable	<i>f</i>	Mean	Median	SD
<b>Dependent Variable</b>				
Final Settlement Amount	--	\$10,988.83	\$200	\$176,351
<b>Independent Variables</b>				
<u>Claim Characteristics</u>				
Lawsuit Initiated	39	.09	--	.28
Claim Duration in Months >3 Months	122	.27	--	.44

Claim characteristics include the dichotomous, independent variables lawsuit initiated and claim duration > 3 months. Lawsuits are initiated in 9% of the dataset, totaling \$116,000 in final settlement amounts. Of the lawsuits initiated ( $f = 39$ ), 87% of claims had a duration of 3 months or less, totaling \$68,000. When claims with initiated lawsuits exceed the 3-month cutoff, final settlement amounts totaled \$48,000. In claims where a lawsuit is filed, 49% receive a payout of \$1,000 or more; the other half receive no payout (51%).

In 26% of claims, the duration is more than 3 months; in other words, 74% of claims resolved from 0 to 3 months. Of the nearly three-quarters of claims in the dataset that resolve within 3 months or less, the total final settlement amount is \$439,934.57. Of claims that last longer than 3 months, the final settlement amount totals \$4,528,972.97. If the outlier is removed, the total final settlement amount for such claims is \$778,922.97. Claim duration lasted more than 2 years for 30 claims and just over 6.5 years (80 months) for one claim.

Table 3 displays the descriptive statistics for the subset ( $n = 260$ ). One hundred percent of claims receive a payout in the subset. For the continuous, dependent variable final settlement

amount, 44% of claims receive a payout greater than \$1,000; 85% of claims receive a payout of \$5,000 or less. The minimum amount is \$10.00 and the maximum amount is \$3,750,050.00.

**Table 3**

<i>Descriptive Statistics (n=260)</i>				
Variable	<i>f</i>	Mean	Median	SD
<i>Dependent Variables</i>				
Final Settlement Amount	--	\$19,111.18	\$1,000	\$232,634.35
<i>Independent Variables</i>				
<b>Claimant Characteristics</b>				
Male Claimant	149	.57	--	.496
Corporate Claimant	12	.05	--	.21
<b>Claim Characteristics</b>				
Lawsuit Initiated	19	.07	--	.261
Claim Duration >3 Months	84	.32	--	.469
Reserve Settlement Amount >\$500	101	.39	--	.488
<b>Situational Characteristics</b>				
Claimant's Vehicle Involved	82	.32	--	.466
Injuries from Accident	30	.12	--	.32
Pedestrian or Bicyclist Hit	13	.05	--	.218
Auto Impound / Auction Involved	21	.08	--	.273
Child Involved	8	.03	--	.173
Family Dog Involved	5	.02	--	.138
Raid, Search, or Warrant Involved	29	.11	--	.315
Property Damage	110	.42	--	.495
False Arrest	80	.31	--	.462
Physical Force Involved	41	.16	--	.365
Claimant Killed by Police	4	.02	--	.123
Claimant is RPD Employee	4	.02	--	.123
Officer Name Given	19	.07	--	.261

**Claimant characteristics.** Fifty-seven percent of those individuals filing claims are men. Only 5% of claimants are corporate claimants representing individuals; where insurance companies are listed, 100% of claims are vehicular in nature. The sum of the final settlement amounts for corporate claimant claims is \$34,380.61.

***Claim characteristics.*** Lawsuits are initiated in 7% of claims; 79% of claims where a lawsuit is filed resolve in 3 months or less. Of all claims in the subset, 68% resolve in 3 months or less.

In 67% of claims, the claimant is offered a reserve settlement amount; of those 39% are earmarked for a payout amount offer greater than \$500. The three most common claim types for reserve settlement amounts are: false arrests (41%); assault (22%); and vehicular incidents (22%). These three incident types make up 85% of claims that receive a reserve settlement amount.<sup>23</sup>

Of the claims earmarked for reserve settlement amounts greater than \$500, 77% resolve within 3 months. The final settlement amounts of these claims add up to \$370,550. Percentages and dollar amounts are as follows: incidents involving claimants' vehicles resolved 100% of the time (\$155,250); assaults resolved 81% of the time (\$96,100); miscellaneous claims resolved 76% of the time (\$38,700); false arrest claims resolved 65% of the time (\$81,000); and claimant deaths resolved 50% of the time (\$5,000). It is unknown if the claimants were aware that a certain amount of money had been set aside to resolve their claims prior to negotiation or if they found out about the offer when the City offered to settle the claim.

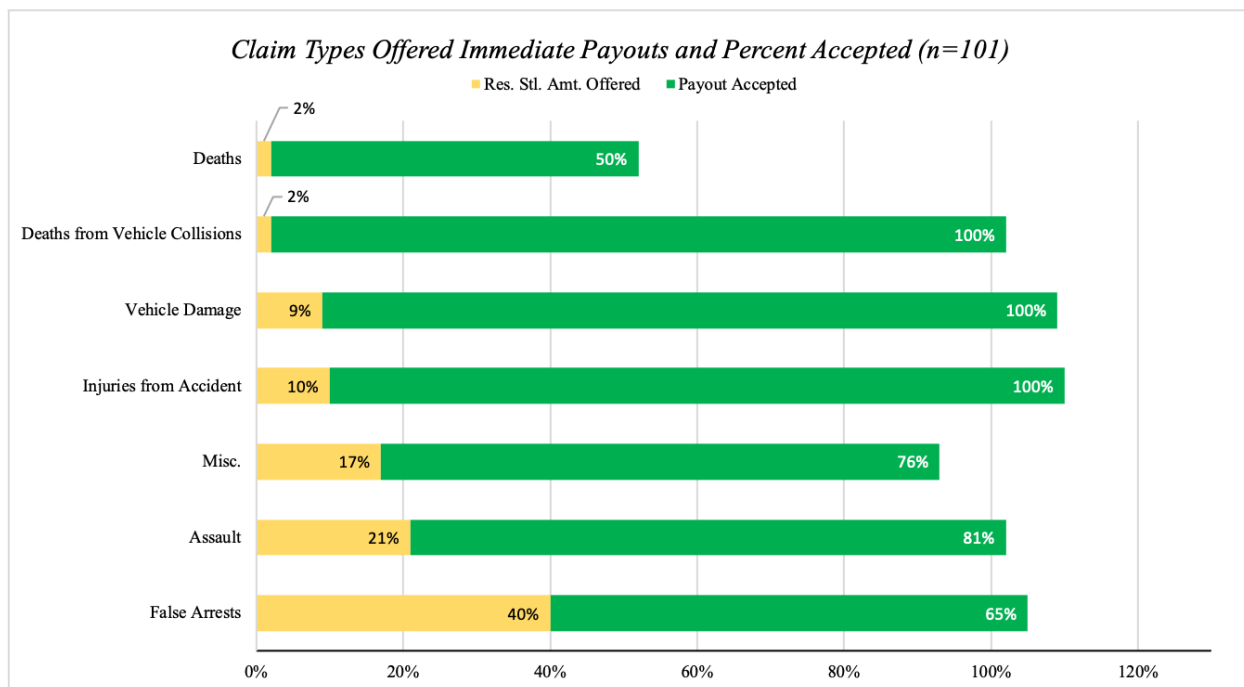
Figure 5 shows claim types, the percent of each claim type offered a reserve settlement amount greater than \$500, and the percent of claims that accepted the immediate payout for each claim type. The chart represents the 39% of claims offered a reserve settlement amount greater than \$500 in the subset. For example, 40% of false arrest claims in the subset were offered a

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<sup>23</sup> The claim types provided in the claims registry were not recorded in an understandable way to people who did not prepare the registry. The claim types addressed here are based on the limited incident descriptions recorded with each claim in the registry.

reserve settlement amount greater than \$500. Of those offered the payout, 65% accepted the offer.

**Figure 5**



For claims where no reserve settlement amount is offered, the three most common claim types are: vehicular incidents (72%); property damage (19%); and false arrests (8%). Vehicular incidents can be broken down into vehicular incidents involving property damage (52%) and those involving injuries (20%). Together, these three claim types account for 99% of claims where no reserve settlement amount is offered.

***Situational characteristics.*** Claimants' vehicles are involved in 32% of claims; this is the second highest proportionality of total claims in the subset. In 11% of these claims, RPD vehicles collided with parked vehicles. In 12% of claims police auto accidents caused injuries. In 5% of claims, police vehicles struck pedestrians or bicyclists. Claim descriptions include words like "struck," "collided," "hit," and "accident." In 8% of claims, a claimant's vehicle is remanded to the auto impound lot or is auctioned off. Of claims involving the auto impound or auction, 48% of

claimants' vehicles are wrongfully auctioned off to new owners. Claimants' vehicles in the impound can be damaged or fall prey to property theft.

In 3% of claims, a child is involved in the incident. Out of the 8 claims where a child is involved, 63% of claims involve a police vehicle striking a child. Of those claims, 80% involved children riding bicycles.

In 2% of claims, family pets—dogs—are injured or killed by police. In 80% of claims involving dogs, a raid or search of a premises was involved. In 40% of claims, police officers shot and killed the dogs; the claim description for two claims does not address if the dogs shot by police officers lived or died; and only 1 claim involved an owner being ticketed for having their dog off-leash at a dog park.

Eleven percent of claims involve a raid, search, or warrant. Of those, 90% involve the claimant's personal residence being the target of the raid. Damage to doors and walls are included in these claims as are assaults, shootings of family dogs, and theft of personal property. This includes 2 claims where the SWAT team is utilized.

In 42% of claims, property damage is involved; this is the highest proportion of total claims in the subset. Many of these claims involve vehicular accidents, followed by cases where claimants' vehicles are damaged or robbed, while being held in the auto impound lot as well as claims involving raids, searches, or warrants. Damage to cell phones is also captured in this variable. Claim descriptions describe property damage caused by the police, which include words and phrases like "detonated a pipebomb [*sic*]," "door broken," "pool lining and cover torn," "forced entry," "veh impounded and sold at auction," "house key taken," "missing property," "police car ran into claimant's fence," "unlawful search," and "cell phone taken," among others.

False arrest of claimants represented the third highest proportion of total claims at 31%. Physical force (i.e., the police officers using hands-on force and causing injury to the claimant) is used in 16% of claims. Descriptions of incidents of physical force used include words like “split lip,” “facial bruising,” “tackled,” “punched,” “kicked,” “choked,” “beat up,” “broken teeth,” “harassment,” “mental anguish,” and “death.” In 2% of claims, the claimant is killed by police.

In 2% of claims, RPD officers are the claimants. The names of police officers are listed in 7% of the subset. One hundred percent of the time where an officer’s name is listed, the claim involves a traffic incident (e.g., a collision, striking a bicyclist or pedestrian, vehicular damage with or without injuries). Officer names listed seems to correspond with the required investigation of traffic accidents spelled out in RPD General Order #345 “Police Fleet Vehicle Accidents” (Ciminelli, 2016, p. 354); the seven-page form requires officers to list their names and a slew of other information pertinent to the accident.

### **Bivariate Analysis**

Table 4 shows a Pearson correlations matrix for all variables. There are no statistically significant relationships between the dependent variable and the independent variables. The relationships between the dependent variable and the independent variables can be characterized, in terms of strength, as non-existent to very weak with some variables indicating positive directions and others negative. The correlations seem to support the thesis that the City values efficiency over fairness—none of the relationships indicate that an association might beget a higher or lower final settlement amount. That said, there are 7 associations between independent variables of moderate strength or greater that are statistically significant.



There is a positive and moderate relationship ( $r = .580$ ;  $p = .000$ ) between pedestrian or bicyclist hit and injuries from accident. If a pedestrian or bicyclist is hit by a police car then there are likely to be injuries.

The variables auto impound or auction involved and claimant's vehicle involved have a positive and moderate relationship ( $r = .437$ ;  $p = .000$ ). This relationship makes sense as claims filed against the City involving the auto impound or auction would involve the claimant's vehicle.

In claims where a child is involved, there is a positive and moderate relationship with pedestrians or bicyclists hit by police vehicles ( $r = .470$ ;  $p = .000$ ). In this relationship, more than half of the claims in the subset (63%) involve police officers striking children with their vehicles, and of those, 80% involve bicycles. In other words, the data suggest that if a claim is filed regarding a child, it is likely the result of an officer striking the child in their vehicle.

The relationship between property damage and claimant's vehicle involved is positive and moderate ( $r = .525$ ;  $p = .000$ ). If claims of property damage are made against the City, there is a likely chance that the situation involves the claimant's vehicle.

There is a negative and moderate relationship between false arrest and claimant's vehicle involved ( $r = -.452$ ;  $p = .000$ ). This inverse relationship indicates that when false arrest claims are made, claims involving the claimant's vehicle are unlikely.

The relationship between false arrest and property damage is negative and moderate ( $r = -.554$ ;  $p = .000$ ). This indicates that people who file claims for false arrest are unlikely to file for property damage because either no property was damaged or the alleged unlawful arrest is the greatest harm.

Table 4

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1 Fined Settlement Amount	1																		
2 Male Claimant	.056	1																	
3 Corporate Claimant	-.015	.002	1																
4 Lawsuit Initiated	-.016	.033	-.062	1															
5 Claim Duration >3 Months	.104	.114	.201**	-.068	1														
6 Reserve Settlement Amount >\$500	-.049	.034	-.062	.297**	.179**	1													
7 Claimant's Vehicle Involved	-.037	-.100	.324**	-.063	.080	-.257**	1												
8 Injuries from Accident	.000	.093	-.079	.037	.162**	.009	.169**	1											
9 Pedestrian or Bicyclist Hit	-.008	.035	-.050	-.064	.106	-.002	-.156*	.580**	1										
10 Auto Impound or Auction Involved	-.023	-.001	.002	-.083	.007	-.178**	.437**	-.107	-.068	1									
11 Child Involved	-.003	.019	-.039	-.030	.020	-.005	-.121	.284**	.470**	-.053	1								
12 Family Dog Involved	-.010	-.106	-.031	-.039	-.097	.061	-.095	-.051	-.032	-.042	.137*	1							
13 Rental, Search, or Warrant Involved	-.026	-.114	-.078	-.033	-.010	.018	-.240**	-.128*	-.081	-.105	-.063	.128*	1						
14 Property Damage	-.064	-.174**	.257**	-.151*	-.039	-.379**	.575**	-.309**	-.196**	.346**	-.153*	.050	.241**	1					
15 False Arrest	.090	.238**	-.147*	.165**	-.051	.204**	.452**	-.241**	-.153*	-.198**	-.071	-.093	-.210**	-.554**	1				
16 Physical Force Involved	-.026	-.053	-.095	.122*	-.028	.348**	-.294**	-.156*	-.099	-.128*	.045	.016	-.019	-.328**	.100	1			
17 Claimant Killed	.001	.045	-.027	-.035	-.086	.157*	-.085	.248**	.258**	-.037	.340**	-.018	-.044	-.107	-.083	.032	1		
18 KPD Employee	-.009	.045	-.027	-.035	-.020	-.036	-.085	-.045	-.029	-.037	-.022	-.018	-.044	-.107	-.083	-.054	-.016	1	
19 Officer Name	-.009	-.056	.079	-.022	.154*	-.012	.159*	.407**	.410**	-.083	.297**	-.039	-.099	-.061	-.187**	-.121	.205**	-.035	1

\*\* . Correlation is significant at the 0.01 level (2-tailed).

\* . Correlation is significant at the 0.05 level (2-tailed).

The last association is between officer name and pedestrian or bicyclist hit. The relationship is positive and moderate ( $r = .410$ ;  $p = .000$ ). In claims where personal injury, death, or damage over \$1,000 occurs, RPD officers are required to fill out a form including the officer's name involved in the vehicular incident. This may explain the moderate and positive relationship between officer name listed and pedestrian or bicyclist hit due to the presence of injuries from police vehicles striking people on bicycles or on foot.

### **Multivariate Analysis**

This exploratory study attempts to answer the question of which key predictors influence payout amount when controlling for claimant, claim, and situational characteristics. Table 5 shows the regression coefficients and table 6 shows the estimated percent change<sup>24</sup> in final settlement amount per a one-unit increase for each of the five key predictors. The block OLS regression indicates that the  $R^2$  for model 3, which takes into account all independent variables on the dependent variable, explains 42% of the variance in final settlement amounts.

Model 1 loaded claimant characteristics onto the regression. There was no change (0%) in  $R^2$  for model 1. This model was not statistically significant. Claimant characteristics, controlled for in model 1, were not predictive of final settlement amount in the regression.

Model 2 loaded claim characteristics onto the regression; this model contained the greatest amount of change in  $R^2$  at 29%. This model was statistically significant ( $p = .000$ ). In this model, claim duration >3 months ( $p = .000$ ) and reserve settlement amount >\$500 ( $p = .000$ ) are significant predictors of final settlement amount. Final settlement amount increases when a claim's duration exceeds 3 months and when a reserve settlement amount greater than \$500 is recorded in the claim.

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<sup>24</sup> To calculate the percent change, the unstandardized coefficient is exponentiated; from that value, subtract 1 and multiply by 100 (UCLA Regents, 2021).

Model 3 loaded situational characteristics onto the regression; the  $R^2$  for the model changed 11%. Model 3 was also statistically significant ( $p = .000$ ). Five key predictors of final settlement amount are uncovered in the analysis: claims that last longer than 3 months, claims offered an immediate payout of over \$500, claimants' vehicles involved, the auto impound lot or auction involved, and child involved. If a claim's duration lasts longer than 3 months, the final settlement amount increases by 199% ( $p = .000$ ). If the reserve settlement amount is greater than \$500, then the final settlement amount increases by 337% ( $p = .000$ ). If the claimant's vehicle is involved, then the final settlement amount increases by 165% ( $p = .003$ ). If the auto impound lot or auction are involved, then the final settlement amount decreases by 128% ( $p = .022$ ). Finally, if a child is involved in the claim, then the final settlement amount increases by 219% ( $p = .042$ ).

The strength of the variables can be found in the standardized Beta coefficients. In order of strength (strongest to weakest), the significant predictors of final settlement amount found in model 3 are: reserve settlement amount >\$500 (.439, moderate), followed by claim duration >3 months (.313, weak), followed by claimant's vehicle involved (.276, weak), followed by auto impound or auction involved (-.137, weak), and finally child involved (.123, weak).

**Table 5***OLS Regression of Claimant, Claim, and Situational Characteristics for Final Settlement Amount*

<b>Variables</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
<b>Claimant Characteristics</b>			
Male Claimant	.313 (.206)	.130 (.175)	.057 (.176)
Corporation Claimant	.057 (.485)	-.202 (.419)	-.363 (.440)
<b>Claim Characteristics</b>			
Lawsuit Initiated		.323 (.346)	.238 (.332)
Claim Duration >3 Months		1.192 (.192)**	1.096 (.189)**
Reserved Settlement Amount >\$500		1.594 (.187)**	1.475 (.203)**
<b>Situational Characteristics</b>			
Claimant's Vehicle Involved			.973 (.327)**
Injuries from Accident			.749 (.467)
Pedestrian or Bicyclist Hit			.390 (.573)
Auto Impound or Auction Involved			-.823 (.357)*
Child Involved			1.162 (.568)*
Family Dog Involved			.348 (.619)
Raid, Search, or Warrant Involved			-.152 (.318)
Property Damage			-.237 (.340)
False Arrest			.264 (.291)
Physical Force Involved			.340 (.273)
Claimant Killed			.757 (.739)
RPD Employee			.547 (.710)
Officer Name Listed			-.656 (.370)
Constant	6.885 (.157)**	5.974 (.159)**	5.728 (.309)**
R <sup>2</sup>	.009	.302**	.415**

Unstandardized coefficients reported with standard errors in parentheses. \*p &lt; .05 \*\*p &lt; .01

Dependent Variable: Winsorized Natural Log of Final Settlement Amount

**Table 6***Estimated % Change in Final Settlement Amounts per One-unit Increase*

<b>Variable</b>	<b>Unstandardized Coefficient</b>	<b>Estimated Percent Change / One-unit Increase</b>
<b>Claim Characteristics</b>		
Claim Duration >3 Months	1.096**	199%
Reserved Settlement Amount >\$500	1.475**	337%
<b>Situational Characteristics</b>		
Claimant's Vehicle Involved	.973**	165%
Auto Impound or Auction Involved	-.823*	-128%
Child Involved	1.162*	219%

Unstandardized coefficients \*p &lt; .05 \*\*p &lt; .01

### **Discussion**

The City values efficiency over fairness; it does this by providing unrealistically low payout offers to claimants for police-involved incidents. estimates when offering claimants payouts. The City appears to exploit the power differential between itself and claimants—persuading claimants to accept offers or drop their claims—in order to conserve resources that can be used for other revenue generation projects. Efficiency over fairness can be found in each of the five key predictors reported on in the previous section.

The regression indicated that claim duration greater than three months, reserve settlement amounts greater than \$500, claimant's vehicle involved, auto impound or auction involved, and child involved were statistically significant key predictors of final settlement amount. Claims that persisted beyond three months were more likely to receive higher settlement amounts than those that resolved within 3 months. The City received many notices of claim from many different departments over the time period studied; in order to process these claims expeditiously, the City resolved claims as fast as possible. Lingering claims consume City time

and resources; in these cases, it seems logical for the City to negotiate a higher payout in order to resolve the claim. Filing a lawsuit did not guarantee a bigger payout.

Digressing briefly, filing a lawsuit was not a key predictor of final settlement amount. The data does not stipulate who the attorneys were or what their motivations were for taking cases. As discussed in the previous section, these cases did not garner large payout amounts; most claims where a lawsuit was filed resolved quickly for small payout amounts. There were 12 corporate claimants (i.e., insurance companies) that represented people involved in vehicular incidents. The majority of these claims settled quickly, which might indicate that insurance companies and their attorneys have some amicable relationship with the City that they wish to maintain. Attorneys in accident cases work to acquire compensation for clients *and* resolve cases quickly in order to move onto the next auto liability claim. Investigations into vehicular incidents are fairly routine (i.e., efficient) leading to faster turnaround times. In addition, the police department must report accident data to the Department of Motor Vehicles (DMV) in a timely manner or the involved officers might face sanctions.

The regression explained that claims with reserve settlement amounts greater than \$500 increased the final settlement amount. Fifty-seven percent of claims were offered reserve settlement amounts greater than \$500 involving the most traumatic incidents (e.g., assault, false arrest, and death). More than three-quarters of those claims settled in three months. Depending on the economic and life situations of claimants, accepting an initial settlement of an amount greater than \$500 might mean the difference between paying for food and rent or not. It stands to reason that, claimants in dire economic straits might accept the upfront payout rather than attempt to battle the City for a fairer amount of compensation because of immediate economic necessity. Further, these claims if left unresolved could be volatile for the City in terms of

negative publicity, exposure to further risk, and the cost of litigation. Conversely for claims where no reserve settlement amount was offered, the most common claim types were vehicular and property damage. In the short-term, the City pays a little more up-front to resolve the more problematic claims but saves money in the long-term by resolving those claims efficiently.

The regression indicated that if a claimant's vehicle was involved, then the final settlement amount was expected to increase. A third of claims in the subset, 32%, involve the claimant's vehicle and the majority of those claims—61%—involved traffic accidents. Chu's (2016) findings indicated that officers who traveled at high speeds, violated traffic signals, and were distracted while driving, increased the chances of crashes with injuries (p. 498). If Chu's research is extended to the RPD and vehicular claims, this suggests that the RPD might have officers who are poorly trained in routine police driving and pursuit work. Further, because there are so many vehicular claims against the department, the phenomenon cannot be chalked up to just a few bad drivers; rather, the prevalence of auto liability claims could be related to a systemic failure of policy, procedure, or training. Related to police involved accidents is the fact that in 100% of vehicle accident claims, the officer's name is listed. As mentioned above, departmental policy specifies that all traffic accidents must be reported and if the damage exceeded \$1,000 or there is personal injury or death, then the involved officer is required to file paperwork with the DMV. Failure to do so could lead to sanctions against the officer by the DMV. These claims are thoroughly investigated and reported both internally and externally, which may explain the efficiency behind vehicular incident claims. Assuming a municipality pays for commercial insurance, the insurance carrier most likely uses this information, in collaboration with the municipality, to make auto liability policy decisions. If an officer generates too many vehicular claims, there might be certain consequences (e.g., premium increases or threat of coverage cancellation). Municipalities in New



York State and insurance carriers may have standing agreements to settle vehicular claims. As this pertains to Rochester, until a review of past insurance policies and the City's internal documentation on the claims process can be conducted, it is difficult to know for certain what, if any, standing agreements exist.

The auto impound lot or auction is another statistically significant predictor of final settlement amount. In this case though, the expected change is a decrease in final settlement amount. Vehicles in the auto impound lot are not under the control of their owners which means that any claims against the City will be scrutinized. Without corroborating evidence, claimants may not be able to prove negligence, by the City, for theft or damage of their vehicles, while they were impounded.

Vehicles that are impounded and then, in some cases sold at auction, might explain why the coefficient is negative. Perhaps once a claimant files for a vehicle that has already been sold, the City takes the most conservative estimate found as the base amount they are willing to offer as compensation for the vehicle—assuming the City makes an offer to settle the claim. The claimant can either accept the offer or reject it. Whatever course of action the claimant takes, the City has virtually complete control of the situation. Attorneys are not likely to take such cases and file lawsuits because there is no monetary incentive. Damages are negligible for wrongfully auctioned-off vehicles compared to the cost of attorney labor. For the claimant, it could be life-altering (e.g., loss of employment, mobility).

The last key predictor of final settlement amount is child involved. If a child is mentioned in the claim, then chances are that the final settlement amount will increase. Fifty percent of claims involved children riding bicycles that were struck by police vehicles, which caused injuries or death. This accounts for 31% of the claims involving pedestrians or bicyclists struck by police.

There is a societal imperative against harming or killing children. As reported by Smith Lee and Robinson (2019), child involved incidents—especially incidents involving violent police action—can have negative, life-long impact. It seems logical that the City would offer an increased payout when a child is involved in order to efficiently resolve the claim as swiftly as possible.

The City exploits the power differential between itself and individual claimants—especially ones involving false arrests, uses of force, and death—because it has financial and reputational interests in suppressing potential misconduct cases. Recall that the postindustrial policing hypothesis (Sharp, 2014; Laniyonu, 2018) argues that as postindustrial cities pursue growth and development strategies in an effort to attract the “creative classes” (i.e., white, wealthy, and educated people) (Florida, 2014, as cited in Laniyonu, 2018, p. 903), who will become the new economic engines of the municipality, policing will become more pronounced and aggressive. If the claims process is efficient, most of these cases will move through the system without much notice. The City’s limited losses through its efficient claims process allow it to conserve resources to be used in other ways to build revenue, while attracting the “creative classes” (Florida, 2014, as cited in Laniyonu, 2018, p. 903).

Observing the key predictors, one could argue that the City’s claims process is a well-oiled machine that is efficiently functioning. Over the course of 12 years, there was only one significant financial outlier that garnered local and national media attention. That claimant won his case and received fairer compensation. Black (2010) argues that the quantity and direction of law can predict who will be impacted in legal disputes. If the claimant is a Black person who is impacted by poverty; is unemployed or underemployed, lives in a neighborhood with drugs and guns, and represents themselves, then Black would argue that their chances of success are very low. If the claimant was injured by police, then they may have additional trauma to work through,

which could impact their decision to proceed with the claims process.<sup>25</sup> An immediate settlement offer might be welcomed relief instead of fighting against the City for fair compensation without any support.

If we apply Black's propositions to the outlier case, we find an alternative outcome. In that case, the individual, who was falsely arrested and incarcerated for ~10 years, was represented by an internationally recognized, external, professional legal entity. The Innocence Project is well-resourced; it contains a depth of knowledge and expertise meaning it is well-organized; it is not tied individually to race, gender, ability, or location, as individual claimants are perceived in their communications with the City; as a legal entity it is grounded in science and considered conventional; and it has the respect of institutions globally. In this one case, fairness was put ahead of efficiency. When power is distributed to the claimant, Black's propositions predict a narrative flip where claimants prevail both legally and financially.

## **Limitations**

This study—no different from others—contains limitations. Four theories (i.e., social capital; power differentials as explained by Donald Black; bureaucratic efficiency; and the postindustrial theory of policing) are combined to explain the City's prioritization of efficiency over fairness. Each theory, on its own, is a part of an already existing body of literature and each theory is complex. Combining these four theories is not a perfect nor elegant explanation, but no single theory exists to explain the actions of mid-sized, northeastern municipalities and how and why they resolve claims brought against them for police-involved incidents.

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<sup>25</sup> Consider that there were 9,055 filed Subject Resistance Reports (SRRs) from 2001 – 2012 (Freedom of Information Law Request, RR19-04235; received by the author on November 8, 2019). RPD officers are required to file SRRs when they use force on individuals. The subset identifies 41 claims involving use of force over the same time period in this study.

Related to the theoretical limitation is the lack of literature on the subject. No studies exist that examine police-involved claims data and payout outcomes. There *are* studies that examine lawsuits stemming from police-involved incidents and the financial outcomes of those lawsuits. These studies offer some similarities but are not congruent. Generalizations about efficiency over fairness in mid-sized municipalities could not be made because of the lack of research on the topic.

With any dataset obtained from government institutions using open records requests, it is difficult to determine if the municipality has transmitted all of its data related to the specific request. There is no independent monitor who ensures that all requested data are sent.<sup>26</sup> As seen with the Daniel Prude case, these fears are legitimate after the results of an independent investigation found a concerted effort to suppress the legal release of information that had been requested (Deliso, 2021) by the family's attorney. Other datasets to corroborate the claims data (e.g., use of force reports and complaints to the Civilian Review Board), as well as interviews with claimants, might provide a more complete understanding of the process behind police-involved incident claims and outcomes.

### **Policy Recommendations**

There are three policy recommendations to make in conjunction with the findings of this study. First, beyond mandatory reporting of vehicular incidents as per General Order #345, the RPD should be required to report all incidents and information to an external oversight agency.<sup>27</sup> Investigation and reporting of incidents should not be under the sole purview of the department

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<sup>26</sup> In New York State, the courts usually play this role, but the petitioner must exhaust all administrative remedies before filing an Article 78. An Article 78 is a proceeding to appeal decisions made by New York State or local government agencies to New York courts.

<sup>27</sup> Rochester's Police Accountability Board (PAB) appears to be perfectly situated to do this work. This agency of city government is led by a 9-member community board with an attached administrative agency tasked with investigating and adjudicating complaints; engaging with community; and analyzing police department policy. For more on the PAB, see: <https://www.cityofrochester.gov/PAB/>

because “internal, police controlled complaint systems [are] a gross failure” (Lewis, 2000, p. 23; *see also* Lacker-Ware & Forsyth, 2017). Community-led, independent review and investigation of claims beyond vehicular incidents (as well as complaints) would help reestablish community trust of local government and provide a check on police power in order to correct for the lack of departmental transparency, while holding officers accountable (Task Force on Racial Injustice and Police Reform, 2021). Departmental and City policy related to police-involved claims should also be reviewed by this same agency. This study indicates that the most frequent claim types involve claimants’ vehicles, false arrests, and property damage. This means that any policy of the police department that intersects with these claim areas should be thoroughly reviewed with changes to the policies made, if necessary, to produce a more safe, less dangerous police force that is responsive to, and controlled by, the community they serve. A benefit is that the City might be less exposed police liability claims.

Second, the City should remove indemnification clauses in its collective bargaining agreement with the Rochester Police Locust Club and create a policy whereby officers are financially responsible for their actions. Right now, the indemnification clauses provide no consequences for officers who are found to have committed misconduct; taxpayers foot the bill for any judgements, settlements, and officer legal expenses (City of Rochester, 2016). The removal of indemnification clauses could restore some accountability—at least financially—by requiring officers who have been found guilty of allegations brought against them or who have claims against them settled by the City, to pay the fees and awards associated with those two outcomes.

Colorado is attempting to walk a line between indemnifying officers and making them partially financially accountable for misconduct. The state passed a law in 2020 that eliminated

qualified immunity as a defense for police officers in state court and made officers partially responsible for any jury awards: “if officers lose in state court, they may have to pay 5 percent of damages, up to \$25,000, of their own money” (Aspinwall & Weichselbaum, 2020). This gradual approach to increasing financial consequences for police misconduct is a mechanism to be observed. If there are no indemnification clauses, then the officer is responsible for the full amount of damages. If the officer does not have the resources, then the impacted individual gets nothing. Indemnification allows for impacted individuals to collect on the awards granted to them by juries because the municipality pays out, instead of the officer. Time will tell if the 5% or \$25,000 limits in Colorado’s law deter police misconduct. Generally, though, officers pay virtually nothing when they are found guilty of misconduct or when municipalities settle police-involved claims.

Schwartz (2014) found that in 99.98% of cases where an officer was convicted, or the municipality settled a claim against them, the city paid for the fees, settlements, and awards—*not* the police officer. This practice creates an environment where officers feel no sanction for their actions, which potentially undercuts any deterrent effects. Instead, losses are dispersed through the population of the municipality in the form of an insurance premium, or a direct payout to the claimant, which dilutes accountability and presents no indication from the department that the office’s problematic behavior will be disciplined. Eliminating indemnification, or creating a hybrid like legislators did in Colorado, could be a way for the City to prioritize fairness rather than efficiency.

The third policy recommendation calls on the City to make the claims process fair and to stop undervaluing payouts for claims involving damages and injuries caused by police action.

Elected officials must demonstrate the political will to implement these recommendations; failure to do this means the perpetuation of the current, unfair process.

### **Future Research**

This exploratory study offers many possibilities for future research. To start, more data needs to be acquired and cross-referenced with claims data to get a more thorough understanding of the incident and the claimant. Linking claimants' identities with their characteristics—especially race, ethnicity, and age, as well as incident location information to do spatial analyses—could advance an understanding about the types of incidents people experience, who is likely to experience those incidents, and the geographical prevalence of such incidents. Such data could be found through civilian complaints made to oversight agencies; filed notices of claim alerting the municipality of the incident; lawsuits filed by the claimants; and use of force reports, where applicable. This information combined into a database could provide a more complete profile of claimants, claims, and situational factors. In addition, acquisition of municipal contracts with their insurance carriers, or internal policies on how the municipality processes claims, could provide useful information about claims registries as well as what constitutes an “open” or “closed” claim (i.e., claim status) or claim types.

Time-series studies could be conducted to better understand the context of the municipality and unaccounted for variables such as: employment turnover rates; changes in policy and procedure that impact patrol operations; reactions to high-profile cases or municipal scandals involving the police; and finally, reviewing the patterns of claims and any associated changes in municipal or police leadership including mayors, corporation counsels, or police chiefs. These variables may or may not impact the number of claims filed, by whom, and for what; this information might also indicate changes in settlement strategy.

On the qualitative side of research, interviewing claimants, attorneys for the municipality and the claimant, and professionals from insurance carriers might provide a much more thorough and robust analysis of the underlying constructs of the claims and settlement process. It would be fascinating to get the notices of claim for claims that were closed without payment and then interview the claimants to get a better sense of why their claim was closed and what the incident entailed. For those claimants who received a payout, it would be instructive to understand the incident from their perspective as well as what motivated them to file the claim and accept a payout. One possible outcome is that such investigation will yield new variables to account for in the model that are perhaps more indicative of outcomes—both in duration of claim and final settlement amount. Expectations from the process and whether or not larger questions of justice were resolved for claimants could also be addressed in interviews.

Interviewing attorneys might provide more specific insight into the legal process and rationale for certain behavior and outcomes. A legal perspective could also potentially provide more technical details about laws and rules that may govern how and why a municipality decided to settle one claim and not another. Clarification on legal definitions could also be gathered from interviewing municipal attorneys involved in the claims process.

Interviewing insurance professionals—especially people who work or worked at the insurance carriers involved—could interpret the internal jargon and help decode claims registries. Rappaport (2017) confirms this in his thorough examination of the police liability insurance industry after interviewing 33 industry-involved people. What seems peculiar in a claims registry might be business as usual; shorthand could be explained and insight gained through an understanding of what insurance professionals take for granted. The logic of each claim could be



described; in this way if a characteristic—like claim type—is mired in internal jargon, then the individual could enlighten the researcher and provide clarity.

Another area of future research for this study is hypothesis testing. Prominent theories in this study include social capital, bureaucratic efficiency, the postindustrial policing hypothesis, and Black's behavior of law—all of these theories could be conceptualized, operationalized, and tested.

A final area of research involves gathering similar claims data in similar sized cities in order to test results across cities and geographies. Conducting these research experiments would improve external validity. They would also further identify processes across municipalities and regions disclosing variation in how municipalities handle claims involving police.

## **Conclusion**

The City of Rochester prioritizes efficiency over fairness when it comes to resolving police-involved claims. The analysis of the dataset ( $n = 453$ ) showed that 59% of claims received a payout and 73% of claims resolved within 3 months. The analysis of the dataset also showed that 50% of claims received \$200 or less. The data corroborated what seems intuitive: bureaucratic efficiency trumps fairness. The data was acquired using an open records request and covered the time period 2001-2012.

One dependent variable and 18 independent variables were identified within the subset ( $n = 260$ ), which were then categorized into three sets of characteristics: claimant characteristics, claim characteristics, and situational characteristics. The guiding research question—What key predictors influence the payout amount claimants receive? —was answered through an OLS regression that analyzed the characteristics. The five key indicators were: claim duration greater than 3 months; reserve settlement amount greater than \$500; claimant's vehicle involved; auto impound or auction involved; and child involved. The key predictors that were expected to

increase final settlement amounts—false arrest, physical force, and death—did not materialize.

The analyses made clear that the City’s claims strategy was to offer unrealistically low settlement offers and to resolve claims quickly. Over a 12-year period, the City limited its losses in payouts to the paltry amount of \$4.9 million.

Three policy recommendations are made in the study. First, the RPD should be required to report all incidents and related information to an external oversight agency for review and independent investigation if the oversight agency feels its warranted. In the event that officer misconduct is uncovered, the subject officers should be disciplined through the oversight agency. In addition, should the oversight agency discover a failed policy or procedure is causing claims to be filed, then this policy or procedure could be amended or eliminated altogether. This is not new territory for the department. When fleet vehicle incidents occur, officers are required, via General Order #345, to report the incident to the department and the DMV. Should officers fail to do this in a timely manner, the DMV has the power to sanction officers.

The second policy recommendation is to do away with or modify indemnification clauses between the City and the Rochester Police Locust Club—the collective bargaining agent that represents police officers—and create a policy whereby officers are financially responsible for their actions. Attaching consequences for misconduct is the first step to reducing officer feelings of impunity. Currently, indemnification clauses in Rochester shield officers from all financial accountability. Removal of such provisions would make officers solely responsible for their actions; alternatively, the City could create a policy like Colorado’s where officers are required to pay a percentage or a limited amount of financial damages for jury awards and settlements.

Third, the City needs to devise a transparent and equitable claims process that limits the ability of the City to use its power over claimants who have been damaged or injured through

police action. Such a process, one that prioritizes equity rather than conservation of resources, would tip the balance of the claims process toward more fairness and accountability. The policy recommendations offered in this study highlight the need for the City to take seriously the actions of its police officers as well as the information contained in claims and lawsuits in order to devise new City policies and procedures that would reduce its exposure to police liability *through systemic change* rather than by taking advantage of claimants in order to conserve resources for future revenue generating projects.

Future research on this project could investigate the claimant experience in the negotiation process and the reasons claimants accept artificially low payouts. Interviews with claimants and document review of notices of claim could offer information about the location of the incident; the race and ethnicity of the claimant; and the potential counter narratives to the ones captured in the claims data.

Aside from incorporating more variables into the analysis through interviews with claimants, attorneys, city officials, and insurance professionals, the same types of data could be gathered in similar-sized cities to see if this phenomenon holds across geography or if it is unique to Rochester. Studies tend to focus on large municipalities with multiple outlier cases to the neglect of mid-sized and small cities as well as rural communities. Without the incorporation of these locations in a comparative analysis, researchers may be missing how routine police action can lead to constant levels of distrust and trauma within their respective communities, where bureaucratic efficiency is prioritized over fairness for people harmed by police.

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