

# Police Accountability through the Courts





## Larry Moore: A Case Example

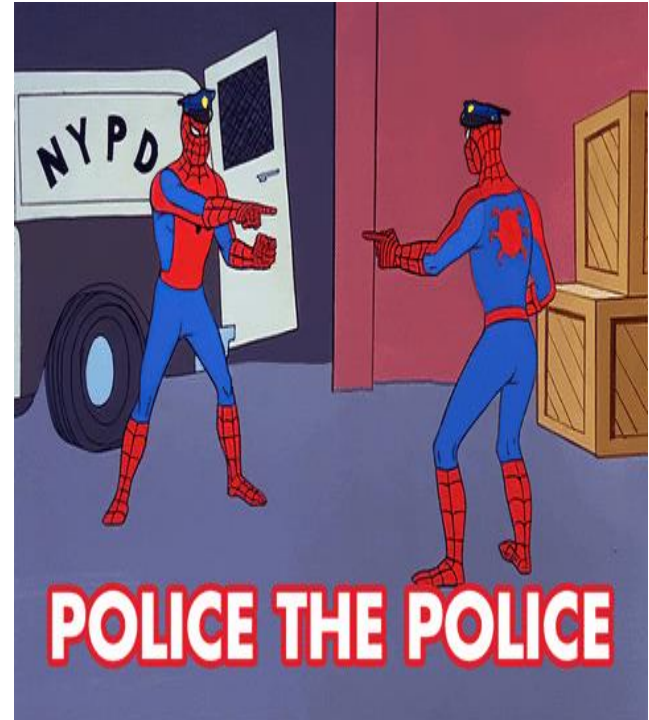
Larry was walking down the street in Harlem with his 7 year-old son when out of nowhere, several police cars swarmed him. Multiple officers exited the cars and proceeded to grab Mr. Moore. He was slammed against one of the cars, handcuffed, and then thrown to the ground where he was forcefully kicked multiple times throughout his body while officers searched him – all while his young son looked on. Mr. Moore was then transported to the 30<sup>th</sup> precinct. While in transit, he felt significant pain in his head, ribs and back from the beating. He asked to be taken to a hospital but the offers transporting him discouraged him, telling him he could spend up to four days in custody if he chose to seek medical treatment. Knowing he needed to be released as soon as possible to care for his son, Mr. Moore did not press the issue. He was eventually charged with possession of a vial of crack cocaine – a charge he adamantly denies and which was eventually dropped by the DA because it could not be substantiated. Mr. Moore continues to experience significant pain from his injuries, preventing him from working in his construction job. Most significantly, he is emotionally distressed that his son witnessed the entire ordeal.

# Why pursue accountability through the courts?



# Lawsuits against the NYPD

- Between 2018-2022 over 13,000 lawsuits filed
  - Does not include claims settled pre-litigation
  - Includes claims against City and individual officers alleging use of force





# Lawsuits against the NYPD

- From 2018-2022:
  - 82% of cases with reported disposition information have settled
  - 1% resulted in a court judgment/order



# Lawsuits against the NYPD

As of August, over

**\$67 million**

paid out in 2022 alone





## Following the \$\$\$

- City pays out all judgments/settlements
- Technically, officers are on the hook for punitive damages arising from “intentional wrongdoing or recklessness.” Gen. Mun. Law 50-k
  - But City indemnifies anyway WITHOUT FAIL!

# De Blasio Backs Ending Qualified Immunity for NYPD, But Stresses Officers Won't Personally Be on the Hook

BY EMILY NGO | NEW YORK CITY

PUBLISHED 10:39 PM ET MAR. 26, 2021

NEW YORK — Mayor Bill de Blasio says he supports [new legislation](#) dramatically limiting police officers' use of what's known as qualified immunity.

But he focused Friday on whether those officers will be on the hook financially.

“It makes it easier if someone has a concern to bring a legal action, but it does not put the individual financial penalty on the officer,” de Blasio told WNYC’s *The Brian Lehrer Show*. “It puts it on the department and the city, and that's what I was comfortable with.”



# Pursuing a Claim





# Possible Litigation Paths

Notice of Claim and Early Settlement

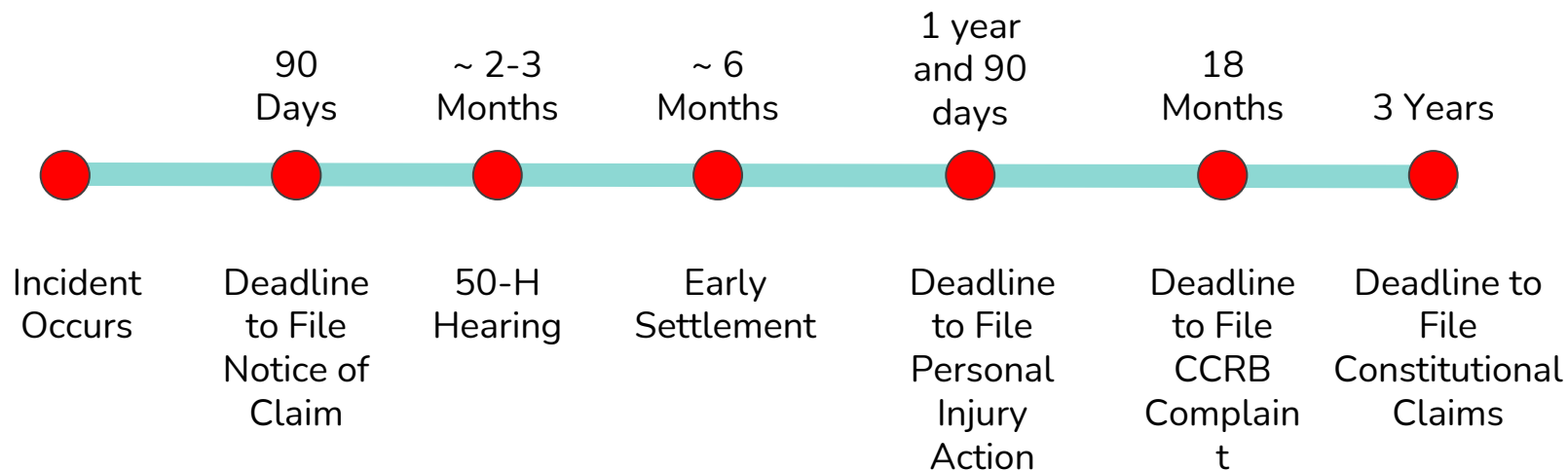
Notice of Claim and litigation

Litigation without NOC/personal  
injury claims

Non-litigation



# The Life of a Misconduct Case





## Notice of Claim

New York General Municipal Law 50-1 requires the filing of a Notice of Claim in any **personal injury, wrongful death, or property damage action** against a city, town, county, village or fire district.

Its function is to put the city on notice that you have a claim that could be filed in court and starts the process for monetary compensation.

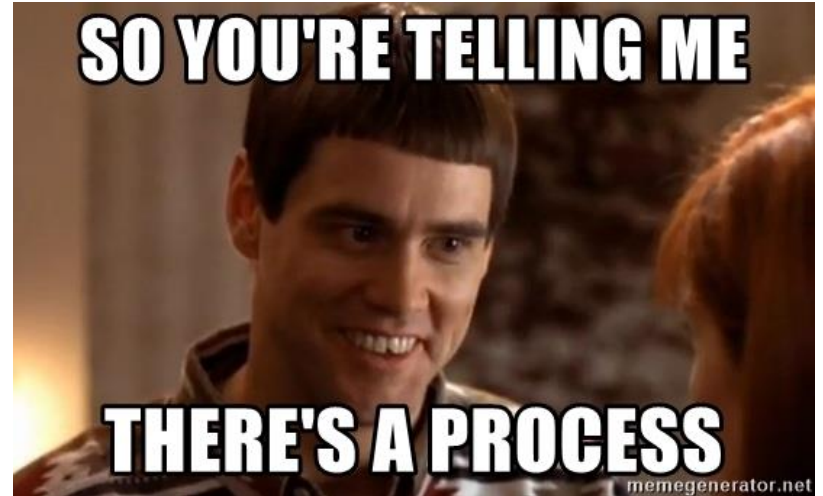


# Personal Injuries

- Assault/battery
- Excessive force
- False arrest
- False imprisonment

## Notice of Claim Process

- Notice filed
- 50-H hearing held
- Possible claim settlement
- Lawsuit





## When to File

Must be filed within 90 days of the incident. Gen. Mun. Law 50-E

If the claim is based on an arrest, even if the ensuing prosecution is also part of the claim, the **90 days dates back to the arrest -- not from the date the case is finally dismissed.**

Use a day calculator to make sure you are within the 90 days:

<https://www.timeanddate.com/date/duration.html>

# Gen. Mun. Law 50-H Hearing

- Like a deposition
- Client is examined/ cross-examined/interrogated by lawyer contracted through City
- City is looking for:
  - Viability of claim
  - Veracity of witness







## Sample City Analysis

“This guy came off as smug and pretended to be a good guy ... but he also conceded that he **pled guilty to the drug charge in this case and is now on 5 years probation. Therefore, overall the claimant is a poor witness who lacks credibility** and who would do poorly before a jury and will not appear credible under effective cross examination in court. He **will not be sympathetic and the fact that he does not work but has been receiving medicaid benefits and food stamps when he is able bodied prior to his arrest, will turn off a Manhattan or Bronx jury.**”



## Post-50H/Early Settlement

- Before filing, you may have the option of early settlement
- Settlement is negotiated with the Comptroller's office based on submission of available evidence
  - 50H transcript, medical records, photos, paystubs, etc.
- Agency/officers are not involved and outcome limited to money damages

If no early settlement...





# Litigating Cases: State and Federal Forums

- New York State
  - Only personal injury/state claims
  - State claims + federal
- Federal
  - Only federal
  - State claims + federal



## Why skip personal injury claims?

- Statute of limitations for NOC and/or PI has passed
- To avoid 50-H
- To expedite process
- If constitutional violations are substantial enough for desired recovery



## Why not skip state claims?

- Respondeat Superior liability
  - Gets past Monell dismissal against City
- No qualified immunity
  - Gives defendant an out unless they knew or should have known actions were a constitutional violation. See *Wood v. Strickland*, 420 U.S. 308, 327 n.1 (1975)
- Can plead John Doe for state law claims, not 1983



# Path of Litigation

- Forum selection
- Complaint filing
- Answer with discovery requests or MTD
- Settlement?
- Amended complaint
- Amended answer
- Court conference
- Discovery
- More motions
- Eventually.....trial

# Possible Outcomes in Litigation







# Potential Outcomes Through Litigation

- Injunctive relief/policy change
- Officer discipline
- \$\$\$\$\$\$\$\$\$\$\$\$\$



# Injunctive Relief



**ENOUGH**  
**is**  
**ENOUGH**

- Generally not available, as courts defer to broad discretion of law enforcement officials to carry out enforcement strategies
- BUT, available if the necessity of the relief is clear and compelling, and irreparable injury will occur
- Examples:
  - Ligon v. City of New York
  - Floyd v. City of New York
  - RC v. City of New York



# Officer Discipline

“Many of my clients in federal civil rights lawsuits alleging police misconduct state that they are more interested in seeing the officers genuinely punished than in obtaining large sums of money from the city. They turn to lawsuits because they feel they have no other effective option. The CCRB rarely substantiates complaints, marking most cases “unsubstantiated” unless it believes the evidence of wrongdoing is overwhelming. And even when the CCRB does substantiate, it is well documented that in most cases the NYPD either ignores the CCRB’s findings or metes out only the weakest penalties.”

- Joel Berger, Reforming the NYPD and Its Enablers Who Thwart Reform, 55 New England L. Rev. 1 (2020)



## Officer Discipline

- “Will the NYPD agree to discipline officers in the course of settlement? It’s possible I’ll win a Nobel Prize. And about as likely.” – Rob Rickner, New York Civil Rights Litigator

# Officer Discipline – NYPD matrix

<b>Less Lethal Force/Device Against Another – Resulting in:</b>			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	15 Suspension Days	15 Suspension Days + 15 Penalty Days	Termination
No Injury	10 Penalty Days	20 Penalty Days	Termination
<b>Non-Deadly Force Against Another – Resulting in:</b>			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	10 Suspension Days	10 Suspension Days + 10 Penalty Days	Termination
No Injury	5 Penalty Days	10 Penalty Days	Termination



# Damages

- Real/compensatory damages
  - Physical/emotional injuries
  - Lost wages
  - Medical bills
- Punitive damages



# Early Settlement vs. Litigation

## PROS

- Fast and avoids lengthy process
- Avoids trauma to client of litigation
- Facts may make litigation challenging

## CONS

- Possible increased settlement amount if you file a lawsuit
- Creates a more robust public record
- Individual officer forced to participate/answer
- Terms of settlement limited



Victims of police misconduct become embittered by the virulent, pugnacious tactics of city lawyers focused more on winning cases than doing justice.

- Joel Berger, Reforming the NYPD and Its Enablers Who Thwart Reform, 55 New England L. Rev. 1 (2020)



# Putting into Practice





## Case Example

Larry was walking down the street in Harlem with his 7 year-old son when out of nowhere, several police cars swarmed him. Multiple officers exited the cars and proceeded to grab Mr. Moore. He was slammed against one of the cars, handcuffed, and then thrown to the ground where he was forcefully kicked multiple times throughout his body while officers searched him – all while his young son looked on. Mr. Moore was then transported to the 30<sup>th</sup> precinct. While in transit, he felt significant pain in his head, ribs and back from the beating. He asked to be taken to a hospital but the offers transporting him discouraged him, telling him he could spend up to four days in custody if he chose to seek medical treatment. Knowing he needed to be released as soon as possible to care for his son, Mr. Moore did not press the issue. He was eventually charged with possession of a vial of crack cocaine – a charge he adamantly denies and which was eventually dropped by the DA because it could not be substantiated. Mr. Moore continues to experience significant pain from his injuries, preventing him from working in his construction job. Most significantly, he is emotionally distressed that his son witnessed the entire ordeal.



# Case Example

- After Mr. Moore's case is referred to you, you learn:
  - He wants to be compensated for his injuries and his inability to work
  - He wants the individual officers involved to be fired
  - He wants the NYPD to issue a statement acknowledging that the officers involved violated the law
  - He wants the City to agree to reduce police presence in his Harlem neighborhood, which he believes is significantly overpoliced and contributed to his discriminatory false arrest



- Do you think this client's goals are attainable?
- What questions would you have for this client about his desired outcomes?
- How would you advise this client about what to expect during the litigation process?