Putting a Check on Police Violence: The Legal Services Market, Section 1983, Torture, Abusive Detention Practices, and the Chicago Police Department from 1954 to 1967

Philip O'Sullivan[1]

This article explores the conception, rise, and initial implementation of a legal strategy which sought to fashion civil liability into a tool for reforming the Chicago Police Department (CPD) from the mid-1950s to 1967. A group of lawyers, working in close concert with the Illinois Division (their preferred name of choice at the time) of the American Civil Liberties Union (ACLU) sought to weaponize civil suits into a means of forcing CPD leadership to crack down on abusive and harmful police behavior. Drawing from a strand of contemporary scholarship on how private civil actions could shape municipal policy, the lawyers theorized that, with the correct imposition of civil liability, they could spur the legal industry to cause the number of successful civil suits to become more commensurate with the prevalence of abusive police practices. The lawyers thought the total cost, or fear of future costs, of the resulting civil suits would compel CPD leadership to enact reforms to crack down on a culture of impunity and widespread police misconduct within the CPD.

This article examines the attempt to carry out this legal strategy in the federal civil court system from the early 1950s to the end of Superintendent O.W. Wilson's tenure in 1967, with a specific focus on police torture and abusive detention practices. This article argues that while this may have been a novel strategy, it was ultimately unsuccessful in forcing CPD leadership to make the changes in departmental policy and discipline which might have stopped police torture and abusive detention practices. A close examination of this legal strategy and the flawed underlying assumptions it made about the interplay between the market dynamics of the legal industry, federal civil court, and police violence offers insight into the utility of private civil suits to rectify and prevent civil rights abuses by the police.

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INTRODUCTION

On September 13th, 1958, at around 1:30 a.m., Ozie Brize, a Black Chicagoan, had just finished his shift as a busboy at William Tell Restaurant in the North Austin neighborhood. Chicago police detectives William Byrne, Salvadore Conzoneri, and James Healy approached him.[2] According to the officers, what happened next was a routine arrest where all proper protocol was followed: they arrested Brize, brought him to two police stations, charged him with disorderly conduct and resisting arrest, and released him in the evening that same day.[3]

According to Brize, it went quite differently. He claimed the officers asked him to go with them to the Chicago Avenue Police station to talk, although they would not tell him what they wanted to talk about.[4] At the station they began to question him about the recent murder of Judith Mae Anderson, a white woman. Brize responded he had not known her, but the officers continued to question him.[5] The officers soon told him they knew he killed Anderson, and they began to drive him over to the Central Police Station.[6] In the car, one officer jabbed Brize hard in the side and warned, "we are going to do more than this if you don't tell us what we want to know."[7] Brize responded by threatening to sue them if they "laid a[] hand" on him, but undeterred, they brought him to the Central Police Station.[8] They took him to a small room and demanded he sign a piece of paper which they claimed was a confession that he killed Anderson—the officers did not let him read what the paper said.[9] When Brize refused, the officers handcuffed him to a chair, "bagged" him—put a paper bag over his head, and began punching him in the head, stomach, back, and chest while demanding he confess, saying he would be "glad to sign any confession they wanted" after they were through with him.[10]

Eventually, Brize passed out and fell to the floor, only to have one officer stomp on his face.[11] When he regained consciousness, the officers again demanded he sign the confession. Brize refused again, and the officers finally relented and put him in jail under the name of James Morris.[12] After Brize spent around sixteen hours in custody, the officers eventually charged him with disorderly conduct and resisting arrest and released him around 6:00pm that evening on $12 bail.[13] While Brize was later acquitted of the charges in municipal court, the consequences of the abuse he experienced lingered.[14] The day after his arrest, in the first of a series of visits, Brize saw his doctor, who determined he had a concussion and prescribed him some medicine for his pain.[15]

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[2] *See* Deposition of Ozie Brize at 4, 6, 11, Brize v. City of Chicago, No. 59-c-923, (N.D. Ill. Feb. 19, 1962) (on file at the National Archives at Chicago) [hereinafter Brize Deposition].
[3] *See* Answer of Defendants at 2, 3, Brize v. City of Chicago, No. 59-c-923, (N.D. Ill. Feb. 19, 1962) (on file at the National Archives at Chicago) [hereinafter Brize Answer of Defendants].
[4] *See* Brize Deposition at 14.
[5] *See id.* at 15.
[6] *See id.* at 19–21.
[7] *Id.* at 21.
[8] *Id.*
[9] *See id.* at 25–26, 29–31.
[10] Brize Deposition at 27–28; *see also* ELIZABETH DALE, ROBERT NIXON AND POLICE TORTURE IN CHICAGO, 1871-1971 106–07 (2016) (noting that allegations of "bagging" were frequent in the 1980s, but they infrequently appeared in the 1950s and 1960s as well).
[11] *See* Brize Deposition at 28.
[12] *See id.* at 29–32.
[13] *See id.* at 33–34; *see also* Brize Answer of Defendants at 2.
[14] Brize Answer of Defendants at 2.
[15] Brize Deposition at 34–38.

Eventually in 1962, the Court awarded him six hundred dollars in total in a trial without a jury; two hundred dollars were awarded against each of the three officers.[16] The officers were likely never disciplined.[17]

Brize's story was told in a Section 1983 lawsuit filed in 1959 against those three officers and the City of Chicago. At the time, Section 1983—the Reconstruction-era Civil Rights Act of 1871 originally passed to fight, among other things, law enforcement complicity with the Ku Klux Klan (KKK)—rarely led to successful claims.[18] Brize's allegations, while shocking, were not anomalous. This lawsuit was just one of fifteen filed against CPD officers that year.[19] Together,

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[16] Brize v. City of Chicago, No. 59-c-923, slip op. at 1 (N.D. Ill. Feb. 19, 1962) (on file at the National Archives at Chicago).

[17] The City of Chicago does not make police disciplinary records from before 1967 publicly available, so it is unknown if the officers were ever disciplined. As of writing, there is currently a lawsuit seeking the release of 50 years of such records, not including records from before 1967, but the City has yet to release the documents. *See* Tim Cushing, *Judge Says Chicago PD Must Release Nearly 50 Years of Misconduct Files Before the End of this Year*, TECH DIRT (Jan. 16, 2020), https://www.techdirt.com/articles/20200112/18240243717/judge-says-chicago-pd-must-release-nearly-50-years-misconduct-files-before-end-this-year.shtml, *archived at* https://perma.cc/N82A-3GQJ.

Searches of the ProQuest Historical Newspaper Database for the officer's names revealed no relevant articles. Other evidence suggests that the default assumption in instances like Brize's should be that the officers were never disciplined. Even if Brize did file a complaint with the CPD over the officers' conduct, it was likely never sustained. The CPD's own statistics for 1961 to the second to last police period (four-week periods, thirteen of which comprise an entire year) of 1966 indicate that only 1.56% of brutality complaints were sustained. *See* ACLU ILL. DIV., MATERIALS FOR WORKSHOP 2: SELF-POLICING; INTERNAL CONTROLS 7 (1967) (on file at the University of Chicago Library, Special Collections Research Center) (tabulations completed by the author). Even though the officers were found guilty in the lawsuit there is no reason to suspect they were disciplined. In an interview with members of the Illinois Division in 1967, an Assistant to the Superintendent of Police revealed that in eighteen Section 1983 cases from 1961–1967 where officers had judgements awarded against them, not once was an officer disciplined for the conduct forming the basis of the lawsuit. Although this was only a subset of Section 1983 cases where officers had judgements awarded against them, the relevant evidence indicates that officer's being found guilty, like in Brize's case, rarely led to discipline. *See id.* at 30–31. Further, external studies of the IID by the Illinois Division and the University of Chicago-affiliated Center for Studies in Criminal Justice supported the notion that IID investigators were "essentially bending over backward to look past evidence of officer guilty, to rule in favor of acquittal." SIMON BALTO, OCCUPIED TERRITORY: POLICING BLACK CHICAGO FROM RED SUMMER TO BLACK POWER 174 (2020) (citing Richard A. Crane & Gregory J. Schlesinger, Citizen Complaints of Police Misconduct and the Internal Affairs Division of the Chicago Police Department: Analysis and Evaluation of the System, May 15, 1971, box 533, folder 8, ACLU Records). Indeed, one black sergeant who worked in the IID for five years said the Division's work was shaped by "purposeful and deliberate malfeasance" and largely served as "an eyewash operation not vitally concerned with changing improper police behavior or serving the public interest." *Id.* The lack of access makes a conclusive statement impossible, but other evidence of IID operations and how infrequently disciplinary action was meted out for brutality supports the idea the officers were likely never disciplined. *Id.*

[18] For the role of Klan violence in motivating the passage of the act, see ALLEN W. TRELEASE, WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION 383–98 (1st ed. 1971); ROBERT J. KACZOROWSKI, THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE AND CIVIL RIGHTS, 49–79, 1866–76 (1985). For the paucity of successful Section 1983 claims, see Alan W. Clarke, *The Ku Klux Klan Act and the Civil Rights Revolution: How Civil Rights Litigation Came to Regulate Police and Correctional Officer Misconduct*, 7 SCHOLAR 151, 158 (2005) (stating "victims of police and correctional officers' misconduct rarely found a remedy in this Nation's courts" before Monroe v. Pape, 365 U.S. 167 (1961)).

[19] Stibbs v. Chicago, No. 59-C-128 (N.D. Ill. Jan. 28, 1959) (on file at the National Archives at Chicago); Callihan v. Nolan, No. 59-C-154 (N.D. Ill. Jan 30, 1959) (on file at the National Archives at Chicago); Colasacco v. O'Connor, No. 59-C-209 (N.D. Ill. Feb. 9, 1959) (on file at the National Archives at Chicago); Montague v. Bowen, No. 59-C-261 (N.D. Ill. Feb 17, 1959) (on file at the National Archives at Chicago); Gordon v. Arrington, No. 59-C-328 (N.D. Ill. Mar. 2, 1959) (on file at the National Archives at Chicago); Monroe v. Pape, No. 59 C 329, (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago); Mahkimetas v. Chicago, No. 59-C-548 (N.D. Ill. 1959)

those lawsuits represented a crucial step in a legal strategy developed to curb Chicago's entrenched problem of police violence.

This strategy, the brainchild of Chicagoland attorneys Charles Liebman, Donald Page Moore, Charles Pressman, and Charles' son Ernst Liebman (hereinafter referred to as LMPL),[20] along with countless others in the Illinois Division of the ACLU, sought to use the cost of private civil lawsuits to force top-down changes in departmental priorities and administration which would then change police behavior. They theorized that if they could create "an adequate inducement to sue" for both victims of police violence and plaintiff attorneys then as long as police violence persisted at high levels, so would successful police lawsuits.[21] Thus, eventually the cost would force CPD leadership to institute top-down changes to prevent more lawsuits, reducing police violence. The lawyers believed that they could create this "adequate inducement" by, among other things, letting plaintiffs sue the City of Chicago directly and broadening the conduct officers could be held liable for. They hoped these changes would increase the number of successful civil suits where plaintiffs were actually paid the award they won.[22] Then, by demonstrating the potential profitability of these police lawsuits to the legal industry, the ACLU attorneys believed that they would "stimulat[e] the rest of the Bar into bringing similar actions whenever merited."[23]

Since City Hall had already expressed concern in 1955 that "the city can be bankrupt by these [civil] suits shortly," LMPL had good reason to think that an increase in successful lawsuits would become an untenable financial burden.[24] Drawing directly from contemporary ideas on how the proper imposition of civil liability could influence municipal policy and priorities, they imagined the volume of suits would help serve as a means of "making indifferent city governments responsive to their duties . . . ."[25] Chief among those duties was the obligation to protect their residents from arbitrary violence and terror at the hands of the police.[26] Ultimately, by hitting the

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(on file at the National Archives at Chicago); Hardwick v. Hurlery, No. 59-C-569 (N.D. Ill. Apr. 9, 1959) (on file at the National Archives at Chicago); Baumgarten v. Klimawicz, No. 59-C-570 (N.D. Ill. Apr. 9, 1959) (on file at the National Archives at Chicago); Brize v. Chicago, No. 59-c-923 (N.D. Ill. Jun. 11, 1959) (on file at the National Archives at Chicago); Zimmerman v. Spicer, No. 59-C-932 (N.D. Ill. Jun. 15, 1959) (on file at the National Archives at Chicago); Busby v. McGuinness, No. 59-C-1879 (N.D. Ill. Nov. 27, 1959) (on file at the National Archives at Chicago); Durham v. Nash, No. 59-C-770 (N.D. Ill. Oct. 4, 1961) (on file at the National Archives at Chicago); Smith v. O'Connor, No. 59 C (N.D. Ill. May 19, 1959) (on file at the National Archives at Chicago); Feggins v. Chicago, No. 59-C-861 (N.D. Ill. Jun. 22,1959) (on file at the National Archives at Chicago).

[20] *See Nerden-Liebman*, CHI. TRIB., Jul. 31, 1955, at F4.

[21] Caleb Foote, Tort Remedies for Police Violations of Individual Rights, 39 MINN. L. REV. 493, 515 (1954).

[22] By law, when a plaintiff won a civil suit against a CPD officer, the City was supposed to indemnify the officer. *See* Ill. Mun. Code, 65 ILL. COMP. STAT. 5/1-4-5 (2002), https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=802&ChapterID=14&SeqStart=6800000&SeqEnd=7300000 (last visited Oct. 21, 2020), *archived at* https://perma.cc/4Q74-RTW3. The officer was supposed to pay the judgement to the plaintiff and the City would reimburse them. If the officer could not afford to pay, the City was supposed to pay outright. In reality, the City and officers would often delay paying, sometimes requiring additional legal action from victorious plaintiffs to recover judgements. Jay McMullen, *Tells How City Wiggles Out of Paying Damages for Cops*, CHICAGO DAILY NEWS, Mar. 6, 1959, at 11 (on file at the University of Chicago Library, Special Collections Research Center).

[23] Letter from F. Raymond Marks, Jr. to James D. Reynolds, Esq. (Dec. 24, 1954) (on file at the University of Chicago Library, Special Collections Research Center,).

[24] Letter from Bernard Weisberg, Gottlieb & Schwartz, to F. Raymond Marks, Jr., ACLU (Mar. 28, 1955) (on file at the University of Chicago Library, Special Collections Research Center).

[25] Brief for Petitioners at 45, Monroe v. Pape, No. 59-C-329, (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago) [hereinafter Monroe Petitioners' Brief].

[26] *Id.* at 44 (citing Leon Green, *Freedom of Litigation (III): Municipal Liability for Torts*, 38 ILL. L. REV. 355, 377 (1944)).

City's finances, LMPL hoped this strategy would succeed where decades of other attempts had not.

They fought to bring their plan to fruition on two main fronts: in Illinois state court and federal court. This paper focuses on their efforts in federal court. Before 1961, federal courts tended to interpret the rights protected by Section 1983 very narrowly, making it almost impossible for victims of police violence to successfully file suit.[27] Courts also did not interpret Section 1983 as permitting municipal liability.[28] LMPL sought to revive Section 1983 by broadening the conduct officers could be held liable for and introducing municipal liability.[29] In 1961, their efforts culminated in the Supreme Court's decision in *Monroe v. Pape*.[30] The Supreme Court's decision that the Monroe family had a cause of action against officers who unlawfully searched their apartment and arrested James Monroe expanded the range of conduct police misconduct victims could sue for, even though the Supreme Court declined to interpret Section 1983 as conferring municipal liability.[31]

After *Monroe*, there was a marked increase in the number of successful Section 1983 cases filed against CPD officers.[32] However, specifically focusing on torture and other abusive detention practices, LMPL's bigger dream for Section 1983 suits was a failure.[33] Ample barriers to filing suit remained, as lengthy trials and low success rates likely made the lawsuits a subpar compensatory mechanism at best for plaintiffs, as well as a poor financial choice for their lawyers. Meanwhile, in the years after 1961 until the end of CPD Superintendent O.W. Wilson's tenure in 1967, the uptick in successful cases failed to provide incentive for the CPD to meaningfully change departmental policy and disciplinary practices to prevent torture and abusive detention practices. In that time period, LMPL's plan, as manifested through Section 1983, failed to make good on its vision of guaranteeing the Fourteenth Amendment's promise of freedom from wanton police violence for all Chicagoans, especially for Chicago's Black and Brown residents.

This paper proceeds in three main sections. The first section provides a history of torture and other abusive detention practices in Chicago up until the mid-1950s to show the full extent of

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[27] *See* Clarke, *supra* note 18.

[28] Theodore Eisenberg, *Section 1983: Doctrinal Foundations and an Empirical Study*, 67 CORNELL L. REV. 482, 487–88 (1982).

[29] *See* Monroe Petitioners' Brief, *supra* note 26, at 45; *see also* Plaintiff Brief in Opposition to the Motion To Dismiss at 14, Moorelander v. Tassone, No. 58-C-689 (N.D. Ill. Jul. 15, 1958) (on file at the National Archives at Chicago); Plaintiff Brief in Opposition to the Motion To Dismiss at 18–19, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. Jan. 12, 1959) (on file at the National Archives at Chicago); Plaintiff Brief in Opposition to the Motion to Dismiss their Complaint at 12, Monroe v. Pape, No. 59-C-329, (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago).

[30] 365 U.S. 167 (1961).

[31] *See id.* at 191.

[32] *See infra* Figure 3.

[33] For this paper, I identified Section 1983 federal civil suits filed against CPD officers or Chicago itself in the Eastern Division of the United States District Court for the Northern District of Illinois. I examined all the docket sheets from 1956 to 1968 and selected potential cases where the stated basis of action was for civil rights or police brutality or misconduct, or where the defendant was represented by the City's Corporation Counsel. It is possible that relevant cases were missed where either the Corporation Counsel did not represent the defendant or the basis of action was not clear. However, it was City policy to defend officers in suits filed against them, so this is highly unlikely. *See* Memorandum from Melvin Landau, Mar. 2, 1953 (on file at the University of Chicago Library, Special Collections Research Center). Overall, it is possible that the true number of cases was slightly undercounted, but the cases gathered represent at least a lower bound. For press coverage, historical databases of the *Chicago Tribune* and *Chicago Defender* were used.

the problem. It also discusses the Supreme Court's response to legal challenges of abusive detention and how the Court came out against uncontested claims of abusive detention practices, but declined to grapple with contested claims of torture, essentially leaving the door open for those practices to continue unabated in the shadows. The second section examines the origins and implementation of LMPL's plan to use Section 1983 litigation to create a police lawsuit marketplace and harness the legal industry to deal with the problem of police misconduct and brutality up through *Monroe*. The third and final section explores how and why Section 1983 litigation failed to work as hoped in relation to police detention practices.

I. ENGAGING WITH THE UNSPEAKABLE: CPD'S ABUSIVE PRACTICES BEHIND CLOSED DOORS

Substantively, this paper engages primarily with disputed claims of police torture and other abusive detention practices like in Ozie Brize's case. The focus on torture and abusive detention practices is an analytical focus imposed by the author, not the historical actors themselves. LMPL and the Illinois Division's plan focused on police brutality in general and made no distinction between abusive detention practices and other forms of police violence such as brutality during arrest. So while torture and abusive detention practices was something they sought to address, it was as part of the larger problem of police brutality. Indeed, the term torture and abusive detention practices itself is largely not contemporaneous to their time period and such conduct would typically be described then as simply an instance of police brutality or the third degree.

The term torture and abusive detention practices used throughout the paper is meant to capture the range of tactics from murder and brutal physical violence against the detained to more "benign" practices like incommunicado detention without physical abuse. Without explicitly drawing a line as to what constitutes torture, the term abusive detention practices is meant to broadly describe illegal practices that used physical and psychological violence to extract confessions, coerce, or summarily punish the detained. This definition raises the question of how to consider violence at the point of arrest. As historian Elizabeth Dale notes, "it is often hard to draw a clear line between violence at the point of arrest and violence intended to coerce a confession" or make the victim more pliant to other future demands.[34] This paper employs no bright line in making the distinction, but operates under the assumption that brutality at the point of arrest irrevocably changes the dynamics of detention for the worse.

The barriers to studying both abusive detention practices and the CPD's response are manifold. Many internal police records and documents from that time period are inaccessible to researchers. In his research of the CPD during the 1950s and 1960s, historian Simon Balto found "few instances in which a record survives of CPD internal discussions surrounding police brutality."[35] Further, disciplinary records, complaints, and documents from misconduct investigations from before 1967 are not currently made available to the public, if they even still

[34] DALE, *supra* note 10, at 114.
[35] BALTO, *supra* note 17, at 174.

exist.[36] In the course of research for this paper, it was impossible to find even a reliable list of officers employed by the department for a given year in the 1960s.[37]

The problems are further compounded when dealing with allegations of police torture and other abusive detention practices behind closed doors, like those in the Central Police Station. Often the only evidence to judge these disputed claims was the statements of those in the room, especially by the 1950s as allegations of torture shifted towards "invisible" methods which left few lasting marks.[38] Obtaining absolute certainty about these claims is usually impossible.[39] Judging the veracity of these claims would be aided immensely by access to internal CPD records like complaint files, disciplinary records, and the proceedings of internal investigations, which could help illuminate a broader pattern of officer conduct.

However, the absence of these sources and absolute proof in most cases does not overrule our ability to make probabilistic guesses about what happened. I make an effort to present both the officers' and the alleged victims' sides of the story, yet I do not maintain a presumption of neutrality simply for the sake of "being impartial";[40] although I generally do not pass judgement on individual cases discussed in this paper, I believe the historical record both inside the cases examined for this paper and outside of it support the statement that CPD officers engaged in abusive detention practices to a not insignificant degree throughout the time period examined by this paper. Even when there is no conclusive evidence supporting either side, given the CPD's long and dark history of lying about what happens to detained persons in their custody, we must give serious weight to allegations like Brize's.[41] When reading these allegations, it is crucial to keep in

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[36] Illinois FOIA law provides an exemption for these kinds of records. *See* Rebecca Brown, *It's Time to Make Police Disciplinary Records Public*, INNOCENCE PROJECT (Jul. 2, 2020), https://www.innocenceproject.org/its-time-to-make-police-disciplinary-records-public/, *archived at* https://perma.cc/4BKU-2Z4U. As of writing, there is an ongoing legal battle over forcing the City to release all closed complaint register files from 1967 to 2015. But even if this is successful, these documents would be outside of the scope of this paper. *See* Cushing, *supra* note 16.

[37] I submitted a FOIA request for a list of all officers and personnel employed in 1964 and was given results from a query submitted to an internal database of officers employed by the department. However, the database did not contain many officers named in lawsuits that year and likely does not contain an unknown number of officers employed then.

[38] DALE, *supra* note 10, at 102–07 ("[The police increasingly adopted] techniques [that] were painful, but rarely left permanent marks or scars.").

[39] As academic Darius Rejali noted in his extensive study of torture in the twentieth and twenty-first, "the historical record is that torturers come unwillingly and even then, rarely admit too much." DARIUS M. REJALI, TORTURE AND DEMOCRACY 533 (2007).

[40] Throughout the paper, when the contents of lawsuits are discussed and it is stated that the plaintiff claimed or alleged something happened, it can be taken as a given that the officers named as defendants denied it.

[41] For a history before Jon Burge, see generally DALE, *supra* note 10. Dale's book reviews over four hundred claims of torture by the CPD from 1871 to 1971 and very consciously does not center its focus on Jon Burge, but rather the history of police torture in Chicago before him. The book relies heavily on historical databases of the *Chicago Tribune*, *Chicago Defender*, and Illinois Supreme Court and Appellate Court records. As such, it misses an unknown number of allegations like Brize's which did not receive press coverage and were not appealed in Illinois State Court. The book should be viewed as a useful, but likely still incomplete, picture of torture allegations over that one-hundred-year period. For an examination of police torture connected to Jon Burge, see FLINT TAYLOR, THE TORTURE MACHINE: RACISM AND POLICE VIOLENCE IN CHICAGO (2019). For an examination of police torture from roughly 1971 to the 2000s, see, e.g., LAURENCE RALPH, THE TORTURE LETTERS: RECKONING WITH POLICE VIOLENCE 25–38 (2020). For contemporaneous reports on police torture and abusive detention practices in Chicago, see generally NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMent, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT NOTE (U.S. Wickersham Commission Reports ed., 1931); AARON M. KOHN, THE KOHN REPORT: CRIME AND POLITICS IN CHICAGO (CRIMINAL JUSTICE IN AMERICA) (1974); ACLU, SECRET DETENTION BY THE CHICAGO POLICE: A REPORT (Glencoe, Ill.: Free Press, 1959).

mind the sentiment expressed by Justice William O. Douglas's concurrence in *United States v. Carignan*: "[w]hat happens behind doors that are opened and closed at the sole discretion of the police is a black chapter in the history of every country – the free as well as the despotic, the modern as well as the ancient."[42]

II. "THE THIRD DEGREE IS THOROUGHLY AT HOME IN CHICAGO": A BRIEF HISTORY OF CPD DETENTION PRACTICES UP TO THE 1950S

Ozie Brize's experience may have been on the extreme end of the spectrum, but his claims of suffering psychological and physical torture at the hands of the CPD and its officers were not unique. Instead, it was just one manifestation of a consistent pattern of allegation of brutal and horrific police violence committed against detained persons throughout the nineteenth, twentieth, and twenty-first centuries.[43] Most victims alleged officers tortured them to secure confessions or information related to crimes, although some also alleged officers tortured them solely to punish them for perceived crimes or other transgressions.[44] Starting around 1910, such tactics were often referred to as "the third degree," a catch-all term, which grew to encompass all manner of abusive tactics from holding the detained incommunicado to physical assault to sleep deprivation and more.[45] The term remained in use throughout the 1960s by the press although it almost never appeared in the filings of Section 1983 suits. As such, the term is only used in this paper in reference to contemporaneous utterances.

In an examination of over four hundred torture allegations against the CPD from 1871 to 1971, legal historian Elizabeth Dale identified three different "waves" of torture allegations. The first wave, beginning shortly after 1870, generally consisted of extended incommunicado detention for up to days on end, often in extremely physically uncomfortable settings like small, poorly ventilated rooms which could get incredibly hot or cold. The second wave, beginning around 1910, was more physically violent with allegations of beatings with fists and tools and other violent methods which often left visible marks; victims alleged officers beat them with fists, tools, and subjected them to a host of violent tactics. This left behind a string of broken bones and other very visible physical injuries which were presented to lawyers, judges, and once the City Council, often

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[42] 342 U.S. 36, 46 (1951) (Douglas, J., concurring).
[43] See generally Taylor, *supra* note 40; Ralph, *supra* note 40, at 25–38; NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, *supra* note 40; KOHN, *supra* note 40; ACLU, *supra* note 40.
[44] DALE, *supra* note 10, at 3, 112–3.
[45] For the term's historical origin around 1910, see *id.* at 15.

spurring public and judicial backlash.[46] This wave was finally ended by the Supreme Court's 1936 ruling in *Brown v. Mississippi*.[47]

The decision, barring the use of confessions which officers openly admitted were tortured out of the defendants, prompted a shift towards allegations of "hidden" violence.[48] In contrast to the second wave's trail of broken bones and bruised bodies, this violence did not leave lasting marks after more than a few days. This meant actions like striking victims on the kidneys and stomach, striking them across the face with a blackjack (night stick), slapping them in the face, or knocking the wind out of them.[49] Perhaps the most gruesome allegation was the use of a tactic known as "hanging him up": a practice where officers would handcuff the detained with their hands behind them, loop a rope through the handcuffs and over a door, and lift the victim up until their toes barely touched the floor. This would apparently leave no mark if the victim's wrists were bandaged ahead of time.[50] Evidence of these tactics would typically disappear by the time the victim was out of police custody, making it was easier for offending officers to maintain deniability. This reduction of torture allegations into questions of credibility likely also drove the violence into the shadows against the most marginalized and vulnerable Chicagoans who had little credibility in a courtroom against a police officer.[51]

Indeed, in the decades after *Brown*, alleged victims were also increasingly Black Chicagoans.[52] This was a particularly deadly combination for Chicago's poor Black communities as the CPD's growing turn to more punitive, aggressive, and frequent policing of Black neighborhoods effectively encouraged officers to make as many arrests as possible, ensuring that Black Chicagoans had a much higher chance of being detained and abused by the police.[53] As the torture and abuse changed after *Brown*, the response of the broader legal system remained the same: virtually blanket indifference; countless people inside and outside of court continued to allege they faced torture and abuse inside police stations, but judges, juries, and prosecutors generally continued to turn a blind eye.[54] By the 1950s, the claims were split increasingly

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[46] *Id.* at 122. The use of abusive detention practices by law enforcement was by no means particular to Chicago. This is best encapsulated by the findings of the National Commission on Law Observance and Enforcement, commonly referred to as the Wickersham Commission for its chair, former attorney general George Wickersham. The commission dedicated a whole report to the topic in LAWLESSNESS IN LAW ENFORCEMENT. *See* NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMent, *supra* note 41. One of the central focuses of the report was on the nationwide use of the third degree, which the Commission identified as being both "widespread" (*id.* at 4) and "secret and illegal" (*id.* at 3) for violating a variety of "fundamental rights." (*id.* at 3). The Commission claimed that "courts give no approval to any of these practices" (*id.* at 4) and "convictions of crime based upon these confessions of guilt secured by such methods are very generally set aside," yet the practice persisted (*id.* at 3–4). In the report, the Commission devoted 15 pages to Chicago alone, noting "the third degree is thoroughly at home in Chicago." *Id.* at 125. There, "[i]llegal detention and detention *incommunicado* are said to be common," with officers frequently detaining persons and holding them for days without access to the outside world. *Id.* at 127. While keeping people detained, "violence is regarded as general and prevailing." *Id.* at 126.

[47] Brown v. Mississippi, 297 U.S. 278 (1936); *see also* DALE, *supra* note 10, at 122.

[48] DALE, *supra* note 10, at 122.

[49] *Id.* at 102–07.

[50] ACLU, *supra* note 41, at 11–5; *see also* Letter from Thomas B. Morgan to Donald Page Moore (Apr. 21, 1958) (on file at the University of Chicago Library, Special Collections Research Center).

[51] ACLU, *supra* note 41, at 5 (asserting, without quantifying, that "the poor, and racial and ethnic minorities" disproportionately bore the brunt of police lawlessness).

[52] DALE, *supra* note 10, at 102–07, 120.

[53] BALTO, *supra* note 17, at 123–30.

[54] *See* DALE, *supra* note 10, at 114–17.

unequally along the axis of race, as Black men made up an ever-growing amount of the alleged victims.[55]

Generations of activists, lawyers, judges, legislators, and concerned residents have acknowledged the extent of this behavior and have been continually grappling with how to deal with this problem since at least 1874, when Illinois outlawed the use of violence or imprisonment to compel confessions.[56] This law failed to eradicate the problem; in Illinois and Chicago, there were local campaigns to end these practices almost every decade from around the turn of the twentieth century onward. By the mid-1950s, these efforts included laws and legislation banning abusive practices, public movements to shame the CPD, frequent rebukes and sanctions from individual judges, and more.[57] At the national level, in 1936, the Supreme Court at least nominally recognized that torture and coercion in the service of compelling confessions made a mockery of the Fourteenth Amendment's guarantee that no "State deprive any person of life, liberty, or property, without due process of law."[58] Despite all this, allegations of torture persisted throughout the twentieth century.[59]

III. "CRIMINALS, SIMPLY BECAUSE THEY ARE CRIMINALS … SHOULD BE PICKED UP AND LOCKED UP ON EVERY OCCASION POSSIBLE": ILLEGAL CPD DETENTION PRACTICES IN THE 1950S

By the 1950s, the Supreme Court, Illinois law, and CPD policy—in theory, at least—were in agreement that incommunicado detention for extended periods of time was unacceptable. This all stemmed from the same understanding that, even absent any other physical or psychological abuse, being detained in police custody with no definite release in sight has the capacity to inflict tremendous psychological trauma. The Supreme Court maintained a stance of voiding information obtained from extended incommunicado detention[60] and Illinois law mandated that:

> It shall be the duty of every sheriff, coroner, constable and every marshal, policeman, or other officer of any incorporated city, town or village, having the power of a sheriff or constable, when any criminal offense or breach of the peace is committed or attempted in his presence, forthwith to apprehend the offender and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and without delay to serve and execute all warrants, writs, precepts and other process to him lawfully directed.[61]

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[55] *Id.* at 120.
[56] ACLU, *supra* note 41, at 12.
[57] For the first decade of the twentieth century, see DALE, *supra* note 10, at 11–15. For the 1910s, see *id.* at 15–20. For the 1920s, see *id.* at 21–25. For the 1930s see *id.* at 25–7, 102–3. For the 1940s, see *id.* at 105–6.
[58] U.S. CONST. amend. XIV, § 1; Brown v. Mississippi, 297 U.S. 278, 286–87 (1936).
[59] DALE, *supra* note 10, at 121–13. For torture allegations before 1971, see generally *id.* For allegations after, see TAYLOR, supra note 41, and RALPH, supra note 41.
[60] DALE, supra note 10, at 107–8; *see also* Chambers v. Florida, 309 U.S. 227, 235–37 (1940); Ward v. Texas, 316 U.S. 547, 555 (1942); Ashcraft v. Tennessee, 322 U.S. 143, 148–53 (1944); Stein v. New York, 346 U.S. 156, 168–70 (1953).
[61] Complaint at 3, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. Feb. 17, 1956) (on file at the National Archives at Chicago) (quoting 38 ILL. COMP. STAT. ANN. 655).

The standards were stronger in Chicago where state law mandated that in Cook County "any person so arrested shall have the right to be brought immediately before the Municipal Court in the District in which he is arrested, or if there be no judge then in attendance upon such court, before the Municipal Court in any other district at which there may be then a judge in attendance, to be dealt with by such court according to law."[62] The CPD even had its own watered-down regulations in the 1950s dictating a similar goal:

> In case of an arrest with or without a warrant, the offender shall be brought before a judge of the municipal court as speedily as possible, as an officer becomes a trespasser if he delays longer than the necessity of the case compels. This, however, does not apply when the offender is a well-known criminal who is held pending investigation; but in such cases, however, complaint shall be filed within twenty-four hours, if possible, and continuance applied for.[63]

There is a notable difference in the CPD regulations making an exception for a "well-known criminal" and using looser language in general, but still the spirit also dictates that officers should have brought arrested and detained people to a magistrate as quickly as possible.

This should have made it crystal clear that holding the detained incommunicado for extensive periods of time was an unacceptable police practice. In theory there was a strict, standard procedure CPD officers were supposed to follow upon arrest. They were supposed to bring the arrested to the station, "book" them, and then either release them on bail or bring them before a magistrate to be charged. "Booked" here meant that the officer wrote down what the detained person was being charged with, set their bail (if applicable), and decided which branch of the municipal court the detained person would be taken to (if applicable).[64] This was all supposed to be done to avoid incommunicado detention, because before someone was booked, they were effectively being held incommunicado.

In reality these rules were barely even treated as guidelines from the Police Commissioner on down. Timothy O'Connor, Commissioner from 1950 to 1960, openly displayed flagrant disregard for the rules and underlying principles surrounding incommunicado detention. In the summer of 1952, the CPD announced to the press that all persons arrested on suspicion of pickpocketing or "confidence game" would be detained incommunicado.[65] In a 1953 report, O'Connor explicitly stated: "My policy has always been that while it may be illegal, and I have received some complaint from civil-liberties group relative to orders to pick up some criminals, simply because they are criminals, I still think they should be picked up and locked up on every occasion possible."[66] Later in 1954, despite being publicly rebuked by a municipal judge for detaining a man for more than 10 hours with no evidence, O'Connor told the *Chicago Tribune* that "we will continue functioning as we have in the past."[67] O'Connor's own comments over the years provided ample evidence that no one in the CPD was taking the requirements to avoid extended

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[62] *Id.* at 4, Guzik v. O'Connor (quoting 37 ILL. COMP. STAT. ANN. 406).
[63] Wakat v. Harlib, No. 56-C-36 (N.D. Ill. May 31, 1957) (on file at the National Archives at Chicago) (excerpts from rules and regulations of the Police Department of the City of Chicago).
[64] ACLU, *supra* note 41, at 24–25.
[65] Charles Liebman, Letter to Timothy O'Connor, July 2, 1952, American Civil Liberties Union. Illinois Division. (on file at the University of Chicago Library, Special Collections Research Center) (quoting *68 Detectives Join 1,000 Cops at Convention*, CHI. DAILY TRIB., Jul. 2, 1952, at 6).
[66] ACLU, *supra* note 41, at 19 (quoting Kohn, *supra* note 41, at 87).
[67] ACLU, *supra* note 41, at 20.

detention seriously. This says nothing of the more extreme violence committed against the detained, which likely continued to flourish in the shadows as well.

IV. "YOU'VE BEEN HARASSING THE NOBLE CHICAGO POLICE FORCE AGAIN": THE ILLINOIS DIVISION ATTEMPTS TO MAKE CHANGE

It is within this context in the mid-1950s that we begin to focus on the Illinois Division of the ACLU and its concerted effort to end illegal extended detention and abusive detention practices in general. Attorney and publisher Charles Liebman and the Police and Criminal Law Committee, which he led, had already spent years constantly writing to and lobbying the Police Commissioner and other actors in Chicago to rectify civil liberties violations which came to their attention.[68] It is unclear how frequently the CPD responded to the Illinois Division's letters, but their volume led one man to write to the Illinois Division: "[Y]ou've been harassing the noble Chicago Police force again, for which I'm grateful; they need it."[69]

One of the Police and Criminal Law Committee's most important contributions was an attempt to quantify, to a degree, the extent of the problem of illegal detention. In 1956, the Committee began a study of the practice led by Donald Page Moore, then a staff attorney from 1956–58. In the study, they sampled 2,038 criminal and quasi-criminal cases from 1956 filed in municipal court. Each case was supposed to be accompanied by an arrest slip detailing when the accused was arrested and when they were booked. Since Illinois law mandated arrested persons be promptly brought to court,[70] the gap between those times should have been minimal, as booking was the first step in the process; however, in reality it was often hours or even days. Fifty percent of detained persons charged in Felony Court had been held without being booked for more than seventeen hours, and ninety-seven people were held for two days or more before being booked. The distribution of time between booking and arrest was not evenly distributed between the various municipal courts or police departments either. For example, as Figure 2 demonstrates, at least half of the Felony Court times were longer than seventeen hours. Further, a third of the slips did not contain any booking times at all; the Detective Bureau was an especially egregious offender, failing to record a booking time on virtually all of their slips.[71] One can only speculate how long people were detained in those cases. Overall, the report's authors believed the lack of booking times and other typical CPD practices meant the study "significantly understates the actual length of detentions in the cases which were sampled."[72]

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[68] *See* Letter from Jean Shanberg, Administrative Assistant, to Jim Hurlbut, National Broadcasting Company (Jan. 27, 1960) (on file at the University of Chicago Library, Special Collections Research Center); Memo from Martin Bickham to Ed Meyerding (Mar. 25, 1952) (on file at the University of Chicago Library, Special Collections Research Center); Letter from Charles Liebman to Timothy J. O'Connor, Commissioner, Chicago Police Department (July 17, 1952) (on file at the University of Chicago Library, Special Collections Research Center).

[69] Letter from John W. Coursell to American Civil Liberties Union (Oct. 4, 1959) (on file at the University of Chicago Library, Special Collections Research Center).

[70] Complaint at 4, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. Feb. 17, 1956) (on file at the National Archives at Chicago) (quoting 37 ILL. COMP. STAT. ANN. 406).

[71] ACLU, *supra* note 41, at 20–28.

[72] *Id.* at 24.

ACLU Detention Time Survey, Nine Municipal Court Branches, 1956
Basic Totals and Computations

Branch of Court	No. 1956 Cases Filed	Sample Size		Time Unknown	< 17 Hours	≧ 17 Hours	≧ 24 Hours	≧ 36 Hours	≧ 48 Hours	≧ 60 Hours	≧ 72 Hours
27	22,100	341	observed no.	154	128	59	22	10	3	1	0
			% of sample	45.16	37.54	17.30	6.45	2.93	.88	.29	.00
			proj. total	9,981	8,296	3,824	1,426	648	194	65	——
34	5,954	163	observed no.	27	108	28	16	7	4	4	3
			% of sample	16.56	66.26	17.18	9.82	4.29	2.45	2.45	1.84
			proj. total	986	3,945	1,023	584	256	146	146	110
36	5,370	79	observed no.	2	68	9	4	1	0	0	0
			% of sample	2.53	86.08	11.39	5.06	1.27	.00	.00	.00
			proj. total	136	4,622	612	272	68	——	——	——
40	10,939	185	observed no.	53	115	17	9	4	0	0	0
			% of sample	28.65	62.16	9.19	4.86	2.16	.00	.00	.00
			proj. total	3,134	6,800	1,005	532	237	——	——	——
42,42A,55	15,397	342	observed no.	76	163	103	59	21	9	4	1
			% of sample	22.22	47.66	30.12	17.25	6.14	2.63	1.17	.29
			proj. total	3,422	7,338	4,637	2,656	945	405	180	45
44	7,246	334	observed no.	101	66	167	121	71	31	15	8
			% of sample	30.24	19.76	50.00	36.23	21.26	9.28	4.49	2.40
			proj. total	2,191	1,432	3,623	2,625	1,540	673	325	174
57	12,325	242	observed no.	102	31	109	71	37	11	2	1
			% of sample	42.15	12.81	45.04	29.34	15.29	4.55	.83	.41
			proj. total	5,195	1,579	5,551	3,616	1,884	560	102	51
Over-all for nine branches	79,331		(weighted) % of sample	31.57	42.87	25.56	14.76	7.03	2.49	1.03	.48
			proj. total	25,044	34,012	20,275	11,712	5,578	1,978	818	379

Figure 1. Table of observed detention times for sampled cases along with projected totals for all arrests in 1956. ACLU, *supra* note 41, at 36.

Based on its sample, the ACLU estimated approximately 20,000 defendants were held for over seventeen hours in the nine branches of municipal court they studied—there were sixteen total branches at the time.[73] As Figure 1's projected totals based on their sample demonstrate, the extent of illegal detention was staggering. This detention was not the only problem. Those detained were typically held incommunicado in the time between being arrested and booked, putting them at the mercy of the officers holding them.[74] The study did note that the longer detention times could be partially explained by officers arresting someone and waiting until their next shift to book them.[75] However, administrative delays do not diminish the harm of being held incommunicado for the detained. That is to say nothing of what other abuses they might endure in police custody, whether it be physical violence or the psychological effect of extended questioning and sleep deprivation for potentially days on end.

[73] *Id.* at 26. For a description of the statistical methods used to arrive at this projection, see *id.* at 35–41.
[74] *Id.* at 24.
[75] *Id.* at 28.

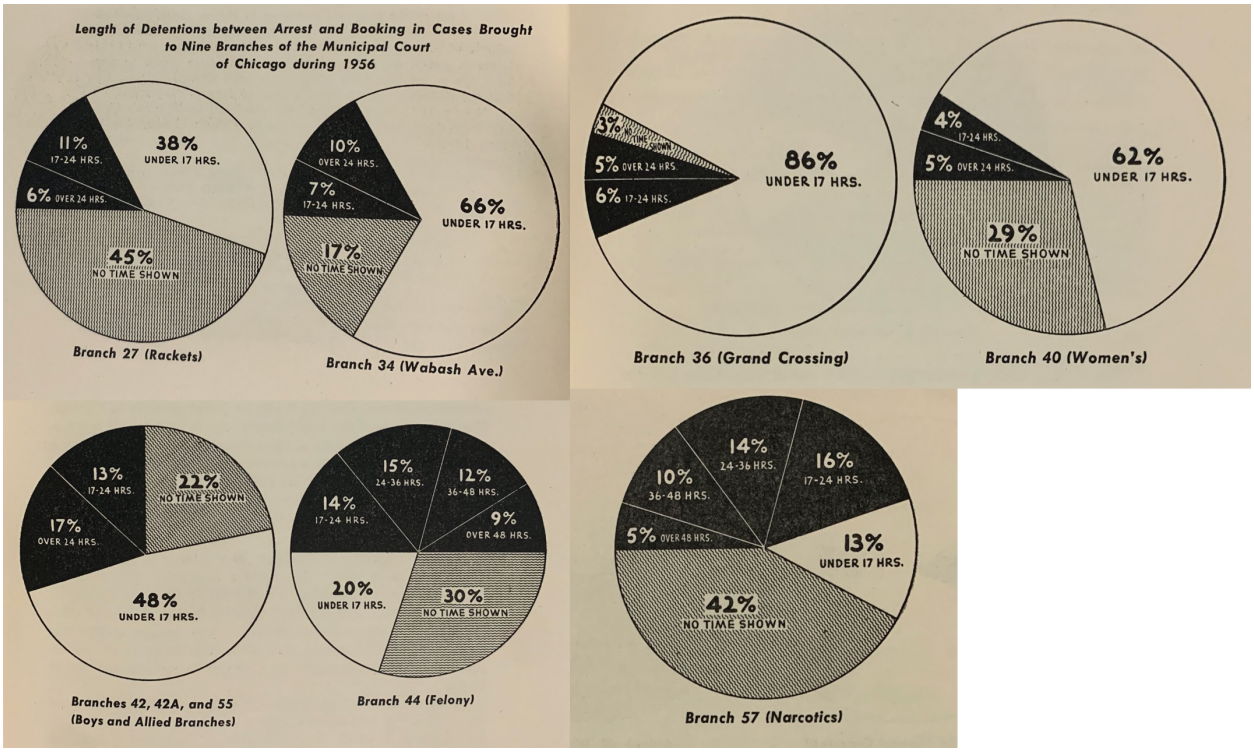

Figure 2. Length of Detentions between Arrest and Booking in Cases Brought to Nine Branches of the Municipal Court of Chicago during 1956. ACLU, *supra* note 41, at 26–28.

This study was just one example of LMPL's knowledge of the widespread extent and severity of abusive police detention practices. The Illinois Division had long lobbied City Hall to improve police practices; they had secured a campaign pledge from Mayor Richard J. Daley in the 1955 mayoral election that the police would be required to promptly book and bring arrested persons to court and that disciplinary proceedings would be required when the officers did not follow those requirements.[76] However, the Secret Detention report demonstrated how hollow promises from City Hall could ring. Just like countless activists, legislators, lawyers, and judges before them, Charles Liebman, his committee, and all the other lawyers involved kept running into the same problem of City Hall inaction, and thus complicity, and acceptance and approval from the top of CPD's leadership on down. As the Secret Detention report demonstrated, the third degree, torture, and other illegal police detention practices were still persistent problems even after decades of attempts to stamp them out.

A. "The opportunity offered through civil actions for making indifferent city governments responsive to their duties is staggering": Creating the Theory Behind the Strategy

Even before Secret Detention's publication in the early 1950s, the Illinois Division had begun to formulate a new strategy to combat illegal police practices. They wanted to use the Chicagoland legal industry to turn civil lawsuits into a financial tool to compel the City to change its behavior. Technically, it was already possible to sue police officers for misconduct in Illinois

[76] *Id.* at 33–34.

or federal civil court. Illinois state law provided grounds to sue individual officers for false arrest, imprisonment, and brutality. In theory, Section 1983 could provide a cause of action for some brutality claims; however, the restrictive interpretation of the federal rights protected by Section 1983 before *Monroe* meant that federal suits were rarely successful.[77] This meant suits were typically filed in state court, where plaintiffs occasionally won.[78] However, under Illinois law, in state cases, plaintiffs could not sue municipalities themselves; instead, they had to sue officers directly.[79] If the plaintiffs won, then the officers would have to pay them and then, as long as their conduct did not result from the officer's willful misconduct, the municipality that employed them would reimburse them for the judgment.[80] In practice, the City would frequently drag its feet on this, often resulting in successful plaintiffs needing to take the City to court again when the officer they won against could not pay the judgment and the City refused to pay.[81]

Despite their chicanery, City leaders claimed that the cost of civil suits stemming from police misconduct had been a major cause for concern for the City's coffers. In the 1950s, settlements and awards reported by the Illinois Division ranged anywhere from several hundred dollars to $80,000.[82] In 1955, First Assistant Corporation Counsel John C. Melaniphy said the City was "getting judgments as high as $200,000 against policemen," and that "something ha[d] to be done," since "the city [could] be bankrupt by these suits shortly."[83] However the awards in court

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[77] *See* Clarke, *supra* note 18, at 158.

[78] Some examples appear in a 1958 Illinois Division press release referencing cases from May 1957 to January 1958 include. *See* Press Release, ACLU Ill. Div. (June 17, 1958) (on file at the University of Chicago Library, Special Collections Research Center) ("Julia Delacourt, $1,500, settlement . . . Eugene Bechtel, $900. jury verdict . . Richichi v. Bielski, $41,000. jury verdict (new trial since ordered on sole question of extent of brain damage to plaintiff) . . . Gloria Pughsley, $500. settlement . . . Fink v. Hock, $80,000. settlement."). To the best of my knowledge, there are no comprehensive statistics on how often plaintiffs were successful in state court. The difficulty in answering this question is further compounded by the fact that many of the state court records from that time period have been destroyed.

[79] *See* Motion to Strike the Complaint and Dismiss the Cause of Action at 3, Turner v. Chicago, No. 63-C-775 (N.D. Ill. Feb. 27, 1964) (on file at the National Archives at Chicago) ("Until 1939, policemen had traditionally been held individually liable for their torts, committed in the scope of employment, while municipalities enjoyed complete immunity." *See id.* at 6.). *See also* City of Chicago v. Williams, 182 Ill. 135, 142 (1899). In that year, the Illinois Supreme Court extended the doctrine of sovereign immunity to include policemen as well as their municipal employers. In Taylor v. City of Berwyn, 372 Ill. 124 (1939), the Court relieved a defendant police officer of liability for injuries, inflicted with his automobile, while in pursuit of a criminal in flight. Reacting to this decision, the State Legislature enacted 24 ILL. REV. STAT. 1-15 (1941). This statute removed the cloak of sovereign immunity from municipalities. The city thus became directly and solely liable for the negligent operation of police motor vehicles. In 1945, the statute was amended to its present form. *See* 24 ILL. REV. STAT. 1-4-5 (1963) ("In case any injury to the person or property of another is caused by a member of the police department of a municipality having a population of 500,000 or over, while the member is engaged in the performance of his duties as policeman, and without the contributory negligence of the injured person or the owner of the injured property, or the agent or servant of the injured person or owner, the municipality in whose behalf the member of the municipal police department is performing his duties as policeman shall indemnify the policeman for any judgment recovered against him as the result of such injury, except where the injury results from the willful misconduct of the Section."). This new enactment had the effect of broadening the City's base of liability to include any tortious act. However, the City now became liable only as an indemnitor to the offending officer, and could no longer be the object of a direct suit.

[80] Brief in Support of Motion to Strike the Complaint in a Supplemental Proceeding in Aid of a Judgement Against the City of Chicago at 3, Carpenter v. Brooks, No. 55-C-946 (N.D. Ill. Jan. 23, 1958) (on file at the National Archives at Chicago) (citing 24 ILL. REV. STAT. 1953/1-15 (1945)).

[81] McMullen, *supra* note 22, at 11.

[82] ACLU Ill. Div., *supra* note 78.

[83] Letter from Law Offices of Gottlieb and Schwartz to F. Raymond Marks, Jr., ACLU (Mar. 28, 1955) (on file at the University of Chicago Library).

were likely not the amount the City paid. While the ACLU identified $156,400 worth of judgements against CPD officers from May of 1957 to January of 1958, City records showed the City actually paid only $35,016 in 1957 and $28,000 in 1958 related to civil suit damages—the discrepancy between the two numbers was because of the City's aforementioned chicanery in actually paying judgement costs.[84] Still, either number was a small amount compared to the CPD's annual appropriation of over $59 million per year at that point, a number which only continued to grow in the future, reaching well over $113 million by 1967.[85] However, in an ominous sign of what was to come, Melaniphy's proposed solution to the cost of civil suits was not to get the CPD to force changes in the officer behavior leading to the suits, but to limit the amount the City would reimburse officers per civil case to $20,000.[86] Melaniphy's efforts reflected an attitude of identifying the cost of civil suits as a problem but not seeing a change in officer behavior as a solution.

Regardless of Melaniphy's proposed solution, his comments on the financial threat from just the suits in 1955 gave LMPL good reason to think the cost of civil suits could easily be made into a major financial liability that the City would notice. Per Section 6-8 of the City's Municipal Code, the Law Department was required to produce and submit a report each month to the Council of all the lawsuits and administrative actions where the City had to pay money.[87] So City Hall and the Council, at least in theory, were constantly aware of the lawsuits' cost to the City. Thus, if the number of lawsuits became commensurate with the prevalence of police violence and misconduct, Liebman and company had good reason to expect that costs to the City could snowball rapidly. Just the shocking frequency of *documented* illegal detention uncovered in the Illinois Division's 1956 study alone suggests there were plenty of potential plaintiffs out there. If you assume the accuracy of their estimation in the Secret Detention report that over 20,000 people were arrested and detained incommunicado for at least seventeen hours, that provides a large pool of potential plaintiffs who could have strong grounds to sue.[88] That is to say nothing of those who experienced other forms of abuse not documented through arrest slips. Given city officials' consternation over the cost of civil suits in 1955, there was ample reason to suspect that a large increase in suits filed against the police going forward would create a huge headache for City Hall and CPD leaders.

LMPL cared so much about creating at least the prospect of a massive financial liability stemming from civil suits over police misconduct because they thought this would drive positive *top-down* reform. This idea did not emerge in a vacuum; they would often reference and likely drew inspiration from legal scholarship on the potential of private civil litigation to prevent tortious conduct by municipal employees.[89] Specifically applied to the CPD, LMPL thought civil lawsuits

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[84] McMullen, *supra* note 22, at 11.

[85] CHICAGO POLICE DEP'T, ANNUAL REPORT: YEAR ENDING 1958 5, 21, 22, 65, 66, 68 (1958), https://www.chicagocop.com/wp-content/uploads/Chicago-Police-Department-Annual-Report-1958.pdf.

[86] Letter from Law Offices of Gottlieb and Schwartz, to F. Raymond Marks, Jr., ACLU (Mar. 28, 1955) (on file at the University of Chicago Library, Special Collections Research Center).

[87] *See* Memo from John C. Melaniphy, Corporation Counsel, to the City Council of the City of Chicago (Mar. 6, 1963) (on file at the University of Chicago Library, Special Collections Research Center). Copies of these monthly reports are still kept by the City Clerk's office. Unfortunately, my request for a decade of these records was rejected for being too burdensome, and the outbreak of COVID-19 prevented the fulfillment of a request for a year of said records. As such, they could not be factored into my analysis.

[88] ACLU, *supra* note 41, at 26. For a description of the statistical methods used to arrive at this projection, see *id.* at 35–41.

[89] *See, e.g.*, Plaintiff Jimmie Moorelander's Brief in Opposition to the Motions to Dismiss the Complaint of Defendants Frank F. Tassone and the City of Chicago at 31, Moorelander v. Tassone, No. 58-C-689 (N.D. Ill. Jul. 15, 1958) (on file at the National Archives at Chicago) [hereinafter Moorelander Plaintiff Brief in Opposition to

would continue to increase the cost of police misconduct and brutality to the City until public anger over rising costs or fear of said anger would force City Hall and CPD leadership to crack down on the problematic police behavior.

This logic was most clearly distilled in the brief Moore, Liebman, Liebman, and several other lawyers submitted to the Supreme Court in *Monroe*:

> Imposition of municipal liability applies deterrent pressures at the only level where they can be truly effective-the level of policy decision and command. If the City must pay for the wrongful acts of its agents, the public will quickly know of it. The resultant pressures will be reflected in the policy decisions and command performance of those who govern the City and rule its police department. Disciplinary controls will be exercised at the top-level where it really counts in a modern big city police department which more nearly resembles a large business corporation than it does an old fashioned town constabulary. Things will change. Not only will past injustice be redressed, but, far more important, future injustice will be prevented.[90]

Explicit in this logic were two crucial assumptions: first, that the cost could reach a threshold high enough for the City to care about stopping it and second, that upon caring, the City actually could and would deal with the underlying problematic police behavior, as opposed to just cutting spending elsewhere. Interestingly, LMPL never explicitly stated or even hinted at what that cost might actually be. Their position implies they thought the current amount the City spent, likely no more than $40,000 a year total for both state and federal cases, was too low.[91] Yet they also thought the cost would not get too high before the City made changes. In their brief to the Supreme Court in *Monroe*, they rebuffed the claim that there was a risk of Section 1983 bankrupting the City, arguing a favorable ruling "would not result in imposing any substantial financial hardship upon American municipalities."[92] This made sense under LMPL and the Illinois Division's broader view that "illegal searches and seizures and police brutality do not arise out of negligence, but are peculiarly a reflection of the policies and attitudes in the top echelons of a police department, [so] it is inevitable that holding the municipality and the misfeasant officers to vigorous account will result in a change in such policies and attitudes."[93]

Indeed, the Illinois Division operated under the core belief that the CPD was a flawed but ultimately salvageable institution. They thought the CPD just needed leadership with the right

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Motions to Dismiss]; Plaintiffs' Brief in Opposition to the Motions to Defendants Motion to Dismiss at 49, 51–52, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. Jan. 12, 1959) (on file at the National Archives at Chicago) [hereinafter Cedeno Plaintiff Brief in Opposition to Motions to Dismiss]; Plaintiffs' Brief in Opposition to the Motions of Defendants Motion to Dismiss at 33, 35–36, 36–37, Monroe v. Pape, No. 59-C-329, (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago) [hereinafter Monroe Plaintiff Brief in Opposition to Motions to Dismiss]; Monroe Petitioners' Brief, *supra* note 29 (citing GREEN, *supra* note 26; Edgar Fuller and A. James Casner, *Municipal Tort Liability in Operation*, 54 HARV. L. REV. 437, 437–62 (1941)) (all citing Caleb Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 MINN. L. REV 493, 493–516 (1955)); *see also* GREEN, *supra* note 26 (citing Frederick F. Blachly and Miriam E. Oatman, *Approaches to Governmental Liability in Tort: A Comparative Survey*, 9 L. & CONTEMP. PROBS. 181, 181–213 (1942)).

[90] Monroe Petitioners' Brief, *supra* note 25, at 28.

[91] This based on the fact that records showed the City paid $35,016 and $28,000 in costs related to police lawsuits in 1957 and 1958, respectively. *See* McMullen, *supra* note 21, at 11.

[92] Monroe Petitioners' Brief, *supra* note 25, at 63.

[93] *Id.*

priorities to institute top-down policy changes and "disciplinary controls"[94] to fix its problems and Section 1983 would help get them there. Outside of this legal strategy, this was reflected in the Illinois Division's advocacy for much higher officer pay, more training, and stronger regulations and rules.[95] Their legal strategy focused so much energy on municipal liability because they wanted to make sure the City, not individual officers, had to pay for police misconduct from civil suits. They viewed the problem of police misconduct as an institutional problem that they thought the legal industry could help fix via private civil suits.

As one of the articles LPML drew from noted, LMPL's plan for civil suits essentially relied on the idea that "if through the tort actions we expect private plaintiffs to carry a major part of the load of enforcing the public policy against police illegality, there must be an adequate inducement to sue."[96] The "adequate inducement to sue" hinges on one crucial fact: victims of police violence with legitimate claims must be able to win their cases and get paid high enough amounts with enough frequency for future potential plaintiffs and lawyers to think filing a civil suit is worthwhile. For this to occur, victims of police violence need the following four conditions: grounds to sue, access to affordable legal representation, the ability to receive a fair trial, and the ability to collect any awards. LMPL's strategy, if successful, would secure the first and the last conditions, but not the middle two. However, if even one of the middle conditions is absent, there is scant reason to think plaintiffs or lawyers would be induced to sue at a high frequency.

It is precisely with these two conditions where LMPL's plan likely fell apart. In many ways, the ability to afford legal representation and receive a fair trial were likely tied together by the strands of race and class. Since most allegations of police torture and abusive detention practices tended to center on techniques of hidden violence, most cases would boil down to a question of credibility in a courtroom.[97] For a well-to-do white Chicagoan with money to spend on lawyer's fees, it seems like a fair assumption that if they were brutalized by police, they could afford an attorney, sue, and possibly win their suit. However, for a poor Black Chicagoan with a prior criminal conviction, that assumption does not seem so reasonable. When it comes to the problem of police violence, where the latter, not the former Chicagoan, would probably be more likely to be the victim,[98] the link between securing standing and municipal liability and a victorious lawsuit is much less of a given. Indeed, these problems seem tied to larger, more intractable societal problems with race, class, and access to affordable legal services. Further, even when a suit is successful, the question arises if sufficient damages can be secured to cover the costs of having to potentially relive the traumatic event. LMPL were perhaps aware of these problems as one article they cited, *Tort Remedies for Police Violations of Individual Rights* by law professor Caleb Foote, explicitly talks about these pitfalls in great length.[99] However, as salient as these concerns might seem, LMPL's legal strategy could not directly fix those issues and they still pressed ahead with their plan.

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[94] *Id.* at 42.
[95] ACLU, *supra* note 41, at 30–34.
[96] Foote, *supra* note 89, at 515.
[97] DALE, *supra* note 10, at 102–07.
[98] To my knowledge, there are no attempts from the 1950s to quantify the extent to which policing was skewed along race and class lines, but some sources from that era essentially argue that "[m]ost police action operates at lower levels of society and the great majority of persons who are subjected to illegal arrests or searches and who are therefore potential tort plaintiffs come from the lowest economic levels, or minority groups, or are criminals or suspected of criminality." Foote, *supra* note 37, at 500; *see also* ACLU Ill. Div., *supra* note 78.
[99] See Foote's discussion on "the way in which the tort remedies, instead of being available 'to all equally,' have for this reason never realized their deterrent potential." Foote, *supra* note 37, at 504–08.

The Illinois Division explicitly confirmed as much in 1954. After seeing an article in the newspaper about two private attorneys who were representing a man in a lawsuit alleging CPD officers detained and beat him, a staff attorney from the Illinois Division sent an unsolicited letter to the lawyers offering words of praise. Discussing their recent "initiative" of bringing "actions against the Chicago Police Department and other local police departments, wherever the facts of the situation seem to merit such action," he commended them for working on a similar suit.[100] He expressed happiness that the Illinois Division's hope that their "initiative in such suits would stimulate the rest of the Bar into bringing similar actions wherever merited" appeared to be bearing out.[101] It is clear they hoped to harness the legal services industry to "give municipalities incentive to restrain police lawlessness."[102]

B. Putting the Plan into Action

In federal court, LMPL embarked on a campaign of strategically filing lawsuits to challenge the status quo on Section 1983.[103] Alongside filing these lawsuits, they also sought out press coverage, hoping that lawyers would pay attention if they ended up winning. Before 1961, the Section 1983 litigation landscape was sparse, and most of the Section 1983 suits filed against the police before 1961 were unsuccessful. The two notable exceptions were *Wakat v. Harlib*[104] and *Carpenter v. Brooks*,[105] two cases LMPL were not involved in.[106] In *Wakat*, Leslie George Wakat was a former machinist who was detained on suspicion of burglary and tortured in police custody.[107] He was first arrested and detained for three days, released at the order of a judge, and rearrested and detained for six more days upon finally "confessing" to the burglary.[108] He was subsequently hospitalized for broken bones and extreme bruises, yet still convicted in criminal court.[109] Wakat sued the officers involved for $300,000 under Section 1983 and eventually won a $15,000 verdict against the officers involved.[110] In a tragic omen of what was to come, the sergeant in charge, Peter Harlib, was never disciplined and remained on the force despite being found guilty of beating the confession out of Wakat and later lying about matters related to the case.[111]

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[100] Letter from F. Raymond Marks, Jr. to James D. Reynolds, Esq. (Dec. 24, 1954), (on file at the University of Chicago Library, Special Collections Research Center).
[101] Id.
[102] Proposed Outline of Amicus Brief in *Molitor* Case, ACLU Ill. Div. (on file at the University of Chicago Library, Special Collections Research Center).
[103] In 1952, Charles Liebman had written to the ACLU chapter in Illinois to inquire "as to the possible use of civil suits for defense under the federal Civil Rights Act against police officials practicing brutality." Letter from Charles Liebman to Herbert Monte Levy, Staff Counsel, ACLU (Oct. 20, 1952) (on file at the University of Chicago Library, Special Collections Research Center). In 1956, Liebman filed *Guzik*. In 1957, Ernst Liebman and Moore filed *Moorelander* and Pressman joined them on *Cedeno*. In 1959, between them Ernst Liebman, Moore, and Pressman filed five lawsuits: *Monroe*, *Gordon*, *Hardwick, Baumgarten, Durham.*
[104] No. 56-C-36 (N.D. Ill. May 31, 1957).
[105] No. 55-C-946 (N.D. Ill. Jan. 23, 1958).
[106] *See* Complaint, Wakat v. Harlib, No. 56-C-36 (N.D. Ill. May 31, 1957) (on file at the National Archives at Chicago); Complaint, Carpenter v. Brooks et al., No. 55-C-946 (N.D. Ill. Jan. 23, 1958) (on file at the National Archives at Chicago).
[107] Complaint at 1–3, Wakat v. Harlib, No. 56-C-36 (N.D. Ill. May 31, 1957) (on file at the National Archives at Chicago).
[108] *Id.*
[109] *Id.*
[110] ACLU, *supra* note 41, at 14–17.
[111] *Id.* at 17.

In *Carpenter*, Augusta Carpenter, a Black woman, sued several officers for brutally arresting her and holding her incommunicado for "many hours," and eventually won a jury trial with a $15,000 verdict against one officer and $2,500 against another.[112] The other officers found guilty in *Wakat* and *Carpenter* were likely never disciplined as well.[113] To add insult to injury, the officers and the City in *Carpenter* only paid $2,500 of Carpenter's award, forcing Carpenter to file a new complaint against them in 1964 to collect on the remaining $15,000 she was owed.[114] Even though LMPL were not involved in litigating these cases, the cases represented an important part of LMPL's plans of "stimulating the Bar" as the cases received coverage in the press for their high judgements and brazen allegations contained within.[115] If more Section 1983 cases had outcomes like *Carpenter* and *Wakat*, LMPL's plan would be well on its way to success.

Despite the daunting litigation landscape, LMPL had a plan to make the landscape more favorable to plaintiffs. Charles Liebman first appeared as the attorney of record in a Section 1983 case in 1956 in *Guzik v. O'Connor*.[116] In that case, he represented Jack Guzik, and later his wife Rose Guzik after his death, against several CPD officers in a lawsuit for $50,000.[117] Guzik alleged that officers illegally arrested him without cause and detained him several times over the course of four years, culminating in an arrest where they brought him to a building that had been condemned as "being unsafe and a fire hazard," and forced him to climb up and down several flights of stairs despite knowledge that it would exacerbate his heart problem.[118] Guzik died shortly after being released, which his wife blamed on his time in police custody.[119] The officers involved denied everything.[120] Liebman was able to successfully fend off the City's motion to dismiss for lack of standing and bring the case to trial, but he lost after the judge directed the jury to return a verdict of not guilty.[121] In *Guzik*, Liebman did not try to sue the City of Chicago as well, but that was soon to change in later suits. *Guzik* was the first in a series of lawsuits filed against CPD officers and the City of Chicago itself that pursued a dual strategy of trying to push the courts to expand the interpretation of rights protected by Section 1983 and introduce federal liability against municipalities under Section 1983.

Moore and Ernst Liebman joined in what would be the first of many more suits next in 1958 with the filing of *Moorelander v. Tassone*.[122] Announced in the Chicago Daily Tribune with the headline "SUIT ACCUSES EX-POLICEMAN, SEEKS $750,000," the suit was filed against ex-officer Frank F. Tassone, two unknown officers, and the City of Chicago.[123] The officers

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[112] Verdict at 2–3, Carpenter v. Brooks, No. 55-C-946 (N.D. Ill. Jan. 23, 1958) (on file at the National Archives at Chicago).
[113] *See supra* note 17 (discussing why officers in the *Brize* case were not disciplined).
[114] Complaint in a Supplemental Proceeding in Aid of a Judgement at 2–3, Carpenter v. Brooks, No. 55-C-946 (N.D. Ill. Jan. 23, 1958) (on file at the National Archives at Chicago).
[115] *See, e.g., May Set Record In Damage Suit*, CHI. DEF., Feb. 8, 1958, at 3; *Wins Damages Of $15,000 From 5 Chicago Cops*, CHI. DAILY TRIB., June 1, 1957, at 11.
[116] Complaint at 1, 14, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. filed Feb. 17, 1956) (on file at the National Archives at Chicago).
[117] Supplement to Complaint at 1–3, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. filed Sept. 11, 1956) (on file at the National Archives at Chicago).
[118] *Id.* at 8–14.
[119] *Id.* at 2–3.
[120] Answer of the Defendants at 1–3, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. filed Jan. 29, 1957) (on file at the National Archives at Chicago).
[121] Docket, Guzik v. O'Connor, No. 56-C-334 (N.D. Ill. filed June 11, 1959) (on file at the National Archives at Chicago).
[122] No. 58-C-689 (N.D. Ill. Apr. 17, 1958).
[123] *Suit Accuses Ex-Policeman, Seeks $750,000*, CHI. DAILY TRIB., Apr. 18, 1958, at 8.

involved admitted to arresting Moorelander and detaining him for two days but denied everything else, conspicuously failing to explain where Moorelander's injuries came from, and even denying that Moorelander suffered "great" injuries at all.[124] Predictably the City immediately filed to dismiss the suit on the grounds that the City itself was immune under Section 1983, and even if Moorelander's allegations were true, none of his rights protected by Section 1983 were infringed upon.[125]

In their voluminous thirty-two-page brief opposing the motion to dismiss, Moore and Liebman previewed a version of their argument grounded in a certain historical reading of the purpose of Section 1983 that they would later present before the Supreme Court.[126] Regarding municipal liability, they argued the historical context of Section 1983 established that it was clearly passed to protect citizens' Fourteenth Amendment rights from abuses of state power.[127] To that end, protecting municipalities from liability would "frustrate the purpose of the Civil Rights Act," since municipal liability was a tool of protecting citizen's rights.[128] Here, they drew directly from the scholarship on the function of municipal liability, citing Foote's article:

> Governmental liability is important not only to provide financially responsible defendants, but primarily so that the deterrent will be effective where it is needed — at the level where police policy is made. If cities are responsible for torts committed by officers who are known to be vicious and ill-tempered or dangerously insane or chronically alcoholic, the liability is likely to discourage the retention of such officers and compel a better police force. Most illegal arrests and searches probably arise within the scope of everyday police activity, a fact recognized by cities which allow the city attorney to defend officers sued for false imprisonment. Where the officer makes an illegal arrest under the orders of his superiors, while this may not excuse him, evidence of the fact will be admissible in mitigation of damages [sic]. However justifiable this may be as an act of justice to the defendant, it should be irrelevant to the plaintiff's cause of action and illustrates the desirability of enforcing the sanction at the policymaking level. Furthermore, some police illegality is an inevitable concomitant of law enforcement. The expense should be borne by the state, which can spread the loss where actual monetary damage results and which is in the position to control and minimize the risk.[129]

Still, the judge was unconvinced, and the City of Chicago was quickly dismissed as a defendant in 1959.[130]

Concurrent with *Moorelander*, Liebman and Moore, along with Charles Pressman, also filed *Cedeno v. Lichtenstein* in 1958.[131] The lawsuit was similarly announced to the press by

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[124] Answer at 2–4, Moorelander v. Tassone, No. 58-C-689 (N.D. Ill. filed Mar. 23, 1959) (on file at the National Archives at Chicago).
[125] Defendant Tassone's Brief in Support of Motion to Dismiss at 4–7, Moorelander v. Tassone, No. 58-C-689, (N.D. Ill. filed May 9, 1958) (on file at the National Archives at Chicago); Amended Motion to Dismiss at 1, Moorelander v. Tassone, No. 58-C-689 (N.D. Ill. filed Jul. 18, 1958) (on file at the National Archives at Chicago).
[126] Moorelander Plaintiff Brief in Opposition to Motions to Dismiss, *supra* note 89.
[127] *Id.* at 13–15.
[128] *Id.* at 31.
[129] *Id.* (quoting Foote, *supra* note 21, at 514–15).
[130] Order at 1, Moorelander v. Tassone, No. 58-C-689 (N.D. Ill. Mar. 3, 1959) (on file at the National Archives at Chicago).
[131] *See* Complaint at 1, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. filed Sep. 17, 1958) (on file at the National Archives at Chicago).

Pressman, along with its three-million-dollar demand.[132] The argument and strategy the lawyers used in the case were virtually the same as *Moorelander*; however, this case was important for a different reason. In *Cedeno*, CPD officers arrested Jose Cedeno and twelve other Puerto Rican men within the vicinity of Chicago Avenue and Ada Street, allegedly beat, assaulted, and subjected them to insults and discriminatory comments, and detained them incommunicado for approximately twenty-four hours before taking them to municipal court and falsely charging them with disorderly conduct.[133] An untitled memorandum in the case file, likely from plaintiffs' attorneys, described it as "something like a Puerto Rican pogrom [which] took place on that night," and alleges that, for reasons unknown to the plaintiffs, police officers were given a directive to arrest all Puerto Rican males in the area.[134] Some of the officers appeared to have executed the command with zeal. One of the plaintiffs, Jose Vasquez, said in a deposition that before arresting him, one officer called him a "dirty Puerto Rican" and told him to go back to where he came from.[135] Other plaintiffs said that officers subjected them to racial slurs and violence at the Racine Avenue Station as well. Indeed, in the plaintiff's complaint, it alleged that this behavior was part of established racist practice within the CPD to harass and humiliate Chicago's Puerto Rican community.[136] This was just one of several lawsuits before 1959 documenting how racism within the CPD combined with abusive detention practices to form a deadly cocktail for Chicago's non-white residents. In *Exclusa v. Krejci*, three more Puerto Rican men claimed officers arrested them and repeatedly assaulted them while subjecting them to racial slurs in police custody.[137] In *Holland v. Logan*,[138] a Black Chicagoan filed a pro-se lawsuit from prison alleging that officers had arrested and assaulted him for being in a white part of the North Side.[139]

These cases are important for highlighting the heightened stakes for Chicago's non-white communities of dealing with police violence against the detained. Indeed, the potential promise of these lawsuits was not lost on the plaintiffs either. In the untitled memo in the case file of *Cedeno*, the plaintiffs told the memo's author they were fighting so hard in the case because "they want[ed] to make sure that what happened to them will not happen again in Chicago."[140] As *Guzik* demonstrated, non-white residents were not the only victims of abusive detention practices, but they often faced additional racist violence in connection with their non-whiteness. There certainly would have been something fitting if, after almost a century, Section 1983 did finally live up to its promise of preventing white supremacist violence. In the end, neither *Cedeno*, *Exclusa*, or *Holland* would become the pivotal Section 1983 case. In 1959, Moore and Liebman filed four more

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[132] *Seek Probe of Puerto Ricans Here*, CHI. DAILY DEFENDER, Sept. 22, 1958, at 6.
[133] Complaint at 2–5, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. filed Sept. 17, 1958) (on file at the National Archives at Chicago); Findings of Fact and Conclusions of Law at 3, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. filed Apr. 29, 1963) (on file at the National Archives at Chicago).
[134] Memorandum at 1, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. filed Oct. 12, 1962) (on file at the National Archives at Chicago).
[135] Deposition of Jose A. Vasquez at 11, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. filed Jul. 28, 1959) (on file at the National Archives at Chicago).
[136] Complaint, *supra* note 133, at 5.
[137] Amended Complaint at 1–6, Exclusa v. Krejci, No. 58-C-1932 (N.D. Ill. filed Jan. 15, 1960) (on file at the National Archives at Chicago).
[138] No. 57-C-1012 (N.D. Ill. Sept. 5, 1957).
[139] Amended Complaint at 1–5, Holland v. Logan, No. 57-C-1012 (N.D. Ill. filed Sept. 5, 1957) (on file at the National Archives at Chicago).
[140] Memorandum, *supra* note 134, at 6.

lawsuits.[141] Of those, the most consequential was *Monroe v. Pape*, a case centered on the arrest of James Monroe, a working-class Black Chicagoan.

C. Monroe v. Pape: The Watershed Moment

On October 29th, 1958 in the early hours of the morning, thirteen Chicago police officers had broken into the apartment of James Monroe and his family without a warrant; the officers were there to arrest Monroe and search for shirts in connection with a murder investigation. The officers, led by famous detective Frank Pape, had been working on the murder of a white insurance agent, Peter Saisi, whose wife, Mary Saisi, had claimed he was murdered by two Black men after a botched robbery.[142] Earlier on the 28th, Mary Saisi had identified a photo of James Monroe, a Black man, as one of the alleged killers. Immediately after, Detective Pape decided to raid the apartment without bothering to secure a warrant and gathered officers for the early morning raid.[143]

According to the officers nothing other than a "very routine arrest" occurred.[144] According to the Monroes, Pape and two other officers woke James and his wife Flossie up at gunpoint by shining flashlights in their faces.[145] The officers then forced James into the living room naked, where Pape "repeatedly hit, struck, and jabbed a flashlight into [his] stomach" while referring to him as "nigger" and "Black-boy."[146] Flossie was later brought out with only a bed sheet to cover herself, as officers ransacked their bedroom in search of shirts allegedly stolen from Saisi's corpse.[147] Other officers then forced their children out of their bedrooms and into the living room, shoving three children onto the floor in the process.[148] Later the officers gave James some clothes, cuffed him and brought him to the Central Police Station, the same one Ozie Brize had been brought to about a month earlier.[149]

At the station, the officers claimed they held him for a few hours, during which time Monroe did not request to contact his family or an attorney, and then released him.[150] Monroe claimed the police held him for more than ten hours incommunicado and denied his requests to contact his family or a lawyer.[151] Instead, the officers intermittently questioned him about the

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[141] Complaint at 1, Monroe v. Pape, No. 59 C 329 (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago); Complaint at 1, Hardwick v. Hurley, No. 59-C-569 (N.D. Ill. filed Apr. 9, 1959**)** (on file at the National Archives at Chicago); Complaint at 1, Baumgarten v. Klimawicz, No. 59-C-570 (N.D. Ill. filed Apr. 9, 1959) (on file at the National Archives at Chicago); Complaint at 1, Durham v. Nash, No. 59-C-770. (N.D. Ill. filed May 12, 1959) (on file at the National Archives at Chicago).

[142] It later came out that Peter Saisi had in fact been murdered by Mary Saisi's lover in a plot to collect the life insurance policy on him. *See* Myriam Gilles, *Police, Race and Crime in 1950s Chicago:* Monroe v. Pape *as Legal Noir* 56 (Jacob Burns Inst. for Advanced Legal Stud., 2007).

[143] *Id.* at 56–58.

[144] CHARLES F. ADAMSON, THE TOUGHEST COP IN AMERICA 172-3 (2001) (quoting Myriam Gilles, *Police, Race and Crime in 1950s Chicago:* Monroe v. Pape *as Legal Noir* 58 (2007)).

[145] Complaint at 8–9, Monroe v. Pape, No. 59-C-329, (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago).

[146] *Id.* at 10.

[147] *See id.*

[148] *See id.* at 10–11.

[149] *See id.* at 12–13

[150] Answer to Plaintiffs Second Amended Complaint at 4–5, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago).

[151] Complaint at 14, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago).

murder and forced him to stand in multiple line-ups.[152] When he asked what he was being held for, he was merely told "open charges."[153] Eventually after Mary Saisi's case fell apart, the officers released Monroe and never filed any charges against him.[154] For Pape, this was not the first time he had been accused of abusive detention practices.[155]

Later, announced in the *Chicago Defender* with the headline "City, 13 Cops Hit By $570,000 Suit," Monroe sued Pape, twelve other officers, and the City of Chicago as defendants, charging them with violating his rights by breaking and entering and arresting him without a warrant and then detaining him without officially charging him with a crime.[156] Again, the City's lawyers argued Chicago was immune from liability under Section 1983 and the officers had not violated any of Monroe's federal rights.[157] The judge was convinced, and the case was eventually dismissed.[158] Unlike before, perhaps sensing the potential of the case, Moore and Liebman appealed the decision to the Seventh Circuit Court of Appeals, only to have the district court's opinion upheld.[159] They appealed again to the Supreme Court, and in March of 1960 the Supreme Court granted certiorari and agreed to hear the case.[160] In 1961, the Supreme Court handed down its decision, granting a partial victory. Monroe had standing to sue the officers under Section 1983, but not the City of Chicago.[161]

IV. "SUCH AN OFFICER … NEED NOT FEAR THE THREAT OF A LAWSUIT": SECTION 1983 MISSES THE MARK

Unfortunately for LMPL and the Illinois Division in the six or so remaining years of Wilson's tenure after the ruling in *Monroe*, Section 1983 suits had almost no discernible influence on preventing abusive detention practices within the CPD. The suits were unable to fix the basic problem that officers were virtually never disciplined for engaging in abusive detention practices; the individual suits over abusive detention practices—and brutality in general, for that matter—likely never resulted in discipline or harm to the career of officers involved, even when they were found guilty. Further, as a whole, Section 1983 suits did not prompt any strengthening or reform of the incredibly ineffective IID which was tasked with disciplining officers for all types of misconduct, including abusive detention practices.

Beyond the problem of discipline, Section 1983 suits seemingly did not prompt any policy or administrative changes which might have reduced the prevalence of abusive detention practices either. Instead, CPD leadership maintained the view that abusive detention practices were not a problem that needed fixing. Even in the face of a highly suspicious death in police custody which spurred a successful Section 1983 suit, CPD leadership did nothing beyond reiterating a policy against abusive detention practices, even as they declined to actually discipline any of the officers

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[152] *See id.* at 13–14.
[153] *Id.* at 15.
[154] *Id.* at 13–15.
[155] DALE, *supra* note 10, at 123.
[156] *City, 13 Cops Hit By $570,000 Suit*, CHI. DEFENDER (Mar. 14, 1959) (on file with the author).
[157] Motion to Dismiss at 1–2, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Mar. 20, 1959) (on file at the National Archives at Chicago).
[158] Monroe v. Pape, No. 59-C-329 (N.D. Ill. Jun. 5, 1959) (on file at the National Archives at Chicago).
[159] Monroe v. Pape, 272 F.2d 365, 366 (7th Cir. 1959), rev'd, 365 U.S. 167 (1961).
[160] Docket Sheet, Monroe v. Pape, No. 59-C-329, (N.D. Ill. Mar. 2, 1959) (on file at the National Archives at Chicago).
[161] Monroe v. Pape, 365 U.S. 167, 192 (1961).

involved or make any policy changes to prevent future incidents.[162] Meanwhile, allegations of abusive detention practices continued to appear in Section 1983 suits and the press.

A. "An eyewash operation not vitally concerned with changing improper police behavior": CPD Failure to Discipline

LMPL had rightly focused on officer discipline and disciplinary controls as a key component to stopping misconduct. At a minimum the prevalence of abusive detention practices could not be addressed if officers who were caught were never disciplined. Before *Monroe*, incidents of police misconduct and corruption were supposed to be dealt with by the City's Civil Service Commission, although the Commission was rather ineffective at doing this.[163] However, in 1960 as *Monroe* was winding its way through the court system, the Commission was soon to receive a replacement. In January of 1960, Chicago was treated to shocking headlines that the state's attorney's office had uncovered a major police burglary ring operating inside the Summerdale Police District.[164] The Chicago police had already long had a reputation for corruption and scandal, but the Summerdale scandal was so public and embarrassing for Mayor Daley's administration that it forced him to make major changes in the department's leadership.[165] Daley was forced to agree to find a new leader for the CPD, and he eventually offered the job to Wilson, then a well-respected criminologist, after Daley assured Wilson he would have the independence to reform the department.[166] Wilson took over as Superintendent later in March.[167]

Before arriving in Chicago, Wilson was among the forefront of a wave of criminologists who argued that police departments needed to be professionalized and modernized.[168] He came into Chicago with an eye towards fixing the department's poor public image and ensuring police officers were competent professionals who followed the law and could earn the trust of the community.[169] Upon taking over the department, Wilson identified a need to do away with the CPD's administrative culture which sought to "to cover up, to excuse, to deal with these recalcitrant [officers] in a manner dissimilar to the manner in which the offender would be dealt with were he a private citizen."[170] By his own admission, when these officers stayed on the force, unpunished, "the public reaches the conclusion that the police condone the act."[171] To that end, he

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[162] BALTO, *supra* note 17, at 174.
[163] *Id.* at 167.
[164] *How 8 Cops Helped Thief Loot Stores*, CHI. DAILY TRIB., Jan. 16, 1960, at 1.
[165] According to the *Chicago Daily Tribune*, there was a common joke told at the time about Chicago cops and corruption. "A Chicago motorist was halted by a police squad on a boulevard late at night. As a policeman strode from the squadrol toward the citizen, the latter cranked down a window of his car and asked 'what's it to be – a ticket or a stickup?'" See Wayne Thomis, *Cops Turn Burglars! City Horrified*, CHI. DAILY TRIB., Feb. 23, 1960, at 12.
[166] BALTO, *supra* note 17, at 154–55.
[167] *Judge Orders Freeing of Report on Crime: A Nonpolitical Police Board Hinted*, CHI. DAILY TRIB., Jan. 27, 1960, at 1. The position was renamed from Commissioner to Superintendent to get around residency requirements. *See* BALTO, *supra* note 17, at 154–55.
[168] BALTO, *supra* note 17, at 154–55.
[169] O. W. Wilson, *Problems in Police Personnel Administration*, 43 J. CRIM. L. & CRIMINOLOGY & POLICE SCIENCE 840, 840-842 (1953); *see also* BALTO, *supra* note 17, at 7–8, 155.
[170] BALTO, *supra* note 17, at 167–78.
[171] *Id.* at 154–55.

set up a new internal disciplinary body, the IID, to deal with police misconduct and corruption, replacing the old, ineffective, Civil Service Commission.[172]

Despite, or perhaps because of, its goals, the IID was almost immediately met with tremendous resistance from rank-and-file officers, who loathed even the patina of oversight into their behaviors. Although not officially unionized, patrolmen's groups like the Chicago Patrolmen's Association ("CPA"), Chicago Confederation of Police ("COP"), and the Fraternal Order of Police ("FOP") mounted frequent and vocal campaigns against any IID oversight. These attitudes extended towards any outside oversight as well, where the groups often allied with top CPD leadership, especially in opposition to a civilian review board to investigate brutality claims.[173]

Yet for all the vociferous resistance to the IID's oversight role, the IID actually conducted very little oversight; it was generally a very ineffective disciplinary body, especially when it came to claims of brutality. Activists and organizations like the Illinois Division frequently criticized the IID for failure to seriously investigate officers, and outside studies of IID practices backed up the notion that IID investigators were "essentially bending over backward to look past evidence of officer guilt, to rule in favor of acquittal."[174] Indeed, one Black sergeant who worked in the IID for five years said the Division's work was shaped by "purposeful and deliberate malfeasance" and largely served as "an eyewash operation not vitally concerned with changing improper police behavior or serving the public interest."[175] From 1961 to 1966, as Figure 3 demonstrates, the overwhelming majority of brutality complaints resulted in no disciplinary action. Of a total of 2,560 complaints over a six-year period, only *forty* were sustained.[176] This number seems hard to square with information like a survey of Chicago residents which found over six percent reported witnessing police using what they believed to be an unjustified amount of force. While the residents' observations do not necessarily mean brutality actually occurred, the survey strongly suggests there were more than forty incidents of police brutality among a police force with 10,000 plus officers over a six-year period.[177]

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[172] *Id.* at 167–70.
[173] *Id.*
[174] *Id.* at 171.
[175] *Id.* (citing Richard A. Crane and Gregory J. Schlesinger, Citizen Complaints of Police Misconduct and the Internal Affairs Division of the Chicago Police Department: Analysis and Evaluation of the System, May 15, 1971, box 533, folder 8, ACLU Records).
[176] ACLU ILL. DIV., supra note 17, at 6.
[177] *Id.* at 15.

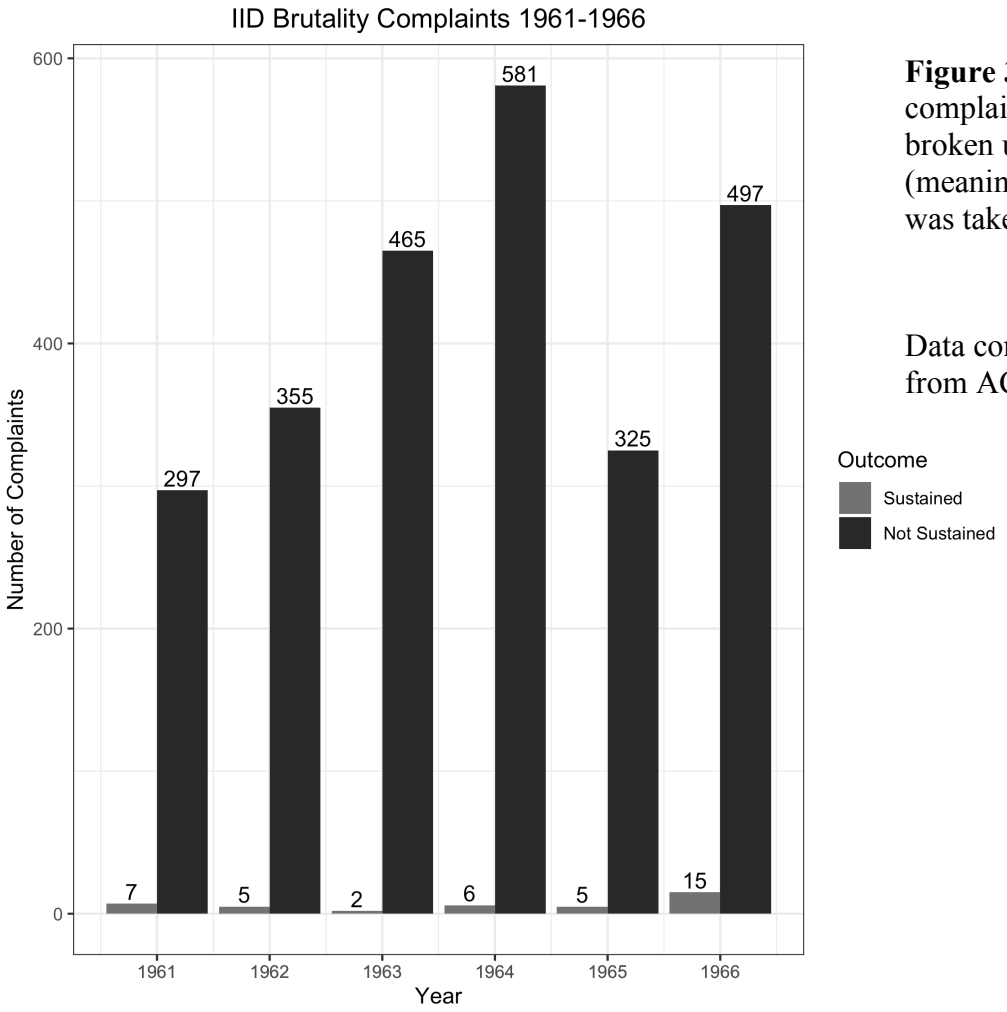

Figure 3. Graph of brutality complaints filed per year broken up into sustained (meaning disciplinary action was taken) and not sustained.

Data compiled by author from ACLU source.

As a whole, the IID largely failed to provide any semblance of discipline throughout Wilson's tenure.

In addition to the failure of Section 1983 litigation influencing IID work as a whole, it soon became clear that individual Section 1983 suits were a virtual non-factor in individual IID investigations of the incidents which led to suits. Even before taking the job as superintendent, Wilson had been hostile towards civil suits, arguing that "[c]ivil suits for damages filed against the individual officer have not proved adequately effective in preventing police abuse of authority," and they were generally undesirable as an oversight mechanism because they "emasculate vigorous police action."[178] Considering this attitude, alongside the IID's general failure to discipline officers for brutality and violence, the rank-and-file officers' resistance to any oversight, and the CPD leadership and rank-and-file's shared antagonism to any outside oversight, it is not surprising they refused to accept oversight via Section 1983 cases too.

Perhaps the most visible example of Section 1983 suits' non-impact was the aftermath of Monroe's case after the Supreme Court's ruling. After the ruling in 1961, Monroe's case was reinstated, and it eventually went to trial.[179] In 1962, an all-white jury found in favor of James and

[178] O. W. Wilson, *Police Arrest Privileges in a Free Society: A Plea for Modernization*, 51 J. CRIM. L. & CRIMINOLOGY & POLICE SCIENCE 395, 400 (1960).
[179] Monroe v. Pape, No. 59-C-329 at 4 (N.D. Ill. Jan. 23, 1963) (on file at the National Archives at Chicago).

Flossie Monroe and against five of the officers, returning a judgement of $10,000 in damages for James and $3,000 for Flossie.[180] The judge presiding over the case later reduced the damages by $1,500 to $11,500 but denied the officers' motion for a new trial and upheld the verdict.[181] This number was only a fraction of the almost a million-and-a-half Monroe had sought in the initial complaint, but it was victory nonetheless.[182] The verdict could not undo the humiliation and terror the Monroes experienced, but the Monroes finally had their day in court, and the jury affirmed that Pape and four other officers had violated their rights with their conduct. The verdict could not undo the humiliation and terror the Monroes had to endure, but it could compensate them and compensate them it did. The $11,500 award, worth approximately $98,000 in 2020,[183] was more than twenty-three times Monroe's annual income,[184] and it was likely significantly higher than the average cost per lawsuit to the City at the time.[185] Doubly promising, the verdict received widespread attention in both the *Chicago Tribune* and *Chicago Defender*.[186] With *Wakat*, *Carpenter*, and now *Monroe* ending in such high verdicts, this certainty seemed promising for LMPL's plan. If more cases ended with verdicts like those cases, they would go a long way in attracting the attention of attorneys, potential plaintiffs, and City Hall.

Specifically, in the *Monroe* case, if LMPL's plan was going to work as hoped, then the verdict would help spur the CPD into at least disciplining the guilty officers to prevent similar lawsuits in the future. Disciplining the officers for their conduct would send a message that the casual violations of civil liberties tolerated under O'Connor would be unacceptable in Wilson's CPD. Given Wilson's prior statements on the importance of officer conduct, it seemed possible the officers involved would at least be disciplined by the IID. Perhaps fearful of punishment, Captain Frank Pape, the lead officer in *Monroe*, had taken a leave of absence from the CPD after the Supreme Court's ruling in 1961 to work security at a racetrack, where he was later sued by two patrons for illegal detention and interrogation.[187]

Then in 1964, Pape quit his job and told the press he was thinking of returning to the CPD.[188] Upon catching wind of these rumors, the ACLU wrote to Wilson and implored him that if Pape returned to the force, he should be disciplined for his role in *Monroe*.[189] They warned that reinstating Pape without disciplining him would effectively amount to endorsing his behavior, especially after he was found guilty in a court. Their pleas fell on deaf ears though, and in 1965 he was reinstated, with his only "punishment" being that he had to go through the police academy

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[180] Gilles, *supra* note 142, at 62.
[181] Monroe v. Pape, No. 59-C-329, at 8 (N.D. Ill. Jan. 23, 1963) (on file at the National Archives at Chicago).
[182] *See id.* at 8.
[183] CPI INFLATION CALCULATOR, https://www.in2013dollars.com/us/inflation/1962?amount=11500 (last visited Jan. 7, 2021), *archived at* https://perma.cc/E2HS-C9XX (this website was used to estimate the amount in present dollars).
[184] In a court filing the City claimed James Monroe earned less than $500 total in 1959. *See* Brief of Defendants in Support of Motion to Vacate Excessive Judgements at 2, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Dec. 17, 1962) (on file at the National Archives at Chicago).
[185] In 1959, the City Law Department reported an average payment of $1,657 per civil case filed against it, although this figure was for all lawsuits, not just police lawsuits. There is no reason to suspect that number changed substantially by 1963. *See* Plaintiff's Brief at 64, Monroe v. Pape, 365 U.S. 167 (1961) (No. 39).
[186] *Pape Suit Jury Is Out in Civil Rights Case*, CHI. DAILY TRIB., Dec. 4, 1962, at 6; *Order Pape, 4 Others to pay $13,000*, CHI. DAILY DEFENDER, Dec. 5, 1962, at 1.
[187] BALTO, *supra* note 17, at 168–171; *Horse Race Group Sued by 2 Fans*, CHI. TRIB., May 22, 1963, at C2.
[188] ACLU, ILL. DIV. *Pape May Return to Police Force*, Aug. 3, 1964 (on file at the University of Chicago Library, Special Collections Research Center).
[189] Letter from Franklin S. Pollak to O.W. Wilson, (Nov. 13, 1964) (on file at the University of Chicago Library, Special Collections Research Center).

again to learn the new department rules.[190] His reinstatement was met with protest from many, especially in Chicago's Black community.[191] If Pape, the ringleader in a well-publicized trial with a large verdict, did not receive any discipline for his conduct, then what message did that send to the other officers on the force? Here, LMPL's plan was already falling apart. At a minimum, Section 1983 suits like *Monroe* were supposed to lead to discipline for the guilty officers and, if necessary, broader policy changes to prevent future lawsuits. Yet here, it meant absolutely nothing besides an $11,500 bill to the taxpayers.

Unfortunately, this was the first of many failures of Section 1983 suits to translate directly into any discipline for officers who violated residents' civil rights. It appears that the IID's extreme lenience in discipline extended to investigations stemming from Section 1983 suits as well. According to a report by the Illinois Division in 1967, the CPD was always made aware of brutality suits filed against officers, and the IID would typically investigate the incidents that prompted the lawsuits.[192] As part of this report, the Illinois Division also identified eighteen successful Section 1983 cases where a total of thirty-six officers had been found guilty and had some amount awarded against them.[193] Upon further inquiry, an Assistant Superintendent of Police revealed that *none* of the officers involved had been disciplined in any way for their conduct that prompted the suits.[194] Evidently, the determination of guilt or at least liability by a jury or a judge carried no weight for the IID.

It is actually possible to identify most of the cases where the Illinois Division found officers were not disciplined—and the lack of discipline speaks volumes. Many of the cases contained elements of abusive detention practices toward the detained, from extended incommunicado detention to the police allegedly beating someone to death in their custody. The most striking example of a failure to discipline was the death of Ralph Bush, a twenty-three year old Black Chicagoan. In October of 1962, Bush and his friend Bennie Black were arrested for loitering and taken to the Central Police Station. Bush never made it out of the station alive. He died of a fatal head injury, and Bush's family sued the City in *Bush et al. v. Pepp et al.* alleging that officers at the Station beat him to death.[195] The City eventually agreed to pay $25,000 to Bush's family and to Black.[196] Bush's death prompted public outrage and even some internal discussion over whether CPD officers were engaging in torture. One of the few surviving records of internal CPD discussion on brutality that historian Simon Balto discovered in his research was minutes from a meeting Wilson had on December 10th with division heads. Perhaps prompted by *Bush*, which was filed on December 2nd and covered by the *Defender* on the 9th, Wilson pointed to Bush's death as "evidence of brutality within the department" and reasoned "there is no other logical explanation" than that Bush died from injuries received in police custody.[197] Still, even the very incident which the Chief of Police pointed to as evidence of brutality was not enough to lead to any discipline or sanctions for the officers involved or derail their careers in any way. In fact, Charles Pepp, then a lieutenant in charge who allegedly "discovered" Bush's fatal head injury, according a police report

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[190] Cap*tain Pape Returns to Duty with Police*, CHI. TRIB., May 4, 1965, at B10.
[191] BALTO, *supra* note 17, at 180.
[192] ACLU ILL. DIV., supra note 17, at 30.
[193] *Id.*
[194] *Id.* at 31.
[195] *Six Policemen Hit With $150,000 Damages Suit*, CHI. DEFENDER, Dec. 9, 1963, at 27; Bush v. Pepp, No. 63-C-2170 (N.D. Ill. 1963) (on file at the National Archives at Chicago).
[196] Docket Sheet at 1, Bush v. Pepp, No. 63-C-2170, (N.D. Ill. 1963) (on file at the National Archives at Chicago).
[197] BALTO, *supra* note 17, at 174 (citing Minutes of the Chicago Police Department Staff Meeting, December 10, 1963, CPD Collection, Chicago Historical Museum).

of the incident, enjoyed a long and prosperous career afterwards;[198] Wilson promoted him to Captain in 1967 and future Superintendents promoted him to Deputy Chief of Patrol, Area 1 Deputy Chief, Area 2 Deputy Chief, and Head of the Special Operations Group.[199] He even unsuccessfully applied for Superintendent in 1983.[200] It would seem that $25,000 and Bush's death meant little to CPD higher-ups.

The remaining suits examined by the Illinois Division contained a bevy of allegations of incommunicado detention and physical violence against the detained, often preceded by violence during arrest as well. Other striking examples include: in 1965, Joseph Grimes, a Black Chicagoan, sued officers Jess Sixkiller and Roy Overland for assaulting him and holding him incommunicado for around 8 hours.[201] Grimes said the officers beat him "with everything but a kitchen sink" after they stopped him for a traffic violation.[202] After beating him semi-conscious, the officers brought him to Filmore District Police station.[203] There Grimes claimed Sixkiller asked him where he was from and after replying "Arkansas," Sixkiller told him "you should have stayed there, you rotten cock sucker, son-of-a-bitch," and Sixkiller and other officers started beating Grimes again, kicking him once he fell to the floor.[204] When Grimes eventually left police custody, he required hospitalization and medical treatment to the tune of $3,161.70 for, among other things, a broken jaw, two broken teeth, and a swollen face.[205] The City paid him $15,000 after a trial without a jury.[206]

That same year, Fred Burley sued officer Lorenzo Chew, the son of Alderman Charles Chew Jr., for breaking his leg during an arrest and then having Burley held incommunicado for over two weeks at various hospitals where he was denied proper care for his broken leg.[207] Burley's arrest had stemmed from a dispute over cab fare.[208] Burley had been charged $1.10 for a ride, and after the driver informed him he did not have change for a ten-dollar bill, Burley went to look for change.[209] While Burley was looking for change, the driver radioed his dispatch who then told the police that a passenger was evading fare. Before Burley got back, Chew and another officer were

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[198] *NAACP Backs Family In Brutality Suit*, CHI. DEF., Dec. 10, 1963, at 4.
[199] *O. W. Names Pepp Captain*, CHI. DEF., June 6, 1967, at 5; Patricia Leeds, *Huge Police Command Shakeup Is Announced by Conlisk*, CHI. TRIB., Sep. 16, 1970, at 8; *Rochford Announces New Assignments For Top Policemen*, CHI. TRIB., Apr. 17, 1974, at 3; Philip Wattley, *Top-Level Police Shakeup; O'Grady Picks His Team*, CHI. TRIB., Sep. 16, 1978, at N1.
[200] Philip Wattley, *19 Applicants Seek Chicago's Top Police Job*, CHI. TRIB., May 26, 1983, at B10.
[201] Complaint at 3–4, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. Mar. 25, 1965) (on file at the National Archives at Chicago).
[202] Dave Potter, *New Charges of Police Brutality*, CHI. DEF., Mar. 31, 1964, at 2.
[203] Deposition of Joseph Grimes at 34, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. Sep. 3, 1965) (on file at the National Archives at Chicago).
[204] *Id.* at 35–37.
[205] Transcript of Proceedings at 9, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. May 25, 1966) (on file at the National Archives at Chicago); Deposition of Joseph Grimes at 57–58, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. May 25, 1966) (on file at the National Archives at Chicago).
[206] Order, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. Apr. 11, 1966) (on file at the National Archives at Chicago).
[207] Complaint at 2–5, Burley v. Chew, No. 65-C-1302 (N.D. Ill. Aug. 5, 1965) (on file at the National Archives at Chicago). Curiously, Chew's father, Chew Jr., at first denied Lorenzo Chew was his son when confronted by the press about the lawsuit. *See Clerk Accuses Chew's Son of Breaking Leg*, CHI. TRIB., Aug. 6, 1965, at C11.
[208] Answer of Defendant at 3, Lorenzo Chew, Burley v. Chew, No. 65-C-1302 (N.D. Ill. Sep. 29, 1965) (on file at the National Archives at Chicago).
[209] Complaint at 3–4, Burley v. Chew, No. 65-C-1302 (N.D. Ill. Aug. 5, 1965) (on file at the National Archives at Chicago).

sent to the scene.[210] Burley claimed that as soon as he arrived back at the cab, Chew began beating him without provocation with a nightstick and injured his leg.[211] Chew then shoved Burley into a police car and took him to the 48th Avenue Police Station, where they threw him in a cell.[212] After requesting medical care the officers brought Burley to the nearby Provident hospital where a nurse determined he had a broken leg and put a stint on his leg.[213] Then, two different officers brought Burley to a series of other hospitals before leaving him at Bridewell Hospital for seventeen days, where he received no medical treatment for his leg.[214] Burley said that during his entire ordeal, Chew and the two officers who later accompanied him denied his requests to make a phone call.[215] Burley was only able to contact his family after seven days when he convinced another soon-to-be-released patient to call his brother upon their release.[216] Then, only after his brother went to the 48th Avenue Police Station and posted bail was Burley released.[217] The City settled the suit for $6,500.[218]

In 1960, Patrick Costello sued officer Clarence Vitek for holding him incommunicado for "a great length of time" and assaulting him during his arrest and detention.[219] A jury found Vitek guilty and awarded Costello $500.[220] In 1963, Abdursham Kadrick, a Yugoslavian immigrant, sued officer James C. Webb for assaulting him during arrest and holding him incommunicado for four hours.[221] Webb had stopped Kadrick for making an improper left turn, and allegedly proceeded to pull him out of his car and beat him for possessing a license Webb thought was fake.[222] Webb then brought Kadrick to the 3rd District Police Station where Kadrick was allegedly held incommunicado until he agreed to sign a Release of Liability of Suit against the City.[223] After his release, Kadrick was unable to work for over a year because of his injuries, and he had to pay $615

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[210] Answer of Defendant, supra note 202, at 3.
[211] Deposition of Fred Burley at 20, Burley v. Chew, No. 65-C-1302 (N.D. Ill. Jul. 21, 1965) (on file at the National Archives at Chicago).
[212] *Id.* at 26, 29.
[213] *Id.* at 33–36.
[214] *Id.* at 39–45.
[215] *Id.* at 46–47.
[216] *Id.* at 48.
[217] *Id.* at 49–50.
[218] Transcript of Proceedings at 6, Burley v. Chew, No. 65-C-1302 (N.D. Ill. May 1, 1967) (on file at the National Archives at Chicago).
[219] Complaint at 2–4, Costello v. Chicago, No. 60-C-1566 (N.D. Ill. Oct. 5, 1960) (on file at the National Archives at Chicago).
[220] Verdict at 1, Costello v. Chicago, No. 60-C-1566 (N.D. Ill. Apr. 2, 1963) (on file at the National Archives at Chicago).
[221] Deposition of Abdursham Kadrick at 4, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Aug. 7, 1963) (on file at the National Archives at Chicago); Complaint at 2–4, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Apr. 5, 1963) (on file at the National Archives at Chicago).
[222] Stipulation of Facts and Summary of Pre-Trial Information at 1, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Sep. 15, 1964) (on file at the National Archives at Chicago); Deposition of Abdursham Kadrick at 11–12, 14–18, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Aug. 7, 1963) (on file at the National Archives at Chicago).
[223] Stipulation of Facts and Summary of Pre-Trial Information at 4, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Sep. 15, 1964) (on file at the National Archives at Chicago); Complaint at 3, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Apr. 5, 1963) (on file at the National Archives at Chicago).

in medical costs related to his injuries.[224] The City paid him $500 after Webb was found guilty by a trial without a jury.[225]

The list goes on. Yet in every single case, the officers involved did not even receive an oral reprimand! Further, given the IID's general ineffectiveness, there is strong reason to suspect no Section 1983 suits resulted in discipline. Unfortunately for LMPL's plan, successful Section 1983 suits could not even get the officers involved disciplined, let alone change broader disciplinary procedures or policy. The cost of the lawsuits seemingly provided no pressure to discipline officers or change department practices. This failure to discipline had real consequences for Chicagoans, especially non-white ones. Just like the cases before *Monroe*, suits continued to include allegations of racist violence directed at non-white Chicagoans, especially Black and Puerto Rican Chicagoans.

In 1962, Decosta Hutsona, a Black man, was allegedly subjected to police violence in CPD custody because of his race. Hutsona and a friend had gone to a bar in a white neighborhood, only to be told by the bartender that "He didn't serve no niggers."[226] Hutsona complained to an officer in the bar, only to be told that he would have to come into the Eleventh Street Police Station to make a complaint.[227] Hutsona went into the police station to make his complaint, only to have the station captain tell him he was lying and that "I don't want to hear this civil rights mess."[228] The captain then had Hutsona arrested and detained him incommunicado for over a day.[229] During this time, some officers pressured him to sign a slip of paper, although just like with Brize, they refused to let him read what it said.[230] After he refused, they took him to a room and proceeded to assault him, and afterwards, they threw him back into his cell.[231] After his release, Hutsona had to go to the Hospital where he saw a doctor for his injuries.[232] Hutsona's case was ultimately never resolved. The docket sheet lists the case as being reinstated on November 5th, 1965, but no further actions were taken.

In 1963, Vidal Rodriguez, Jorge Cordova, and his son Jorge Louis Cordova, all Puerto Rican, sued officers James Smith and J. Butler.[233] The Cordovas had been working at a restaurant owned by Jorge Cordova, when an argument between two men broke out on the street outside the restaurant.[234] Some police officers soon showed up and allegedly handcuffed Jorge and threw him in a police car after he refused to comply with their demand that he step outside.[235] When Jorge Louis came out to get the key to close the restaurant, the officers allegedly hit him in the eye with

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[224] Deposition of Abdursham Kadrick at 49–50, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Aug. 7, 1963) (on file at the National Archives at Chicago); Stipulation of Facts and Summary of Pre-Trial Information at 4, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Sep. 15, 1964) (on file at the National Archives at Chicago).
[225] Order at 1, Kadrick v. Wilson, No. 63-C-570 (N.D. Ill. Feb. 11, 1965) (on file at the National Archives at Chicago).
[226] Deposition of Decosta Hutsona at 40, Hutsona v. Egan, No. 62-C-1023, (N.D. Ill. May 2, 1964) (on file at the National Archives at Chicago).
[227] *Id.* at 40–41.
[228] *Id.* at 43–44.
[229] *Id.* at 44–47.
[230] *Id.* at 45, 49–50.
[231] *Id.* at 49–50.
[232] *Id.* at 56.
[233] Complaint at 1–2, Rodriguez v. Smith, No. 63-C-1272 (N.D. Ill. Jul. 16, 1963) (on file at the National Archives at Chicago).
[234] Deposition of Jorge Cordova at 4–5, 7–8, Rodriguez v. Smith, No. 63-C-1272 (N.D. Ill. Aug. 3, 1963) (on file at the National Archives at Chicago).
[235] *Id.* at 6–7.

a club and threw him in the car with Jorge.[236] Vidal had also been at the restaurant after the fight broke out, and after getting in his car to drive away later, he was stopped by one of the officers, who allegedly said: "[T]his is one of the gang, take him out too."[237] Vidal refused to get out of the car, and one of the officers allegedly began beating him and then hit him on the head with a club and put him in the car with the Cordovas.[238] All three of the men were brought to the police station on 11th and State, where Vidal was allegedly thrown up against a wall and all three were allegedly subjected to racist remarks like "why don't you _____ go back to Puerto Rico where you came from."[239] Jorge was released later that day, and Vidal and Jorge Louis were allegedly held incommunicado until the next day.[240] All three were later awarded $4,000 in a trial without a jury.[241]

In 1965, George and Marjorie Darden and Marjorie's son, Thomas Lewis, all Black, sued officers John R. Graefen and Richard O'Neil.[242] They alleged the officers showed up to the carwash the Dardens owned, dragged George outside without provocation, assaulted and arrested all three of them, and held them incommunicado for nine hours because they were Black.[243] They were eventually awarded $8,500 in a trial without a jury.[244]

In general, the CPD's policies under Wilson brought more and more non-white Chicagoans in contact with the police detention machine. While Wilson was not outwardly racist in his public conduct, his policies had deeply racist impacts. Wilson was a vocal proponent of "aggressive preventative patrol," a method where police would patrol "high crime" areas and prevent crime before it happened.[245] In practice, this meant more police patrols and policing in non-white neighborhoods, which drove up arrests and crime statistics for those areas, continuing the cycle.[246] Once in police custody, these non-white Chicagoans faced the added threat of racial violence along with the pre-existing risk of detention.[247]

B. Broader CPD Detention Policy and Procedures

In addition to the IID's failure to enforce discipline, Section 1983 litigation, whether as a whole or by individual cases, likely had no influence in causing any major policy or administrative changes which could have reduced the prevalence of abusive detention practices. Indeed, throughout Wilson's tenure, I identified only two policy and administrative changes which could have potentially reduced the prevalence of abusive detention practices: the youth division formally

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[236] *Id.* at 8–9.
[237] Deposition of Vidal Rodriguez at 12–14, Rodriguez v. Smith, No. 63-C-1272 (N.D. Ill. Aug. 3, 1966) (on file at the National Archives at Chicago).
[238] *Id.* at 16–18, 21–25.
[239] Complaint, *supra* note 233, at 2; Deposition of Vidal Rodriguez, *supra* note 237, at 20.
[240] Deposition of Vidal Rodriguez, *supra* note 237, at 31–32; Deposition of Jorge Cordova, *supra* note 234, at 23–24.
[241] Judgment Order, Rodriguez v. Smith, No. 63-C-1272 (N.D. Ill. Nov. 1, 1966) (on file at the National Archives at Chicago).
[242] Complaint at 1, Darden v. Graefen, No. 65-C-1437 (N.D. Ill. Aug 27, 1965) (on file at the National Archives at Chicago).
[243] *Id.* at 2–4.
[244] Judgment Order at 1, Darden v. Graefen, No. 65-C-1437 (N.D. Ill. Jan 24, 1967) (on file at the National Archives at Chicago).
[245] BALTO, *supra* note 17, at 154–57.
[246] *Id.*
[247] BALTO, *supra* note 17, at 169–75.

banning the use of the third degree in 1962 and changes in administrative procedure around booking implemented in 1961.[248] The small number of changes was likely because CPD leadership did not believe there was a problem with abusive detention practices. The lack of accessible internal records makes it hard to pin down exact sentiments, but one striking example is the meeting where Ralph Bush's death was discussed. In the aforementioned minutes, Wilson brought up the allegations that officers were engaging in widespread torture at police stations through methods like bagging, administering electric shocks, and simulating drowning.[249] Others in the room shrugged those allegations off as inconceivable, offering only a proposal to search officers' lockers for torture devices—it is unknown if they followed through on it.[250]

Of the two policy changes, the changes to administrative procedure on booking likely made some difference. Under Wilson, the CPD invested in new communication technology to cut down on administrative delays stemming from slow communication methods, eliminated the need to bring the detained to certain locations for fingerprinting and photographing, and required booking thirty minutes after the detained was brought into a police station.[251] In a 1966 article, Wilson claimed that all this had dramatically reduced the gap between booking and arrest times.[252] While this likely cut down on illegal detention due to administrative delay, it did not address the problem of intentional use of abusive detention practices. The officers both involved in the arrest and at the police station still had to follow the regulations, and as the past showed, there was often a large gap between what regulations mandated and what officers actually did. Especially considering there was virtually never any discipline for breaking these procedures, it is questionable what effect the changes had. Further, there is no reason to think that the technological and administrative changes were prompted by Section 1983 suits. Wilson had been an ardent proponent of such changes long before taking over the CPD.[253]

Regarding the youth division's ban on the third degree, it is dubious that this accomplished anything. The ban, announced in an article in the *Chicago Tribune*, was supposedly met with grumbling from "some of the old-timers."[254] Despite the article's sunny optimism about officers then "break[ing] the youth with a blow-a psychological blow" instead of a physical one, it is unclear what effect this would have given the lack of discipline for breaking the rules.[255] It is possible that this announcement was influenced by the verdict in Monroe's trial——the verdict was released on December 4th and the announcement was made on December 23rd. But besides the timing, there is no evidence to suggest a connection. In examining broader policy changes towards

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[248] *See* David Halvorsen, *Youth Division Police Ban the 'Third Degree': Use New Techniques with Juveniles*, CHI. TRIB., Dec. 23, 1962, at 14. The only mention of this ban was the *Tribune* article. It is unclear if the headline of the article was editorializing, as the announcement of banning the third degree seems to imply that the department did use it in the past, which it has denied. *See also* O. W. Wilson, *O. W. Wilson Speaks: Progress at Work*, CHI. DAILY DEFENDER, Feb. 22, 1966 at 46. I searched for any new directives or policy changes using newspaper databases, archival research of the Illinois Division records, and secondary sources. It is possible there were some other internal changes made, but given everything else, that seems unlikely.

[249] BALTO, *supra* note 17, at 174 (citing Minutes of the Chicago Police Department Staff Meeting, December 10, 1963, CPD Collection, Chicago Historical Museum).

[250] *Id.*

[251] O. W. Wilson, *supra* note 248, at 46.

[252] Id.

[253] BALTO, *supra* note 17, at 158.

[254] Halvorsen, *supra* note 248, at 14.

[255] *Id.* The only mention of this ban was the *Tribune* article. It is unclear if the headline of the article was editorializing, as the announcement of banning the third degree seems to imply the department did use it in the past, which it has denied.

detention, the administrative changes might have cut down on some incommunicado detention, but that was not spurred by any Section 1983 suits.[256]

C. An Inadequate Inducement to Sue

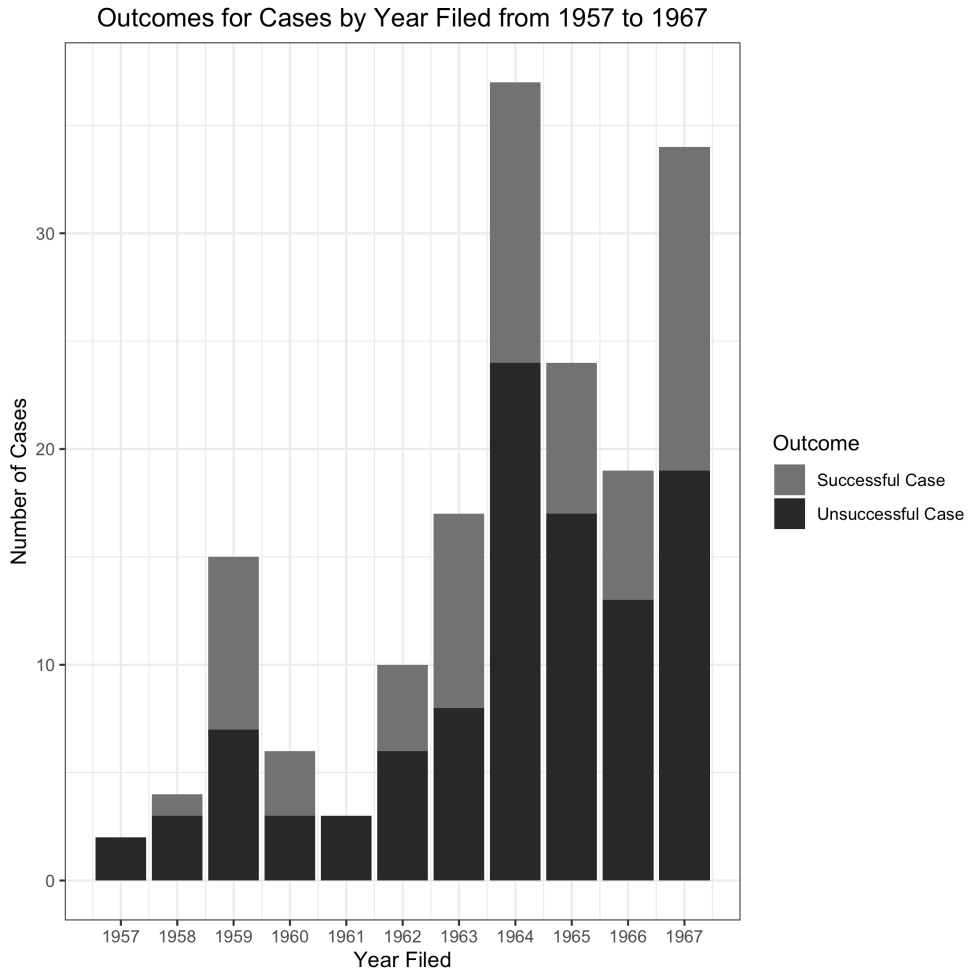

Figure 4. Graph of Section 1983 Suits filed per year from 1957 to 1967. Successful suits are those where the plaintiff won a non-zero award.

Data compiled by author.

[256] There could have been more internal discussion of this issue. As mentioned earlier, part of the problem with studying the CPD's response is the lack of accessible internal records. However, regardless of how much internal discussion took place, it is clear that the leadership never thought it was an important enough issue to make any policy changes.

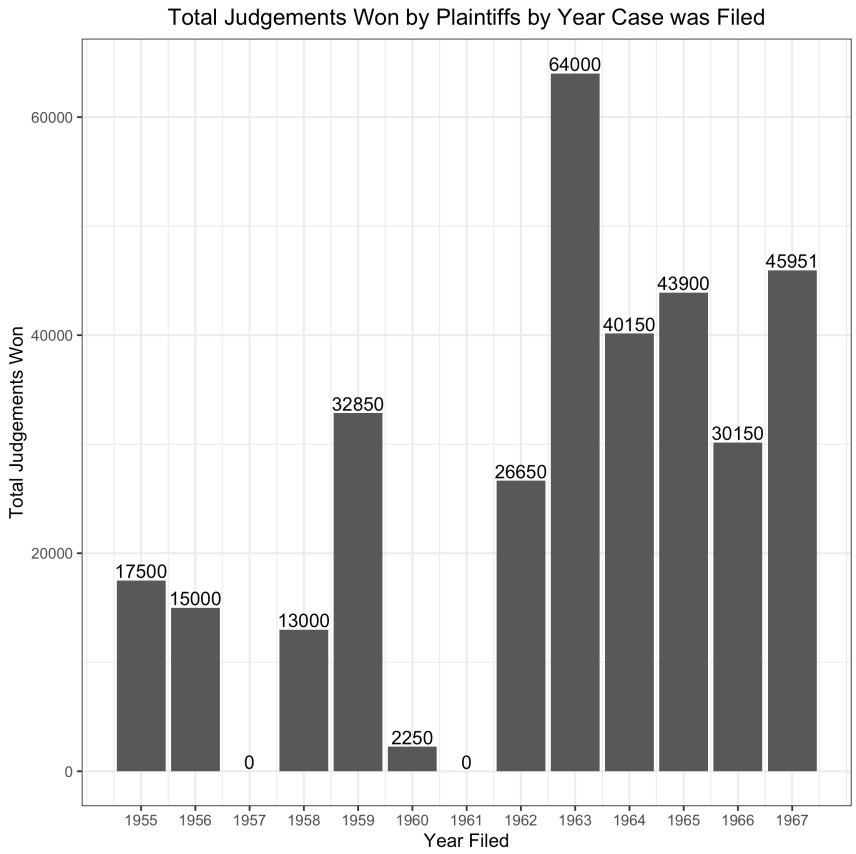

Figure 5. Graph of total amount awarded against the City and CPD officers by year case was filed between 1957 and 1967.

Annual Section 1983 Suits per Year
Data compiled by author.

* The docket sheets for 1955 and 1956 were not exhaustively searched, so there is a small but improbable chance some cases were missed, and the true total is higher.

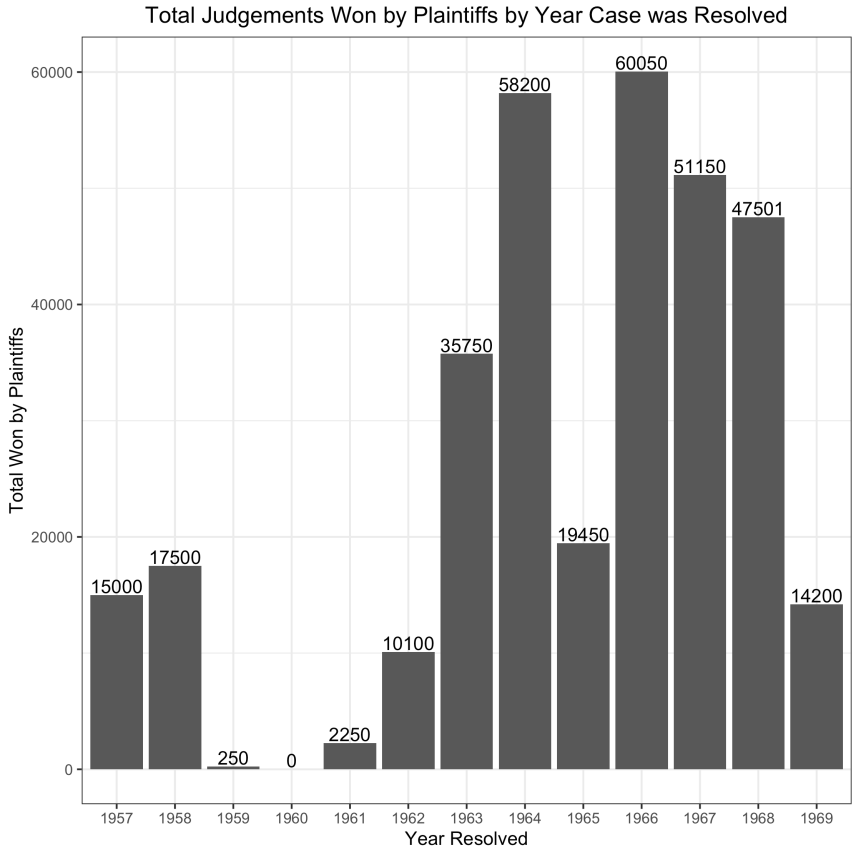

Figure 6. Graph of total amount awarded against the City and CPD officers by year case was resolved** for cases filed between 1955* and 1967.

Annual Section 1983 Suits per Year
Data compiled by author.

* The docket sheets for 1955 and 1956 were not exhaustively searched, so there is a small but improbable chance some cases were missed, and the true total is higher.
** The totals for each year, especially 1968 and 1969, do not include cases filed before 1955 or after 1967 that may have been resolved between 1957 and 1969.

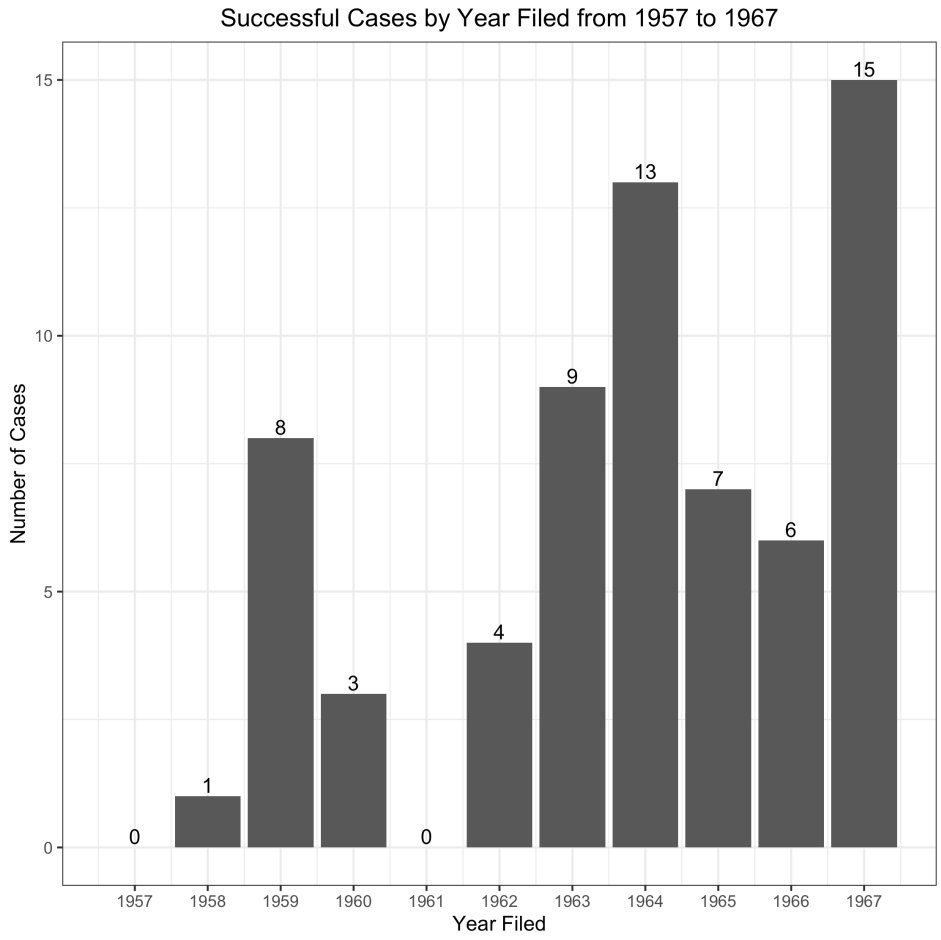

Figure 7. Graph of successful Section 1983 Suits per year filed from 1957 to 1967. Successful suits are those where the plaintiff won a non-zero award.

Data compiled by author.

Even though LMPL never specified exactly how they thought Section 1983 litigation patterns would change if their strategy was successful, they did sketch out some rough contours of what would change. The number of cases filed and the number of new lawyers and law firms representing plaintiffs would increase as more victims of police violence and lawyers had that "adequate inducement to sue." This in turn would drive up the total cost of these suits to the City until the costs reached the threshold to prompt reforms cutting down on the underlying problematic officer conduct. It is less clear what LMPL thought "stimulat[ing] the bar" would look like, but at the very least one would expect more new lawyers and firms taking cases in the years after *Monroe*.

An empirical examination of all Section 1983 suits filed against CPD officers or the City itself between 1957 and 1967 reveals that after *Monroe*, the number of cases filed, new lawyers and firms, and amount won by plaintiffs per year did increase, although perhaps not to the degree LMPL wanted. Overall, the relative paucity of cases filed in a City with over three million residents and ten thousand police officers—who had an average of over two hundred fifty brutality complaints filed against them each year—suggests that despite LMPL's partial victory with *Monroe*, other powerful inhibitors to filing suit remained. It is important to note that while many of the Section 1983 suits examined in this paper contain an element of abusive detention practices,

it is possible that not all of the ones filed in the decade examined did.[257] Still, as mentioned earlier, LMPL's plan was not solely focused on abusive detention practices, but rather police brutality and misconduct in general. As such, it is fair to evaluate the dynamics of all Section 1983 litigation against the CPD to consider how reality deviated from LMPL's vision after *Monroe*.

As Figure 4 reflects, it is clear that after the Supreme Court's decision in *Monroe*, there was an increase in the number of cases filed each year. For both the number of cases filed and the number of successful cases filed that year, 1959 stands as an outlier before 1962. This is likely because LMPL, and perhaps other lawyers who were in correspondence with the Illinois Division, had sought out strong cases that year as part of their litigation strategy.[258] Even including 1959, however, the average number of cases filed a year before *Monroe* was about seven; after *Monroe*, it was about 21. Figure 7 also shows there was an increase in the number of cases which were ultimately successful after *Monroe*, although those totals were not consistently increasing. Still, the post-*Monroe* number of cases filed and won were still likely very small compared to the total amount of police brutality and misconduct occurring in the City each year. For some perspective, from 2007 to 2017, there were an average of at least 184 *successful* cases per year filed against the CPD and its officers, despite the fact that there are more than half a million less people living in Chicago in the twenty-first century compared to the 1960s.[259]

Table 1. Types of Judgements in Cases Decided Before and After Monroe.[260]

Type of Judgement	Total final amount awarded for cases decided before *Monroe*	Total final amount awarded for cases decided after *Monroe*	Median final amount awarded for cases decided after *Monroe* (in cases with an award)
Jury Verdict	$32,500	$51,750	$6,750
Trial by jury waived	$250	$229,151*	$2,000
Other	$0	$17,750	$2,500
Total	$32,750	$298,651*	$2,400

[257] For more on the open question of whether brutality during arrest was a cognizable injury under Section 1983, see discussion *supra* note 33.

[258] Of the fifteen relevant cases filed in 1959, at least one member of LMPL worked on five of them. Complaint at 7, Gordon v. Arrington, No. 59-C-328 (N.D. Ill. Mar. 2, 1959) (on file at the National Archives at Chicago); Complaint at 37, Monroe v. Pape, No. 59 C 329 (N.D. Ill. Mar. 2, 1959) (on file at the National Archives at Chicago); Complaint at 12, Hardwick v. Hurley, No. 59-C-569 (N.D. Ill. 1959) (on file at the National Archives at Chicago); Amended Complaint at 9, Baumgarten v. Klimawicz, No. 59-C-570 (N.D. Ill. Dec. 21, 1959) (on file at the National Archives at Chicago); Initial Complaint at 17, Durham v. Nash, No. 59-C-770 (N.D. Ill. May 12, 1959) (on file at the National Archives at Chicago). Lawyers who the Illinois Division had corresponded with in the past also worked on another two. *See* Letter from Kenneth Douty to Charles Liebman, George Leighton, Cyril Robinson, Ernet Liebman, Don Moore, Morris Simons, Charles Pressman, Lee Leibik, Jewell Rogers, Eugene Devitt, David Alswant, Archibald Le Cesne, Odas Nicholson, William Hunry Huff & Euclid Taylor (Sep. 11, 1959) (on file at the University of Chicago Library, Special Collections Research Center); *see also* Complaint at 8, Mahkimetas v. City of Chicago, No. 59-C-548 (N.D. Ill. Apr. 6, 1959) (on file at the National Archives at Chicago); Complaint at 18, Smith v. O'Connor, No. 59-C-805 (N.D. Ill. May 19, 1959) (on file at the National Archives at Chicago).

[259] Data tabulated by author. US CENSUS BUREAU, *Quick Facts: Chicago City, Illinois; United States* (last visited Jan. 27, 2021).

[260] I have included asterisks here because the total for one of the cases, *Remec v. Chicago*, No. 67-C-1892 (N.D. Ill. Oct. 31, 1967) (on file at the National Archives at Chicago), was not made publicly available.

Table 2. Outcomes of Cases Decided Before and After Monroe.

Case Outcome	Cases Decided before *Monroe*	Cases decided after *Monroe*
Trial by jury waived	1	54
Other	0	6
Jury verdict of guilty	2	6
Jury verdict of not guilty	0	7
Directed verdict of not guilty	1	3
Dismissed before trial	9	85
Total	13	161

As Figures 5 and 6 demonstrate, there was also an increase in the amount plaintiffs won in judgments against the City and officers after *Monroe*, although just like with the number of cases filed and successful cases, the increase seemed small in proportion to the problem. Compared to the other two statistics, the City also had a strong hand in dictating how much the cost of most suits would be. In an interview from the aforementioned 1967 report with the City lawyer who handled Section 1983 suits, the lawyer stated that typically the City would settle strong claims and have a trial without a jury where the judge would read the settlement into the record as a formality.[261] Of the three cases decided before *Monroe* for the plaintiff, the City only settled one of them: *Montague v. Bowen et al.*, where a man accused CPD officers of holding him incommunicado for four hours and was awarded $250.[262] The other two cases, *Wakat* and *Carpenter*, were jury trials where the plaintiff won $15,000 and $17,500 respectively.[263] As Table 1 demonstrates, this changed drastically after *Monroe* was decided. Of the at least $279,150 in judgements awarded across 65 cases, the clear majority came from cases that the City settled.

The frequency of settling meant usually when a plaintiff had a strong claim, the City was still exerting a lot of influence over the ultimate cost of the lawsuit. Of course, the City could not settle for so little that the plaintiff refused to take the offer, but settling likely reduced the cost to the City compared to jury verdicts. Jury trials were relatively rare, and the majority were not decided in the plaintiffs' favor, but when plaintiffs won, the total verdict for all plaintiffs was typically over $10,000, an amount the City rarely settled above.[264] Of the eight cases where a jury

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[261] *See* ACLU ILL. DIV., *supra* note 17, at 24.

[262] Memorandum and Order at 1, Montague v. Bowen, No. 59-C-261 (N.D. Ill. Jun. 11, 1959) (on file at the National Archives at Chicago); Order at 1, Montague v. Bowen, No. 59-C-261 (N.D. Ill. Sep. 14, 1959) (on file at the National Archives at Chicago). Although the complaint sought to invoke Section 1983, the judge only allowed the suit to proceed under 28 U.S. Code Section 1332 since the plaintiff was a British citizen.

[263] Docket at 3, Wakat v. Harlib, No. 56-C-36 (N.D. Ill. May 31, 1957) (on file at the National Archives at Chicago); Docket at 3, Carpenter v. Brooks, No. 55-C-946 (N.D. Ill. Jan. 23, 1958) (on file at the National Archives at Chicago).

[264] Of the 54 cases where a trial by jury was explicitly waived the City only paid more than $10,000 in five of them. *See* Judgment Order at 1–2, Cedeno v. Lichtenstein, No. 58-C-1712 (N.D. Ill. Apr. 29, 1963) (on file at the National Archives at Chicago); Docket at 2, Bush v. Pepp, No. 63-C-2170 (N.D. Ill. Mar. 13, 1964) (on file at the National Archives at Chicago); Docket at 3, Bracken v. Varallo, No. 63-C-2280 (N.D. Ill. 1966) (on file at the National Archives at Chicago); Docket at 3, Attreau v. Morris, No. 63-C-128 (N.D. Ill. Dec. 14, 1967) (on file at the National

returned a verdict of guilty, the amount was over $10,000 in six of them.[265] In fact, in four of the cases, the verdict was so high that the amount was later reduced by the presiding judge.[266] Perhaps the most notable of the cases with reduced verdicts was *Booker v. Timmins*, where sailor Frank Booker sued police officer Benjamin Timmins for shooting him in the head outside a bar allegedly for no reason.[267] A jury later returned an eye-popping $254,000 verdict, the highest amount ever awarded in the Northern District of Illinois, Booker's lawyer claimed.[268] The City later agreed to settle for $25,000.[269] While it is hard to make sweeping judgements when the particulars of each case matter so much, given cases like *Booker*, *Monroe*, *Mica*, and *Collum,* it is probable that some of the other cases the City settled could have fetched similar verdicts if they went before a jury.

There are some important qualifications to that statement, however. For the suits in general, and jury trials in particular, some preliminary evidence suggests race and whether or not the plaintiff was charged with any crimes resulting from the incident the lawsuit was filed over played a significant role in the outcome of the case.[270] In many of the incidents which led to suits, police officers charged the plaintiff with at least one offense, often falsely, the plaintiff would allege. When the Illinois Division study examined differences between white versus minority plaintiffs and cases where the plaintiff had been convicted of the charge versus not, they found differences in case outcomes. Of the thirty cases where the plaintiff's race could be determined, white plaintiffs won four out of six cases compared to twelve out of twenty-four cases with minority plaintiffs. For the eight jury trials, white plaintiffs won one of two cases whereas minority plaintiffs lost all three.[271] Of the twenty-one cases where plaintiffs had criminal charges filed against them, they won five out of eight where they were not charged and won five out of four where they were charged. Plaintiffs won only one of the four cases where the outcome could not be determined. The difference was much more pronounced in the eight jury trials where plaintiffs who were convicted lost all three of their cases compared to the remaining plaintiffs who won three of the

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Archives at Chicago); Docket at 3–4, Grimes v. Chicago, No. 65-C-467 (N.D. Ill. Apr. 11, 1966) (on file at the National Archives at Chicago); Docket at 3, McDonald v. Stewart, No. 66-C-845 (N.D. Ill. Oct. 23, 1967) (on file at the National Archives at Chicago). Also note while the judgement in *Cedeno* was over $10,000, the amount was spread among twelve plaintiffs.

[265] *See* Docket at 2, Wakat v. Harlib, No. 56-C-36 (N.D. Ill. May 31, 1957) (on file at the National Archives at Chicago); Docket at 3, *Carpenter*, No. 55-C-946 (on file at the National Archives at Chicago); Docket at 7, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Dec. 4, 1962) (on file at the National Archives at Chicago); Booker v. Timmins, No. 62-C1-805 (N.D. Ill. 1962) (on file at the National Archives at Chicago); Docket at 4, Mica v. Chicago, No 67-C-1755 (N.D. Ill. May 15, 1968) (on file at the National Archives at Chicago); Docket at 4, Collum v. Butler, No 65-C-2199 (N.D. Ill. May 24, 1968) (on file at the National Archives at Chicago).

[266] *See* Docket at 8, Monroe v. Pape, No. 59-C-329 (N.D. Ill. Dec. 4, 1962) (on file at the National Archives at Chicago); Booker v. Timmins, No. 62-C1-805 (N.D. Ill. 1962) (on file at the National Archives at Chicago); Docket at 4–5, Mica v. Chicago, No 67-C-1755 (N.D. Ill. May 15, 1968) (on file at the National Archives at Chicago); Docket at 4–5, Collum v. Butler, No 65-C-2199 (N.D. Ill. May 24, 1968) (on file at the National Archives at Chicago). In addition to the reduced verdict in the *Monroe* trial in district court and *Booker*, in *Mica* and *Collum* juries returned verdicts of $12,500 and $17,500, respectively. In both cases the judge presiding over the trial ordered remitters reducing the amount to less than $10,000 for both.

[267] *Seaman Shot In Eye by Cop Seeks $1,000,000*, CHI. TRIB., Sep. 28, 1962, at C9.

[268] *Seaman Shot by Policeman Wins $254,000: Lost Eye; Bullet Still Lodged in Head*, CHI. TRIB., Oct. 18, 1963, at 18.

[269] *Cuts Damages In Shooting By Cop to $25,000: $254,000 Jury Award Reduced by Judge*, CHI. TRIB., Apr. 1, 1964, at A10.

[270] *See* ACLU ILL. DIV., *supra* note 17, at 19–29.

[271] *See id.* at 26.

other five cases.[272] While the Illinois Division's study only looked at 35 of the 160 cases filed from 1960 to 1967, this does suggest some factors which could have influenced case outcomes.

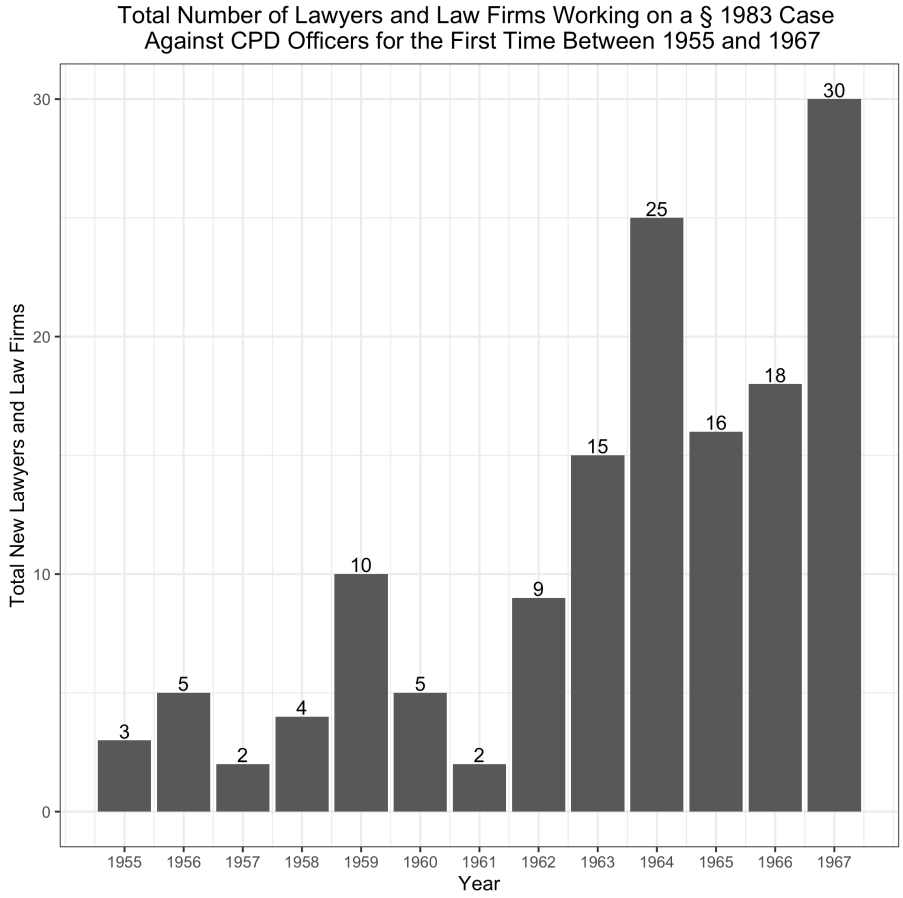

Figure 8. Graph of the number of lawyers and law firms working on a Section 1983 case against CPD officers for the first time between 1957 and 1967*.

Data compiled by author.

*These numbers are just for the interval from 1957 to 1967, meaning some of the lawyers and law firms could have worked on Section 1983 cases before 1957.

In terms of lawyers working on Section 1983 suits, there did appear to be an increase after *Monroe* as Figure 8 demonstrates. Before *Monroe*, there were an average of about five new lawyers and law firms working on Section 1983 per year. After *Monroe*, the average was about sixteen. It would seem that LMPL and the Illinois Division's work on stimulating the rest of the bar was working somewhat, as there were more lawyers and firms working on these cases. However over 75% of all lawyers and firms only worked on one case during the time period. Of those who only worked on one case, less than 60% won their case. In the absence of relevant information about the litigation habits of private lawyers in Chicago and how many cases they won more generally, it is hard to determine if Section 1983 suits were "bad" for lawyers looking to make a profit. However, the fact that over 40% of lawyers and law firms worked on a case, lost, and did not take another one within the time frame suggests they were not a certainty.

Indeed, the obstacles for both potential plaintiffs and counsel likely stemmed from the underlying fact that victims of police violence were "most often the poor . . . members of racial and ethnic minorities, alcoholics, sexual deviates, persons with police records, juveniles, . . . in short, the powerless."[273] This likely led to a litany of obstacles. A potential plaintiff would have to know they had a right to sue, potentially deal with credible fear of police retaliation, and have the

[272] *See id.* at 27.
[273] *Id.* at 20.

foresight and resources to document their injuries suffered at the hands of the police. They would also need to have the means to pay attorney fees, likely no small matter for poor victims of police violence who might have also had to deal with medical bills and lost wages.[274] Indeed, in the 1961 Commission on Civil Rights Report, that very problem was highlighted for police brutality lawsuits. The report mentioned contingency fees as a partial solution to the problem but that was still hampered by the difficulty in winning a case.[275] As Table 3 demonstrates, Section 1983 could take a long time to be resolved, especially when they were successful, and over 50% of cases ended in dismissal anyways, making contingency fees a potentially risky proposition for lawyers. For most victims of police violence, Section 1983 suits likely were not worth the time, effort, and money either. This difficulty was likely especially pronounced for non-white victims who some evidence suggests won their cases at lower rates. This likely meant that even as a purely compensatory mechanism, Section 1983 suits were largely unavailable to poor and non-white residents——the same ones who bore the brunt of police violence.

Table 3. Median days until resolution by outcome type for cases filed before and after Monroe was decided.

Case Outcome	Median number of days until resolution for cases filed before *Monroe*	Median number of days until resolution for cases filed after *Monroe*
Trial by jury waived	1130 ½ days	424 days
Other	1240 ½ days	424 days
Jury verdict of guilty	925 ½ days	676 ½ days
Jury verdict of not guilty	N/A	798 days
Directed verdict of not guilty	1210 days	436 days
Dismissed before trial	522 days	212 days
All Cases	915 days	320 days

Thanks to the small number of successful suits each year, and likely aided by the City's practice of settling some suits, the total amount awarded in judgements remained relatively small compared to both the CPD's annual budget and the City's overall expenditures on judgements stemming from lawsuits and administrative claims. The amount awarded against the City in judgements each year was probably at most double the City's annual expenditures on police suits from the late 1950s. Compared to the City's total expenditure on all lawsuits and administrative claims, the cost of Section 1983 suits was likely always a small proportion. In 1962, the City budget allocated two million for such expenditures.[276] However, from 1957 to 1967, total annual Section 1983 suit judgments never reached even five percent of that. Further, as Table 4 shows, the cost of Section 1983 suits was miniscule compared to the CPD's annual expenditures——not to say that LMPL ever intended for the cost of lawsuits to compare to the CPD's annual expenditures. Overall, it would appear Section 1983 litigation did not play out how LMPL had hoped.

[274] *See id.* at 20–21.
[275] *Id.* at 21 (citing U.S. Comm'n on Civ. Rts.: 1961 Report, Books 5: Justice LXVII, 1391 (1961)).
[276] Edward Schreiber, *Chicago Sued Often; Sneeze Can Cause It*, CHI. TRIB., Jun. 24, 1964, at 26.

Table 4. Total Amount Awarded in Judgements Per Year Compared with CPD Annual Expenditure[277]

Year	CPD Annual Expenditure	Total Amount Awarded by Year Case was Resolved*
1957	$55,478,680[278]	$15,000
1958	$59,098,150[279]	$17,500
1959	Unavailable	$250
1960	Unavailable	$0
1961	Unavailable	$2,250
1962	Unavailable	$10,100
1963	Unavailable	$35,750
1964	$ 90,774,582[280]	$58,200
1965	$91,042,274[281]	$19,450
1966	$103,105,418[282]	$60,050
1967	$113,000,000[283]	$51,150
1968	Unavailable	$47,501
1969	Unavailable	$14,200

D. So What Happened?

It is clear that, by 1967, LMPL's plan had failed. The cost of Section 1983 suits was not high enough to prompt change. What is up for speculation is whether the cost threshold LMPL theorized would prompt change actually existed. It is not clear what the answer is, but the answer is undoubtedly important; the entire plan to force policy changes via private suit falls apart if no cost is actually high enough to force a change in priorities.

LMPL's plan offers some evidence for both sides. On the side of answering yes to this question is the fact that the various factors inhibiting successful suits mentioned above meant that even at their highest, the suits only cost at most $60,050 in any given year—this was the amount awarded against officers in court, not the amount the City actually paid, which could have been lower.[284] Meanwhile, in 1967, the CPD spent over $113 million.[285] This meant that whatever amount the City actually paid from Section 1983 suits that year was a drop in the bucket of their total expenditures. Given all that, perhaps if the Section 1983 suit expenses reached some number

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[277] I have included asterisks because the totals for each year, especially 1968 and 1969, do not include cases filed before 1955 or after 1967 that may have been resolved between 1957 and 1969.

[278] CITY OF CHI. POLICE DEP'T, ANNUAL REPORT: YEAR ENDING DECEMBER 31, 1957 68 (1957), https://www.chicagocop.com/wp-content/uploads/Chicago-Police-Department-Annual-Report-1957.pdf, *archived at* https://perma.cc/B499-HE6H.

[279] *Id.* at 65.

[280] *Id.* at 3.

[281] *Id.*

[282] *Id.* at 27.

[283] *Id.* at 5.

[284] *See* Figure 4, *supra*, at 54.

[285] CHI. POLICE DEP'T, CHICAGO POLICE ANNUAL REPORT 1967 5 (1967). In 1962, the City said it was on track to pay out almost all of the two million dollars allocated to the judgement fund. It is reasonable to think that the City spent roughly that number in 1967 as well. *See* Schreiber, *supra* note 276.

where the City was forced to cut popular services or raise taxes, then it would muster the political will to eliminate the cost. Of course, that requires another argument that the City would actually eliminate police conduct leading to Section 1983 suits and not just find another way to shirk the cost.

On the side of answering no is the fierce resistance to outside oversight from both CPD leadership and rank-and-file officers combined with their political clout. The rank-and-file's revolt over the IID and the shared animosity towards anything resembling a civilian review board demonstrated their ability to resist change. Their political importance to City politics would have left leadership powerless to take drastic measures like mass firings, which could have resulted in a clean slate. Short of bankruptcy, no cost seems high enough in this scenario.

When trying to compare this to the present, the situation is probably different, but the answer to the question remains just as important.

CONCLUSION

Depending on the metric, LMPL's plan was simultaneously a resounding success and failure. Evaluated through the metric of making federal civil court a more accessible venue for victims of police violence, they were undoubtedly successful, though not in the way they had hoped. Their litigation in *Monroe* helped turn Section 1983 into the powerful tool that it can be today for victims of police violence. In no small part thanks to LMPL's work, victims of police violence can now seek financial redress in federal court if they so choose. That ability can be incredibly valuable. As the cases in this paper demonstrate, police violence typically carried not just a physical and psychological toll but also a monetary toll like lost wages and medical expenses. A judgement or settlement is certainly better than nothing and can provide some semblance of redress for the victim. Even if that was not LMPL's only goal, that accomplishment is powerful and important.

Yet, based on the metrics of preventing police violence, especially against the most vulnerable, their plan was a resounding failure. For all its benefits, monetary compensation can only do so much; no amount of money would bring Ralph Bush back from the dead, unbreak Fred Burley's leg or Joseph Grimes' jaw, or undo the trauma all those plaintiffs suffered. It is almost paradoxical how LMPL's plan simultaneously made the situation better for victims of police violence and accomplished nothing by leaving the underlying problem of police violence largely untouched. Unfortunately, the failure of the litigation strategy to prevent police misconduct had severe and disturbing ramifications not just for the 1960s, but for the decades to come as well.

After O.W. Wilson stepped down in 1967, Daley lackey James B. Conlisk took over the CPD, and "corruption, violence, and unabashed racism from the white rank and file exploded again."[286] Three years after that, Jon Burge joined the police force, and two years later, he was assigned to Area 2. Burge, often at the center of the modern-day discussion on police torture and abusive detention practices in Chicago, was an officer who intermittently worked and later held positions of authority in Area 2, a police district on the South Side from the mid-1970s to 1986.[287] There, he led a group of officers——sometimes known as the "Midnight Crew"——who have been

[286] BALTO, *supra* note 17, at 194.
[287] *Burge to Head Bomb and Arson Unit*, CHI. SUN-TIMES, Aug.14, 1986, at 26.

accused of using torture to elicit confessions by over 192 men, all of whom were black.[288] The officers were accused of using tactics like "Russian roulette with pistols and shotguns, burning suspects on radiators, suffocation with typewriter covers, beatings with phone books and electric shocks to the ears, nose, fingers, and testicles" to induce confessions.[289] The first allegation against Burge dates back to the early seventies, soon after he joined the CPD, although the first one to receive serious attention in the press was Andrew Wilson's. In 1982, Wilson and his brother were beaten, suffocated, and electrocuted by Burge and other officers until they "confessed" to the murder of two police officers.[290] Wilson eventually filed a Section 1983 suit against Burge, the City, and other officers involved for $10 million in damages stemming from his torture. Echoing many of the lawsuits in this paper, Wilson alleged a widespread custom of police abusing detained persons in their custody.[291] Wilson eventually lost his first lawsuit, but that was just the beginning of a flood of civil suits related to the torture under Burge. It is estimated that the City of Chicago, Cook County, and the state of Illinois have already paid more than $130 million dollars in settlements stemming from civil cases related to Burge. [292] Chicago alone has paid more than $80 million of that total.[293]

If LMPL's plan had worked, Burge and his conspirators would have never continued torturing Chicagoans as long as they did, as a reformed CPD would have either not permitted such behavior or, at the very least, Wilson or someone else's lawsuit would have prompted an investigation with consequences. Instead, Burge continued his reign of terror with impunity. An internal CPD report later determined that Burge and other officers engaged in "systematic torture" with the knowledge of their superiors, and a report from a special prosecutor identified hundreds of allegations of assault and other heinous acts.[294] Unlike the officers in the 1960s, consequences eventually came for Burge, although too little and too late. Burge was eventually fired in 1993 for torturing Andrew Wilson, but he was still allowed to keep his pension.[295] In 2010, he was convicted of perjury and obstruction of justice, stemming from a civil suit against him.[296] He was later sentenced to four-and-a-half years in prison, but those were the only criminal penalties he ever faced stemming from his reign of torture.[297] Meanwhile, many of the other officers involved and

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[288] John Conroy, *The Police Torture Scandals: A Who's Who*, CHI. READER (June 15, 2006), https://www.chicagoreader.com/chicago/the-police-torture-scandals-a-whos-who/Content?oid=922414, *archived at* https://perma.cc/K8MX-Y3NC.

[289] Tracy Siska, *The Chicago Police Used Appalling Military Interrogation Tactics for Decades*, GUARDIAN (Feb. 19, 2015), https://www.theguardian.com/commentisfree/2015/feb/19/chicago-police-military-interrogation-guantanamo, *archived at* https://perma.cc/BP8T-F5LZ.

[290] JOHN CONROY, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE 60 (2000); Harrison Smith, *Jon Burge, Alleged Ringleader of Police Torture in Chicago, Dies at 70*, WASH. POST (Sept. 20, 2018), https://www.washingtonpost.com/local/obituaries/jon-burge-alleged-ringleader-of-police-torture-in-chicago-dies-at-70/2018/09/20/734aef12-bcd5-11e8-b7d2-0773aa1e33da_story.html, *archived at* https://perma.cc/NA49-HBKL.

[291] *Id.*

[292] *See* Elvia Malagon, *The Cost of Jon Burge's Policy Torture Legacy*, CHI. TRIB., Sep. 23, 2018, at 9.

[293] *See id.*; *see also* DALE, *supra* note 10, at 1–2.

[294] *Jon Burge and Chicago's Legacy of Police Torture*, CHI. TRIB. (Sept. 19, 2018), https://www.chicagotribune.com/news/ct-jon-burge-chicago-police-torture-timeline-20180919-htmlstory.html, *archived at* https://perma.cc/KKV8-QEZH.

[295] *Id.*

[296] *Id.*

[297] *Id.*

the prosecutors in the State's Attorney's office informed of the torture, including future mayor Richard M. Daley, never faced any consequences.[298]

Many people have found it tempting to write off the failure to stop Burge's reign as a failure of individuals. This is best exemplified by federal judge Joan Lefkow's comment at his sentencing hearing: "How I wish there had not been such a dismal failure of leadership in the [police] department that it came to this . . . If others, such as the United States attorney and the [Cook County] state's attorney, had given heed long ago, so much pain could have been avoided."[299] This line of thinking goes: if only the individuals who had the power to stop Burge had actually done so, his reign of terror would have been avoided. This notion incorrectly writes Burge off as a perverse victim at best, and a bad apple at worst, and it portrays the torture as a result of a temporary lapse in institutional judgements and safeguards, downplaying the complicity of the entire system. Devoid of historical context, the Burge saga seems like a shocking, but ultimately one-off and isolated, failure within the CPD, instead of an indictment of the entire institution. However, the historical record, both within this paper and outside of it, reveals that Burge was just one manifestation of a much larger problem with much, much deeper roots.

Unfortunately, Burge is not the last chapter in the CPD's problems with abusive detention practices. In 2015, the same year the City Council finally passed an ordinance apologizing to Burge's victims and establishing reparations for his victims with "credible" claims,[300] the *Guardian* uncovered "what lawyers say is the domestic equivalent of a CIA black site" operated by the CPD on the South Side.[301] In a facility known as Homan Square over an eleven year period from 2004 to 2015, the police held more than 7,000 people, almost 6,000 of whom were black, incommunicado.[302] Internal police records showed *only sixty-eight* people were able to access an attorney or notify the public of their whereabouts, and some people held there said that they were detained for days.[303] That says nothing of the allegations of physical violence inside the facility, which included the use of "punches, knee strikes, elbow strikes, slaps, wrist twists, baton blows and Tasers" and one case of death in police custody.[304] As of July 2020, the CPD said the facility was "fully functional."[305]

Throughout all this, Section 1983 suits have remained a constant presence with seemingly little effect. Over the past two decades alone, the City of Chicago has had to pay over three quarters

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[298] *Jon Burge and Chicago's Legacy of Police Torture*, CHI. TRIB. (Sept. 19, 2018), https://www.chicagotribune.com/news/ct-jon-burge-chicago-police-torture-timeline-20180919-htmlstory.html, *archived at* https://perma.cc/KKV8-QEZH; *see also* Smith, *supra* note 279.

[299] Annie Sweeney & Tribune Reporter, *Burge Given 4 ½ Years in Prison*, CHI. TRIB. (Jan. 21, 2011), https://www.chicagotribune.com/news/ct-met-burge-sentencing-0122-20110121-story.html, *archived at* https://perma.cc/T6KA-9M45.

[300] *Id.* at 1–2.

[301] Spencer Ackerman, *The Disappeared: Chicago Police Detain Americans at Abuse-Laden 'Black Site'*, GUARDIAN (Feb. 24, 2015), https://www.theguardian.com/us-news/2015/feb/24/chicago-police-detain-americans-black-site, *archived at* https://perma.cc/MRY8-RCT2.

[302] *Id.*

[303] Spencer Ackerman, *Homan Square Revealed: How Chicago Police 'Disappeared' 7,000 People*, GUARDIAN (Oct. 19, 2015), https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands, *archived at* https://perma.cc/VEJ6-NA24.

[304] Spencer Ackerman, *'I Was Struck with Multiple Blows': Inside the Secret Violence of Homan Square*, GUARDIAN (Apr. 11, 2016), https://www.theguardian.com/us-news/2016/apr/11/homan-square-chicago-police-internal-documents-physical-force-prisoner-abuse, *archived at* https://perma.cc/NBT7-NJQR.

[305] Megan Hickey, *Protesters Demand Closure of CPD Homan Square Facility*, CBS CHI. (July 24, 2020, 6:15PM), https://chicago.cbslocal.com/2020/07/24/protesters-demand-closure-of-cpd-homan-square-facility/, *archived at* https://perma.cc/2ZSX-Z4PS.

of a billion dollars in costs stemming from Section 1983 and state court lawsuits filed against the CPD.[306] In 2017, after a two-year long investigation of the CPD, the Department of Justice (DOJ) released a scathing report on the conduct of CPD officers. An investigation into the role of civil suits found that over the seven-year period from 2009-2015, the disciplinary bodies overseeing officers recommended discipline in less than 4 percent of investigations stemming from lawsuits with settlements or judgments. Just as in 1967, there was a clear failure to connect successful suits against officers with virtually any internal discipline or punishment whatsoever. In a report on risk management, the City's own Office of Inspector General found that "because the City does not analyze trends, including trends in police misconduct, or take action on the basis of such analysis, the City 'spends tens of millions of dollars annually to pay claims.'"[307]

Here, the paradox appears again. It is better for the victims of police violence that the City now spends more per year on verdicts and settlements than it did in the 1960s (adjusted for inflation). Yet, the money is also worse than the violence never occurring, and it is appalling that the allegations of what happened in Homan Square sound like they could have been ripped right out of a lawsuit from the 1960s.

In the wake of the movement after George Floyd's death and the renewed focus on qualified immunity, it is important to ask what repealing qualified immunity would accomplish. Repealing qualified immunity would be incredibly useful as a method of expanding which victims of police violence can seek redress in federal civil court; however, the story of how LMPL's plan played out in the 1960s offers ample reason to be skeptical that repeal of qualified immunity will fix broader, systemic problems with police conduct, at least in Chicago. When considering the myriad factors that shared blame for the failure of LMPL's plan——ranging from police resisting external oversight to the inaccessibility of the civil court system for the victims of police violence to the cost of lawsuits not being high enough for the City to muster the political will to force change——there seems to be little reason to think that these obstacles have disappeared. At present, even if there is a price high enough to force change, it is probably too high. If such a number exists for Chicago, then that number is likely not in the millions or tens of millions per year, but higher. Moreover, the astronomical cost of lawsuits, often financed with debt, represents a very real diversion of City resources that could have been invested in marginalized communities. Instead, these communities must bear the brunt of police violence and then also pay for that "privilege" through their taxes. In this system, nobody but the offending officers wins. This is not to say that the City should stop paying these settlements; the settlements are a flawed but valuable compensation mechanism. Instead, this enormous financial cost should highlight the human and financial cost of the status quo and the urgent need for a solution to the problem of police violence.

The Illinois Division and the lawyers who worked to further its mission thought the solution could be obtained within the same system and institutions that tacitly permitted police violence to continue. Perhaps that is where their plan's error ultimately lay. The CPD's history of evading attempts to stamp out its use of torture and abusive detention practices suggests that its institutional culture is so rotten to the core that perhaps, given the stakes, the solution now should be a new start, not some chimeric dream of reform.

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[306] *See How Chicago Racked Up a $662 Million Police Misconduct Bill* (Mar. 20, 2016, 7:00 AM), https://www.chicagobusiness.com/article/20160320/NEWS07/160319758/how-chicago-racked-up-a-662-million-police-misconduct-bill, *archived at* https://perma.cc/5GGC-P95; Jonah Newman, *Chicago Spent More Than $113 Million on Police Misconduct Lawsuits in 2018* (Mar. 7, 2019), https://www.chicagoreporter.com/chicago-spent-more-than-113-million-on-police-misconduct-lawsuits-in-2018/, *archived at* https://perma.cc/66Z9-BT3V.

[307] U.S. DEP'T OF JUST., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 23, 65–6 (2017).