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A CONTENT ANALYSIS OF SECTION 1983 LITIGATION AGAINST RESERVE POLICE OFFICERS

by

Michael Ryan Broadus

A Thesis
Submitted to the Graduate School,
the College of Science and Technology"
and the School of Criminal Justice
at The University of Southern Mississippi
in Partial Fulfillment of the Requirements
for the Degree of Master of Arts

Approved by:

Dr. Philip E. Carlan Committee Chair
Dr. Lisa S. Nored
Dr. Charles L. Scheer

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ABSTRACT

Police studies have well developed a demonstrative framework for detailing risks which generate financially-detrimental civil litigation – particularly regarding 42 U.S.C. §1983. Conversely, though, police studies have given little attention to the often-used but differentially-trained reserve police officer. Primarily replicating the methodologies of Kappeler, Kappeler, and del Carmen (1993) and Ross (2000), this descriptive study sought to fill this void via a manifest content approach to purposively select a sample of Section 1983 cases decided by U.S. District Courts over a 16-year period (2001-2016) to determine: (1) if significant liability was generated by reserve officers, (2) the main basis for such claims, (3) the rate of plaintiff success, and (4) the average monetary award granted to successful plaintiffs. Although reserve police did not generate significant Section 1983 liability in the 30 cases reviewed in this study, data did identify failure to train as the most asserted basis for those claims. Moreover, an abysmally-low rate of plaintiff success made the calculation of a reliable average monetary award unattainable. Notwithstanding the methodological challenges which surfaced in this study, its findings did produce a series policy recommendations, while also providing advice to researchers who wish to continue an examination of the potential (and actual) Section 1983 liability associated with the use of reserve police officers.

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CHAPTER I - INTRODUCTION

Nearly two decades ago (in 2001), Cohen (2005) noted that successful civil plaintiffs averaged receipt of more than $50,000, with 11% actually receiving more than $1 million. Four years later (in 2005), Cohen and Harbacek (2011) similarly found that average civil cases generated $64,000; and in that same year, Langton and Cohen (2008) revealed that plaintiff awards in state courts averaged roughly $28,000. Collectively, then, it is reasonable to conclude that civil liabilities are costly. One major focus within the civil liability arena, however, pertains to law enforcement personnel.

Kappeler, Kappeler and del Carmen (1993) noted that 653 (48%) federal torts against police over a 13-year period (1978-1990) were successful, with a high award of $1.65 million. Ross (2000) further added that 552 (36%) lawsuits against police over an 11-year period (1989-1999) averaged $492,794, thus producing $272 million in annual costs. These two studies depict the numerous and expensive nature of law enforcement liability; but others, too, have confirmed voluminous civil liability costs against police (Langton & Cohen, 2008) that have detrimental effects on police budgets (Carter & Sapp, 1989; Fisher, Kutner, & Wheat, 1989). Of central significance, then, is a shared focus on one section of the federal code that permits civil liability attachment to government entities and their employees – that being Section 1983.

Context of Law Enforcement Liability

Title 42 Section 1983 of the U.S. Federal Code addresses egregious breaches of government authority (Eschholz & Vaughn, 2001; Vaughn & Coomes, 1995). Enacted as a means to preserve civil liberties (Nahmod, 2013), Section 1983 holds government agents liable when their actions inhibit constitutional rights. Kappeler et al. (1993) noted

that police malfeasance generates Section 1983 liability when errors result in a trespass upon constitutional rights (e.g., false arrest, unlawful search). Ross (2000) shared similar liability examples, but focused particularly on wrongdoing as a product of inferior training. Regardless of the avenue through which such liability emerges, its importance lies in its capacity to inhibit guaranteed freedoms of the American populace.

The U.S. Supreme Court clarified in *Monell v. New York City Dept. of Social Services* (1978) that Section 1983 liability attaches to governmental agencies when policies – or lack thereof – create civil rights violations (Lee & Vaughn, 2010; Manley, 2006). The High Court confirmed the mandate in *City of Canton v. Harris* (1989) in holding that an agency's habitual indifference to the need for officer training is tantamount to a policy decision, thus requiring that such agencies be accountable for resulting harm. Individual malfeasance, however, resulted in stratified liability.

Liability stratification principally originated from case law. Blum (1999) noted that agency liability is derived from a variety of U.S. Supreme Court decisions; individual liability, however, was specifically affirmed by the U.S. Supreme Court's ruling in *Monroe v. Pape* (1961). Abernathy (1989) likewise argued that *Monroe* created individual liability by granting state entities – not individuals – immunity from Section 1983. This ruling importantly suggests that individuals are central to litigation because organizational immunity implies that individuals generate lawsuits. This type of restricted liability is exhibited when inadequate training leads individual officers to commit constitutional violations (*City of Canton v. Harris,* 1989) such as excessive force, false imprisonment and/or arrests, and unlawful searches (Kappeler et al., 1993; Ross, 2000).

Use and Liability of Reserve Police Officers

More than 600,000 full-time law enforcement officers are employed in the United States (Federal Bureau of Investigation, 2015; Reaves, 2015); but these figures do not account for support officers. The Law Enforcement Management and Administrative Statistics survey data consistently document that more than 30% of all law enforcement agencies employ more than 40,000 auxiliary officers (Hickman & Reaves, 2006). Wolf (2013) further discovered that reserve officers hold considerable authority, with 673 (45%) delegated arrest powers and 1,028 (74%) permitted to actively patrol. Given, then, that patrol and arrest are standard tactics of full-time officer training, the finding that reserve officers generally receive less training may create enhanced risk of liability. For example, the Mississippi Board of Law Enforcement Standards and Training (2006) only requires 37 hours of patrol training for reserve officers, compared to 56 hours for full-time personnel. California also requires less reserve training, and even differentiates their degree of authority when working alone (Cal. Penal Code § 832.6). Concerned with these disparities, Wallace and Peter (1994) pointed out that the unorganized nature of reserve officer training was a liability risk. Wolf and Russo (2005) also noted that lesser-trained reserve officers invite liability that far outweighs that of their fully-trained counterparts.

Policymakers appear cognizant of the liability risks of improper reserve-officer training. Use of authoritative tactics creates much liability when absent proper instruction (Ross, 2000), especially with regard to the misuse of force and arrest (Wallace & Peter, 1994). California even segregates reserve officer authority based on level of completed training (Cal. Penal Code § 832.6). According to a California Commission on Police Officer Standards and Training (1995) survey, the motivation for the policy was the

perceived liability risk created by inadequate training. Wolf (2013) upholds the view that untrained New York reserve officers serve with little discretion, while California reserve officers exercise full authority once trained. Others have expressed similar liability concerns (Dobrin & Wolf, 2016; Wolf & Russo, 2005). Ultimately, though, even the slightest modicum of liability potential would seem sufficient to garner the interest of criminal justice researchers, and those practitioners actually employing reserve officers.

Statement of the Problem

Law enforcement liability appears to be a financial burden. One aspect of police liability, however, has received an abundance of attention (Kappeler et al., 1993; Ross, 2000). Unfortunately, though, studies have paid little attention to potential risks regarding certain types of sworn personnel – especially use of reserve officers. Their questionable training (Dobrin & Wolf, 2016; Wolf & Russo, 2005) situates both agencies and officers in peril of civil liability. Thus, the potential costs stemming from Section 1983 violations need more (and better) research about the use of reserve officers.

Purpose of the Study

Research clearly demonstrates the burdens of civil litigation caused by law enforcement malfeasance. Police studies often demonstrate general typologies (Kappeler et al., 1993; Ross, 2000), but rarely address reserve-officer liability – mostly due to lack of personnel variation. Although some data exist (Puffer, 1996; Wolf, 2013), Wolf and Russo (2005) largely attribute this dilemma to the general absence of reliable data. The potential risk of differentiated training is well documented, but the continued dearth of studies nonetheless necessitates that more attention be paid to the problem. This study

seeks to discover the presence and causes of reserve-officer Section 1983 liability, as well as to generate solutions to such litigation. This study follows four research questions:

1. Did reserve police officers generate significant Section 1983 liability during the years 2001-2016?
2. What was the most alleged basis for Section 1983 liability during the years 2001-2016?
3. How often did the plaintiff win their case(s) during the years 2001-2016?
4. What was the average payment granted to a successful plaintiff during the years 2001-2016?

Objectives

The objectives for this study are as follows:

O_1: How much Section 1983 liability did reserve police officers generate during the years 2001-2016?

O_2: What were the varying rates of allegations upon which Section 1983 liability was based during the years 2001-2016?

O_3: What was the relative rate of plaintiff success for Section 1983 liability cases during the years 2001-2016?

O_4: What was the average monetary award granted to a successful plaintiff for Section 1983 liability during the years 2001-2016?

Delimitations

This study is delimited by the following parameters:

1. Reserve police officer liability (primarily Section 1983) involving all cases where a reserve officer was the principal cause of a civil lawsuit.

2. Purposive sampling to select cases exclusively based on manifest content pertaining to Section 1983 reserve officer liability.
3. Federal lawsuits within U.S. District Courts during the years 2001-2016.

Assumptions

The assumptions for this study are as follows:

1. The sample of Section 1983 reserve officer liability cases will be representative of all federal liability cases (particularly Section 1983).
2. By excluding all cases pertaining to full-time officers, reserve officers are the principal cause of this sample's Section 1983 litigation.

Definition of Terms

The following terms apply to this study:

Civil Case/Claim: Section 1983 lawsuit by which an aggrieved party seeks relief.

Liability: Legal responsibility for certain actions or mistakes.

Liability cause: Specific act(s) committed by a reserve officer that served as the basis for a Section 1983 court case

Reserve/Auxiliary: Sworn volunteer within a law enforcement agency (Dobrin, 2017a) that serves primarily a support role (Dobrin, Wolf, Pepper, & Fallik, 2017).

Section 1983 Liability: Federal code through which government agents are held legally responsible when infringing upon constitutional rights (42 U.S.C. § 1983).

Justification of the Study

Fredericksen and Levin (2004) assert that volunteers -- particularly reserve police -- are increasingly used by government agencies; and as a result, renewed interest has surfaced in the unknown quandaries and risks of utilizing such volunteers (Cooper, Bryer,

& Meek, 2006). Considering the limited amount of data on reserve law enforcement (Dobrin, 2017a; Wolf, Holmes, & Jones, 2016), exploring this issue may provide vital insight into unperceived risks. Dobrin and Wolf (2016) argue that examination of reserve officers is similarly important, noting that a single unlawful shooting by an auxiliary officer can lead to training liability. These issues seem to be reasonable validation for further exploring reserve officers on both a macro/general level and micro/liability level (Wolf & Russo, 2005). Abundant liability also provides such justification.

Wolf (2013) posits that auxiliary programs can generally benefit police agencies, while others likewise support their manpower and economic benefits (Dobrin, 2017b; Pepper, 2014); yet with studies highlighting the costliness of police liability (Carter & Sapp, 1989; Fisher et al., 1989), it is essential that police officials have access to liability-mitigating solutions before such benefits are possibly eliminated. Even though such liability information is lacking (Dobrin & Wolf, 2016), Kappeler et al. (1993) and Ross (2000) circumvented this issue through qualitative analyses of Section 1983 cases, thereby establishing a methodological foundation for the construction of descriptions and solutions for liability-generating police malfeasance. By replicating this method, it is reasonable to presume that the same can be done for reserve police officer liability.

CHAPTER II – LITERATURE REVIEW

Nearly one decade ago (in 2010), LaFountain, Schauffler, Strickland, and Holt (2012) found that civil claims comprised 18% of 103.5 million cases in state courts. Two years later (in 2012), LaFountain, Schauffler, Strickland, Holt, and Lewis (2014) confirmed the reliability of that data, as civil claims again occupied 18% of 94.1 million state court cases. Hannaford-Agor, Graves, and Miller's (2015) one-year study (in 2013) of 152 courts in 10 urban counties across 10 states, however, revealed a far lesser quantity of 925,344 civil cases – a mere 5% of all such claims in the United States.

MacManus and Turner (1993) describe the cost of civil liability as drastic. For example, Cohen (2005) discovered that punitive damages for 356 successful plaintiffs in the nation's 75 most populous counties averaged $50,000, with more than $1 million distributed to 41 (11%) of those victors. Cohen and Harbacek (2011) then examined the same 75 counties four years later, and similarly found that punitive damages for 700 successful plaintiffs averaged $64,000, with more than $1 million distributed to 91 (13%) of those winners. In that same year, Langton and Cohen (2008) further discovered that some state courts of general jurisdiction handled nearly 27,000 civil liability cases, and disbursed average awards of $28,000 to 14,170 successful plaintiffs, with 624 (4.4%) receiving $1 million or more. Recent judicial caseload statistics also illustrate that civil liability cases are abundant in federal U.S. District courts, having experienced an increase in claims over the most recent two-year period – 281,608 in 2015 and 292,076 in 2017 (United States Courts, 2016, 2017a). These figures collectively purport that civil liability is both rampant and generally problematic for law enforcement.

Law Enforcement Liability

Police liability studies extensively describe the flawed nature of collected data, with many purporting that little accurate police litigation data even exists (Kappeler & Kappeler, 1992; Meadows & Trostle, 1988). Ross (2000) found no reliable mechanism to track lawsuits against police due to problematic case and opinion reporting. Vaughn, Cooper, and del Carmen (2001) corroborate Ross' claim that no mechanism to measure police liability on any jurisdictional level currently exists; but even though police liability studies have been plagued by inaccurate and nonspecific case recording, researchers have continually sought to collect such information on a more general level.

Research on law enforcement liability has increased proportionate to a corresponding rise in civil allegations against the police. For example, Carter and Sapp (1989) assert that civil liability was law enforcement's primary concern over the prior 10-year period; yet others claimed that liability had been a concern more along the lines of 2-3 decades (Russell, 1994). Novak, Smith, and Frank (2003), however, purport that police liability has been rising since the 1960s as a consequence of heightened legal oversight (del Carmen, 1981) in a period of increased bureaucratic culpability (Hughes, 2001; Pellicciotti, 1989). Schmidt's (1974) report of a 124% increase in police liability claims supported this contention, from which Kappeler et al. (1993) then deduced would have produced another 13,400 torts over the next two years. Worrall (1998) reported, however, that only 213 liability cases were distributed among 248 state and local police agencies, revealing that 1.1% of 18,000 state and local police agencies may have faced civil liability (Reaves, 2011). Vaughn et al. (2001) similarly indicated liability rates of 630 civil claims against police over a three-year period. Despite these figures, Novak et al.

maintain that unknown rates of police liability claims cause much speculation. Silver (1991), for instance, hypothesized that police face about 30,000 lawsuits annually – which if true would have produced 780,000 more police liability claims in the subsequent 26-year period. Other inferences, too, have been based on police–public contact.

Novak et al. (2003) argued that police encounters involving force yield a heightened likelihood of liability. If that assertion is true, Eith and Durose's (2011) report of 1.4% of 40 million police interactions involving physical force would yield 560,000 torts against police. Such drastic case rates make liability risk even more important when small portions of police encounters account for a high proportion of liability risk. It's upon this premise that Worrall (1998) implies that police research has focused on small groups because only a small fraction of officers actually generate liability.

Monetary costs are another reason for concern. According to Meadows and Trostle (1988), $12.5 million (average of $158,500) went to successful plaintiffs in 79 police liability cases. Kappeler et al. (1993) reported that the highest plaintiff award was $1.65 million, and that complainants on average received $121,874 in 112 successful cases -- totaling $14.7 million. Ross (2000) further found that 552 successful lawsuits averaged $492,794 -- producing $272 million in annual costs, while Bates, Cutler, and Clink (1981) calculated liability more near $730 billion – which is equivalent to $1.83 trillion when adjusted for modern inflation (United States Department of Labor, 2017). Given the World Bank's (2017) data that the United States' gross domestic product in 2016 was greater than $18.5 trillion, the aforementioned liability comparatively represents 10% of all funds generated in U.S. free markets. Moreover, with local law enforcement budgets consistently totaling $64.1 billion (Reaves, 2015), Bates et al.'s

liability calculation of $730 billion is 11.3 times larger than all combined local police financial resources, and 28.5 times greater when utilizing the adjusted inflation total.

Civil liability payments are particularly harmful to police finances (Carter & Sapp, 1989; Fisher et al., 1989). Reaves (2015) indicated the average budget of a local police agency was $5.2 million, meaning that an average plaintiff award of $158,500 in police liability (Meadows & Trostle, 1988) could deplete 3% of an agency's financial resources. Moreover, Ross' (2000) calculated average of $492,794 in 552 successful cases demonstrates a potential 9% depletion of operational expenses, and further signifies $272 million in total liability – or 52.3 times greater than an average budget. Although Ross indicated a high plaintiff success rate of 36%, Kappeler et al. reported an even higher 48% rate. Meadows and Trostle, however, reported a vastly higher rate of 100%, signifying that high plaintiff triumphs are financially detrimental to policing. In reality, however, this suggestion is speculative because existing issues with court case data invariably generates validity concerns about such information.

Data Dilemmas

Concerns about existing case data often require assumptive conclusions based on frequencies and other information. Ramseyer and Rasmusen (2010) concluded 20% of all civil liability case sampling is flawed due to incomplete instruments and/or improper data reporting, and that these problems are due to highly-differentiated state courts often utilizing several – instead of one centralized – courts to handle claims. These studies therefore must account for such differences when constructing survey instruments and sampling frames, lest courts may (1) fail to complete said questionnaire because of an honest belief the inquiries do not apply to them or (2) correctly report case data that fails

to account for varied jurisdictions. Hannaford-Agor et al. (2015) also acknowledge these operational challenges pursuant to lawsuit studies (e.g. highly varied court types, jurisdictions, and organization). Ironically, despite federal court standardization, these issues are not restricted to states. Kyckelhahn and Cohen (2008) and Litras (2000) state that although initial records often include the federal code for each case, the governing body for federal case classifications (Administrative Office of the United States Courts, AOUSC) has not yet required that submitted data include code sections in case statistics. Moreover, cases involving multiple constitutional issues are classified from established categories by the representing attorney, which is used thereafter in case data. These points are critical because Section 1983 liability originated as a means to protect civil rights (Nahmod, 2013); and since it addresses law enforcement overreach, inadequate reporting of code sections creates many unclassified cases that may involve police.

Litras (2000) identified 16,000 unclassifiable federal cases due to an absence of section coding – potentially representing numerous unknown Section 1983 claims against police. Moreover, this deficiency may well skew attempts to identify rates, causes and solutions of police liability (Worrall, 1998). The practice of attorneys classifying multiple-issue cases is similarly troubling (Kyckelhahn & Cohen, 2008), as it may lead to a disregarding of claims not explicitly involving Section 1983 or police; this oversight may even be exacerbated since AOUSC does not record legal actions directed toward police (Ross, 2000). Given that Section 1983 is a highly-prolific means of combating police civil violations (Kappeler et al., 1993; Vaughn, 1994), such misidentification or omission only adds to an information dearth inhibiting what otherwise would be an ample mechanism against police misconduct. As a consequence, claim frequencies and

typologies are speculative, which in turn worsens existing concerns when combined with the inaccuracy already embedded within police civil litigation data (Vaughn et al., 2001).

Section 1983 Law Enforcement Liability

Studies which focused on Section 1983 police liability have been plagued with similar complications regarding inaccurate case rates and recording. For example, broad coverage of civil liberties by Section 1983 translates into vague case descriptions (Harvard Law Review, 1969; Kossis, 2013), thus making case data inaccurate from imprecise case classification and cataloguing. This only worsens an earlier inference that Section 1983 cases may escape classification – and impact case rate accuracy – since specific sections of the federal code are not recorded in case statistics (Kyckelhahn & Cohen, 2008; Litras, 2000). Moreover, with Section 1983 being a primary means of addressing police malfeasance (Vaughn, 1994), this adds to the dearth of accurate police liability statistics due to classification errors. Kappeler et al. (1993) and Ross (2000) also point out that the lack of precise statistics on police liability claims extends to Section 1983; but research nonetheless continues to determine case rates in this manner.

Lee (1987) discovered only 240 (14%) Section 1983 claims were premised upon alleged police misconduct. Kappeler et al. (1993) and Ross (2000), however, recorded substantially higher numbers (1,359 and 1,525 respectively) of police malfeasance cases. Stinson and Brewer (2016) also discovered that 1,220 (22%) arrested police officers faced multiple Section 1983 complaints, signifying that only one-fifth of one percent of more than 600,000 actively employed police officers (Federal Bureau of Investigation, 2015; Reaves, 2015; United States Census Bureau, 2015) created Section 1983 risks; but with costly police liability, even this small segment could create great expense.

Hanson and Daley's (1995) inmate study showed that arresting officers' unlawful use of force was responsible for 161 (6%) Section 1983 claims. The United States Courts (2017b) more recently reported that prisoners filed 14,881 habeas corpus petitions in Federal District courts. The data present no direct police connection, but substantiates the premise because unlawful arrest and detention (two habeas corpus foci) are tantamount to liberty deprivation when exercised under color of law (Kappeler et al. 1993; Ross 2000). This also highlights the particular cause of litigation, as Section 1983 was fundamentally designed to address actions that subvert civil rights (Nahmod, 2013). Research suggests this manifested via the U.S. Supreme Court's blanket application of the Civil Rights Act of 1871, requiring that liability attach in any instance where government activities inhibit freedom (Lee, 1987; Stinson & Brewer, 2016). Additional proof is that Section 1983's sole purpose is to curb these events (Abernathy, 1989; Newman, 1978) by guarding civil liberties (*Mitchum v. Foster*, 1972). Thus, given that Section 1983 codifies the liability for government agents who obstruct civil liberties (42 U.S.C. § 1983), it is implied that police liability is a result of the impediment of civilians' civil liberties.

Multiple authors have argued that Section 1983 incorporates civil liability onto local governments when policies subvert civil rights (Lee & Vaughn, 2010; Manley, 2006), but Ross (2000) specifically notes that police administrators also have been civilly liable for Section 1983 claims pursuant to policy guidelines. Others likewise discuss the attachment of such liability when any agency or manager drafts policies responsible for constitutional violations (*Monell v. New York City Dept. of Social Services*, 1978). Police departments, too, may face civil liability (due to *Monell)* when there is no written policy (or the policy is inadequate) governing intermediate-force weapons usage (McEwen,

1997; Worley & Worley, 2011). The U.S. Supreme Court reasoned in *City of Canton v. Harris* (1989) that a law enforcement agency is liable for officer violations when it fails to adequately train them. Oliver (1986) and Stafford both (1987) interpret this as evidence of police administrator civil liability when harm results from indifference toward the training needs of officers. The common factor here is that civil liability can be derived from any part of a police organization – Manley (2006) has even confirmed that such fiscal remuneration pursuant to Section 1983 has occurred against agencies at multiple levels. Ross (2000) further corroborates this by reporting that civil claims against police are prominently caused by (1) policy faults or other internal decisions or (2) individual liability caused by staff. Additional studies also have revealed that individual errors are a prominent cause of Section 1983 liability (Chiabi, 1996; Kappeler et al., 1993; Miller, 1994; Schwartz & Pratt, 2011, Stinson & Brewer, 2016).

Stratified Law Enforcement Liability

Both agency (Blum, 1999) and individual (*Smith v. Wade*, 1983) liability are forms of police liability derived from Supreme Court decisions. Sources, however, essentially credit *Monroe v. Pape (1961)* with affirming individual civil liability by immunizing state and local governments from Section 1983 monetary liability (Abernathy, 1989). This consequently is significant to Kappeler et al.'s (1993) assertion that such lawsuits were created by officer error (e.g. excessive force, or illegal arrest and detention) as it suggests individuals are central to Section 1983 litigation. Ross (2000) reported identical errors regarding training failures, which only reaffirms that there is a trend of individual police officers generating Section 1983 claims. Ross further reports that individual officer mistakes were causes for lawsuits filed against both individual

officers and agencies, which is ultimately supported by multiple observations that individual malfeasance has created Section 1983 liability for both police officers and administrators (Eschholz & Vaughn, 2001; Kappeler & del Carmen, 1990; Miller, 1994). *City of Canton v. Harris* (1989) dictates, too, that Section 1983 liability attaches when officer errors result from insufficient training -- thus suggesting that one officer error can trigger a Section 1983 claim. Ross (2000) and del Carmen (1989) confirm the accuracy of such an observation by noting that individual police indeed were primary civil targets, as does Stinson and Brewer's (2016) report that 1,200 (22%) full-time officers had been exposed to the dangers of individual Section 1983 lawsuits. Individual errors and training issues also clearly relate to reserve police.

Reserve Police Officers and Liability

Although some contend that reserve officers' volunteer work is indistinguishable from that of fully-authorized, full-time patrolmen (Bayley & Shearing, 1996, Dobrin, 2017a; Meunier, Koontz, & Weller, 1995), they are nonetheless separately classified as support personnel for full-time police officers (Dobrin et al., 2017; Sundeen & Siegel, 1987). The Louisiana Revised Statutes and Tennessee Code likewise classify auxiliary police officers as those with full authority (LSA-R.S. 40:1665.2; Tenn. Code Ann. § 38-8-101), or as support personnel (Ala. Code § 11-43-210(a)) as Alabama does. In either case, their status creates several liability generating distinctions.

Full-Time versus Reserve Training

Dissimilar training requirements often entail that reserve and full-time police officers receive differentiated training (Pepper & Wolf, 2015). The Mississippi Board of Law Enforcement Officer Standards and Training (2006) requires 400 training hours for

full-time officers but only 200 training hours for reserve officers, and these same officers receive 52 hours and 4 hours (respectively) of firearms training. The Tennessee Department of Commerce and Insurance (2017), as well as the Alabama Peace Officer Standards and Training Commission (2017), indicate that full-time police training exceeds 500 hours; however, while the Alabama Administrative Code requires 400 training hours for reserves (Ala. Admin. Code Rule 650-X-10-.02) the Tennessee Peace Officer Standards and Training Commission (2017) require a mere 120-160 hours. The Louisiana Peace Officer Standards and Training Council (2016) conversely discuss that reserve officer training is subject only to administrative discretion. Wallace and Peter (1994) caution that reserve officer liability is often caused by flawed reserve officer training programs that are sporadic and unorganized. Wolf and Russo (2005) conversely argue that reserves invite liability by receiving less and inadequate training when contrasted with full-time police. Dobrin and Wolf (2016) also suggest such liability by claiming that reserves face individual liability from extensive training variation.

Policymakers appear aware of liability risks related to inadequate reserve-officer training, especially considering the Louisiana Peace Officer Standards and Training Council's (2016) report that such inadequacy was the main motivator to assist agencies employing undertrained reserve officers. The California Commission on Police Officer Standards and Training (2016) similarly exhibited this concern by utilizing risk mitigation via segregation of reserve authority by completed training (Cal. Penal Code §832.6), and requiring reserve officers to receive 200 hours of training to work freely. A California Commission on Police Officer Standards and Training's (1995) survey illustrated managerial views about inadequate reserve officer training as a major cause of

police liability. Wolf (2013) highlights this view of liability as a major factor in New York's decision to delegate little authority to untrained reserve officers, while California grants only trained reserves authority and autonomy. Other agencies also have utilized differentiated authority to mitigate reserve officer liability (Pepper & Wolf, 2015; Wolf et al., 2016). Cementing this point is that civil liability appears to be the greatest motivator for policy changes (Smith & Hurst, 1997).

Full-Time versus Reserve Employment

Training has often been used to distinguish full-time and reserve officers. One such example is California's explicit distinction between trained reserve officers with autonomy and untrained police officers which require supervision (Cal. Penal Code § 832.6). The California Commission on Police Officer Standards and Training (2016) adds that autonomous reserve officers may not work for extended periods of time. Mississippi and Tennessee created similar distinctions by limiting work hours (Miss. Code Ann. § 45-6-3(d); Tenn. Code Ann. § 38-8-101(3)). These work restrictions bolster the awareness of reserve officer liability because work-time reductions and supervisory oversight both serve as risk mitigation. Wallace and Peter (1994) further identify that police liability created by problematic reserve training is best alleviated through extensive (and supplemental) training and review. Others have similarly argued that training and oversight are central to reducing police officer liability (Clarke & Armstrong, 2012; Kinnaird, 2007a, 2007b). Despite such literature and practitioner concerns, however, auxiliary police officers are delegated significant authority.

Full-Time versus Reserve Authority

Opinions of most reserve authority contrarily assert little authority (Greenberg, 1978) or a state of being indistinguishable from their full-time counterparts (Bayley & Shearing, 1996). Wolf's (2013) reserve officer utilization survey, however, indicated they have equivalent authority, with 546 (39%) actively patrolling, 673 (45%) delegated full arrest powers, 1,028 (74%) engaged in specialized operations, and 1,347 (91%) carrying firearms. Wolf et al. (2016) similarly signify their authority equivalence by reporting that most police agencies utilize reserves for common policing tasks. Concerns abound about this fact, though, because Ross (2000) argues that improperly taught police tactics and authority can create liability. Wallace and Peter (1994) similarly determined that reserve police training's particularly disorganized nature contributes to questionable instruction which, in turn, creates increased probability of training liability via individual errors such as excessive force, improper arrests, and unjustifiable discretionary searches. Kappeler et al. (1993) and Ross discovered similar errors creating Section 1983 claims while utilizing no personnel distinction, and thus equates such liability directly with reserve police. Dobrin and Wolf (2016) support these claims by highlighting that unlawful reserve shootings were deemed excessive due to improper training. Although the magnitude of reserve liability remains unknown, its wide utilization continues despite the perception of frequent association with costly mistakes.

Full-Time versus Reserve Utilization

There are approximately 600,000 full-time (Federal Bureau of Investigation, 2015; Reaves, 2015; United States Census Bureau, 2015) and 40,000 more auxiliary police officers in the U.S. (Hickman & Reaves, 2006). Recent data also add about 30,000 more active reserve sheriff deputies – bringing the total to 70,000 auxiliary reserves

(Bureau of Justice Statistics, 2015) employed in 30% of 18,000 state and local police agencies (Reaves, 2011). Using Wolf's (2013) indication of 1,347 (91%) reserve officers using firearms, combined with recorded incidences of flawed reserve training which resulted in illegal shootings (Dobrin & Wolf, 2016), suggests that 1.92% of reserves may pose liability risks. Furthermore, Dobrin's (2017a) estimate of 70,000 active reserves suggests that each agency employs 14 or more reserve officers, meaning that one simple error may well be financially detrimental. Although a lack of valid data about reserve police render this estimate speculative (Wolf & Russo, 2005), it is nonetheless consistent with other such inferences (Kappeler et al., 1993; Ross, 1997; Worrall, 1998).

Unexplored Liability and Existing Research

Little research has explored reserve liability (Dobrin & Wolf, 2016) -- much less reserve officers in general (Wolf & Russo, 2005). Illinois state officials, though, possess dually-opposed notions about the creation of lawsuits by untrained reserves (Crank & Langworthy, 1992); and somewhat contradictory perceptions of risk also are held by California police supervisors (Puffer, 1996). Wright (1992) argued that liability concerns are concomitant with reserve-unit creation, whereas others believe liability is the outcome of flawed and differential training (Wallace & Peter, 1994). Keating's (1982) citation of *McAndrew v. Mularchuk* (1959) and Blum, Koleveld, Rudin, and Schwartz's (2012) citation of *Board of County Commissioners v. Brown* (1997) also identify lone reserve officers who committed malfeasance through abuse of authority. Others also point to differentiated training as the impetus for individual errors triggering Section 1983 claims (Dobrin & Wolf, 2016; Wallace & Peter, 1994). For example, the California Commission on Police Officer Standards and Training (2016) actually lessened all reserve authority

until training was completed. Acknowledgement of such liability by the Louisiana Peace Officer Standards and Training Council (2016) also was the prime factor in deciding to provide supplementary training assistance to undertrained reserve officers.

CHAPTER III – METHODOLOGY

The primary goal of this study was to resolve four general research questions: (1) Did reserve police officers generate significant Section 1983 liability during the years 2001-2016? (2) What was the most alleged basis for Section 1983 liability during the years 2001-2016? (3) How often did the plaintiff win their case(s) during the years 2001-2016? (4) What was the average payment granted to a successful plaintiff during the years 2001-2016?

Research Design

The four research questions in this study were pursued through a content analysis which mostly replicated procedures and logic employed by Kappeler et al. (1993) and Ross (2000). *LexisNexis* (an electronic database) was searched using five Boolean descriptors (i.e., reserve police officer, reserve law enforcement, auxiliary police officer, auxiliary law enforcement, Section 1983) to locate legal cases reflecting Section 1983 allegations against reserve police officers. Multi-word phrases were most appropriate because varying jurisdictions often label reserve personnel with diverse titles (Dobrin, 2017a; Pepper & Wolf, 2015; Wolf et al., 2016). Even though Ross solely examined training liability, no specific sampling frames beyond reserve officers were used because Section 1983 covers this by law (*City of Canton v. Harris*, 1989).

Case selection utilized a manifest content approach (i.e. written accounts of errors) to produce a sample restricted to the Section 1983 liability of reserve police officers. Chosen cases adhered to Kappeler et al.'s (1993) federal jurisdiction focus (i.e., cases within U.S. District Courts); this purposive sampling strategy was necessitated by the dearth of published research on reserve officers, and in conjunction with the

questionable validity of existing research (i.e., inaccurate case statistics, arbitrary case reporting and classification, and relatively small percentage of reserve officers within the law enforcement community). To account for such a restricted sample, however, four exclusions were necessary: (1) cases where reserve officers were not a principal party of the lawsuit – and thus not regarded as directly responsible for alleged harm; (2) temporal stratification was used to exclude cases within the expansive time frame (i.e. 1979-2000) studied by Kappeler et al. and Ross (2000) in order to eliminate case redundancy; (3) overlapping cases in the database; (4) methods used by Kappeler et al. required exclusion of all lawsuits against police officers (or agencies) by other officers, plus exclusion of all cases pertaining to state tort law, or Federal Tort Claims Act, in an effort to expose only the Section 1983 liability of reserve officers.

Objectives

This descriptive study aimed to calculate outcomes for four objectives extracted from the extant literature reviewed for this project: (1) How much Section 1983 liability did reserve police officers generate during the years 2001-2016? (2) What were the varying rates of allegations upon which Section 1983 liability was based during the years 2001-2016? (3) What was the relative rate of plaintiff success for Section 1983 liability cases during the years 2001-2016? (4) What was the average monetary award granted to a successful plaintiff for Section 1983 liability during the years 2001-2016?

Data Evaluation and Statistical Techniques

Following implementation of exclusion parameters, the resulting cases were analyzed as a collective 16-year unit to determine an overall case total and yearly average, and also individually analyzed to achieve three tasks: (1) extract available

demographic information about reserve police officers or agencies, (2) classify each case by the nature of the error (i.e. manifest content) that generated the liability claim, and (3) document plaintiff success and monetary awards. Case classification followed Ross' (2000) method of collecting the total written text for each case to determine any principal or common causes, as each case may contain multiple subsets of accusations beyond the primary claim. In effect, this allowed for the determination of specific litigation causes. Moreover, gathering demographic data aided in the development of a profile for the sampled cases in order to discern any relevant liability trends.

To assess Objective 1, a basic summative value for total cases was generated utilizing Kappeler et al.'s (1993) method of aggregating liability cases across all sampled years, in conjunction with recorded case classifications to determine a total of Section 1983 cases caused by reserve officers. Because each case provided what (if any) liability was generated, this approach allowed for the computation of an overall value of Section 1983 liability created by reserve officers; generating this total also allowed for a comparison with the initial case total (i.e. across all years) to calculate a relative percentage of reserve officer cases. To assess Objective 2, Ross' (2000) method of summing related case classifications (e.g. tallying related search and seizure violations) across all years was applied to determine the frequency of each liability error, which was then subsequently divided into the total number of Section 1983 cases in order to generate proportional representations of all case classifications, and thus allowed for determination of prevailing liability causes. Grouping related liability causes and determining their proportionality ultimately allowed for acceptance or rejection of the suspicion that training issues were the prevailing basis for liability cases during these

years. Assessment of Objectives 3 and 4 was done through summing of individually recorded instances of plaintiff victory (or monetary awards) across all years to develop respective aggregates that were subsequently divided into the initial overall case total to determine both (1) proportional plaintiff success and (2) average plaintiff award. A profile of sampled cases was then constructed via use of collected demographic data.

Potential Limitations of the Study

The methods used in this study engendered four potential limitations regarding validity of the findings. One limitation was the potential introduction of selection bias through the use of purposive sampling. An inability to generalize findings of this study across all police agencies possibly inhibited its utility for some (or all) law enforcement budgets. The manner through which search terms were selected reinforces this concern because the five descriptors are grounded in both legal statutes and research.

A second limitation was the potential influence of history. Weitzer (2002) observed that public mindfulness of a police scandal led not only to civil and criminal sanctions, but also negatively influenced public perception of the Los Angeles Police Department. Additionally, Lait and Glover (2000) reported that victims filed roughly 200 lawsuits of alleged police abuse after the media highlighted such incidents. In short, general awareness of police misconduct had the potential to create lawsuits.

A third limitation was the potential for awareness of general misconduct to cause the filing of civil cases – namely qualitative and quantitative differences in litigation across the sampling time frame. Given that this analysis excluded cases not focusing on Section 1983 liability, this risk was somewhat mitigated by narrowing primary causes of cases to civil violations – as Section 1983's sole purpose is to address these events

(Abernathy, 1989; Nahmod, 2013; Newman, 1978) primarily through protecting civilian constitutional rights (*Mitchum v. Foster*, 1972).

Access to civil claims and other data therein (e.g. settlement figures, plaintiff-police win/loss ratios, basis for claims etc.) was a critical fourth limitation. Both Ross (2000) and Kappeler et al. (1993) highlighted that their analyses were hindered because many cases were not published due to judicial discretion in opinion reporting, blatant failures to record decisions, and particularly out-of-court settlements. Eisenberg and Lanvers (2009) highlighted this issue by noting that civil claims' settlement rates may approach 90%. Kappeler et al. discussed that these issues are slightly mitigated, however, by the uniformity of what cases are available, as published cases signify decisions that were reported (deemed noteworthy), and thus available cases sampled for this study offered a valid representation of Section 1983 allegations against reserve police

CHAPTER IV – RESULTS

Multiple data exclusions in this study yielded a final sample of 30 cases across 16 years -- an annual average of 1.87 cases. Reliable demographic information was limited to officer gender, agency type/supervisory location, and geographic location by State. Forthcoming findings are presented with the aim of (1) resolving each research question, and (2) constructing a profile of the sampled cases.

Although limited in volume and variation, Table 1 displays the demographic characteristics of all sampled cases (n = 30), nearly all of which were based on alleged malfeasance by male reserve officers (n = 29, or 96.7%). Moreover, municipal police agencies (n = 22, or 73.3%) were liable for reserve officer wrongdoing much more frequently than were county agencies (n = 5, or 16.7%) and businesses (n = 3, or 10.0%). Data were extracted from 18 states, with an average of 1.66 cases per state. California, Illinois, Indiana, Louisiana, Maine, Missouri, New York, and Oklahoma (8 of 18, or 44.4%) each had two claims, and thus collectively accounted for slightly more than one-half (16 of 30, or 53.3%) of all sampled liability cases. Colorado, Florida, Kansas, Michigan, Minnesota, Montana, Ohio and Oregon (8 of 18, or 44.4%) each had one claim totaling 26.7% (8 of 30) of all liability cases, and Alabama and Tennessee (2 of 18, or 11.1%) each had three claims totaling 20.0% (6 of 30) of all liability cases.

Research Questions

Research Question #1 – Generation of Significant Section 1983 Liability

Table 2 displays case success and liability claims for each respective year of the sampling frame. Data revealed that Section 1983 liability claims were not frequently filed

Table 1

§1983 Reserve Police Officer Cases By Demographic Characteristics

Characteristics	**n**	**%**	**Expected Observation**
Officer Gender			15.00
Male	29	96.7%	
Female	1	3.3%	
Agency/Location			10.00
Municipal	22	73.3%	
County	5	16.7%	
Business	3	10.0%	
State/Jurisdiction			1.66
Alabama	3	10.0%	
California	2	6.7%	
Colorado	1	3.3%	
Florida	1	3.3%	
Illinois	2	6.7%	
Indiana	2	6.7%	
Kansas	1	3.3%	
Louisiana	2	6.7%	
Maine	2	6.7%	
Michigan	1	3.3%	
Minnesota	1	3.3%	
Missouri	2	6.7%	
Montana	1	3.3%	
New York	2	6.7%	
Ohio	1	3.3%	
Oklahoma	2	6.7%	
Oregon	1	3.3%	
Tennessee	3	10.0%	

Note: Percentages have been rounded to nearest tenth.

(n = 30; mean yearly rate = 1.87) against reserve officers during the years 2001-2016. More importantly, the data further indicated a scarcity of plaintiff success (2 of 30, or 6.7%), thus signifying no significant actual liability was generated. Collectively, 18.8% (3 of 16) of all sampled years had no liability cases (2001, 2002, 2005). Of the remaining years (13 of 16, or 81.2%): (1) 18.8% (3 of 16) had one claim totaling 10.0% (3 of 30) of all sampled cases, (2) 31.3% (5 of 16) had two claims totaling 33.3% (10 of 30) of all sampled cases, (3) 18.8% (3 of 16) had three claims totaling 30% (9 of 30) of all sampled cases, and (4) 12.5% (2 of 16) had four claims totaling 26.7% (8 of 30) all sampled cases.

Research Question #2 – Most Alleged Basis for Section 1983 Liability

Failure to train (see Table 2) was the most alleged basis for Section 1983 liability against reserve officers during the years 2001-2016, with allegations specifically filed in slightly more than one half (9 of 16, or 56.3%) of all sampled years, and multiple such claims also were filed in one-quarter (4 of 16, 25%) of those years -- comprising 30% (9 of 30) all sampled cases: 2008 and 2013 (2 of 4, or 50%), 2011 (2 of 2, or 100%), and 2015 (3 of 3, or 100%). The remaining five failure-to-train claims were filed in 2003, 2007, 2010, 2012, and 2016.

Table 3 illustrates six types of liability were alleged against reserve officers, with failure to train (n = 14, or 46.7%) easily the most commonly-filed claim. Search & seizure and arrest & detention were the second and third most-asserted case claims, but collectively totaled (40%, 12 of 30) – nearly 7% less than the singular claim for failure to train. Varying errors and activities, however, served as the bases for these claims.

Table 2

§1983 Reserve Police Officer Cases By Year Filed & Case Success Rate

Year	n	%	Case Claim(s)	Claim Rate	Plaintiff Success	Police Success
2003	2	6.7	Failure to Train	1	0	2 (100%)
			Search & Seizure	1		
2004	1	3.3	Search & Seizure	1	0	1 (100%)
2006	1	3.3	8th Amend. Vio.	1	1 (100%)	0
2007	3	10.0	Arrest & Detention	1	0	3 (100%)
			Failure to Train	1		
			Search & Seizure	1		
2008	4	13.3	Failure to Train	2	0	4 (100%)
			Negligent Hiring	1		
			8th Amend. Vio.	1		
2009	1	3.3	Search & Seizure	1	0	1 (100%)
2010	3	10.0	Excessive Force	1	1 (33.3%)	2 (66.7%)
			Failure to Train	1		
			Arrest & Detention	1		
2011	2	6.7	Failure to Train	2	0	2 (100%)
2012	2	6.7	Arrest & Detention	1	0	2 (100%)
			Failure to Train	1		
2013	4	13.3	Search & Seizure	2	0	4 (100%)
			Failure to Train	2		
2014	2	6.7	Arrest & Detention	1	0	2 (100%)
			Search & Seizure	1		
2015	3	10.0	Failure to Train	3	0	2 (100%)
2016	2	6.7	Arrest & Detention	1	0	2 (100%)
			Failure to Train	1		
Total	**30**	**100**		**30**	**2 (6.7%)**	**28 (93.3%)**
Avg.	**1.87**					

Note: Percentages have been rounded to nearest tenth where applicable.

Table 3

§1983 Reserve Police Officer Case Claims By Specific Error & Activity

Case Claim	n	%	Specific Errors	Rate/% of Error(s)	Specific Activity
8th Amend. Violation	2	6.7	***Excessive Bail***	***2 (100%)***	***Excessive Bail***
Arrest & Detention	5	16.7	Unlawful Arrest	5 *(100%)*	No Probable Cause
Excessive Force	1	3.3	Lethal Force	1 *(100%)*	Shooting
Failure to Train	14	46.7	Excessive Force Arrest Process Unlawful Arrest ***Rape*** Unlawful Seizure	2 *(14.3%)* 3 *(21.4%)* 7 *(50.0%)* ***1 (7.1%)*** 1 *(7.1%)*	Battery - Firearm Handcuff Tactics No Probable Cause ***Rape*** Seizure: Person
Negligent Hiring	1	3.3	***Sexual Abuse***	***1 (100%)***	***Sexual Abuse***
Search & Seizure	7	23.3	Unlawful Entry Unlawful Search Unlawful Seizure	3 *(42.8%)* 2 (28.6%) 2 *(28.6%)*	Entry: Residence Search: Residence Seizure: *Person (1)* *Vehicle (1)*
Total	**30**	**100**		**30 (100%)**	**30 (100%)**

Note 1: Percentages have been rounded to nearest tenth where applicable.
Note 2: **Bold** and *italicized* represent specific errors also asserted as activity.

Unlawful arrest, arrest process, and excessive force comprised 85.7% (12 of 14) of all errors leading to failure-to-train claims. Each error, however, was independently related to (1) absence of probable cause, (2) handcuffing tactics, and (3) battery with a firearm. Isolated failure-to-train claims also were filed for rape (n = 1, or 7.1%) and unlawful seizure of a person (n = 1, or 7.1%). Additionally, unlawful arrest (5 of 5, or 100%) as a byproduct of no probable cause was the basis for all arrest and detention

claims. Unlawful residential entry and unlawful residential search errors generated 71.4% (5 of 7) of all search and seizure claims. Lastly, 13.3% (4 of 30) of all other assertions were attributed to (1) excessive bail (n = 2), (2) sexual abuse stemming from negligent hiring (n = 1), and (3) lethal-force shooting which qualified as excessive force (n = 1).

Research Question #3 – Plaintiff Success Rate

Given that plaintiffs won only 6.7% (2 of 30) of filed cases in 2006 and 2010 (see Table 2), it is reasonable to conclude that reserve officers overwhelmingly prevail (93.3%, 28 of 30) in section 1983 lawsuits, and thus reaffirms that little actual liability is generated. This shortage of plaintiff success does, however, reveal an interesting trend. Table 4 displays the six claims areas and case success rates recorded from the sample in this study. Data revealed that reserve officers had a 100% success rate in 66.7% (4 of 6) of areas: (1) arrest and detention, (2) excessive force, (3) negligent hiring, and (4) search and seizure. Conversely, plaintiffs succeeded in 50% (1 of 2) of Eighth Amendment violation cases and only 7.7% (1 of 14) of failure-to-train claims.

Research Question #4 – Average Payment Granted to a Successful Plaintiff

The abysmally-low 6.7% plaintiff success rate made unattainable the calculation of a reliable estimate of the average amount of awards against reserve officers. Adding to this unforeseen dilemma is that the actual award was reported for only one of two successful plaintiffs – *Campbell v. Anderson County* (2010) noted punitive and compensatory rewards of nearly $25,000 each (~ $50,000 total). Unfortunately, *Staley v. Wilson County* (2006) was resolved by an undisclosed settlement agreement.

Table 4

§1983 Reserve Police Officer Case Claims By Case Success Rate

Case Claim	n	%	Plaintiff Success	Police Success
8th Amend. Violation	2	6.7	1 (50%)	1 (50%)
Arrest & Detention	5	16.7	0	5 (100%)
Excessive Force	1	3.3	0	2 (100%)
Failure to Train	14	46.7	1 (7.7%)	13 (92.3%)
Negligent Hiring	1	3.3	0	1 (100%)
Search & Seizure	7	23.3	0	7 (100%)
Total	**30**	**100**	**2 (6.7%)**	**28 (93.3%)**

Note: Percentages have been rounded to nearest tenth where applicable.

Profile of Cases

From the data, it is now somewhat possible to construct a profile consisting of case frequencies, case claim, and case success rates along demographic lines. Table 5 displays case success and primary case claim by officer gender. Failure to train was the primary claim filed against both male (13 of 30, or 44.8%) and female reserve officers (1 of 1, or 100%) -- both plaintiff successes involved male reserve officers.

Table 6 displays case success and primary case claim by agency type/location. Results demonstrated that the majority of claims were filed against reserve officers employed in municipal police agencies (22 of 30, or 73.3%) – the primary basis for which was failure to train (11 of 22, or 50%). County agencies employed reserve officers in 16.7% (5 of 30) of lawsuits in this study – the basis for which was generally premised on a search and seizure allegation (3 of 5, or 60%). Businesses employed reserve officers in the remaining 10% (3 of 30) of claims, primarily on arrest and detention allegations (2

of 3, or 66.7%). Case success data also noted that municipal agencies and businesses collectively prevailed in 100% (24 of 24) of claims against them. Consistent with scarce success, plaintiffs prevailed in only two of five (or 40.0%) cases against county agencies.

Table 5

§1983 Reserve Police Officer Cases By Officer Gender & Case Success

Officer Gender	n	%	Most Asserted Case Claim	Rate of Claim	Plaintiff Success	Police Success
Male	29	96.7	Failure to Train	13 (44.8%)	2 (6.9%)	27 (93.1%)
Female	1	3.3	Failure to Train	1 (100%)	0	1 (100%)
Total	**30**	**100**		**14 (46.7%)**	**2 (6.7%)**	**28 (93.3%)**

Note: Percentages have been rounded to nearest tenth where applicable.

Table 6

§1983 Reserve Police Officer Cases By Agency/Location & Case Success

Agency/ Location	n	%	Most Asserted Case Claim	Rate of Claim	Plaintiff Success	Police Success
Municipal	22	73.3	Failure to Train	11 (50%)	0	21 (100%)
County	5	16.7	Search & Seizure	3 (60%)	2 (40.0%)	3 (60.0%)
Business	3	10.0	Arrest & Detention	2 (66.7%)	0	3 (100%)
Total	**30**	**100**		**16 (53.3%)**	**2 (6.7%)**	**28 (93.3%)**

Note: Percentages have been rounded to nearest tenth where applicable.

Table 7 displays case success and primary case claim across all 18 states in this study. Results demonstrated that less than one quarter (22.2%, 4 of 18) of states housed multiple cases on a singular claim, comprising 30% (9 of 30) of all cases: (1) Alabama's three cases all focused on search and seizure, while (2) Indiana, (3) Louisiana, and (4) New York each had two failure-to-train cases. Conversely, one third (33.3%, 6 of 18) of multiple-case states varied by claims, comprising 43.3% (13 of 30) of all claims: (1) Tennessee's three cases (of which two included plaintiff success) added an Eighth Amendment violation to aforementioned failure-to-train and search and seizure cases, while the other five states each had two cases with an added claims twist – (2) California (arrest and detention), (3) Illinois (negligent hiring), (3) Maine (excessive force), and (4) Missouri and (5) Oklahoma (both arrest and detention). The remaining 50% (4 of 8) of states had only one case each. Success rates revealed that reserve officers prevailed in 93.3% (28 of 30) of all cases and in 94.4% (17 of 18) of all states.

Table 7

§1983 Reserve Police Officer Cases By State & Case Success

State	n	%	Case Claim(s)	Claim Rate	Plaintiff Success	Police Success
Alabama	3	10.0	Search & Seizure	3	0	3 (100%)
California	2	6.7	Arrest & Detention 8th Amend. Viol.	1 1	0	2 (100%)
Colorado	1	3.3	Failure to Train	1	0	1 (100%)
Florida	1	3.3	Arrest & Detention	1	0	1 (100%)
Illinois	2	6.7	Failure to Train Negligent Hiring	1 1	0	2 (100%)
Indiana	2	6.7	Failure to Train	2	0	2 (100%)
Kansas	1	3.3	Search & Seizure	1	0	1 (100%)
Louisiana	2	6.7	Failure to Train	2	0	2 (100%)
Maine	2	6.7	Failure to Train Excessive Force	1 1	0	2 (100%)
Michigan	1	3.3	Failure to Train	1	0	1 (100%)
Minnesota	1	3.3	Search & Seizure	1	0	1 (100%)
Missouri	2	6.7	Failure to Train Arrest & Detention	1 1	0	2 (100%)
Montana	1	3.3	Failure to Train	1	0	1 (100%)
New York	2	6.7	Failure to Train	2	0	2 (100%)
Ohio	1	3.3	Arrest & Detention	1	0	1 (100%)
Oklahoma	2	6.7	Failure to Train Arrest & Detention	1 1	0	2 (100%)
Oregon	1	3.3	Search & Seizure	1	0	1 (100%)
Tennessee	3	10.0	Failure to Train Search & Seizure 8th Amend. Viol.	1 1 1	2 (66.7%)	1 (33.3%)
Total **Avg.**	**30** **1.66**	**100**		**30 (100%)**	**2 (6.7%)**	**28 (93.3%)**

Note: Percentages have been rounded to nearest tenth where applicable

CHAPTER V – DISCUSSION, RECOMMENDATIONS, AND CONCLUSIONS

The extant literature reviewed for this study showed that law enforcement liability is rampant and expensive (Carter & Sapp, 1989; Kappeler et al, 1993; Ross, 2000), but has produced miniscule scholarship addressing the risks of using reserve officers (Dobrin & Wolf, 2016; Wolf & Russo, 2005). This descriptive study sought to (1) discover the extent to which reserve officers generated Section 1983 liability, (2) calculate the average monetary award associated with such liability, and (3) develop appropriate solutions to such litigation. Although based on a small sample of 30 cases, the following discussion provides information relevant to these goals while concurrently comparing its results with those of the principal studies upon which this study was guided. Policy recommendations and suggestions for future research also are discussed.

Presence of Reserve Officer Liability, Basis for Claims, and Plaintiff Success

The first three research questions of this study generated somewhat successful conclusions. Research Question 1 sought to determine if reserve officers generated significant Section 1983 liability during the years 2001-2016. Data indicated that the number of cases per year (Mean = 1.87) did not rise to the definition of the term 'significant.' Considering that Kappeler et al. (1993) and Ross (2000) revealed averages of greater than 100 cases per year for all law enforcement, this study indicates that reserve officers do not generate a significant portion of all law enforcement liability. Abysmally-low 6.7% (2 of 30) plaintiff success rates further signify that little liability was actually generated. Lacking unpublished cases perhaps renders this suggestion problematic, but Kappeler et al. emphasized that no judgments should be drawn from unpublished – published case comparisons. One could assert, then, that any claim is

significant, as case records demonstrate only partial resolutions in light of possible procedural appeals in the future – particularly summary judgment or requests to set aside cases with no disputable issues (Fed. R. Civ. P. 56(a), 2018). This is especially relevant to this study given its findings were inconsistent with prior analyses of summary judgment and police success rates. First, although Kappeler et al. did not record motion rates, their review did determine that plaintiff success was mostly based on summary judgment denials against the police. A review of the sample used in this study, however, indicates that police success was actually based on granted summary judgment. Second, Kappeler et al. and Ross (2000) recorded police success rates (50-60%) markedly lower than those of reserve officers in this study (93.3%), suggesting that potential liability may be insignificant given the much-higher success rate of reserve officers, or that such claims may be too factually insufficient to prevail based on summary judgment. Latent appeals, nevertheless, arguably denote that all claims present liability issues.

Research Question 2 sought to determine the most alleged basis for Section 1983 liability during the years 2001-2016. Failure to train was the most asserted, with search and seizure and arrest and detention second and third. This outcome is inconsistent with Kappeler et al.'s (1993) report that unlawful arrest, unnecessary force, and illegal search/ seizure were most prevalent, and contradicts Ross' (2000) similar findings regarding excessive force, unlawful arrest, and unlawful search/seizure. Although those two studies illustrate inconsistent allegation rates, direct comparison reveals that some consistency does exist (and thus suggests some degree of generalizability). This directly supports the initial suspicion that reserve police training may well create liability claims after all (Dobrin & Wolf, 2016; Wallace & Peter, 1994); and because some policymakers believe

in potential liability associated with flawed training (California Commission on Police Officer Standards and Training, 1995), training issues are often cited as actually creating civil liberty infringements. Ross (2000) exhibits further inconsistency by relating excessive force complaints to hands-on force, while this study noted that such assertions were related to battery by firearms. This analysis also found errors that neither principal study reported (such as sexual abuse and forcible rape) related to negligent hiring and failure to train. This is puzzling given that replication of the methodologies of Kappeler et al. (1993) and Ross suggests some claims against reserve officers may be specific or more frequent. A lack of comparative literature, however, makes this subject to question.

Research Questions 3 and 4 sought to establish plaintiff success rates and average monetary awards during the years 2001-2016. Even though this study identified only one of two successful plaintiffs (making a reliable average unattainable), it did suggest that flawed reserve training actually creates liability. Campbell v. Anderson County (2010) further implied that reserve officer training is flawed, as the decision to hold a reserve officer liable for rape was based on precedent suggesting that all correct police training should convey ethical presumptions not to commit sex crimes (Andrews v. Fowler, 1996).

Profile of Sampled Cases

Only one aspect of this study's developed profile is comparable with those of Kappeler et al. (1993) and Ross (2000), namely that municipal (first) and county (second) agencies were the most recorded agencies in civil claims. The discovery of businesses, however, is inconsistent with both studies, in that plaintiffs asserted supervisory liability for hiring reserve police as security – but were actually accused of civil infractions in

their official capacity. The general prevalence of supervisory liability in this study (particularly involving failure to train) is best explained through the concept of vicarious liability – described by Tutin (2016) as being caused by a supervisor-subordinate relationship that extends civil risk beyond individuals to administrators. In short, multiple observations have shown that individual malfeasance also has created Section 1983 liability for administrators (Eschholz & Vaughn, 2001; Kappeler & del Carmen, 1990; Miller, 1994) -- particularly concerning failure to train when considering the relevant case law dictating that supervisors may be liable for civil liberty infractions committed by subordinates from a lack of training (*City of Canton v. Harris*, 1989). Further inconsistency stems from municipal agencies' involvement in 70% of case claims, compared to 60% in the studies of Kappeler et al. and Ross. These figures concurrently suggest that most police agencies are municipal departments which are more likely to employ reserve officers. These conclusions are supported by data indicating that local agencies comprised more than two-thirds of 18,000 state and local U.S. police agencies (Reaves, 2011). Reaves (2015), too, reports that nearly 30,000 reserves work in municipal jurisdictions. Given that some 70,000 reserves are employed overall (Dobrin, 2017a), this indicates that 43% of all reserves work in municipalities.

Two critical trends further support suspicions that flawed reserve training can create liability (Dobrin & Wolf, 2016; Wallace & Peter, 1994). First, failure to train was the primary claim against both male and female officers, suggesting that training is a concern for all reserves -- especially considering that the second and third most asserted allegations totaled nearly 7% less than all failure-to-train claims. Second, the focus of some states on one particular claim area suggests the possibility of specific problems. For

example, Alabama focused singularly on search and seizure allegations, while Indiana, Louisiana, and New York focused on failure to train. Louisiana, however, dealt with two probable cause dilemmas: unlawful seizure and unlawful arrest (*Livermore v. Arnold*, 2013; *Tracie v. Foster*, 2008). Although failure-to-train cases in Indiana dealt with different issues, the consistency of these cases suggests (even with such vast police success) that the training in each of the states has specific need areas.

Policy Recommendations

One particular goal of this analysis was to develop applicable policy recommendations. Because the basic assumption of some authors is that flawed reserve training may generate liability claims (Dobrin & Wolf, 2016; Wallace & Peter, 1994), the fact such allegations did actually generate several civil claims provides support for this notion, as well as three critical policy recommendations.

First, a profile of training issues suggests reserve police training should be approached with revisionist intent, as 50% of all failure-to-train claims were generated by unlawful arrests with a lack of probable cause. It seems reasonable, then, to assert that criminal procedure is one training area that needs revision. One could argue this is unnecessary, however, given that some describe police training as generally adequate (Marion, 1998). Ross (2000) specifically argued, though, that police training should especially parallel the law when pertaining to the 4th Amendment. This strategy is collectively supported by the prevalence of failure to train and differentiated training (Pepper & Wolf, 2015) as an alleged liability producer (Dobrin & Wolf, 2016; Wallace & Peter, 1994). Other ideas related to this recommendation stem from *Campbell v. Anderson County's* (2010) implication that reserve training is flawed, which is based on

precedent that correct police training imparts a basic ethos designed to dissuade sexual improprieties (*Andrews v. Fowler*, 1996). Such ideas promote ethics as central to all police decision making, with particular emphasis on eliminating sexual malfeasance given Eschholz and Vaughn's (2001) observation that police training must ensure that such conduct is condemned – which by extension could possibly mitigate such liability.

Second, frequent supervisory liability and failure-to-train allegations dictate that agencies employing reserve officers should engage in continual assessments at the departmental level. Vaughn (1994) and Ross (2000) suggest that doing so is a primary means of liability mitigation because it allows for (1) analysis of regular duties, (2) ascertainment of particular problems, and (3) timely training updates. Dobrin et al. (2017) also note potential mitigation by ensuring that reserves are extensively trained in all routine duties (e.g. arrests, patrols etc.). Moreover, these ongoing assessments can help alleviate liability claims principally tied to (1) policies that do not combat constitutional violations (*Monell v. New York City Dept. of Social Services*, 1978) or (2) police agencies that fail to train officers as a matter of routine policy (*City of Canton v. Harris*, 1989). The woeful inadequacy of retroactive risk analyses (Worrall, 1998) makes it prudent to review all reserve guidelines to preemptively mitigate liability. Simply put, reviews of policy are essential to avoiding civil liberty infringements (Lee & Vaughn, 2010).

Considering that allegations against reserve police mostly originate from differentiated training, a third recommendation is to create (and utilize) a standardized training curriculum (Dobrin & Wolf, 2016). Multiple sources support the view that standardized training and oversight would reduce officer liability (Clarke & Armstrong, 2012; Kinnaird, 2007a, 2007b). Wallace and Peter (1994), however, assert that issues

related to circumspect reserve training are best mitigated by supplemental training and administrative review – an approach currently used in California to distinguish reserve officers with autonomy, as well as trained and untrained police who require supervision (Cal. Penal Code, 2016). Because these policies were grounded in the belief that poor reserve training could create liability (California Commission on Police Officer Standards and Training, 1995), the fact that no plaintiff succeeded provides support for this strategy.

Limitations of the Study

This study has various limitations that should be addressed by future scholars, two of which drastically reduced the sample size. First, multiple exclusions were required to maintain its focus; and as such, one limitation was its own specificity. For example, even though this study sampled cases from 16 recent years, 21 years (1979-2000) of published cases were excluded. Although many Section 1983 claims against reserves were likely already analyzed, the undeveloped nature of reserve police research (Dobrin, 2017a; Pepper & Wolf, 2015; Wolf et al., 2016) suggests that all available years should be included. Second, the utilized Boolean descriptors often provided partial database matches, demonstrating that a greater range of applicable descriptors should be used. The absence of details pertaining to the particular events in which these allegations occurred, also limited the accuracy of findings pertaining to specific errors and activities driving any alleged malfeasance, which in turn reinforces civil liability's negative consequences of by reducing the viability of accurate policy recommendations.

Recommendations for Future Research

While this study confirms that inadequate reserve training has the potential to create liability, it also adds new information and recommendations to the literature.

Recommendation 1: Future studies should move beyond database searches in lieu of survey data. Ramseyer and Rasmusen (2010) noted that 20% of all civil case sampling is via court questionnaires which suffer from incomplete submissions and/or improper data that originate from (1) unforeseen differentiation among state courts and (2) how claims are handled by researchers. Because this study was guided by Ross' (2000) and Kappeler et al.'s (1993) focus on U.S. District Courts, future research will have a defined population from which to develop tailored (and specific) survey instruments that may diminish survey error, while concurrently alleviating the often troublingly unavoidable limitations related to unpublished cases. Both Ross and Kappeler et al. discuss that their respective samples were incomplete as a result of this limitation. With settlement rates somewhere between 50% (Wissler, 2004) and 90% (Eisenberg & Lanvers, 2009), case availability clearly is a core component of police liability research that may be alleviated by opting for a questionnaire's capacity to more specifically request relevant data.

Recommendation 2: Case analyses about reserve police liability should continue to include police demographics to generate direct comparisons about liability. This recommendation is based on findings that municipal entities and male reserve officers faced the most liability – primarily training issues. Doing so may result in reducing the information deficiency involving reserve law enforcement, and enable targeted policies to address specific and well-informed liability trends (Dobrin & Wolf, 2016).

Recommendation 3: Future reserve police studies should develop accurate (and available) training information. For example, the data framing within this study was largely limited to state figures due to a lack of published material with standards and demographics. Dobrin (2017a) notes the absence of a central database that regularly

records reserve police information; and even worse is the massive variation of available information in those state publications (e.g. utilization figures, codified statues, etc.). Moreover, this variation is also present in information specifically related to reserve officer training (Wolf, Albrecht, & Dobrin, 2015). Current research offers two applicable methods of achieving this: (1) amending federal data sources to depict accurate reserve police demographic and training information, or (2) utilizing direct information requests of state and local police agencies to develop accurate descriptions of these items (Dobrin, 2017a). Such a strategy may markedly increase existing data of an understudied area.

Recommendation 4: Multiple contexts should be examined to develop this body of knowledge which currently lacks sufficient analyses on reserve police (Dobrin, 2017a; Pepper & Wolf, 2015) – especially with regard to liability risk (Wolf & Russo, 2005). While this study attempted to draw conclusions about reserve police liability involving civilians, it excluded potentially-valuable claims filed by reserve officers against fellow officers and supervising agencies. Given that civil liability has negative effects for police agencies (Carter & Sapp, 1989; Fisher et al., 1989), it seems prudent to explore all internal sources. Researchers suggest that a lack of evidence reduces the value of conclusions about reserve police (Dobrin & Wolf, 2016), and thus bridging this gap through continued study may help to forge those needed affirmative conclusions.

Conclusion

A host of sources have documented an utter lack of reserve police studies (Dobrin, 2017a; Pepper & Wolf, 2015; Wolf et al., 2016), and others specifically declare that little is known about liability risks involving reserve police forces (Wolf & Russo, 2005). Results of this study, however, provide the basis for multiple conclusions. First, it

was demonstrated that reserve officers did generate an insignificant amount of Section 1983 liability during 2001-2016. Second, failure to train was most frequently asserted as the basis for liability claims, perhaps supporting the view that faulty reserve training can generate liability claims (Dobrin & Wolf, 2016; Wallace & Peter, 1994). Finally, even though the developed case profile highlighted that training allegations are consistent regardless of gender, each agency type/location faced diverse primary allegations, and varying states contained cases that asserted consistent as well as diverse accusations. Conclusions and recommendations discussed herein should provide guidance to better develop what remains a vastly underdeveloped area of study. Moreover, it is believed that the findings may potentially mitigate extant risks. Given the supplementary benefits often provided by reserve police, coupled with ever-present budgetary constraints, reserve police officers are likely to be increasingly used in coming years. Thus, this author's sincerest wish is that these findings will increase research interest on an important and widely-utilized law enforcement resource.

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