



Investigating Police Witnesses

A Practical Guide

Whether your starting point is information gathered from your client, a disclosure from the DA's Office, or the officers' names alone, there are numerous routes available for investigating police witnesses and procuring impeachment material. Below is a non-exhaustive resource list to aid you in your investigations.

FEDERAL LAWSUITS

PACER:

PACER is an electronic public access service that allows online users to obtain case and docket information from the federal court system. Users must register for an account in order to access records, but need only provide basic contact information and select a username and password to do so. Upon completion of the online registration form, the PACER Service Center will mail the user a registration code with the final few steps required to set up an account.

- Note that each federal district in NY has its own home page and database. It is wise to check all four districts, although SDNY and EDNY will likely be the most fruitful starting points for NYPD officers.
 - A directory of court home pages can be found at <https://www.pacer.gov/psco/cgi-bin/links.pl>
- Once you have arrived at your chosen court homepage, you may search for case information by clicking "Query" in the top left-hand corner of the page and inputting index numbers and/or party names.
- After clicking on a case result, users have the option of viewing a few different categories of information. The most useful starting point is "Docket Report," which displays a timeline of the case with case filings attached as .pdf files, where available.
 - The most useful documents tend to be complaints, amended complaints, and stipulations of settlement.
- Record-access cost is assessed by the page, at a nominal rate (as of September 2018, \$.10 per page).
- If cost is a concern:
 - PACER may be accessed for free at the SDNY and EDNY courthouses, and paper files may be ordered for free with the relevant index number.
 - Alternatively, consider downloading the RECAP Google Chrome Browser Extension, which alerts the browser when the document in question has already been downloaded and made available for free elsewhere.
 - Learn more by searching for "RECAP" at <https://chrome.google.com/webstore/>

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Court Listener: RECAP Archive

The RECAP Archive is a free searchable collection of millions of PACER documents and dockets, created and managed by the Free Law Project in partnership with The Center for Information Technology Policy at Princeton University.

- No account or user-registration is necessary to search this database.
- Users may search by jurisdiction, docket number, document, case name, judge, case type, party name, and attorney name.
- Visit the RECAP Archive at <https://www.courtlistener.com/recap/>

STATE LAWSUITS

Bronx County Clerk's Office Online Database

The Bronx County Clerk's Office maintains an online database of court records and case filings. The search-engine is imperfect and the records are not necessarily complete, but with some elbow-grease, this resource can provide a wealth of information.

- No account or user-registration is necessary to search this database, but NYS attorneys may request a special account in order to view additional information not available to the public.
- Users may search by index number, party name, firm name, and filing date.

Note: Searching by party name seems to be the least reliable, while searching by index number seems to be the most reliable.

- Visit the Bronx County Clerk's Office Online Database at <https://iapps.courts.state.ny.us/ctclrk/>

The NYC Comptroller's Office and Law Department

- State court civil suits against NYPD officers all commence with the NYC Comptroller's Office by the filing of a Notice of Claim.
- After notice has been filed, a formal lawsuit may be filed 30 days later. However, the City has the option of taking testimony at a "50-h" hearing beforehand. See N.Y. Gen. Mun. L. § 50-H (2014).
 - The utility of 50-h hearing transcripts cannot be overstated, as they often provide narratives and a level of detail far exceeding that of notices of claim or verified complaints.
- The Comptroller's Office settles a significant number of suits against police officers before they ever reach the court system. Although inadmissible in and of themselves, stipulations of settlement revealing a significant settlement amount may still be helpful in establishing a good faith basis for cross-examination on the underlying allegations.
- In the event a claim is not settled with the Comptroller's Office, the verified complaint filed in NYS Supreme Court is another potential source of specific allegations of misconduct against police witnesses.

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- In a great majority of police misconduct civil suits, the NYS Law Department serves as counsel to the NYPD and named-defendant police officers.
- As city agencies, the Comptroller's Office and Law Department maintain litigation records, including deposition transcripts, that (subject to certain exceptions) the public is entitled to access. See Public Officers L., Art. 6, §§ 84-90.
- Notices of claim, 50-h testimony transcripts, verified complaints, deposition testimony transcripts, and settlement stipulations are often accessible via FOIL request (see below) or, where applicable, the Bronx County Clerk's Office Online Database.

GENERAL INVESTIGATION TECHNIQUES

Begin investigating police witnesses at the earliest possible point. Even before disclosures from the prosecution, a careful client interview can reveal officers' names, shield numbers, and misconduct, as well as officers' reputations in the community.

Search Social Media

- Your police witness likely has a social media profile, and it may provide investigatory leads. Be sure to search for the officer by name on Facebook, Instagram, Twitter, and other platforms.
- Alternatively, UVRX.com is a search-engine, similar to Google, which allows you to search multiple social media platforms at the same time, in one fell swoop. To use this feature, visit <http://www.uvr.com/social.html>

Search Westlaw and LexisNexis

- A search of our trusty mainstays, Westlaw and LexisNexis, may reveal that a police witness has had their own run-ins with the legal system, has been deemed incredible as a matter of law, or has even been convicted of perjury. Be sure to search both state and federal records.

Maximize News Articles

- A quick Google search may reveal a news article about the police witness in your case, but don't stop there. A growing contingent of reporters specialize in criminal justice issues, and police misconduct specifically, and are happy to speak with attorneys about their research, sometimes going so far as to share resources, index numbers, and party names.
- Reporters' twitter accounts and webpages often list their email addresses or other contact information.

Submit Freedom of Information Law (FOIL) Requests

- The Freedom of Information Law ("FOIL"), which is governed by Public Officers Law, Article 6, Sections 84-90, was designed to ensure public access to NYS agencies' records.

- All NYS and NYC agencies are subject to FOIL with the exception of the judiciary and the state legislature.
- All agency records are presumptively open to inspection unless specifically exempted by the Public Officers Law, see § 87(2), and agencies have the burden of showing that an exemption applies.
- There is no limit on the number of FOIL requests you can make.
- Although most requests will incur a per page copying fee, you may specify a particular format (".pdf") or medium ("disc").
- FOIL requests may be made to many NYC agencies through the NYC Open Records Portal at <https://a860-openrecords.nyc.gov/request/new>
 - Alternatively, a list of Records Access Officers for every NYC agency can be found at http://home2.nyc.gov/html/records/downloads/pdf/FOIL%20Officer%20Contact%20Information_February%202015.pdf
- Initial productions may be sparse and under-inclusive, but an appeal can produce a wealth of additional documents. Appeals must be submitted within 30 days of the agency's determination.
 - The Committee on Open Government prepares written FOIL advisory opinions in response to particular sets of facts and circumstances. For guidance on meritorious bases for appeal, visit https://www.dos.ny.gov/coog/foil_listing/findex.html
- **A sample FOIL request is attached to this guide.**
- *Note:* As of December 2017, the Comptroller's Office categorizes its records by claimant, NOT by defendant or other named party. As such, requests for "all records relating to 'X' officer" will not be successful. The Law Department, however, is able to respond to officer-centered requests

Contact Plaintiff's Counsel

- If you have already identified a specific civil suit against a police witness, pull plaintiff's counsel's contact information from the last page of the complaint. Counsel can serve as an invaluable resource, both for court filings and background information on the officer and case in question.

Keep an eye out for the unveiling of The Legal Aid Society's Cop Accountability Project and Database website, which will provide public access to a portion of Legal Aid's growing database of police misconduct records. *Note:* institutional defenders have direct access to the full database through their offices.