

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## The lawsuit that never should have been

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*“Where the use of Mounted Unit becomes necessary for crowd control purposes, incident commanders are reminded that if Mounted officers are deployed for such purpose it is important to ensure that a crowd or group to be dispersed has sufficient avenues of escape and/or retreat available to them and has a reasonable chance to disperse.”*

— Paragraph 3 of the March 28 settlement order in *Stauber and the New York Civil Liberties Union v. the City of New York*, 03-cv-09164

In 2003, the New York Civil Liberties Union filed a lawsuit against the New York Police Department on behalf of protestors injured by police during peaceful antiwar demonstrations.

The complaint alleged the NYPD prevented protesters from leaving police barricaded areas and approached the trapped crowds on horseback, causing injuries to many in attendance.

The plaintiffs included a then-law student, now an attorney, who was injured by a police horse and a woman confined to a wheelchair who alleged she was trapped behind a police barricade and her wheelchair was damaged by a police officer when she attempted, for medical reasons, to leave the barricaded area.

Pursuant to the Settlement order, the defendants agreed to pay \$100,000 in attorneys fees to the New York Civil Liberties Union and \$25,000 in damages to the injured plaintiffs.

The NYPD also agreed to adopt written policies that ensure those lawfully exercising their First Amendment rights can gain access to protest areas, have adequate means of ingress and egress from the areas set aside for the protest, and that police provide adequate warning and an opportunity to disperse prior to using the Mounted Unit for crowd control.

In other words, the police agreed, apparently because they had

no other choice, to give people a chance to get out of the way before charging into crowds on police horses, each of which weighs a ton or more.

It would seem this last concession would have been self-evident to the Mounted Police as they sat atop their large horses, looking down on the tiny mortals below them — some in wheel chairs, some with children, some with long, unkempt hair — engaging in a process as American as apple pie: peacefully protesting a contentious war.

Shouldn't “New York's finest” have known better than to stomp on its citizens with the heavy hooves of horses?

One would think that in 21st century America, such flagrant abuses of police power would be a thing of the distant past. One would hope taxpayers wouldn't have to foot the bill for a costly lawsuit brought to prevent the NYPD from using horses to stampede the very same people it is paid to protect.

And yet, it turns out such wishful thinking is apparently naïve, at best, since that is exactly what New York taxpayers had to do: pay damages to the injured plaintiffs, pay attorneys fees to their counsel and fund the investigation and defense of a lengthy federal lawsuit for police conduct that never should have occurred in the first place.

Police conduct in this instance was deplorable just as the costs of defending the abusive conduct were unnecessary and unforgivable.

All the more unforgivable is the fact that this claim was even necessary to protect our constitutional right to gather and engage in peaceful protest, for this was a lawsuit never should have been.

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