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*Randall K. Johnson**

INTRODUCTION

Does lawsuit data collection deter police misconduct lawsuits? One might think so, judging from recent scholarship on police accountability and deterrence.¹ The best of this work argues that police learn from lawsuit data collection, without actually proving the point.² While I agree with the premise that law enforcement agencies may learn from better and more complete information, there is little proof that lawsuit data collection deters police misconduct lawsuits.³ As a result, additional research is necessary in order to support or to deny this claim.

I modeled and tested this claim in a recent paper: *Do Police Learn from Lawsuit Data?*⁴ My paper introduced a new § 1983 dataset⁵ in order to determine if lawsuit data collection correlates with better deterrence of published misconduct cases. This dataset drew on 10,044 cases that were brought against twenty-six U.S. law enforcement agencies.⁶ I matched these published cases with police

* J.D. 2012, University of Chicago Law School; M.U.P. 2006, New York University; M.Sc. 2003, London School of Economics; B.A. 2000, University of Michigan. Special thanks to Amos Jones, Taimoor Aziz, and Lionel Foster.

1. See, e.g., Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 GA. L. REV. 845, 853 (2001).

2. See, e.g., Joanna C. Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking*, 57 UCLA L. REV. 1023, 1086 (2010) [hereinafter Schwartz, *Myths and Mechanics*]; Joanna C. Schwartz, *What Police Learn from Lawsuits*, 33 CARDOZO L. REV. 841, 890 (2012) [hereinafter Schwartz, *What Police Learn*].

3. See generally VICTOR E. KAPPELER, CRITICAL ISSUES IN POLICE CIVIL LIABILITY (3d ed. 2001).

4. Randall K. Johnson, *Do Police Learn from Lawsuit Data?*, 40 RUTGERS L. REC. 30, 36 (2012).

5. “The primary vehicle for asserting federal claims against local public entities and public employees is the Civil Rights Act of 1871, 42 U.S.C. §1983. [The statute’s] broad language . . . led to its present status as the primary source of redress for a wide variety of governmental abuses.” Robert W. Funk et al., *Civil Rights Liability*, in ILLINOIS MUNICIPAL LAW: CONTRACTS, LITIGATION AND HOME RULE (2012 ed.)

6. Johnson, *supra* note 4, at 35. I used LexisNexis Advance to perform the research, and I searched using the following legal search terms: Villa /s Rica /s Police; Farmington /s Police; New /s York /s Police; District /s Columbia /s Police; Boise /s Police; Philadelphia /s Police; San /s Jose /s Police; New /s Orleans /s Police; Buffalo /s Police; Chicago /s Police; Cincinnati /s Police; Nashville /s Police; Albuquerque /s Police; Prince /s Georges /s County /s Police;

employment data⁷ in order to compute officer-to-lawsuit ratios.⁸ These computations were done for all twenty-six law enforcement agencies and three separate groups of departments.⁹ After comparing these average ratios, at the individual and group levels, I found that departments that consistently gather lawsuit data do not perform better than other law enforcement agencies.¹⁰ This finding indicates that police may not learn from lawsuit data collection.¹¹ As a result, law enforcement agencies may need to identify a more promising approach. One approach, which is often overlooked by departments, is third-party data collection.

This Essay argues that third-party data collection, particularly of administrative complaints and departmental audit information, holds greater promise than lawsuit data collection. It does so by asserting that third-party data collection is more useful for three reasons. First, third-party data collection may prevent manipulation by individual police officers and law enforcement agencies. Second, it may assure that police behavioral trends are identified. Lastly, third-party data collection may help to deter published § 1983 cases. This Essay, however, only models and tests the final claim.

I. METHODOLOGY

This Essay models and tests one claim: that police may learn from third-party data collection. In doing so, it draws on the same § 1983 dataset that I used to find out if police learn from lawsuit data collection. As in my earlier work, better deterrence is equated with higher officer-to-lawsuit ratios. Less effective deterrence, in contrast, is equated with lower average ratios. By comparing these average ratios, at the individual and group levels,¹² I found a

Portland /s Police; Detroit /s Police; Seattle /s Police; Denver /s Police; Los /s Angeles /s Police; Oakland /s Police; Pittsburgh /s Police; Sacramento /s Police; Steubenville /s Police; Wallkill /s Police; Los /s Angeles /s County /s Sheriff and New /s Jersey /s State /s Trooper. These results were restricted by jurisdiction (U.S. Federal), citation (42 U.S.C. § 1983), and timeline (six intervals were used: 01/01/2006 to 01/01/07; 01/01/07 to 01/01/08; 01/01/08 to 01/01/09; 01/01/09 to 01/01/10; 01/01/10 to 01/01/11; 01/01/11 to 01/01/2012).

7. See Brian A. Reaves, *Census of State & Local Law Enforcement Agencies, 2004*, BUREAU JUST. STAT. BULL. (June 2007), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cslllea04.pdf>.

8. Johnson, *supra* note 4, at 34 & n.25 (“Ratios describe the relationship between two quantities, as expressed by one number being divided by the other.”).

9. *Id.* at 38–42 (noting that the groups are law enforcement agencies that consistently gather lawsuit data, law enforcement agencies that ignore lawsuit data, and a control group, which inconsistently gathers lawsuit data).

10. *Id.* at 37.

11. *Id.*

12. The three groups are law enforcement agencies with access to complaint data and audit data, law enforcement agencies without access to

baseline for each subset and another for the entire population. The baselines helped me to determine two things: whether the departments are a part of the same population and are distributed along a normal distribution.

This approach compliments regression analysis in several ways. First, officer-to-lawsuit ratios provide a simple way to test new hypotheses. Second, this approach shows whether lawsuits have been deterred. Third, officer-to-lawsuit ratios account for differences in department size. Finally, this approach captures the effect of changes in litigation strategy such as no-settlement policies.¹³

The preceding analysis indicates that officer-to-lawsuit ratios may be useful, even with a relatively small population.¹⁴ This approach, however, will not be valid when law enforcement agencies do not meet a minimum “size” threshold.¹⁵ The minimum size, at least in this paper, is 330 officers. These departments also must face more than a nominal amount of published § 1983 cases. The failure to meet each requirement means that a department will be excluded from this Essay’s analysis.¹⁶ These two issues, and other potential problems, are dealt with deliberately, with an eye toward avoiding methodological issues.¹⁷

Within this context, I evaluate a single claim: that law enforcement agencies with greater access to third-party data are, on average, more effective in deterring published § 1983 cases. This claim is evaluated by determining whether law enforcement agencies with greater access to third-party data have higher officer-to-lawsuit ratios than other departments (with less access to third-

third-party data, and a control group, which has access to one type of third-party data.

13. See, e.g., Heather Kerrigan, *Chicago’s Police Misconduct Cases Go to Court*, GOVERNING (Feb. 2011), <http://www.governing.com/topics/public-justice-safety/Chicagos-Police-Misconduct-Cases-Go-to-Court.html>.

14. Johnson, *supra* note 4, at 33 (“In addition to [the] restrictions [described above], only published cases are used so as to exclude frivolous claims, settlements and textbook applications of § 1983. Each of these precautions are necessary, in order to [test Schwartz’s hypothesis.]”). Nothing, however, would preclude departments from providing information about the full “universe” of § 1983 cases. By doing so, law enforcement agencies would increase the target population size, individual sample sizes, and the reliability of this indirect measure of police misconduct.

15. See Baruch Lev & Shyam Sunder, *Methodological Issues in the Use of Financial Ratios*, 1 J. OF ACCT. & ECON. 187, 187–88 (1979).

16. Examples are Farmington, Steubenville, Wallkill, and Villa Rica. Data for each department are accompanied by an asterisk (*), which indicates that data for that department are not used to compute group-level averages.

17. Johnson, *supra* note 4, at 35 (“Selection effects are addressed by testing only [certain departments] . . . , which have similar histories of police misconduct. Omitted variables are accounted for by creating a control group[, which is roughly the same size as the other two groups]. Reverse causation is addressed by treating the time period [as either an independent variable or] as a dependent variable.”).

party data). This finding will substantiate or deny the claim that police may learn from third-party data collection.

II. RESULTS

As I stated earlier in this Essay, my § 1983 dataset has 10,044 cases. These cases were published by LexisNexis between 2006 and 2012. I restricted these data by year (2006 to 2012), jurisdiction (federal district court), and cause of action (§ 1983). Next, these cases were matched with police employment data in order to compute officer-to-lawsuit ratios for twenty-six law enforcement agencies. I also used this dataset to compute average ratios for three groups of departments (law enforcement agencies with access to complaint data and audit data, departments without access to third-party data, and a control group, which has access to complaint data or audit data). These officer-to-lawsuit ratios are given, individually and by department group, in Tables 1, 2, 3, and 4.

As illustrated in Table 2, law enforcement agencies with access to complaint and audit data had an average ratio of sixty-two to one.¹⁸ Departments without access to third-party data,¹⁹ which are described in Table 3, had an officer-to-lawsuit ratio of forty-three to one.

The control group,²⁰ which is highlighted in Table 4, had an average ratio of fifty-one to one. When these ratios are compared, it is clear that departments with more access to third-party data perform better than others. This finding supports the claim that police learn from third-party data collection.

CONCLUSION

This Essay demonstrates that law enforcement agencies with greater access to third-party data are, on average, more effective in deterring published § 1983 cases. As a result, police may learn from more third-party data collection. These law enforcement agencies, however, should avoid situations that distort third-party data. For example, third-party data may be less accurate when regulators and police officers share office space.²¹ It also may have limited usefulness when data collection is not done in a timely manner or

18. These law enforcement agencies are New York, Boise, Philadelphia, San Jose, New Orleans, Chicago, Albuquerque, and Denver.

19. These law enforcement agencies are Villa Rica, Buffalo, Cincinnati, Prince George's County, Detroit, New Jersey, Los Angeles PD, Steubenville, and Wallkill.

20. These law enforcement agencies are Los Angeles County, Farmington, Washington, D.C., Nashville, Portland, Seattle, Oakland, Pittsburgh, and Sacramento.

21. See, e.g., Rob Wildeboer, *Police Oversight Agency Moving from Chicago's South Side*, WBEZ91.5 (Oct. 6, 2011), <http://www.wbez.org/story/police-oversight-agency-moving-chicagos-south-side-92881>.

employs substandard procedures.²² Lastly, third-party data may be less effective when there are costly barriers to reporting police misconduct.²³

Fortunately, each of these data-collection issues may be overcome by employing solutions that are grounded in practice. Several examples may be found in legal clinics, especially when law students are used to collect and analyze third-party data.²⁴ Other examples arise in regulatory settings and draw on public resources, staffing, and expertise.²⁵ Lastly, additional examples may emerge over time, especially if new legislation calls for more robust third-party data collection.²⁶

In summary, it is clear why police learn from third-party data collection. First, it may provide better and more complete information about the underlying causes of misconduct. Second, third-party data collection may be useful for modeling actual police behavior. Lastly, third-party data collection may help departments overcome heuristic biases and other informational failures.

22. See, e.g., Al Baker & Joseph Goldstein, *Police Tactic: Keeping Crime Reports Off the Books*, N.Y. TIMES, Dec. 31, 2011, at A1.

23. See, e.g., CAL. CIV. CODE § 47.5 (2005); CAL. PENAL CODE § 148.6 (2008).

24. See, e.g., Craig B. Futterman et al., *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System*, 1 DEPAUL J. OF SOC. JUST. 251, 252 (2008).

25. See, e.g., CITY OF NEW YORK, OFFICE OF THE COMPTROLLER, CLAIMS REPORT FISCAL YEARS 2009 & 2010, at 1-2, 34-35 (2011).

26. See, e.g., N.Y. City Council, Int. No. 130 (2010).

TABLE 1. BACKGROUND INFORMATION FOR TWENTY-SIX LAW ENFORCEMENT AGENCIES

Jurisdiction	Third Party Consistently Gathers Complaints ²⁷	Departmental Audits ²⁸	Ratio of Officers to § 1983 cases
*Villa Rica	*No	*No	*206 to 1
L.A. County	No	Yes	129 to 1
*Farmington	*No	*Yes	*125 to 1
New York	Yes	Yes	99 to 1
Washington, D.C.	Yes	No	93 to 1
Boise	Yes	Yes	66 to 1
Philadelphia	Yes	Yes	65 to 1
San Jose	Yes	Yes	64 to 1
New Orleans	Yes	Yes	63 to 1
Buffalo	No	No	58 to 1
Chicago	Yes	Yes	56 to 1
Cincinnati	No	No	52 to 1
Nashville	No	Yes	51 to 1
Albuquerque	Yes	Yes	48 to 1
Prince George County	No	No	41 to 1
Portland	No	Yes	40 to 1
Detroit	No	No	39 to 1
New Jersey	No	No	37 to 1
Seattle	No	Yes	35 to 1
Denver	Yes	Yes	34 to 1
Los Angeles	No	No	30 to 1
Oakland	Yes	No	22 to 1
Pittsburgh	Yes	No	19 to 1
Sacramento	No	Yes	18 to 1
*Steubenville	*No	*No	*17 to 1
*Wallkill	*No	*No	*17 to 1
* Indicates that data for that department are not used to compute group-level averages.			

27. Johnson, *supra* note 4, at 43–45.

28. Schwartz, *Myths and Mechanics*, *supra* note 2, at 1090.

TABLE 2. LAW ENFORCEMENT AGENCIES WITH ACCESS TO COMPLAINT DATA AND DEPARTMENTAL AUDIT DATA

Jurisdiction	Number of Officers ²⁹	2006 Published § 1983 Cases ³⁰	2007 Published § 1983 Cases ³¹	2008 Published § 1983 Cases ³²	2009 Published § 1983 Cases ³³	2010 Published § 1983 Cases ³⁴	2011 Published § 1983 Cases ³⁵	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
New York	36118	309	303	320	358	452	436	363	99 to 1
Boise	330	5	3	4	4	9	3	5	66 to 1
Philadelphia	6832	93	106	95	110	95	133	105	65 to 1
San Jose	1342	13	18	19	27	24	24	21	64 to 1
New Orleans	1646	20	25	31	27	20	32	26	63 to 1
Chicago	13129	164	165	210	215	297	358	235	56 to 1
Albuquerque	951	22	11	19	31	22	17	20	48 to 1
Denver	1405	32	25	38	40	58	55	41	34 to 1
<i>Average</i>	<i>7720</i>	<i>83</i>	<i>82</i>	<i>92</i>	<i>102</i>	<i>123</i>	<i>131</i>	<i>102</i>	<i>62 to 1</i>

29. Reaves, *supra* note 7, at app. 2, 4.

30. Johnson, *supra* note 4, at 38–42.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

TABLE 3. LAW ENFORCEMENT AGENCIES WITHOUT ACCESS TO COMPLAINT DATA OR DEPARTMENTAL AUDIT DATA

Jurisdiction	Number of Officers ³⁶	2006 Published § 1983 Cases ³⁷	2007 Published § 1983 Cases ³⁸	2008 Published § 1983 Cases ³⁹	2009 Published § 1983 Cases ⁴⁰	2010 Published § 1983 Cases ⁴¹	2011 Published § 1983 Cases ⁴²	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
*Villa Rica	*35	*1	*0	*0	*0	*0	*0	*0	*206 to 1
Buffalo	750	4	10	18	5	18	23	13	58 to 1
Cincinnati	1048	25	20	21	18	15	19	20	52 to 1
Prince George County	1344	17	24	23	38	45	53	33	41 to 1
Detroit	3512	68	73	77	101	125	102	91	39 to 1
New Jersey	2768	62	63	92	63	74	94	75	37 to 1
Los Angeles	9099	145	229	297	390	386	403	308	30 to 1
*Steubenville	*50	*2	*5	*3	*2	*2	*3	*3	*17 to 1
*Wallkill	*33	*3	*0	*4	*1	*1	*3	*2	*17 to 1
<i>Average</i>	<i>2071</i>	<i>37</i>	<i>48</i>	<i>60</i>	<i>69</i>	<i>74</i>	<i>78</i>	<i>61</i>	<i>43 to 1</i>

36. See Reaves, *supra* note 7, at 9–10; Johnson, *supra* note 4, at 41–42.

37. Johnson, *supra* note 4, at 41–42.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

TABLE 4. LAW ENFORCEMENT AGENCIES WITH ACCESS TO COMPLAINT DATA OR DEPARTMENTAL AUDIT DATA

Jurisdiction	Number of Officers ⁴³	2006 Published § 1983 Cases ⁴⁴	2007 Published § 1983 Cases ⁴⁵	2008 Published § 1983 Cases ⁴⁶	2009 Published § 1983 Cases ⁴⁷	2010 Published § 1983 Cases ⁴⁸	2011 Published § 1983 Cases ⁴⁹	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
LA County	8239	49	30	53	77	92	83	64	129 to 1
*Farmington	*125	*1	*0	*1	*1	*1	*3	*1	*125 to 1
Washington, D.C.	3800	39	38	38	37	43	52	41	93 to 1
Nashville	1212	18	15	23	16	30	41	24	51 to 1
Portland	1050	21	31	19	31	23	31	26	40 to 1
Seattle	1248	39	39	31	43	35	29	36	35 to 1
Oakland	803	29	30	41	37	47	35	37	22 to 1
Pittsburgh	892	26	33	42	54	62	67	47	19 to 1
Sacramento	677	28	42	26	34	49	42	37	18 to 1
<i>Average</i>	<i>2006</i>	<i>28</i>	<i>29</i>	<i>31</i>	<i>37</i>	<i>43</i>	<i>43</i>	<i>35</i>	<i>51 to 1</i>

43. Reaves, *supra* note 7, at app. 2, 4.

44. Johnson, *supra* note 4, at 38–42.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*