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### DO POLICE LEARN FROM LAWSUIT DATA?

Randall K. Johnson\*

ABSTRACT: A compelling new theory argues that lawsuit data collection has a deterrent effect on police misconduct. If this theory is correct, why has the number of police misconduct cases still increased over time? Does the trend continue if police departments consistently gather lawsuit data? A § 1983 dataset, which is introduced in this paper, provides an answer. This dataset shows that lawsuit data collection does not correlate with better deterrence of § 1983 cases. The dataset therefore indicates that police departments may not learn from lawsuit data.

#### PART I: INTRODUCTION

Conventional legal theory assumes that lawsuits have a deterrent effect on police misconduct.<sup>1</sup> This view largely goes unchallenged by legal scholars and the judiciary.<sup>2</sup> So, if this

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\* 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 Sheldon Evans, Amos Jones and Taimoor Aziz.

<sup>1</sup> See, e.g., Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 Ga. L. Rev. 845-76 (2001).

assumption is correct, why does the number of police misconduct cases increase over time?<sup>3</sup> Professor Joanna C. Schwartz gives a compelling explanation. In two recent papers,<sup>4</sup> Schwartz questions the received wisdom “that when a plaintiff prevails against a government entity ... a government policymaker will gather information about the lawsuit and weight the costs and benefits of the alleged activity ... then decide whether to maintain the status quo and risk being sued again, or make changes.”<sup>5</sup> Schwartz goes on to challenge the conventional view by conducting in-depth interviews with twenty-six U.S. law enforcement agencies.<sup>6</sup> Schwartz completes her critique by showing that about four-fifths of these departments do not consistently gather lawsuit data.<sup>7</sup>

As a result, Schwartz raises three previously-ignored research questions. First, Schwartz asks if “[t]here are good reasons ... to doubt [judicial and scholarly] expectations of ... rational decision-making and ... access to relevant information [that are] underlying this assumption.”<sup>8</sup> Second, Schwartz questions whether government officials have access to enough useful information about police misconduct to make informed decisions about whether and how to deter it.<sup>9</sup> Finally, Schwartz asks if “the inverse is also true: When officials consider information from lawsuits, [do] they use [this data] to reduce the likelihood of future [police misconduct cases]?”<sup>10</sup>

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<sup>2</sup> Victor E. Kappeller, *Critical Issues in Police Civil Liability* (Waveland Press, Inc., 4th ed. 2001).

<sup>3</sup> *Id.* at 5. This source also indicates that published § 1983 cases tripled between 1980 and 2000.

<sup>4</sup> Joanna C. Schwartz, *What Police Learn from Lawsuits*, 33 *Cardozo Law Review* 841-94L. Rev. 101-54 (2012); Joanna C. Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decision-making*, 57 *UCLA L. Rev.* 1023-94 (2010).

<sup>5</sup> Schwartz, *supra* note 4 at 1026.

<sup>6</sup> *Id.* at 1023-24.

<sup>7</sup> *Id.* at 1045-52. (These departments are New York, Philadelphia, San Jose, New Orleans, Nashville, Sacramento, Villa Rica, Farmington, Washington DC, Boise, Buffalo, Cincinnati, Albuquerque, Prince George’s County, Detroit, New Jersey, Los Angeles, Oakland, Pittsburgh, Steubenville and Walkill).

<sup>8</sup> Schwartz, *supra* note 4 at 1026.

<sup>9</sup> *Id.* at 1028-29.

<sup>10</sup> *Id.* at 1029.

Schwartz answers each question by studying the five departments that consistently gather lawsuit data.<sup>11</sup> As a result of her analysis, Schwartz argues that “the failure of deterrence is viewed as an information failure, instead of an intractable problem related to the way [that] government officials analyze information once it is in their hands.”<sup>12</sup> Although she recognizes that other types of data are also useful for overcoming this information failure,<sup>13</sup> Schwartz still goes on to claim that lawsuit data holds the greatest potential for deterring police misconduct cases.<sup>14</sup>

Schwartz comes to this conclusion after observing that each of the five law enforcement agencies work to overcome the weaknesses of lawsuit data.<sup>15</sup> These departments gather “information at each stage of the litigation process, [review lawsuit] data in context with other available information, and [use] independent auditors to consider what [lawsuit] data may show.”<sup>16</sup> Thus, when viewed in light of other data that is collected in the normal course of police business,<sup>17</sup> Schwartz believes that these law enforcement agencies actually learn from lawsuit data.<sup>18</sup>

## PART II: METHODOLOGY

Unfortunately, Schwartz does not adequately support all of her claims. Additional work is necessary; either to substantiate or to reject Schwartz’s argument. In this paper, I create a dataset to model and test one of Schwartz’s key claims: that police learn from lawsuit data. This dataset

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<sup>11</sup> Schwartz, *supra* note 4 at 849-52, 109-12. (These departments are Los Angeles County, Chicago, Portland, Seattle and Denver.)

<sup>12</sup> Schwartz, *supra* note 4 at 1030.

<sup>13</sup> Schwartz, *supra* note 4 at 862-70. Examples include civilian complaint data and use-of-force reports.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 874-87.

<sup>16</sup> *Id.* at 841.

<sup>17</sup> *Id.* at 862-70.

<sup>18</sup> *Id.*

matches police employment data with lawsuit data that is published by LexisNexis<sup>19</sup>, but only for the twenty-six departments that were interviewed by Schwartz. The lawsuit data is restricted by year (2006 to 2012), jurisdiction (federal district court) and cause of action (§ 1983)<sup>20</sup>. In addition to these restrictions, 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 determine if lawsuit data collection correlates with better deterrence of published § 1983 cases. This finding will demonstrate whether police learn from lawsuit data.

I take an equally traditional approach to modeling Schwartz's claim.<sup>21</sup> I began by dividing the twenty-six departments into three groups. The first subset is composed of the five law enforcement agencies that consistently gather lawsuit data.<sup>22</sup> The second group is made up of the six departments that ignore lawsuit data.<sup>23</sup> The third subset is comprised of the remaining fifteen law enforcement agencies, which inconsistently collect lawsuit data.<sup>24</sup> Once each group is formed, I used the § 1983

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<sup>19</sup> See Brian A. Reaves, *Census of State & Local Law Enforcement Agencies, 2004* Bureau of Justice Statistics, June 2007, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cslea04.pdf>; *Lexis Advance Legal Research* (2012), (which was last accessed on 03/27/2012). This research used 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; Portland /s Police; Detroit /s Police; New Jersey /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 Sheriff and New /s Jersey /s State /s Trooper. The result for each department was restricted by jurisdiction (US Federal), citation (42 U.S.C. § 1983) and timeline (Six intervals were used in this paper: 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 01/10/10; 01/01/10 to 01/01/11; 01/01/011 to 01/01/2012)).

<sup>20</sup> "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. 2012).

<sup>21</sup> See William H. Kruskal and Judith M. Tanur, *ERRORS: Nonsampling Errors. International Encyclopedia of Statistics*. I, 219-20 (1978).

<sup>22</sup> These departments are Los Angeles County, Chicago, Portland, Seattle and Denver.

<sup>23</sup> These departments are New York, Philadelphia, San Jose, New Orleans, Nashville and Sacramento.

<sup>24</sup> These departments are Farmington, Washington DC, Boise, Buffalo, Cincinnati, Albuquerque, Prince George's County, Detroit, New Jersey, Los Angeles, Oakland, Pittsburgh, Steubenville, Wallkill and Villa Rica.

database to find the ratio of officers-to-lawsuits for each department between 2006 and 2012. This information helped me to compute a baseline for each subset and for the overall population. The creation of these baselines, in turn, allowed for a determination of whether each department is drawn from the same population and part of a normal distribution.

I test Schwartz's claim by applying a ratio-based approach. I chose ratios,<sup>25</sup> as opposed to regression analysis, for four practical reasons. First, ratios allow for useful comparisons to be made between departments of different sizes. Second, this approach captures the effect of changes in litigation strategy.<sup>26</sup> Third, ratios are an easy way to determine if police misconduct lawsuits are actually deterred. Finally, at the theoretical level, this approach complements regression analysis by providing a straight-forward way of testing new hypotheses.

My ratio-based approach equates higher ratios of officers to § 1983 cases with better deterrence of police misconduct lawsuits. Lower officer-to-lawsuit ratios are indicative of less effective deterrence. By comparing the ratios of all twenty-six departments, I evaluate how each law enforcement agency performed between 2006 and 2012. I made comparisons at both the individual-level (jurisdictional) and group level (whether a department consistently gathers lawsuit data, ignores lawsuit data or is part of the control group), in order to put these results into perspective. It should be noted, however, that comparisons are unlikely to be accurate if the department falls below a certain threshold. For example, when the law enforcement agency has less than three hundred and thirty officers and faces only a small number of § 1983 lawsuits.<sup>27</sup>

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<sup>25</sup> *Ratios* describe the relationship between two quantities, as expressed by one number being divided by the other.

<sup>26</sup> See, e.g., Heather Kerrigan. *Chicago's Police Misconduct Cases Go to Court*, February (2011) Governing.com.

<sup>27</sup> Examples are Farmington, Steubenville, Wallkill and Villa Rica. Data for each department is accompanied by an asterisk (\*), which indicates that data for that law enforcement agency is not used to compute group-level averages.

This ratio-based approach also unlikely to be accurate if it fails to account for empirical biases such as selection effects, omitted variables and reverse causation.<sup>28</sup> These biases are accounted for, in a deliberate way, by this paper. Selection effects are addressed by testing only the twenty-six departments that were interviewed by Schwartz, which have similar histories of police misconduct. Omitted variables are accounted for by creating a control group of law enforcement agencies, which is roughly the same size as the experimental group. Reverse causation is addressed by treating the time period (2006 to 2012) as a dependent variable. Each of these safeguards, if properly applied in this paper, address biases that may otherwise distort its findings.

Within this context, my evaluation of Schwartz's argument focuses on a single claim: that departments who consistently gather lawsuit data are, on average, the most effective in deterring published § 1983 cases. This claim is evaluated by determining whether the group of law enforcement agencies that consistently gathers lawsuit data has a higher officer-to-lawsuit ratio than the two groups that do not. This finding will support or undermine Schwartz's argument.

### **PART III: RESULTS**

This paper's § 1983 dataset includes 10,044 cases, all of which were decided between 2006 and 2012. As stated earlier, this dataset is useful for computing officer-to-lawsuit ratios for individual law enforcement agencies or groups of departments. This computation was done for the twenty-six law enforcement agencies that were interviewed by Schwartz. These individual average ratios also

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<sup>28</sup> See Baruch Lev and Shyam Sunder, *Methodological Issues in the Use of Financial Ratios*, *Journal of Accounting and Economics*, Volume 1, Issue 3, 187-88 (1979).

were used to compute average ratios for three groups: law enforcement agencies that consistently gather lawsuit data, departments that ignore lawsuit data and the control group.

Comparisons were later made at the individual and group level, in order to put these average ratios into perspective. The five departments that consistently gather lawsuit data have an average ratio of fifty-nine officers for every § 1983 case. The six law enforcement agencies that ignore lawsuit data, in contrast, have an average ratio of sixty to one. The control group, which includes the remaining fifteen departments, has an average ratio of forty-six officers for every § 1983 case. When these groups are compared, it becomes clear that consistently gathering lawsuit data does not lead to higher officer-to-lawsuit ratios. This finding, therefore, undermines Schwartz's claim that police learn from lawsuit data. The data is summarized in Tables 1, 2 and 3.

#### **PART IV: DISCUSSION**

This paper's unexpected findings do not mean that Schwartz's claim should be completely discarded. Instead, Schwartz's claim should be revised, reconceived or re-tested. One approach is to determine if other data sources, especially information that is collected in the normal course of police business, better deter police misconduct. Another option is to determine whether consistently gathering lawsuit data deters other types of lawsuits, such as federal and state tort claims. A third approach involves finding out if regressions yield a similar result. In any case, more research is needed. To support this work, I summarize other important data in Table 4.

Building on the first option, I revise Schwartz's claim by asking whether other data sources better deter police misconduct lawsuits. In testing this revised claim, I found that three law enforcement agencies have much higher officer-to-lawsuit ratios than the other departments. These

law enforcement agencies are Los Angeles County, New York and Washington DC. Each department shares two characteristics: it meets the “size” threshold and has access to multiple types of third-party data.<sup>29</sup> When considered as a group, these law enforcement agencies have an average ratio of one hundred and seven officers for every § 1983 case. This result is better than the average ratios for law enforcement agencies that consistently gather lawsuit data (59 to 1), departments that ignore lawsuit data (60 to 1) and the control group (46 to 1). This result, therefore, supports a modest revision of Schwartz’s claim. This data is summarized in Table 5.

Law enforcement agencies with access to third-party complaint data and departmental audit data, in comparison, perform similarly to lawsuit data. Eight departments satisfy these conditions: New York, Boise, Philadelphia, San Jose, New Orleans, Chicago, Albuquerque and Denver. When considered as a group, these law enforcement agencies averaged sixty-two officers for every § 1983 case. This result is similar to the average ratios for departments that consistently gather lawsuit data (59 to 1) and law enforcement agencies that ignore lawsuit data (60 to 1). It also is better than the average ratio for the control group (46 to 1). This result also supports a revision to Schwartz’s claim. I summarize this complaint and audit data in Table 6.

## **PART V: CONCLUSION**

This paper demonstrates that departments who consistently gather lawsuit data are not, on average, the most effective in deterring published § 1983 cases. This finding indicates that police may not learn from lawsuit data. However, this finding does not mean that law enforcement agencies cannot learn from other data collection and analysis. In fact, two modest revisions to

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<sup>29</sup> There are two requirements for this information: data collectors are not subject to direct government or police control and these third-parties consistently gather information from complaints, audits or independent monitors.



Schwartz's claim indicate that third-party data performs similarly to lawsuit data. As a result, more law enforcement agencies should consider third-party data. This information is collected in the normal course of police business and may improve deterrence at a more reasonable cost.

## PART VI: TABLES

Jurisdiction	Number of Officers <sup>30</sup>	2006 Published § 1983 Cases <sup>31</sup>	2007 Published § 1983 Cases <sup>32</sup>	2008 Published § 1983 Cases <sup>33</sup>	2009 Published § 1983 Cases <sup>34</sup>	2010 Published § 1983 Cases <sup>35</sup>	2011 Published § 1983 Cases <sup>36</sup>	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
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**Table 1. Departments that consistently gather lawsuit data**

LA County	8239	49	30	53	77	92	83	64	129 to 1
Chicago	13129	164	165	210	215	297	358	235	56 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

<sup>30</sup> Reaves 31-41, *supra* note at 1.

<sup>31</sup> LexisNexis Legal Research, *supra* note 19, at 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

Denver	1405	32	25	38	40	58	55	41	34 to 1
Average	X	X	X	X	X	X	X	X	59 to 1

Jurisdiction	Number of Officers <sup>37</sup>	2006 Published § 1983 Cases <sup>38</sup>	2007 Published § 1983 Cases <sup>39</sup>	2008 Published § 1983 Cases <sup>40</sup>	2009 Published § 1983 Cases <sup>41</sup>	2010 Published § 1983 Cases <sup>42</sup>	2011 Published § 1983 Cases <sup>43</sup>	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
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**Table 2. Departments that ignore lawsuit data**

New York	36118	309	303	320	358	452	436	363	99 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
Nashville	1212	18	15	23	16	30	41	24	51 to 1
Sacramento	677	28	42	26	34	49	42	37	18 to 1

<sup>37</sup> Reaves, *supra* note 19, at 1.

<sup>38</sup> LexisNexis Legal Research, *supra* note 19, at 1.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

Jurisdiction	Number of Officers <sup>44</sup>	2006 Published § 1983 Cases <sup>45</sup>	2007 Published § 1983 Cases <sup>46</sup>	2008 Published § 1983 Cases <sup>47</sup>	2009 Published § 1983 Cases <sup>48</sup>	2010 Published § 1983 Cases <sup>49</sup>	2011 Published § 1983 Cases <sup>50</sup>	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
Average	X	X	X	X	X	X	X	X	60 to 1

**Table 3. Control group**

*Villa Rica	*35	*1	*0	*0	*0	*0	*0	*0	*206 to 1
*Farmington	*125	*1	*0	*1	*1	*1	*3	*1	*125 to 1
DC	3800	39	38	38	37	43	52	41	93 to 1
Boise	330	5	3	4	4	9	3	5	66 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

<sup>44</sup> Reaves, *supra* note 19, at 1.

<sup>45</sup> LexisNexis Legal Research, *supra* note 19, at 1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

Albuquerque	951	22	11	19	31	22	17	20	48 to 1
PG 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
Oakland	803	29	30	41	37	47	35	37	22 to 1
Pittsburgh	892	26	33	42	54	62	67	47	19 to 1
*Steubenville	*50	*2	*5	*3	*2	*2	*3	*3	*17 to 1
*Walkill	*33	*3	*0	*4	*1	*1	*3	*2	*17 to 1
Average	X	X	X	X	X	X	X	X	46 to 1

**Table 4. Other information about the twenty-six departments that were interviewed by Schwartz**

Jurisdiction	Third-Party Consistently Gathers Complaints <sup>51</sup>	Departmental Audits <sup>52</sup>	Independent Monitor <sup>53</sup>	Ratio of Officers to §1983 cases
*Villa Rica	*No	*No	*Yes	*206 to 1
L.A. County	No	Yes	No	129 to 1
*Farmington	*No	*Yes	*No	*125 to 1
New York	Yes	Yes	No	99 to 1
DC	Yes	No	Yes	93 to 1
Boise	Yes	Yes	No	66 to 1
Philadelphia	Yes	Yes	No	65 to 1
San Jose	Yes	Yes	No	64 to 1

<sup>51</sup> *LexisNexis Legal Research* (2012), which remains on file with the author. This supplemental data also is available at <http://www.nacole.org/resources/police-oversight-jurisdiction-usa>. Villa Rica, Farmington, Nashville, New Jersey, Steubenville and Wallkill are not listed on the NACOLE website. These six law enforcement agencies do not allow third-parties to consistently gather civilian complaints on their behalf.

<sup>52</sup> Schwartz, *supra* note 4, at 1091

<sup>53</sup> *Id.*

New Orleans	Yes	Yes	No	63 to 1
Buffalo	No	No	Yes	58 to 1
Chicago	Yes	Yes	No	56 to 1
Cincinnati	No	No	Yes	52 to 1
Nashville	No	Yes	No	51 to 1
Albuquerque	Yes	Yes	No	48 to 1
PG County	No	No	Yes	41 to 1
Portland	No	Yes	No	40 to 1
Detroit	No	No	Yes	39 to 1
New Jersey	No	No	Yes	37 to 1
Seattle	No	Yes	No	35 to 1
Denver	Yes	Yes	No	34 to 1

Los Angeles	No	No	Yes	30 to 1
Oakland	Yes	No	Yes	22 to 1
Pittsburgh	Yes	No	Yes	19 to 1
Sacramento	No	Yes	No	18 to 1
*Steubenville	*No	*No	*Yes	*17 to
*Wallkill	*No	*No	*Yes	*17 to



Jurisdiction	Number of Officers <sup>54</sup>	2006 Published § 1983 Cases <sup>55</sup>	2007 Published § 1983 Cases <sup>56</sup>	2008 Published § 1983 Cases <sup>57</sup>	2009 Published § 1983 Cases <sup>58</sup>	2010 Published § 1983 Cases <sup>59</sup>	2011 Published § 1983 Cases <sup>60</sup>	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
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**Table 5. Departments with access to multiple types of third-party data**

L.A. County	8239	49	30	53	77	92	83	64	129 to 1
New York	36118	309	303	320	358	452	436	363	99 to 1
DC	3800	39	38	38	37	43	52	41	93 to 1
Average	X	X	X	X	X	X	X	X	107 to 1

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<sup>54</sup> Reaves, *supra* note 19, at 1.

<sup>55</sup> LexisNexis Legal Research, *supra* note 19, at 1.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Jurisdiction	Number of Officers <sup>61</sup>	2006 Published § 1983 Cases <sup>62</sup>	2007 Published § 1983 Cases <sup>63</sup>	2008 Published § 1983 Cases <sup>64</sup>	2009 Published § 1983 Cases <sup>65</sup>	2010 Published § 1983 Cases <sup>66</sup>	2011 Published § 1983 Cases <sup>67</sup>	Average Number of Published § 1983 Cases	Ratio of Officers to Published § 1983 Cases
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**Table 6. Departments with access to third-party complaint data and departmental audit data**

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
Average	X	X	X	X	X	X	X	X	62 to 1

<sup>61</sup> Reaves, *supra* note 19, at 1.

<sup>62</sup> LexisNexis Legal Research, *supra* note 19, at 1.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*