University of Chicago Law School

Chicago Unbound

Coase-Sandor Working Paper Series in Law and Economics | Coase-Sandor Institute for Law and Economics

2019

Is Police Behavior Getting Worse? The Importance of Data Selection in Evaluating the Police

John Rappaport
dangelolawlib+johnrappaport@gmail.com

Aurelie Ouss
aurelie.ouss@chicagounbound.edu

Follow this and additional works at: https://chicagounbound.uchicago.edu/law_and_economics

Part of the Law Commons

Recommended Citation
John Rappaport & Aurelie Ouss, "Is Police Behavior Getting Worse? The Importance of Data Selection in Evaluating the Police," Coase-Sandor Working Paper Series in Law and Economics, No. 865 (2019).

This Working Paper is brought to you for free and open access by the Coase-Sandor Institute for Law and Economics at Chicago Unbound. It has been accepted for inclusion in Coase-Sandor Working Paper Series in Law and Economics by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

The published version of this paper is available at 49 J. Legal. Stud. 153 (2020)

Is Police Behavior Getting Worse?
Data Selection and the Measurement of Policing Harms

Aurélie Ouss

John Rappaport

ACCEPTED DRAFT
February 2020

Abstract

Public concern about harmful policing is surging. Governments are paying historic amounts for law enforcement liability. Has police behavior changed? Or is society responding differently? Traditional data sources struggle with this question. Common metrics conflate the prevalence and severity of policing harms with the responses of legal actors such as lawyers, judges, and juries. We overcome this problem using a new data source: liability insurance claims. Our dataset contains 23 years of claims against roughly 350 law enforcement agencies that contract with a single insurer. We find that, while lawsuits and payouts have trended upwards over the past decade, insurance claims have declined. We examine multiple potential explanations. We argue that, in our sample, police behavior is not getting worse; rather, societal responses to policing harms are intensifying. Police litigation is not representative of the broader universe of claims and adjudicated claims also differ systematically from settled ones.

AURÉLIE OUSS is the Jerry Lee Assistant Professor of Criminology at the University of Pennsylvania. JOHN RAPPAPORT is an Assistant Professor of Law and the Ludwig and Hilde Wolf Research Scholar at the University of Chicago Law School. We are grateful to our data provider, which has asked to remain anonymous, along with its many personnel who patiently fielded our questions and requests. A host of others deserve thanks as well: Rafeh Qureshi of the Coase-Sandor Institute for Law and Economics for help constructing the dataset; Morgan Gehrls, Carly Gibbs, Alli Hugi, Viraj Paul, Yosef Schaffel, and Alex Song for excellent research aid; Adam Chilton, William Hubbard, Emma Kaufman, Jennifer Laurin, John MacDonald, Jonathan Masur, Richard McAdams, Minor Myers, Megan Stevenson, Ronald Wright, and three anonymous referees and the editorial board of JLS for comments on drafts; and Aaron Chalfin and participants in CrimFest, the Junior Criminal Law Faculty Roundtable, and workshops at the University of Connecticut and Hebrew University for helpful discussion. Rappaport acknowledges the financial support of the Darelyn A. and Richard C. Reed Memorial Fund.

Electronic copy available at: https://ssrn.com/abstract=3325382

1. INTRODUCTION

The deaths of Michael Brown and Eric Garner in the summer of 2014 fueled widespread public interest in, and media scrutiny of, police behavior.[1] In December of that year, Barack Obama created the President's Task Force on 21st Century Policing. In the years since, a steady stream of videos has hit the Internet depicting the use of force—sometimes deadly force—by law enforcement officers around the country. Meanwhile, newspapers have reported rising police-related payouts (Elinson and Frosch 2015; Winton 2017). The explanation for these trends remains obscure, however. Is police behavior getting worse (King 2015, 2018) or simply more salient, particularly with the rise of smartphones and body-worn cameras (McLaughlin 2015; Wines and Cohen 2015)? There is some evidence, for example, of increasing militarization of the police, which may in turn correlate with the fatal use of force (Delehanty et al. 2017; Lawson 2018). But it is also possible that growing societal intolerance of police-inflicted harms is driving up media coverage and liability costs without any change in underlying police behavior.

The types of policing data available have limited our ability to discriminate among these explanations and to ascertain the nature of, and trends in, police-inflicted harms more generally (see Harmon 2013; Kane 2007). Of all the challenges facing researchers who study these questions, perhaps foremost is that common data sources—such as lawsuits and payouts—conflate the prevalence and severity of policing harms with the responses of legal actors such as lawyers, judges, and juries. Ideally, researchers would track harmful policing incidents directly. Reliable data of that kind, however, are rarely available, especially at scale. Given this reality, the search is for data that bring researchers closest to the harmful behavior, such as by capturing civilian allegations that an officer has inflicted compensable harm. If the dispute-resolution process is a pyramid, in other words, with jury trials at the peak (Galanter 1990), the base is the set of all potentially compensable policing harms. Researchers interested in understanding harmful police behavior want to be as close to the base as possible.

[1] Querying Google Trends (see Stephens-Davidowitz and Varian 2015) for the phrase "police brutality," for example, shows a jump in search activity in the United States in August 2014. Since then, search activity has remained at levels generally higher than during the preceding decade or more. Figure A1 displays Google search activity for "police brutality" in the United States, indexed to all Google searches and normalized to reach 100 in the highest relative search month; the vertical line marks August 2014. Similarly, in searching the "US Newspapers" collection in Lexis Nexis for the phrase "police brutality," a spike in monthly coverage appears in August 2014, marked again by a vertical line in Figure A2.

Electronic copy available at: https://ssrn.com/abstract=3325382

There is a seldom-used type of data that brings us much of the way there, permitting researchers to make progress in disentangling police behavior from the responses it triggers: liability insurance claims. We exploit this unusual data source in this paper. Police liability insurers open a claim every time a civilian seeks financial compensation for a police-inflicted harm, regardless whether a lawsuit is filed or payout ultimately made. While there is selection by civilians, sometimes with the assistance of counsel, regarding when to file claims, a claim reflects the first step in the dispute-resolution process. Claims data are not filtered through the additional layers of selection that produce litigation and payout data and that may bias our understanding of police behavior. By comparing claims data with these other data types, moreover, we are able to isolate and describe the latter selection process.

We demonstrate the importance of these points with a novel dataset containing 23 years of police liability claims against roughly 350 small and midsized police agencies in a midsized state (by population), compiled by a single insurer whose identity we have agreed to conceal. In addition to bringing us closer to the harmful behavior researchers aim to study, the dataset's expansive time horizon—covering 23 years up through 2017—allows us to measure time trends, helping to contextualize today's contentious policing environment. That our data cover hundreds of agencies, moreover, ensures that the trends we observe are not driven by idiosyncracies in a single or small number of jurisdictions. Indeed, we are aware of no other dataset that covers so many agencies for so many years.[2]

Our data allow us to make three central contributions. First, from a methodological perspective, we demonstrate the extent to which the analysis of policing harms depends on the type of data used to measure those harms. By comparing our overall sample with the subsets of claims that involve lawsuits or lawsuits with payouts, we show that police litigation—however ultimately resolved—is not representative of the broader universe of claims. In fact, using lawsuits or payouts to proxy for policing harms would have led to opposite conclusions about the direction of police performance in our sample over the past decade. Furthermore, claims data allow us to observe settled cases as well as adjudicated ones, so we can directly test the Priest-Klein hypothesis, which predicts bias in the selection of disputes for litigation. We show that, in our data,

[2] Kane and White (2013, p. 3) present "perhaps the largest study of police misconduct ever conducted in the United States, with a study period spanning from 1975 through 1996," a total of 22 years. They study a single agency, albeit the nation's largest—the New York City Police Department.

Electronic copy available at: https://ssrn.com/abstract=3325382

adjudicated claims differ systematically from settled ones, consistent with Priest-Klein but in contrast to recent empirical work by Helland, Klerman, and Lee (2018). We discuss how these contrasting results may stem from differences in the institutional environments we study.

Second, we present new evidence on the prevalence, composition, cost, and resolution of police liability allegations over time within a stable set of agencies. Consistent with evidence from other sources (Elinson and Frosch 2015; Winton 2017), we find that payouts have trended upward over time, and sharply so in recent years. The rate at which claims pay out, as well as the number of lawsuits, have also climbed since 2005. Yet the overall number of claims has declined, possibly due in part to loss-prevention techniques like those detailed in Rappaport (2017). Our data come from a single state, and from law enforcement agencies serving small and midsized localities—the average jurisdiction in our dataset has roughly 9,000 inhabitants. Although these are not the places policing researchers most commonly study, they are home to many millions of Americans. According to the 2010 Census, around 20% of the U.S. population lives in municipalities with fewer than 2,500 residents and 30% lives in municipalities under 50,000 (Ratcliffe et al. 2016). Furthermore, 70% of police agencies serve localities with fewer than 10,000 inhabitants (Reaves 2015). Our data therefore shed light on a large and understudied slice of American policing.

Finally, we consider several potential explanations for the opposing trends we observe in the number of claims and resolution of those claims. These include the rise in smartphone and body-worn camera technologies, changes in qualified immunity doctrine, and deteriorating police-community relations. We argue that the observed trends are most consistent with an intensified societal response to policing harms. Through this exercise, the paper extends the economics-of-crime literature focused on police behavior. A sizable literature studies the effects of policing on crime (see Levitt and Miles (2006) for a review). Other work examines the determinants of officer productivity (Chandrasekher 2016; Mas 2006) and racial disparities in stops and arrests (see, for example, Anwar and Fang (2006)). Economic research into police misconduct, specifically, has emerged only recently. In the last few years, researchers have measured police misconduct either as the primary outcome of interest (Rozema and Schanzenbach 2019; Fryer 2019) or as the consequence of different policy environments (Chandrasekher 2017; Dharmapala, McAdams, and Rappaport 2019). To our knowledge, our paper is the first to attempt to illuminate the distinction between long-term trends in police behavior and societal responses to it.

Electronic copy available at: https://ssrn.com/abstract=3325382

The rest of the paper is organized as follows. Section 2 explains how policing data have hamstrung prior research and how insurance claims data allow researchers to tackle questions incompletely explored by prior work. Section 3 describes our claims data in detail. Section 4 illustrates the data's potential by reporting and interpreting results concerning trends in police liability. It then more broadly demonstrates the importance of data selection for policing research. Section 5 discusses the results, using the data to benchmark findings from prior research and outlining the study's limitations. Section 6 concludes.

2. MEASURING POLICE BEHAVIOR

Section 2.1 describes how prior policing research has been limited by its data. Section 2.2 explains why insurance claims data give researchers traction on important but underexamined questions.

2.1. Prior Literature

Research on police behavior has generally relied on a small number of data sources. We review those sources here, noting various shortcomings that have limited the reach of prior work.

Lawsuits. Many studies, especially those focused on financial liability, exploit publicly available records of lawsuits (Eisenberg 1982; Kappeler 2006; Leong 2012; Powell, Meitl, and Worrall 2017; Ross 2000; Worrall and Gutierrez 1999). Because procedural and financial obstacles tend to "filter out marginal or frivolous cases," lawsuits are thought to constitute a high-quality sample of liability disputes (Rozema and Schanzenbach 2019, p. 231). At the same time, legal scholars have long believed that cases selected for litigation are "neither a random nor a representative sample" of the universe of disputes (Priest and Klein 1984, p. 4). Among other concerns, defendants can influence the number of suits filed against them. They can, for example, opt to settle politically embarrassing disputes or high-quality claims they expect to lose. An agency's low lawsuit count, therefore, could signal either responsible policing or an aggressive settlement strategy. In addition, plaintiffs' lawyers filter cases not for legal merit but for expected value, which encompasses concerns orthogonal to merit, such as the personal characteristics of potential clients and the nature of their injuries. Plaintiffs' attorneys may be more likely to file low-quality, high-dollar lawsuits than high-quality, low-dollar suits, leaving the latter undercounted.

Electronic copy available at: https://ssrn.com/abstract=3325382

Payouts. Data on public payouts, also familiar to academic research (Iris 2012, 2014; Rozema and Schanzenbach 2019; Schwartz 2014, 2016), may capture some cases lawsuit data miss. Few jurisdictions make payout data readily accessible, though they are typically covered by public records laws and can be gathered with sufficient effort. Yet payout data also confront significant selection effects, as disputes are filtered by multiple legal actors on the path to resolution. Unsuccessful claims, too, are wholly omitted. As a practical matter, in working with payout data, it can also be difficult to determine what cases localities are counting as "police-related" (Iris 2014).

Civilian Complaints. Another approach is to examine civilian complaints about police behavior (Chandrasekher 2017; Chanin 2016; Kane and White 2009; Lersch and Mieczkowski 2000). Civilian complaints can be valuable for comparing officers within a large agency (see Rozema and Schanzenbach 2019). Yet researchers cannot meaningfully aggregate or compare civilian complaints across agencies because data structures vary substantially (Hickman and Poore 2016). Relatedly, Ba (2018) finds that the physical location of the oversight agency where complaints are signed affects the likelihood that civilians will complete the complaint-filing process. This suggests that small barriers can have real effects on civilian reporting; it is certainly possible that more substantial obstacles have even larger effects, making cross-jurisdictional or even intertemporal comparisons difficult to interpret.

In addition, civilian complaints data are frequently unavailable, or unreliable, especially for smaller agencies. Hickman and Poore (2016, p. 472) find "many examples of erratic reporting" in their audit of data submitted by "small" agencies (100 to 249 officers) to the Law Enforcement Management and Administrative Statistics (LEMAS) survey. Many agencies in their study, moreover, both large and small, had purged their records under record-retention laws after as little as three years. Civilian complaints and insurance claims also capture different types of police behaviors. Where good civilian complaints data are available, they tend to feature allegations of failure to provide service and "discourtesy" (Ba 2018; NYC Civilian Complaint Review Board 2017). These are important for understanding police-community relations but less helpful for studying the types of incidents that trigger the regulatory apparatus of civil liability. Indeed, there are disincentives to filing civilian complaints over incidents that cause financially compensable harm, as documents submitted in connection with the complaint may become admissible in any later litigation (Rozema and Schanzenbach 2019).

Electronic copy available at: https://ssrn.com/abstract=3325382

Civilian Deaths. In recent years, journalists and activists have compiled databases that collect information on officer-involved shootings and civilian deaths. Researchers have begun to use these data sources, which are close to comprehensive, in peer-reviewed work (Campbell, Nix, and Maguire 2017; Jennings and Rubato 2017; Legewie and Fagan 2016; Mesic et al. 2018; Nicholson-Crotty, Nicholson-Crotty, and Fernandez 2017; Ross 2015). Yet the most inclusive one, Mapping Police Violence, contains only six years of data. For measuring police misconduct, moreover, these databases are simultaneously underinclusive, as they capture only the most extreme incidents, which are statistically rare, and overinclusive, as they include some legally justified killings that may not count as "misconduct" by reasonable standards, such as cases of officer self-defense.

2.2. Insurance Claims Data

Insurance claims data allow us to tackle some questions incompletely explored by prior work. A challenge in policing research is that most common data sources—particularly lawsuits and payouts—conflate the prevalence and severity of policing harms with the responses of legal actors such as lawyers, judges, and juries. Using insurance claims data to study policing does not eliminate these selection effects, as there is still selection into claims, but it does reduce their influence, as claims lie closest to the base of the dispute-resolution pyramid. In particular, we can track disputes beginning when they are initially filed and before claim-processing begins. Defendants cannot control the number of claims they incur by changing their settlement behavior. The plaintiffs' bar also plays a smaller role in filtering claims, as claims are easier than lawsuits to file without legal assistance.[3] Cutting through these layers of selection allows researchers to disaggregate the responses of legal actors such as lawyers, judges, and juries from the prevalence and severity of policing harms.

In addition, because the insurance mechanism requires spreading risk, each insurer typically covers many law enforcement agencies. This mitigates the concern that observable patterns in the data might reflect the idiosyncrasies of one or a small number of agencies. Data for covered agencies, moreover, are collected consistently across time and place and well preserved, making them valuable for studying time trends and—while not the focus of this paper—cross-jurisdictional questions as well.

[3] There are no systematic data on the rate of representation of insurance claimants. As one point of reference, in the past several years, the rate was around 20 to 30 percent in our sample.

Electronic copy available at: https://ssrn.com/abstract=3325382

Finally, insurance data give researchers an unprecedented view of policing outside the nation's largest cities. Empirical research rarely covers smaller agencies,[4] generating an oft-noted "big-city bias" in the literature (see Barrett, Haberfeld, and Walker 2009; Crow and Adrion 2011; Terrill, Leinfelt, and Kwak 2008; Walker and Katz 2008). This scholarly bias mirrors a similar skew in national media coverage. In recent years, just three cities—New York, Chicago, and Los Angeles—generated between half and two-thirds of all stories about "police misconduct" in the Associated Press and the 50 most widely circulated newspapers, despite employing less than 12% of sworn officers nationwide and accounting for only 4% of police-related civilian deaths.[5]

Big-city bias may warp our understanding of policing harms to the extent that big-city policing differs from policing elsewhere. The United States has over 12,000 local police departments. Roughly half of them employ 10 or fewer officers (Reaves 2015). Around 78% of the country's sworn officers serve populations of fewer than a million residents, 66% serve populations below 500,000, and 46% serve populations smaller than 100,000 (Reaves 2015).[6] Nor does the lion's share of crime and policing happen in the biggest cities (Fox 2017). Back-of-the-envelope calculations suggest that roughly two-thirds of FBI index crimes, arrests, and police-related fatalities occur outside the 100 largest cities. (For perspective, Fremont, California; Garland, Texas; and Hialeah, Florida make the 100-largest-cities list.)[7] If anything, these numbers may increase over time if experts are right that "the periphery," rather than the urban core, "remains

[4] Indeed, it is not uncommon for studies to exclude agencies that serve fewer than 100,000 residents (Parker et al. 2005; Smith 2004). The few exceptions consist principally of descriptions of individual jurisdictions (Garcia and Cao 2005; Lytle and Randa 2015; Payne, Berg, and Sun 2005; but see Liederbach 2005, 2007, examining multiple jurisdictions). Yet some evidence suggests that smaller agencies differ meaningfully from larger ones in structure, professionalization, and personnel (Falcone, Wells, and Weisheit 2002; Weisheit, Wells, and Falcone 1995). Smaller departments, for example, often lack big-city protocols for investigating policing harms, including shootings of civilians (Toner and Rutecki 2018).

[5] In the Lexis database "Major U.S. Newspapers," which contains the top 50 U.S. papers by circulation, a search for the phrase "police misconduct" on October 11, 2017 turned up 431 stories during the immediately preceding year. After filtering the results for duplicates and relevance, 66% of the stories concerned the three largest cities. Likewise, a search of the Lexis database "Associated Press" on the same day generated 167 results. The top three cities accounted for 54% of the filtered results. The *ten* largest cities generated 70% and 58% of the stories, respectively. Employment figures are from 2013, as reported in Reaves (2015). Data on police-related civilian deaths are from Mapping Police Violence (2019).

[6] The figures look even starker if one counts agencies rather than officers: 94% of police departments serve fewer than 50,000 people, 70% serve fewer than 10,000 people, and 40% serve fewer than 2,500 people (Reaves 2015).

[7] Data for the crime and arrest figures are from the FBI's Uniform Crime Reports for 2016 as compiled in Kaplan (2017). Crimes are actual reported offenses; arrests are clearances by arrest. Where cities did not report, they were skipped in the city counts. Data for the police-related-civilian-deaths calculation are from Mapping Police Violence (2019) for January 2013 through November 2017 and 2016 U.S. Census estimates.

Electronic copy available at: https://ssrn.com/abstract=3325382

the dominant, and fastest growing, part of the American landscape" (Kotkin and Berger 2017; *Infinite Suburbia* 2017).

Only two studies, to our knowledge, have relied upon insurance claims data. McCoy (2010) exploits claims data from 1974 to 1984 from a defunct insurer that had covered counties nationwide. She uses the data to assess the impact of the U.S. Supreme Court's 1978 decision holding municipalities amenable to suit under federal civil rights law. Based on a pre/post comparison, she finds that the number of claims and their outcomes did not materially change, but that the number of wrongful death lawsuits increased. Closest to our endeavor, Ross and Bodapati (2006) analyze 15 years of law enforcement liability claims data—from 1985 to 1999—from the Michigan Municipal Risk Management Authority. They present certain aggregate information over time, such as the total cost of claims for all agencies or the percentage of claims that were litigated. Their data, however, are limited in several important respects. First, Ross and Bodapati cannot verify whether the same agencies were covered throughout their observation period, making it difficult to interpret time trends. Second, they cannot determine, in general, whether their claims relate to law enforcement or to detention functions. In addition, their dataset includes employment claims and their liability claims are dominated by auto accidents. Finally, their observation period ends almost 20 years ago, so they cannot speak to recent trends, which hold substantial interest given current policy debates.

Before describing our dataset, we offer two caveats about claims data generally. First, even though claims data capture incidents that other data miss, they do not count every incident involving policing harm—there is selection into claims. Second, because the largest cities in the country, which may be some of the most racially diverse, tend to self-insure, claims data may be unhelpful for studying discriminatory policing, unless they are drawn from states with diverse populations (or large populations of people of color) outside their biggest cities.

3. INSTITUTIONAL BACKGROUND AND DATA

We illustrate the points made in Section 2 by using insurance claims to study trends in police liability in our sample over the past two decades. Our dataset consists of claims data provided by a single insurer in a midsized state ("the Insurer") under an agreement to preserve the Insurer's anonymity. The data cover roughly 350 law enforcement agencies over a period of 23 years. This is the largest and most detailed dataset of police insurance claims ever employed in

Electronic copy available at: https://ssrn.com/abstract=3325382

academic research. We begin with a brief background on the Insurer. We then describe the dataset in detail.

3.1. Institutional Background

Police liability insurance is common nationwide (see Rappaport 2017 for details). Providers include both for-profit carriers and intergovernmental risk pools. The latter are organizations formed by groups of local governmental entities to finance a risk, typically by pooling or sharing that risk. The exact number of localities that purchase police liability insurance is unknown but is thought to be a majority share. The market breakdown is also unknown. As a very general matter, however, small localities tend to join pools; midsized entities divide between pools and commercial carriers; and the largest localities self-insure. Even self-insured localities, though, often purchase excess coverage on the market.

The Insurer furnishes third-party liability coverage to its policyholders on a variety of lines, including automobile, employers' liability, and workers' compensation. We focus on the coverage it provides for liability triggered by police operations, which is part of a comprehensive liability coverage package. Roughly 350 agencies in one midsized state obtain police liability coverage from the Insurer. Consistent with the general pattern nationwide, a handful of the largest cities in the state, fewer than 10, self-insure and are not included in this total. The Insurer does capture the vast majority of the state's municipal police departments, however, corresponding to about 60% of the state's population. The covered agencies tend to be small, with most having 10 or fewer full-time officers.

The Insurer's police liability coverage is of the typical sort described in Rappaport (2017). It reaches nearly all losses stemming from sworn police activities that cause personal injury or property damage. The localities and their officers all are covered; for convenience, though, we will generally refer to claims as running against *agencies*. Deliberate violations of the law and criminal acts are excluded from coverage, though the Insurer will typically defend an officer suspected of such conduct under a "reservation of rights"; the Insurer will also defend the locality. Acts committed outside an officer's official capacity are excluded as well.[8]

[8] The deliberate and criminal acts exclusion would apply to incidents in which there is no arguable legal justification for the officer's act, such as the sexual assault of a detainee. Even then, many insurers would defend the officer, subject to a reservation of rights, unless and until he is convicted of a crime (Rappaport 2017). The Insurer informed us that it very rarely invokes the exclusion, which is consistent with general industry practice (Rappaport 2017).

Electronic copy available at: https://ssrn.com/abstract=3325382

A “claim,” for our purposes, represents a file the Insurer opens upon demand by an individual (the “claimant”) for compensation from a covered agency for a police-related harm. Most often, claimants make demands to the localities or agencies, which report them to the Insurer. On rare occasions, claimants submit demands directly to the Insurer, which then coordinates with the locality, or the Insurer opens a claim in anticipation of a demand, which is typically followed by an actual demand. The claims-making process is consistent across localities. To our knowledge, the principal change in the process over time has been increasing reliance on the Internet as a substitute for in-person claims submission.

The claims process is independent from litigation in the sense that claimants are not required to initiate or exhaust the claims process before suing, nor are they required to sue at all in order to receive compensation. In other words, some claimants never sue, some sue without first engaging in out-of-court negotiation with the Insurer, and some sue after negotiation fails. If the process is started when the claimant initiates a lawsuit, this is also considered a claim for our purposes, meaning that every lawsuit against a covered agency for which the Insurer provides coverage will be included in our dataset.

3.2. Data

The Insurer initially provided us a raw, claims-level dataset of all police liability claims filed between 1992 and June 30, 2018, containing a total of 3,353 claims. Unlike in Ross and Bodapati (2006), police-related claims that fall under separate employment or automobile policies are not included; nor are workers’ compensation claims. It is worth noting at the outset, however, that not all of our claims allege what, colloquially, might be called “police misconduct.” As Kane and White (2013) discuss at length, there is no expert consensus on how to define this term. Merely negligent infliction of personal or property harm, for example, may violate state tort law but probably not the U.S. Constitution. Is this “misconduct”? It is behavior society would prefer not occur, and it can cause serious harm (including death). Yet it lacks the element of willfulness some might expect from “police misconduct.” For this reason, when referring to claims generically, we use terms like “policing harms” or “police-inflicted harms,” reserving the term “misconduct” for discussing prior literature using the term.

Each claim in the dataset has a unique identifier and is associated with a specific law enforcement agency. For each claim, we observe a brief description of the underlying incident (the “loss description”). For claims that are closed, we see whether a lawsuit was filed—and, if so, how

Electronic copy available at: https://ssrn.com/abstract=3325382

it was resolved—as well as payouts, expenses, and deductible payments. We also observe the dates on which the incident allegedly occurred, the claim was reported to the Insurer, and the Insurer formally opened and closed the claim. In our temporal analyses, we focus on the reporting date.

The loss description field characterizes the *incident*, not the legal arguments claimants make. If, for example, a claimant alleges that an officer used excessive force in arresting her, and argues that the locality is liable because it failed to train the officer adequately, the loss description will reflect the underlying alleged use of force but typically will not mention the failure-to-train allegation. What we refer to as "payouts" includes money paid to the claimant under either a settlement or judgment. It also includes the claimant's attorney fees, whether taken from the claimant's recovery—such as in a contingent-fee arrangement—or separately delineated, which is rare. When claims have multiple claimants, we include a single observation per claim, and we sum payouts made to all of the claimants. Our data are therefore at the incident level and not at the claimant level.

The earliest reported claims are from 1992 but, due to data-quality concerns, we exclude all 333 claims reported before 1995. For analyses involving claims outcomes, we limit our sample to closed-claims data, as open-claims data are necessarily incomplete. And because many claims from 2016 through 2018 remain open, we also exclude from these analyses 218 *closed* claims from these most recent years. There are only eight open claims from 2015 and earlier, however, meaning our pre-2016 data are essentially complete (Figure A3).

We also exclude certain types of claims against unusual agencies. First, we exclude 127 claims against a couple dozen multi-jurisdictional, specialized task forces focused on problems like drugs or violent crime. These agencies differ in kind from general-services police departments. Among other things, oversight responsibility is spread among numerous jurisdictions, some of which are entities not otherwise covered by the Insurer. In contrast, we do include in our main analyses claims against a few multi-jurisdictional, *general-services* police departments. These agencies are formed by small clusters of neighboring municipalities, all of which are themselves covered by the Insurer, simply to achieve economies of scale. Second, we exclude 36 claims against agencies that did not exist, or did not obtain coverage from the Insurer, throughout the

Electronic copy available at: https://ssrn.com/abstract=3325382

entire observation period.[9] Our findings are qualitatively similar when we relax any of the above-mentioned restrictions.

This winnowing process left us with 2,858 claims across 23 years and 2,590 closed claims, for which we can see claim outcomes, across 21 years.[10] To study the substantive composition of claims, we developed a coding scheme consisting of the following eight salient types of police-related harms plus one residual category, which we applied to claims based on the "loss description" field:

1. ***Force***: Excessive force
2. ***Sexual***: Sexual misconduct (e.g., sexual assault, coerced sexual activity)
3. ***Property Harm***: Property damage or loss (e.g., damage to door upon entry, items lost during arrest, animals injured, car damage from pursuit)
4. ***Seizure of Person***: Illegal seizure of a person (e.g., false arrest, unlawful detention)
5. ***Seizure of Property***: Illegal seizure of property (e.g., illegal forfeiture, improper towing or impoundment of vehicle
6. ***Search***: Illegal search
7. ***Discrimination***: Discriminatory policing (including profiling based on race, sex, religion, ethnicity, or national origin)
8. ***Negligence***: Negligence resulting in personal injury (e.g., inadvertent K9 bite, accidental discharge of weapon)
9. ***Other*** (e.g., unspecified violation of constitutional rights, failure to investigate, defamation)

We also flagged any claim that involved a civilian fatality or vehicular pursuit. Multiple claim types could be assigned to a single claim. Claims that did not fit into any of our categories were

[9] Specifically, we exclude claims from agencies that opened or closed, or obtained or lost coverage, between 2007 and 2015, the period for which we have such information. Only 1.6% of claims between 2007 and 2015, and 1.26% of claims between 1995 and 2007, are from such agencies. Our results are very similar when we include these claims. There may be a small number of additional claims from agencies that opened or closed, or obtained or lost coverage, between 1995 and 2007, but we cannot identify these claims. Given the stability of our results regardless whether we include the claims from agencies that changed status between 2007 and 2015, we think their exclusion (were it possible) would not change our results substantially.

[10] Note that there were multiple reasons to drop some claims. Our findings are qualitatively similar when we include any of the dropped claims.

Electronic copy available at: https://ssrn.com/abstract=3325382

classified as "Other."[11] The most common allegations in claims classified as Other include failure to intervene or investigate, defamation, and misuse of confidential information.

Table 1 presents descriptive statistics on our closed claims data—overall and by type of claim. Out of the 2,590 closed claims, 32% involve a lawsuit and 30% lead to some payout being made, though these figures vary greatly across claim type. Claims for property damage or loss are most common, followed by use of force. When successful (i.e., when resulting in some payout), claims for discriminatory policing, use of force, and sexual misconduct result in the highest average payouts. Overall, mean payouts for successful claims are $23,700 (median: $700).

[INSERT TABLE 1 HERE]

The dataset contains an average of 123 claims per year across all of the covered agencies. In recent years, the covered agencies experienced an average of fewer than 5 claims per year per 100 officers. These seemingly small numbers may suggest that policing harms are less common (at least in some places) than is commonly thought, that many harms go unreported, or some combination of the two.

4. PRINCIPAL RESULTS

We report our main findings in three parts. In Section 4.1, we present time-trend evidence on the number and substantive composition of claims in our sample, as well as claim outcomes. In Section 4.2, we consider potential explanations for these trends. In Section 4.3, we use our data to demonstrate the importance of data selection in studying the police.

4.1. Trends in Frequency, Composition, and Resolution of Claims Against Police Agencies

Our data, which span more than two decades, allow us to explore time trends in the number, type, and resolution of claims against police agencies in our sample. Motivating this analysis—and as noted above—public interest in police brutality, as well as media coverage, have spiked in recent years (Figures A1 and A2). Is this because police behavior has worsened over time? Or are legal responses intensifying, possibly because people are simply paying more attention? Our data can help us get traction on this question.

[11] A pair of law-student research assistants manually and independently coded each claim. When they agreed on the coding, we adopted their coding decisions; when they disagreed, one of us made the ultimate determination of how to code the claim.

Electronic copy available at: https://ssrn.com/abstract=3325382

We ask first whether the total number of claims against the police in our sample has increased over time. Figure 1 plots the number of claims against all covered agencies, including open claims, reported each year between 1995 and 2017. There is no apparent increase in recent years to explain the heightened interest in police behavior. In fact, the number of claims has decreased over time, from an average of 135 claims per year in the 1990s, to 127 claims per year in the 2000s, to 106 claims per year in the 2010s. Nor do we see any uptick in claims to match the spike in interest in the summer of 2014. Note that the downward trend in claims cannot be explained by a declining population in the localities served by agencies in our data, as the population was steadily rising while claims declined. Indeed, when we plot claims per capita (not reported), the trend looks very similar to Figure 1.[12]

[INSERT FIGURE 1 HERE]

Trends in the aggregate number of claims may mask variation in the substantive types of claims that citizens bring. If claims for property damage are going down, for example, while use-of-force claims are rising, the appearance of overall stability (or improvement) may be deceiving. The graphs in Figure 2 break out claims reported by substantive type, with different scales on the y-axes across the graphs. While we do see year-to-year variation in the substantive composition of claims, there are no obvious trends and no clear increase in recent years for the most serious allegations—in particular, those involving fatalities, excessive force, or seizure of a person (i.e., false arrest). Overall, Figures 1 and 2 show that increased scrutiny of the police has occurred in a context in which claims were, if anything, decreasing.

[INSERT FIGURE 2 HERE]

When we look at payouts, however, the trends are anything but stable, as shown in Figures 3 and 4. The top-left graph in Figure 3 plots the total payouts (in real 2015 dollars) made by all agencies for all claim types. Consistent with media reports (Elinson and Frosch 2015; Winton 2017), the trend is clearly upward; sharply so in 2014 and 2015. Between 2013 and 2015 alone, total annual payouts rose almost tenfold, from $400,000 to $3.97 million. Multiple factors could be driving this trend in total payouts: a rising claimant "win rate" (i.e., an increasing share of claims leading to payouts), rising average payouts per claim, or some combination of the two. The next

[12] Nor can the decline in claims be explained by changes in the claims-submission process over time. As noted in Section 3.1, the principal change has been increasing reliance on the Internet as a substitute for in-person submission, which would tend to *increase* the number of incidents reported in more recent years.

Electronic copy available at: https://ssrn.com/abstract=3325382

two graphs in Figure 3 show that both factors are at play—claimants are winning more often *and* taking home more dollars per "successful" claim (i.e., per claim with a positive payout). And, as with total payouts, average payouts shoot rapidly upward in 2014 and 2015, rising from about $4,000 to about $40,000 per claim.[13] Finally, the bottom-right graph in Figure 3, which depicts the *number* (rather than percentage) of successful claims, shows that the rising win rate is partly, but not entirely, an artifact of the declining total number of claims. The number of successful claims increases throughout our observation period, from an average of 33 per year in the 1990s, to 37 per year in the 2000s, to 39 per year in the 2010s.

[INSERT FIGURE 3 HERE]

Particularly given the stark increase in recent years, it is possible that outliers are driving the increase in average payouts. Given that most claims are fairly small, a few multi-million-dollar claims involving fatalities, for example, could pull the averages up. Figure 4, however, rules out this explanation. Figure 4 presents the median, first-, and third-quartile payouts, which are also climbing during our observation period. Between 2013 and 2015, the median payout per claim rose by from $1,400 to $3,700. Most of that increase occurred during the last five years of the sample. This is all the more significant given that the number of successful claims is rising too; it would be reasonable to think that low-dollar claims might be driving the latter trend, which would drive median payouts *down*.

[INSERT FIGURE 4 HERE]

Figures 1 through 4, then, leave us with the following puzzle: Over the past two decades, the overall number of claims in our sample is stable or declining. This might suggest the police are involved in a shrinking number of harmful incidents—in other words, that police behavior is improving within our sample. Yet there is also some evidence suggesting that police behavior may be getting worse. The number of *successful* claims is climbing. Likewise, payouts—total, mean, and median—are rising, and spike sharply upwards in recent years. In the next section, we consider multiple potential explanations for this collection of trends.

[13] We do not include graphs showing total and mean payouts by claim type because, given that only 30% of claims pay out, the data are too sparse. Our analysis of the data does suggest, however, that the trends in total and mean payouts are driven largely by the trends in payouts for claims involving fatalities or excessive force.

It is possible that some of the increase in observed payouts is attributable to changes in claimants' attorney fees rather than compensatory payments to the claimant. Because the division of payouts is typically a matter between claimants and their attorneys, our data do not permit us to speak to this point with precision. In the minority of claims in which separate payments were made to claimants and their counsel, however, we do not observe any upward trend in the attorney's share, though the number of observations is too small to support any firm conclusions.

Electronic copy available at: https://ssrn.com/abstract=3325382

4.2. Mechanisms and Interpretation

Several phenomena could potentially explain the juxtaposition of falling claims with a rising claimant win rate and rising payouts. We consider three candidate explanations in turn: claimant selection of claims may have improved; policing harms may have become more severe, even if less frequent; and societal responses to policing harms may have grown more punitive. While our data do not permit a definitive answer, we argue that the available evidence favors the last explanation.

4.2.1. Improved Claim Selection

The first potential explanation is that, during our observation period, claimants became more selective in bringing claims. This could have occurred for a variety of reasons, though two stand out from policing debates: (1) more video evidence of police-citizen encounters and (2) changes in qualified immunity doctrine. We consider each separately, as each generates slightly different predictions.

The introduction of body-worn cameras, and the rising popularity of smartphones, have improved available evidence of some police-citizen encounters. Prospective claimants with low-quality claims may have become less likely to file knowing that video footage would tend to defeat their allegations. Claimants with high-quality claims, in contrast, possessed better evidence than in the past. This improved their odds of winning and increased expected damages per win, assuming video evidence elicits emotional responses from jurors by making harms more vivid. If this explanation were correct, we would expect to see several patterns in the data. Coincident with the introduction of these video-recording technologies: (1) the number of claims should decline, as low-quality claims are withheld; (2) claimants' win rate should rise, as average claim quality increases; and (3) average payouts should rise, as average claim quality and the emotional appeal of claimants' evidence both increase. The explanation is consistent with multiple patterns in total payouts—whether total payouts increase depends on whether the effects of higher average payouts swamp the effects of reduced frequency of claims. This explanation, in other words, is consistent with the rising trend in total payouts but not does require it.

Although we observe all three of these trends over our sample period, the timing of pertinent events allows us to reject this explanation: the observed trends occur too early relative to the popularization of these video-recording technologies. According to the Insurer, as of 2016, fewer than 10 of the 350 agencies in our sample were using body-worn cameras. Similarly, very

Electronic copy available at: https://ssrn.com/abstract=3325382

few, if any, claims during our sample period involved video evidence from smartphones.[14] The rise of these technologies may change patterns of police liability in the future but it cannot explain the trends we examine here.

Developments in legal doctrine may also have altered claim selection. In particular, changes in qualified immunity doctrine, which shields government employees from suit as long as they discharge their duties reasonably, may have hindered plaintiffs in many types of litigation against the police (Baude 2018). By effectively raising plaintiffs' burden of proof, these changes may have reduced the expected value of lawsuits and thus the "threat value" of lawsuits to claimants who hoped to settle claims without litigation. Prospective claimants, therefore, may have become less likely to file marginal claims. Unlike the new video technologies, however, the expansion of qualified immunity protections would have had no effect on the quality or emotional appeal of evidence for claims ultimately brought. In other words, claims that were filed notwithstanding the heightened barriers to suit were of no greater value after than before the doctrinal shifts. If this explanation were correct, we would expect that: (1) the number of claims and (2) lawsuits should gradually decline, as prospective claimants withhold marginal claims and suits; (3) claimants' win rate and (4) average payouts should gradually rise, as average claim quality increases; and (5) total payouts should decline, as marginal claims are withheld and the value of successful claims is unchanged.

There are three reasons to reject this explanation. First, the number of lawsuits does not gradually decline. In Figure 5, we plot the number of lawsuits over time alongside the number of successful lawsuits (i.e., lawsuits with positive payouts) and the overall number of claims. We also include smoothed trend lines. Contrary to expectations, the number of lawsuits has been steadily *climbing* since 2005.[15]

[14] The Insurer's reported experience on this point is consistent with other evidence regarding the popularization of filming the police with smartphones. For example, the ACLU released its "Mobile Justice" smartphone application, which facilitates civilian recording of the police, shortly before the end of our sample period. It is worth noting, too, that our claims are organized by the date on which they were reported to the Insurer. Our dataset contains only six excessive-force claims regarding incidents that allegedly occurred (and thus could have been filmed) in 2015. Among other things, these claims could not be driving the recent jump in median damages we observe in Figure 4.

[15] Figure 5 also suggests that number of claims is a better measure than number of lawsuits of the incidence of policing harms. If we assume that number of claims proxies for the number of policing harms, there are several reasons why the number of lawsuits might rise and fall (and rise again) during the observation period. The behavior of the plaintiffs' bar, which has historically shifted its attention among litigation areas, could explain this trend. But if we assume instead that number of lawsuits proxies for the number of policing harms, it is significantly more difficult to explain why the number of claims moves in the way it does.

Electronic copy available at: https://ssrn.com/abstract=3325382

[INSERT FIGURE 5 HERE]

Second, the large spike in average payouts in 2014 (Figure 3, top-right graph) is also inconsistent with expectations. As stated, qualified immunity doctrine is generally understood to have *gradually* raised the bar for plaintiff success. No single judicial decision since 1995 stands out as a game changer (see Baude (2018), pp. 88-90 for a comprehensive list of the Supreme Court's qualified immunity decisions). Finally, and once again contrary to expectations, total payouts are clearly trending upwards (Figure 3, top-left graph).

4.2.2. Increasing Severity of Harm

A second potential explanation for the trends presented in section 4.1 is that, while the *frequency* of policing harms decreased during our observation period, the *severity* of harms increased. It could be that police are interacting with civilians less often but that interactions are more volatile because police-community relations are deteriorating and the police are increasingly militarized (Delehanty et al. 2017; Lawson 2018). If this were the case, (1) claim severity should increase, either across or within claim types, especially after the events of 2014, and (2) average payouts should rise, as harms are increasingly severe. This explanation could be consistent with multiple patterns in total payouts or claimant win rate.

Our data do not permit us to reject this explanation with certainty, but we offer several reasons for skepticism. First, external evidence casts doubt on the motivating premise. While survey findings do suggest that confidence in the police declined between 2013 and 2015 (from 57 to 52% nationwide), during our sample period more generally, public confidence was fairly stable (ranging between 52 and 64%) (Jones 2015). There is no sign, in other words, of a persistent decline in police-community relations. Nor does existing evidence support the assumption that a deteriorating relationship would aggravate policing harms. Multiple studies have found that, if anything, the police *backed off*, rather than leaned in, after Ferguson (Morgan and Pally 2016; Shjarback et al. 2017). Over three-quarters of police officers surveyed in 2016, for example, indicated that Ferguson and other high-profile events have made them more reluctant to use force when it is appropriate (Morin et al. 2017).

Second, we find no evidence that claim severity increased, either across or within claim types. As an initial matter, recall that Figure 2 shows no clear trends over time in the substantive composition of claims. It is not the case, for example, that claims for property damage are consistently growing less common while excessive-force claims are growing more so. If claims

Electronic copy available at: https://ssrn.com/abstract=3325382

are becoming more severe, it is happening *within-type*, in unobservable ways. One way to approach the question is to examine claims involving fatalities, many (though not all) of which concern severe examples of use of force. If within-type severity is increasing, we might expect fatalities to increase as well. Yet Figure 2 confirms that the number of fatalities is not rising over time. Our data on this point are consistent with external, national data sources that show a high, but stable, number of police-related civilian deaths each year (Mapping Police Violence 2019). Furthermore, in Figure A4, we show that there is no increase in the number of claims whose descriptions mention officer-involved shootings (identified by searching the text of the "loss description" field) or vehicular pursuits.

4.2.3. Changing Societal Attitudes

Our final potential explanation for the trends we observe, and the one we find most compelling, is that society grew increasingly intolerant of harmful policing, especially after the spike in public scrutiny and media coverage precipitated by the events of 2014 (Figures A1 and A2). Juries may have become more inclined to issue large damage awards upon finding liability. They may also have grown increasingly willing to believe plaintiffs and disbelieve police officers in close cases, or to deny police the benefit of the doubt. This would be consistent with other evidence that public behavior—such as calls to 911—changes markedly in response to highly publicized cases of police violence (Desmond, Papachristos, and Kirk 2016).

Of course, civil juries resolve a very small number of claims; most claims are settled out of court. But negotiation takes place in the jury's shadow (Galanter 1990). Multiple empirical studies confirm the influence of anticipated jury verdicts on settlement decisions by insurance claims adjusters (Ross 1970; Metzloff 1991). For example, Metzloff (1991, p. 88), writing in the medical malpractice setting, concludes: "While the number of litigated outcomes is modest, the jury is a real and present influence." Our conversations with the Insurer, moreover, suggest that these effects matter in its business. For example, one claims adjuster reported that, when assessing claims, adjusters consider how a jury would respond even though the probability of a jury trial is very small.

Several empirical patterns would be consistent with this explanation: (1) claim severity should not increase, as police behavior is not worsening; (2) claimants' win rate should rise, as jurors increasingly favor plaintiffs in close cases; and (3) average payouts should increase,

Electronic copy available at: https://ssrn.com/abstract=3325382

especially around 2014, as jurors return higher damages awards upon finding liability. No firm predictions about the number of claims or total payouts are warranted.

Our data bear out all of these predictions. As discussed above, we find no evidence of increasing claim severity. Figure 3, meanwhile, does show a rising claimant win rate (bottom-left graph) and rising average payouts, with a spike in 2014 (top-right graph). There is also external evidence consistent with this explanation. In Philadelphia, for example, the average damages for police shooting cases—the severity of which cannot rise over time—more than tripled between 2010 and 2014 (Elinson and Frosch 2015). And while anecdotal in nature, we think it not insignificant that insiders on *all* sides of the debate—insurers, plaintiffs' lawyers, city attorneys, and law enforcement experts—agree that "current scrutiny of law enforcement" and "shifting attitudes toward police" are affecting the direction and magnitude of case outcomes (Elinson and Frosch 2015; Winton 2017: "Jurors are now less likely to give law enforcement the benefit of the doubt and more likely to award larger sums to plaintiffs, driving up the cost of judgments and emboldening attorneys to seek larger settlements during negotiations, experts said.").

4.3. The Importance of Data Selection

4.3.1. *Claims Data vs. Lawsuit Data: Substantive Composition and Payout Magnitude*

Given that insurance claims data may be difficult to obtain (see Section 5.2), it is worth examining the extent to which other data sources might substitute. Figure 5 suggests reason for caution on this point, as the trends in claims, lawsuits, and lawsuits with payouts differ markedly. Indeed, if, like prior researchers, we had used lawsuits or lawsuits with payouts as a proxy for police-inflicted harms over the past decade or so, we would have reached the opposite conclusion: we would have concluded, that is, that policing harms were increasing rather than decreasing. In this subsection, we investigate whether these data sources—claims, lawsuits, and lawsuits with payouts—differ along additional dimensions. We find that they do.

We first compare the universe of all claims to the subsets of claims that are commonly employed in academic research. In the top-left graph of Figure 6, we present the distribution of types of claims for all claims (1995 to 2015) and the 32% of claims that involve lawsuits, respectively. Use of force and illegal seizures of a person generate the majority of lawsuits, while property claims are much more common overall. Lawsuit data, in other words, drastically undercount the incidence of property harms. Payouts also vary between claims that do and do not go to court (Figure 6, bottom-left graph). Average payouts are significantly higher for excessive

Electronic copy available at: https://ssrn.com/abstract=3325382

force and sexual misconduct claims that involve a lawsuit, for example. This does not mean that lawsuits cause higher payouts, because of selection. It does mean, however, that estimates of average payouts calculated using lawsuit data will be biased upward, as we discuss in more detail below. Claims that go to court differ significantly from those that do not in both type and severity.

[INSERT FIGURE 6 HERE]

Many papers that study police liability match lawsuit data—which rarely includes settlement amounts—with payout data (Iris 2012, 2014; Rozema and Schanzenbach 2019; Schwartz 2014, 2016). Requiring both a lawsuit and a positive payout narrows the sample to only 8% of all claims in our dataset, as Table 2 shows. As the right column of Figure 6 illustrates, this small subset of claims differs from the larger sample in both substantive composition (top graph) and average payouts made (bottom graph). Again, use of force and illegal seizures of a person are overrepresented, and property harms underrepresented, relative to the overall sample. The distortion is even greater when considering average payouts. Without any zero-dollar claims, and with presumably very few low-value claims due to the costs of litigation, the average-payout value in this subset is more than ten times what it is in the overall sample of claims. Furthermore, because many claims involve neither a lawsuit nor a payout, even data containing all lawsuits (regardless of payout) *and* all payouts (regardless of lawsuit) would miss a large fraction of allegations: on average, for all types of claims, 46% (Table 2, column 4). And this is not the case only for minor infractions: for example, 58% of sexual-misconduct and 53% of excessive-force claims lead neither to a lawsuit nor to a payout.[16]

[INSERT TABLE 2 HERE]

One might argue that property harms, the least egregious among the claim types, are not worth much attention. If we disregard these minor claims, do claims data still differ systematically from the other data types? In unreported analysis, we reproduce several of our key figures after dropping property claims from the dataset. We find that, when we omit property claims, the substantive composition of claims does converge for claims and lawsuits (as well as lawsuits with payouts, though to a lesser extent). At the same time, the average magnitudes of payouts across claim types continue to differ substantially when we compare claims to lawsuits or lawsuits with

[16] Some of these claims may be frivolous, and so focusing on those that make it through the legal system selects for claims with legal merit. Given our results in Section 4.2, however, another possible interpretation is that, in earlier periods, the public was more trusting of the police and tolerant of the harms they cause.

Electronic copy available at: https://ssrn.com/abstract=3325382

payouts. Likewise, the aggregate time trends in number of claims, lawsuits, and lawsuits with payouts remain distinct when we omit property claims.

In addition, even though property claims result in low average payouts and involve no physical harm to civilians, they do shed light on civilian interactions with the police. Each property claim represents an occasion on which a civilian believes a law enforcement officer has damaged or destroyed his property. Even a relatively low-value claim—a damaged door or window, a broken smartphone, or a scratched vehicle, for example—may reflect a substantial monetary shock, especially for poorer households. Moreover, frequent property damage by officers may be interpreted as a sign of disrespect that can breed distrust within the community. Research consistently finds that people form views about police legitimacy based not only on their own interactions with officers but also what they hear from their neighbors and friends (Mazerolle et al. 2013). Yet precisely because property claims are underrepresented in other data sources, researchers likely undercount the frequency of property damage and all that follows from it. Claims data helpfully bring these incidents to light.

4.3.2. *Selection of Disputes for Adjudication*

Even if lawsuits and lawsuits with payouts are not representative of the broader universe of claims, one recent study suggests that researchers might use *adjudicated* claims to proxy for the whole. "Adjudicated" claims are the subset of claims that are resolved by a dispositive motion or trial verdict—all of which necessarily involve lawsuits—regardless whether the judgment favored the plaintiff or the defendant. In recent empirical work using New York litigation data from contingent-fee cases, Helland, Klerman, and Lee (2018) find that the average judgment amount for adjudicated claims is very close to the average settlement, and the distributions of settlements and adjudicated damages are quite similar. This was a surprising finding that runs contrary to the influential Priest-Klein hypothesis, which holds that "the disputes selected for litigation (as opposed to settlement) will constitute neither a random nor a representative sample of the set of all disputes" (Priest and Klein 1984, p. 4).

To see whether Helland, Klerman, and Lee's (2018) finding holds in our distinct institutional environment, we replicate the comparison they draw between "adjudicated" and "settled" claims (see Helland et al. 2017 for a detailed description of their data), using the same definitions of these terms as in their paper. "Adjudicated" claims, as stated, include claims that are resolved by motion or trial verdict. "Settled" claims include all claims that are not adjudicated but

Electronic copy available at: https://ssrn.com/abstract=3325382

that result in some payout being made, regardless whether a lawsuit was filed—in other words, *all* negotiated payments, not just those that resolve *a lawsuit*. Following Helland, Klerman, and Lee (2018), our specification of settled claims does not include unadjudicated claims that lead to no payout for whatever reason, such as claims that were voluntarily dismissed or abandoned by claimants. There are no zero-dollar settlements, that is. Settled claims also exclude claims for which the Insurer denied coverage.

In Figure 7, we compare the substantive composition (top graph) and average payouts (bottom graph) for settled and adjudicated claims. The substantive composition of claims varies between the adjudicated and settled samples (Figure 7, top row). Knowing what share of adjudicated claims involve the seizure of property, for example, does not allow one to estimate the share of settled claims of that same type. It does not appear that Helland, Klerman, and Lee (2018) were able to disaggregate their data by substantive case type, so it is unclear whether their data would have resembled ours in this respect. Likewise, we do not replicate the payout-related findings of Helland, Klerman, and Lee (2018): the average judgment amount in our data ($3,562) is an order of magnitude lower than the average settlement ($32,072) (Table 3, bottom row), and the difference is statistically significant ($p < 0.001$). At least within our sample, then, a researcher without access to settlement data cannot estimate the average-settlement value by reference to the average adjudicated judgment. The same is true for claims of different substantive types, such as excessive force (Figure 7, bottom row). The extent to which these results will hold in other police liability datasets is unclear.

[INSERT FIGURE 7 HERE]

The contrast between our results and Helland, Klerman, and Lee's (2018) may reflect differences in the institutional environments we study. Our data contain exclusively claims against public law enforcement agencies; theirs encompass contingent-fee cases involving personal injury, property damage, and wrongful death, as well as condemnation and change of grade (Helland et al. 2017). Although, as noted, Helland, Klerman, and Lee (2018) do not disaggregate their data by case type, their contingent-fee cases very likely include a significant number of tort suits against private defendants. It may be that the defendants in our dataset more frequently face asymmetric stakes in litigation. Public defendants, for example, may incur greater reputational costs from adverse judgments and, as repeat players, have incentives to "play for rules" that will govern future disputes (Galanter 1974). Where defendants have more at stake than plaintiffs from adverse

Electronic copy available at: https://ssrn.com/abstract=3325382

judgments, defendants can be expected to settle all but the cases they are likeliest to win, driving down the expected plaintiff win rate (Priest and Klein 1984) and potentially pushing apart the average judgment and average settlement amounts. Indeed, in Helland, Klerman, and Lee's (2018) data, plaintiffs won 29% of adjudicated cases; in ours, plaintiffs win only 3.9% (authors' calculations, not reported). If we were to assume a 29% win rate in our own data, and assume (perhaps unrealistically) that average judgments would be the same for those 29% as they are for the 3.9%, then the overall average judgment amount would be around $26,000—substantially closer to the average settlement amount of $32,072.

We also observe that the difference between the average judgment and average settlement is highly sensitive to how we specify claims as "settled." As explained above, Helland, Klerman, and Lee (2018) exclude all unadjudicated claims that result in no payout (defined as "Settled (1)" in Table 3), which constitute 13% of their cases. They acknowledge that "such cases could be classified as settlements for $0" but argue that they "probably reflect nuisance suits the defendant refused to settle or cases where investigation or discovery revealed that the plaintiff's case was very weak" (p. 146). If, however, we recode unadjudicated, zero-dollar claims as "settled" for $0 (defined as "Settled (2) in Table 3)—which seems to us an equally plausible way of interpreting the data—the average judgment ($3,562) and average settlement ($13,574) grow closer but the difference between them remains statistically significant (p = 0.006).

Similarly, Helland, Klerman, and Lee (2018) had the somewhat unusual opportunity—as we do—to observe settlements where no lawsuit was ever filed. In many settings, researchers will never learn of such disputes. With this in mind, if we restrict the universe of claims to those in which a lawsuit was filed—treating settlement as settlement *of a lawsuit* (defined as "Settled (3)" in Table 3—the average judgment ($3,562) and average settlement ($95,307) instead diverge even further *(*p < 0.001). Table 3 compares the composition and average-payout figures for adjudicated claims with those of settled claims defined in these three different ways.

[INSERT TABLE 3 HERE]

5. DISCUSSION

In Section 5.1, we comment on some implications of our research. We then review the principal limitations of our data and analysis in Section 5.2.

5.1. Research Implications

Electronic copy available at: https://ssrn.com/abstract=3325382

Three implications of our analysis deserve mention. First, in our sample, as we move up the pyramid from claims to lawsuits to payouts, the composition of cases changes substantially. Claims that involve litigation differ systematically from claims that do not, in terms of both type and severity, and adjudicated claims differ systematically from settled claims. All of this is consistent with the Priest-Klein hypothesis but in contrast to Helland, Klerman, and Lee's (2018) recent empirical contribution to the Priest-Klein literature. More research is warranted, for example to explore whether there are particular institutional environments in which the Priest-Klein hypothesis is more or less likely to hold. Future research can assess whether selection effects will manifest similarly, in terms of direction and magnitude, even in other policing datasets. For now, we recommend caution when drawing inferences from litigation data about the composition or severity of policing harms.

Second, and relatedly, having demonstrated the value of insurance claims data to the academic study of policing, we hope future researchers will pursue this data source and additional insurers will consider making their data available for study. By analogy, researchers have leveraged to great effect the wider availability of aggregate data on closed claims for medical malpractice (Black et al. 2005; Vidmar et al. 2005). Given the social salience of contemporary American policing, the value of wider access to claims data could be significant. It would shed light not only on other jurisdictions but also on the behavior of other insurers.

Third, in the immediate term, we can use our data to generate multipliers that estimate the numerical relationships among claims, lawsuits, and lawsuits with payouts, respectively. As an illustration, we then use these multipliers to benchmark prior studies. A number of recent papers, which focus on civil rights cases, match lawsuit data with payout data and report case counts and average-payout figures (see, for example, Iris 2012, 2014; Rozema & Schanzenbach 2019). Using the multipliers generated by different cuts of our own data, we show how those estimates might be adjusted to reflect differences among data sources. In principle, future researchers could use these multipliers in similar ways on other datasets.

For this benchmarking exercise, to mirror the prior literature, we limit our data to civil rights claims. We approximate this category by removing from our dataset property-damage, negligence, and unclassified ("Other") claims. In panel A of Table 4, we report the number of claims and average payout per claim, in 2015 dollars, for three different splits of the data: all civil rights claims, civil rights claims involving a lawsuit, and civil rights claims involving a lawsuit

Electronic copy available at: https://ssrn.com/abstract=3325382

and a positive payout. In panel B, we present ratios of claim counts and average payout. The idea is to estimate the extent to which data on lawsuits with positive payouts may lead researchers to understate the number of claims for compensation and overstate average payouts, relative to data on all claims or all lawsuits.

[INSERT TABLE 4 HERE]

The values in Table 4 indicate that, had we used data on claims that led to both a lawsuit and a positive payout, like much of the existing literature, we would have painted a very different picture of the volume and consequences of demands for compensation from the police. There are many fewer claims that result in lawsuits with payouts, or even just in lawsuits, than there are overall; conversely, average payouts are much larger for claims with lawsuits and payouts than for all lawsuits or all claims. For example, we would have *undercounted* by a factor of 8.3 (=1/0.12 in the first column of panel B of Table 4) the number of demands for compensation from the police. At the same time, we would have *overstated* the average payout per demand by a factor of 7.6 had we used data on lawsuits that led to positive payouts instead of data on all claims (second column of panel B of table 4). Similar calculations can be used to compare lawsuits with payouts to all lawsuits.

Ratios like these could inform how we interpret other research. For example, using data from Chicago on civil rights lawsuits that paid out between 2006 and 2012, Iris (2014) reports an average-payout figure of $112,335. If the ratios of payouts are similar in Chicago and our context, then the average payout including lawsuits that did *not* result in payouts would be closer to $30,400, and more like $14,800 including claims that never ripened into lawsuits. Similarly, Rozema and Schanzenbach (2019) find that, between 2009 and 2014, the average payout for civil rights lawsuits in Chicago was $329,322, for lawsuits that led to positive payouts. We might then predict that, for all lawsuits (all claims, respectively), the average payout would be closer to $89,000 ($43,000, respectively).

We emphasize that these ratios are offered principally to illustrate a concept. It is entirely possible that different ratios characterize different settings. Indeed, Iris (2014) suggests that, in Chicago, very few civil rights claims are brought outside of court. Perhaps residents of smaller, more tight-knit communities—like many of those in our dataset—are more hesitant to file lawsuits or seek large recoveries that could burden a modest tax base (Black 1972). Even within a single jurisdiction, different insurers might generate different ratios as well, depending upon factors

Electronic copy available at: https://ssrn.com/abstract=3325382

including settlement strategy. Indeed, we find that, even in our own dataset, the ratios change over time. We calculated number-of-claims and average-payout ratios for different five-year time windows in our data (results available on demand). In the most recent five-year window, the average-payout ratios are smaller than in earlier years: payouts for civil rights claims with lawsuits and positive payouts are 2.5 times higher than for all civil rights claims with lawsuits, and 4.4 times higher than payouts for all civil rights claims. Even these smaller ratios, however, indicate large differences in the magnitude of payouts depending on the dataset employed.

5.2. Limitations

The data we employ are rich and closer to the "base of the pyramid," so to speak, than lawsuit or payout data. That said, there remain important limitations to our data that should be kept in mind when interpreting or extending our results.

First, we have data only on incidents in which an individual demanded, or was anticipated to demand, financial compensation for a covered, police-related harm. This means our data do not include what might be called "victimless" police malfeasance, such as an officer using a controlled substance while on duty. Nor do they capture police behavior like "discourtesy" that, while offensive or undesirable in some respects—and while not "victimless"—creates no plausible claim of compensable harm. Claims data also omit misconduct that is clearly excluded under the Insurer's policy, such as acts committed outside an officer's official capacity.

Second, we observe only incidents that were reported to the Insurer. Localities may resolve some covered, police-related incidents without reporting them, possibly in a perceived effort to control their premiums. Our dataset would not capture these occurrences. These incidents, however, are likely rare and minor in magnitude. Policyholders are contractually obligated to report each covered occurrence to the Insurer promptly. Failing to report even a minor occurrence, which could result in the denial of coverage, is risky because seemingly small claims can escalate. Premiums are experience rated but they are not sensitive enough to respond meaningfully to any particular police liability claim. The Insurer's experience-modification adjustment is calculated across several years of claims, over all lines of liability—not just policing—and caps the impact of large losses. Moreover, many localities carry an aggregate deductible, which creates an additional incentive to report: if the locality is going to pay out, it might as well get credit for the payment against its deductible, so that coverage kicks in sooner for future claims. The Insurer also assists policyholders in evaluating and processing claims, executing adequate releases, and dealing

Electronic copy available at: https://ssrn.com/abstract=3325382

with the tax implications of payments, complications localities would need to handle independently if they declined to report claims.

Third, all of our data come from a single insurer in a single midsized state, which we have agreed not to identify, raising questions about external validity. Part of what we are measuring is the behavior of this particular insurer (see Schwartz, forthcoming). The decline in claims we observe, for example, may stem in part from the Insurer's efforts to reduce policing harms (and therefore claims), efforts that other insurers may not match. The state we study, moreover, is relatively racially homogeneous, especially outside of the largest municipalities, several of which self-insure and thus are not included in our data. It is possible that trends in policing differ in more heterogeneous settings. Kane and White (2013) also suggest the possibility of regional variation in the types and prevalence of police misconduct. At the same time, most law enforcement agencies in the United States are small, and the population in small-town and rural communities is heavily white—78%, compared to 64% in the country overall and 44% in urban areas (Housing Assistance Council 2012). Nor are policing harms confined to the big city. Recall that roughly two-thirds of police-related fatalities occur outside the nation's 100 largest cities; relatedly, roughly half of all individuals killed by the police are white (Mapping Police Violence 2019). There are also distinct methodological advantages to working within a single state. State-level effects—including state law and other state characteristics—are held constant. And where, as here, a single entity collects all of the data, data-consistency concerns are greatly reduced.

Fourth, we cannot directly measure the rate of police-inflicted harms; there is selection into claims. Insurance claims, that is, reflect the behavior of claimants and (in some instances) their lawyers as well as that of the police. The decision whether to make a demand depends on factors including the putative claimant's perception of whether the grievance is worth pursuing as well as her knowledge of the law and legal institutions. The relatively stable trend we observe in the number of claims per year, for instance, could reflect stability in police behavior. We would see the same trend, however, if policing harms increased (decreased) but selection into claims decreased (increased). In Section 4.2.1, we attempted to identify and rule out the most obvious explanations for why selection into claims may have changed over time, and we are not aware of any other well-motivated explanation. But we cannot rule out the possibility. Nevertheless, nearly

Electronic copy available at: https://ssrn.com/abstract=3325382

every familiar data source, especially when it comes to crime and victimization, suffers from this shortfall.[17]

Finally, insurance claims data may be proprietary and thus difficult to obtain. Some civilian complaint data, in contrast, and all lawsuit data, are public record. Still, especially for longitudinal or cross-jurisdictional purposes, these other data sources are not as readily accessible as it may seem. As we discussed in Section 2.1, civilian complaint data may be unavailable or unreliable especially in smaller cities, and many jurisdictions purge these data after a few years. Gathering lawsuit data on police misconduct across any significant span of time or space is also challenging and prone to measurement error. Rozema and Schanzenbach (2019) describe the process, which involves keyword searches followed by manual review, one jurisdiction at a time.

6. CONCLUSION

Motivated by sharply heightened public scrutiny of the police in recent years, we examined a new data source, insurance claims data, in an effort to disentangle trends in police behavior from the responses of legal actors such as lawyers, judges, and juries. We found that, over time, the number and substantive composition of claims have held relatively stable in our sample, while the claimant win rate, total and average payouts, and (more recently) number of lawsuits all have increased. After considering several potential explanations, we interpreted these trends to suggest that the incidence of policing harms has not been rising in our sample, nor has the substantive nature of those harms been changing in observable ways. Instead, society has likely grown increasingly intolerant of policing harms, leading to more claimant victories and larger recoveries as claims are settled in the jury's shadow. The basic methodological take-away is that existing data sources capture vastly different types and amounts of harmful policing.

The policy implications of our findings are less clear. Rising payouts per claim, we have argued, seem to signal increasing societal awareness of, and concern about, harmful policing. This could be an optimistic story about the power of protest and public-influence campaigns, if rising payouts are leading agencies to pursue productive reforms. But it also points to the critical role of the insurer, which, by converting payouts to premiums, mediates the relationship between payouts

[17] One possible exception is field observation data (see, for example, Mastrofski, Snipes, and Supina 1996; Terrill and Reisig 2003). Field observation presents its own difficulties, however. It is difficult to scale and prone to reactivity bias.

Electronic copy available at: https://ssrn.com/abstract=3325382

and incentives for reform. Some insurers, for example, may pin premiums tightly to payouts, creating the sort of behavioral incentives proponents of civil liability imagine. Others, however, may prioritize rate stability as a service to their policyholders, raising the possibility of moral hazard, as rising payouts fail to translate into rising costs for policyholders. Further research might investigate the relationship between police liability claims experience and subsequent premiums and, even more important, between premiums and subsequent police behavior.

We conclude with two parting disclaimers. First, our message is not that policing is self-improving—just give it time, and the incidence of harm will fall. While our findings do not bear on the question, the decline in claims may have resulted from policy efforts on all sides of the issues, including but not limited to the Insurer's loss-prevention initiatives. Falling crime and arrest rates may have helped as well. Second, we do not suggest that, because claims are declining, they are necessarily low enough. They could be declining, that is, but still be higher than the socially optimal level. To dramatize the point, homicide rates have been falling for many centuries, if not millennia, and "today we may be living in the most peaceable era in our species' existence" (Pinker 2011, p. xxi). But few who are living in "high-crime" neighborhoods in America's cities would report that all is well. Progress does not warrant complacency.

REFERENCES

Anwar, Shamena, and Hanming Fang. 2006. An Alternative Test of Racial Prejudice in Motor Vehicle Searches: Theory and Evidence. *American Economic Review* 96:127-51.

Ba, Bocar A. 2018. Going the Extra Mile: The Cost of Complaint Filing, Accountability, and Law Enforcement Outcomes in Chicago. Working paper.

Barrett, Kevin J., Maria (Maki) Haberfeld, and Michael C. Walker. 2009. A Comparative Study of the Attitudes of Urban, Suburban and Rural Police Officers in New Jersey Regarding the Use of Force. *Crime, Law and Social Change* 52:159-79.

Baude, William. 2018. Is Qualified Immunity Unlawful? *California Law Review* 106:45-90.

Black, Bernard, Charles Silver, David A. Hyman, and William M. Sage. 2005. Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002. *Journal of Empirical Legal Studies* 2:207-59.

Black, Donald J. 1972. The Boundaries of Legal Sociology. *Yale Law Journal* 81:1086-1100.

Electronic copy available at: https://ssrn.com/abstract=3325382

Campbell, Bradley A., Justin Nix, Edward R. Maguire. 2017. Is the Number of Citizens Fatally Shot by Police Increasing in the Post-Ferguson Era? *Crime and Delinquency* 64:398-420.

Chandrasekher, Andrea Cann. 2016. The Effect of Police Slowdowns on Crime. *American Law and Economics Review* 18: 385-437.

_____. 2017. Police Labor Unrest and Lengthy Contract Negotiations: Does Police Misconduct Increase with Time Spent Out of Contract? Working paper.

Chanin, Joshua. 2016. Evaluating Section 14141: An Empirical Review of Pattern or Practice Police Misconduct Reform. *Ohio State Journal of Criminal Law* 14:67-112.

Crow, Matthew S., and Brittany Adrion. 2011. Focal Concerns and Police Use of Force: Examining the Factors Associated with Taser Use. *Police Quarterly* 12:366-87.

Delehanty, Casey, Jack Mewhirter, Ryan Welch, and Jason Wilks. 2017. Militarization and Police Violence: The Case of the 1033 Program. *Research and Politics* April-June:1-7.

Desmond, Matthew, Andrew V. Papachristos, and Davis S. Kirk. 2016. Police Violence and Citizen Crime Reporting in the Black Community. *American Sociological Review* 81:857-76.

Dharmapala, Dhammika, Richard H. McAdams, and John Rappaport. 2019. Collective Bargaining Rights and Police Misconduct: Evidence from Florida. Working paper.

Eisenberg, Theodore. 1982. Section 1983: Doctrinal Foundations and an Empirical Study. *Cornell Law Review* 67:482-556.

Elinson, Zusha, and Dan Frosch. 2015. Cost of Police-Misconduct Cases Soars in Big U.S. Cities. *Wall Street Journal*, July 15.

Falcone, David N., L. Edward Wells, and Ralph A. Weisheit. 2002. The Small-Town Police Department. *Policing: An International Journal of Police Strategies & Management* 25:371-84.

Fox, Justin. 2017. Violent Crime Isn't Just a Big-City Thing. *Bloomberg*, September 25. https://www.bloomberg.com/view/articles/2017-09-25/violent-crime-isn-t-just-a-big-city-thing (last updated May 28, 2018).

Fryer Jr., Roland G. 2019. An Empirical Analysis of Racial Differences in Police Use of Force. *Journal of Political Economy* 127:1210-61.

Galanter, Marc. 1990. The Civil Jury as Regulator of the Litigation Process. *University of Chicago Legal Forum* 1990:201-71.

_____. 1974. Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9:95-160.

Electronic copy available at: https://ssrn.com/abstract=3325382

Garcia, Venessa, and Liqun Cao. 2005. Race and Satisfaction with the Police in a Small City. *Journal of Criminal Justice* 33:191-99.

Harmon, Rachel A. 2013. Why Do We (Still) Lack Data on Policing? *Marquette Law Review* 97:1119-46.

Helland, Eric, Daniel Klerman, Brendan Dowling, and Alexander Kappner. 2017. Contingent Fee Litigation in New York City. *Vanderbilt Law Review* 70:1971-92.

Helland, Eric, Daniel M. Klerman, and Yoon-Ho Alex Lee. 2018. Maybe There's No Bias in the Selection of Disputes for Litigation. *Journal of Institutional and Theoretical Economics* 174:143-70.

Hickman, Matthew J. U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. 2006. *Citizen Complaints About Police Use of Force*.

Hickman, Matthew J., and Jane E. Poore. 2016. National Data on Citizen Complaints About Police Use of Force: Data Quality Concerns and the Potential (Mis)Use of Statistical Evidence To Address Police Agency Conduct. *Criminal Justice Policy Review* 27:455-79.

Housing Assistance Council. 2012. *Race & Ethnicity in Rural America*. http://www.ruralhome.org/storage/research_notes/rrn-race-and-ethnicity-web.pdf (last updated August 17, 2019)

Infinite Suburbia. 2017. Edited by Alan M. Berger, Joel Kotkin, with Celina Balderas Guzmán. New York: Princeton Architectural Press.

Iris, Mark. 2012. Illegal Searches in Chicago: The Outcomes of 42 U.S.C. § 1983 Litigation. *Saint Louis University Public Law Review* 32:123-45.

Iris, Mark. 2014. Your Tax Dollars at Work! Chicago Police Lawsuit Payments: How Much, and for What? *Virginia Journal of Criminal Law* 2:25-61.

Jennings, Jay T., and Meghan E. Rubato. 2017. Preventing the Use of Deadly Force: The Relationship Between Police Agency Policies and Rates of Office-Involved Gun Deaths. *Public Administration Review* 77:217-26.

Jones, Jeffrey M. 2015. In U.S., Confidence in Police Lowest in 22 Years. Gallup, June 19. https://news.gallup.com/poll/183704/confidence-police-lowest-years.aspx (last updated December 16, 2018).

Kane, Robert J. 2007. Collect and Release Data on Coercive Police Actions. *Criminology and Public Policy* 6:773-80.

Kane, Robert J., and Michael D. White. 2013. *Jammed Up: Bad Cops, Police Misconduct, and the New York City Police Department*. New York, N.Y.: New York University Press.

Electronic copy available at: https://ssrn.com/abstract=3325382

_____. 2009. A Study of Career-Ending Misconduct Among New York City Police Officers. *Criminology and Public Policy* 8:737-69.

Kaplan, Jacob. 2017. *Uniform Crime Reporting Program Data: Offenses Known and Clearances by Arrest, 1960-2016*. Ann Arbor, Mich.: Inter-university Consortium for Political and Social Research. http://doi.org/10.3886/E100707V2.

Kappeler, Victor E. 2006. *Critical Issues in Police Civil Liability*. 4th ed. Long Grove, Ill.: Waveland Press.

King, Shaun. 2015. Police Brutality Is Getting Worse and Shows No Signs of Slowing Down. Daily Kos, September 22. https://www.dailykos.com/stories/2015/9/22/1423847/-Police-brutality-is-getting-worse-and-shows-no-signs-of-slowing-down (last updated October 20, 2018).

_____. 2018. Data Shows Police Brutality in America Is Getting Worse—2018 Could Be the Most Deadly in Years. The Appeal, April 17. https://theappeal.org/in-louisiana-threatening-to-file-a-complaint-against-police-can-lead-to-a-five-year-prison-4cece4c63edc (lasted updated November 26, 2018).

Kotkin, Joel, and Alan M. Berger. 2017. The Future of America's Suburbs Looks Infinite. *Orange County Register*, November 19.

Lawson, Jr., Edward. 2018. Police Militarization and the Use of Lethal Force. *Police Research Quarterly* 1-13.

Legewie, Joscha, and Jeffrey Fagan. 2016. Group Threat, Police Officer Diversity and the Deadly Use of Police Force. Working paper 14-512. Columbia Law School, New York, NY.

Leong, Nancy. 2012. Making Rights. *Boston University Law Review* 92:405-81.

Lersch, Kim Michelle, and Tom Mieczkowski. 2000. An Examination of the Convergence and Divergence of Internal and External Allegations of Misconduct Filed Against Police Officers. *Policing: An International Journal of Police Strategies & Management* 23:54-68.

Levitt, Steven D. and Thomas J. Miles. 2006. Economic Contributions to the Understanding of Crime. *Annual Review of Law and Social Science* 2:147-64.

Liederbach, John. 2005. Addressing the "Elephant in the Living Room": An Observational Study of the Work of Suburban Police. *Policing: An International Journal of Police Strategies & Management* 28:415-34.

_____. 2007. Controlling Suburban and Small-Town Hoods: An Examination of Police Encounters with Juveniles. *Youth Violence and Juvenile Justice* 5:107-24.

Lytle, Daniel J., and Ryan Randa. 2015. The Effects of Police Satisfaction on Fear of Crime in a Semirural Setting. *International Criminal Justice Review* 25:301-17.

Electronic copy available at: https://ssrn.com/abstract=3325382

Mapping Police Violence. 2019. https://mappingpoliceviolence.org/nationaltrends (last updated July 23, 2019).

Mas, Alexandre. 2006. Pay, Reference Points, and Police Performance. *Quarterly Journal of Economics* 121:783:821.

Mastrofski, Stephen D., Jeffrey B. Snipes, and Anne E. Supina. 1996. Compliance on Demand: The Public's Response to Specific Police Requests. *Journal of Research in Crime and Delinquency* 33:269-305.

Mazerolle, Lorraine, Emma Antrobus, Sarah Bennett, and Tom R. Tyler. 2013. Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice. *Criminology* 51:33-64.

McCoy, Candace. 2010. How Civil Rights Lawsuits Improve American Policing. Pp. 111-60 in *Holding Police Accountable*, edited by Candace McCoy. Washington, D.C.: Urban Institute Press.

McLaughlin, Eliott C. 2015. We're Not Seeing More Police Shootings, Just More News Coverage. CNN, April 21.

Mesic, Aldina, Lydia Franklin, Alev Cansever, Fiona Potter, Anika Sharma, Anita Knopov, and Michael Siegel. 2018. The Relationship Between Structural Racism and Black-White Disparities in Fatal Police Shootings at the State Level. *Journal of the National Medical Association* 110:106-16.

Metzloff, Thomas B. 1991. Resolving Malpractice Disputes: Imaging the Jury's Shadow. *Law and Contemporary Problems* 54:43-129.

Morgan, Stephen L., and Joel A. Pally. 2016. *Ferguson, Gray, and Davis: An Analysis of Recorded Crime Incidents and Arrests in Baltimore City, March 2010 through December 2015*. Unpublished manuscript. Johns Hopkins University, March. http://socweb.soc.jhu.edu/faculty/morgan/papers/MorganPally2016.pdf (last updated September 29, 2018).

Morin, Rich, Kim Parker, Renee Stepler, and Andrew Mercer. 2017. Behind the Badge. Pew Research Center, January 11. http://www.pewsocialtrends.org/2017/01/11/behind-the-badge (last updated September 29, 2018).

Nicholson-Crotty, Sean, Jill Nicholson-Crotty, and Sergio Fernandez. 2017. Will More Black Cops Matter? Officer Race and Police-Involved Homicides of Black Citizens. *Public Administration Review* 77:206-16.

NYC Civilian Complaint Review Board. 2017. Annual Report. https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf (last updated July 22, 2019).

Electronic copy available at: https://ssrn.com/abstract=3325382

Parker, Karen F., John M. MacDonald, Wesley G. Jennings, and Geoffrey P. Alpert. 2005. Racial Threat, Urban Conditions and Police Use of Force: Assessing the Direct and Indirect Linkages Across Multiple Urban Areas. *Justice Research and Policy* 7:53-79.

Payne, Brian K., Bruce L. Berg, and Ivan Y. Sun. 2005. Policing in Small Town America: Dogs, Drunks, Disorder, and Disfunction. *Journal of Criminal Justice* 33:31-41.

Pinker, Steven. 2011. *The Better Angels of Our Nature: Why Violence Has Declined*. New York, N.Y.: Viking Penguin.

Powell, Zachary A., Michele Bisaccia Meitl, and John L. Worrall. 2017. Police Consent Decrees and Section 1983 Civil Rights Litigation. *Criminology and Public Policy* 16:575-605.

Priest, George L., and Benjamin Klein. 1984. The Selection of Disputes for Litigation. *Journal of Legal Studies* 13:1-55.

Rappaport, John. 2017. How Private Insurers Regulate Public Police. *Harvard Law Review* 130:1539-1614.

Ratcliffe, Michael, Charlynn Burd, Kelly Holder, and Alison Fields. 2016. Defining Rural at the U.S. Census Bureau. https://www.census.gov/content/dam/Census/library/publications/2016/acs/acsgeo-1.pdf (last updated July 22, 2019).

Reaves, Brian A. U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. 2015. *Local Police Departments, 2013: Personnel, Policies, and Practices*.

Ross, Cody T. 2015. A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011-2014. *PLoS ONE* 10:1-34.

Ross, Darrell L. 2000. Emerging Trends in Police Failure To Train Liability. *Policing: An International Journal of Police Strategies and Management* 23:169-93.

Ross, Darrell L., and Madhava R. Bodapati. 2006. A Risk Management Analysis of the Claims, Litigation, and Losses of Michigan Law Enforcement Agencies: 1985-1999. *Policing: An International Journal of Police Strategies and Management* 29:38-57.

Ross, H. Laurence. 1970. *Settled Out of Court: The Social Process of Insurance Claims Adjustments*. Chicago, Ill.: Aldine Publishing Co.

Rozema, Kyle, and Max Schanzenbach. 2019. Good Cop, Bad Cop: Using Civilian Allegations to Predict Police Misconduct. *American Economic Journal: Economic Policy* 11:225-68.

Schwartz, Joanna C. 2014. Police Indemnification. *NYU Law Review* 89:885-1005.

_____. 2016. How Governments Pay: Lawsuits, Budgets, and Police Reform. *UCLA Law Review* 1144-1298.

Electronic copy available at: https://ssrn.com/abstract=3325382

_____. Forthcoming. Civil Rights Ecosystems. *Michigan Law Review*.

Shjarback, John A., David C. Pyrooz, Scott E. Wolfe, and Scott H. Decker. 2017. De-Policing and Crime in the Wake of Ferguson: Racialized Changes in the Quantity and Quality of Policing Among Missouri Police Departments. *Journal of Criminal Justice* 50:42-52.

Smith, Brad W. 2004. Structural and Organizational Predictors of Homicide by Police. *Policing: An International Journal of Police Strategies & Management* 27:539-57.

Stephens-Davidowitz, Seth, and Hal Varian. 2015. A Hands-On Guide to Google Data. Permanent working paper. http://people.ischool.berkeley.edu/~hal/Papers/2015/primer.pdf.

Terrill, William, Fredrik H. Leinfelt, and Dae-Hoon Kwak. 2008. Examining Police Use of Force: A Smaller Agency Perspective. *Policing: An International Journal of Police Strategies and Management* 31: 57-76.

Terrill, William, and Michael D. Reisig. 2003. Neighborhood Context and Police Use of Force. *Journal of Research in Crime and Delinquency* 40:291-321.

Toner, Casey, and Jared Rutecki. 2018. 113 Suburban Cop Shootings, Zero Discipline. *WBEZ Chicago*. http://interactive.wbez.org/taking-cover/zero-discipline (last updated May 12, 2018).

Vidmar, Neil, Paul Lee, Kara MacKillop, Kieran McCarthy, and Gerald McGwin. 2005. Uncovering the "Invisible" Profile of Medical Malpractice Litigation: Insights from Florida. *DePaul Law Review* 54:315-56.

Walker, Samuel, and Charles M. Katz. 2008. *The Police in America: An Introduction*. 6th ed. Boston: McGraw-Hill.

Weisheit, Ralph A., L. Edward Wells, and David N. Falcone. 1995. *Crime and Policing in Rural and Small-Town America: An Overview of the Issues*. Washington, D.C.: National Institute of Justice.

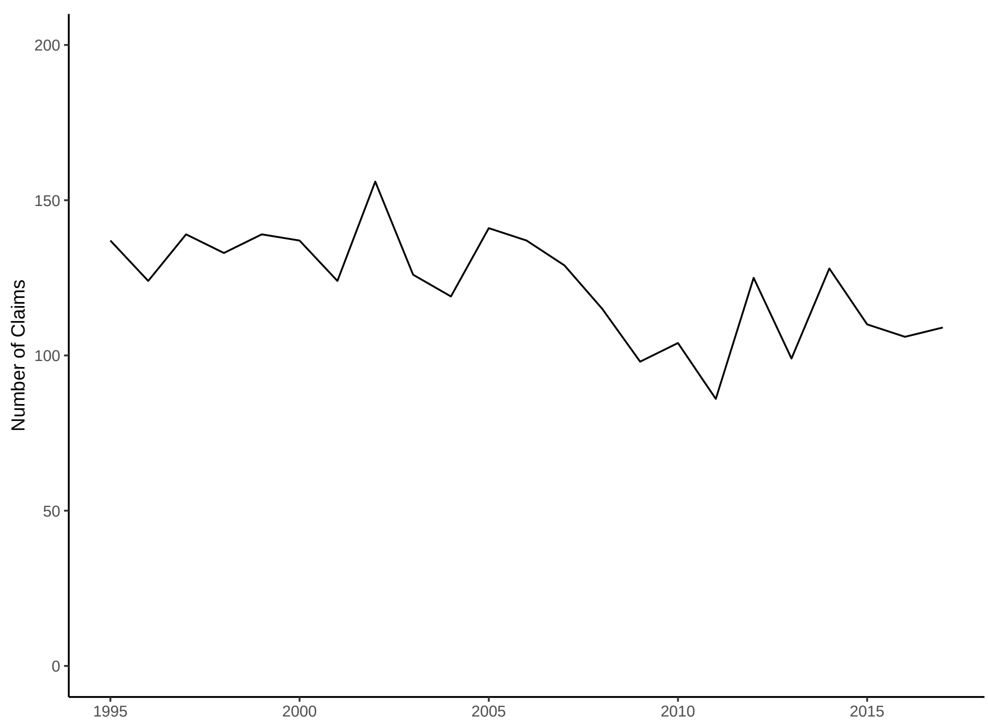
Wines, Michael, and Sarah Cohen. 2015. Police Killings Rising Slightly, Data Suggests. *New York Times*, April 30.

Winton, Richard. 2017. Sheriff's Department Misconduct-Claim Payouts Have Soared, Topping $50 Million Last Year. *Los Angeles Times*, April 9.

Worrall, John L., and Ricky S. Gutierrez. 1999. Potential Consequences of Community-Oriented Policing for Civil Liability: Is There a Dark Side to Employee Empowerment? *Review of Public Personnel Administration* Spring:61-70.

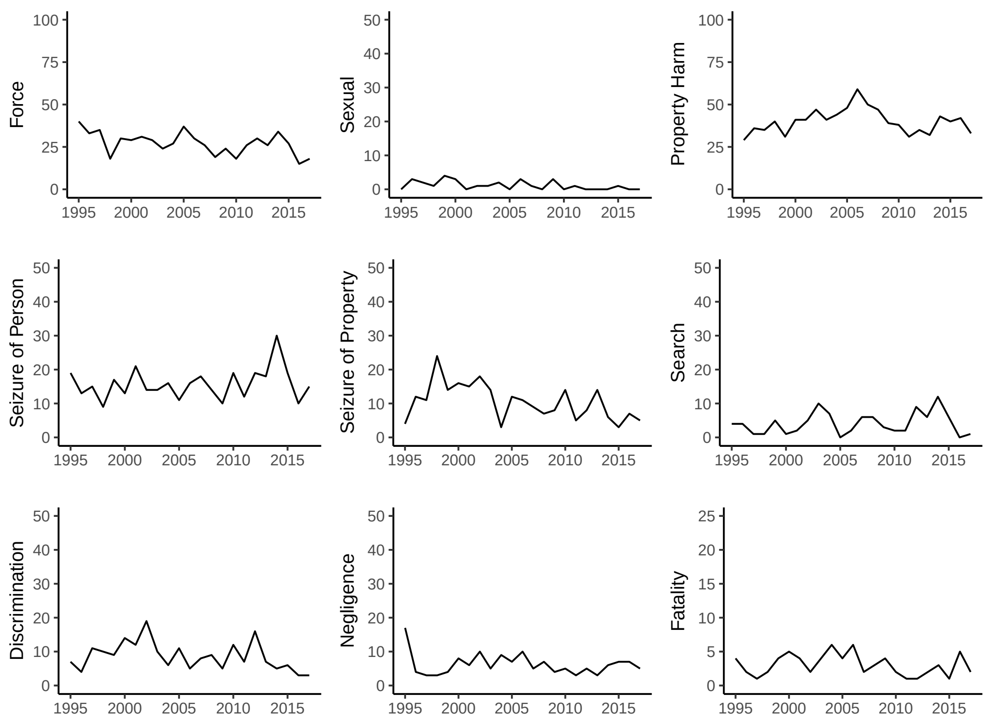
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 1: Number of claims per year reported between 1995 and 2017 (including open claims).



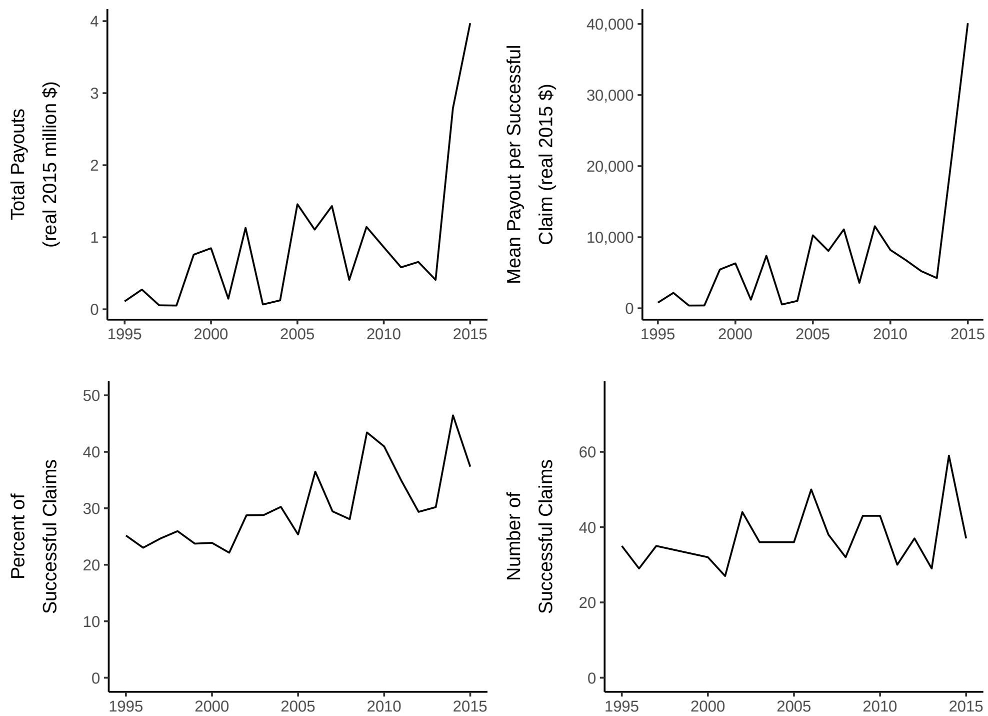
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 2: Number of claims per year reported between 1995 and 2017 (including open claims), by type of claim.



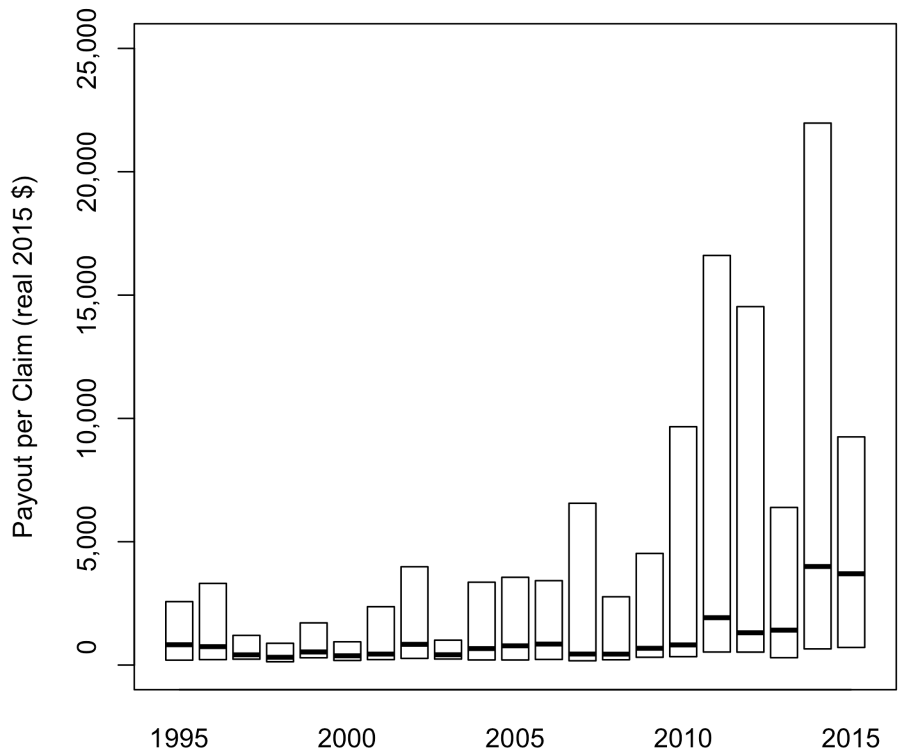
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 3: Outcome of claims by year reported. Dollar amounts are inflation-adjusted and presented in 2015 dollars.



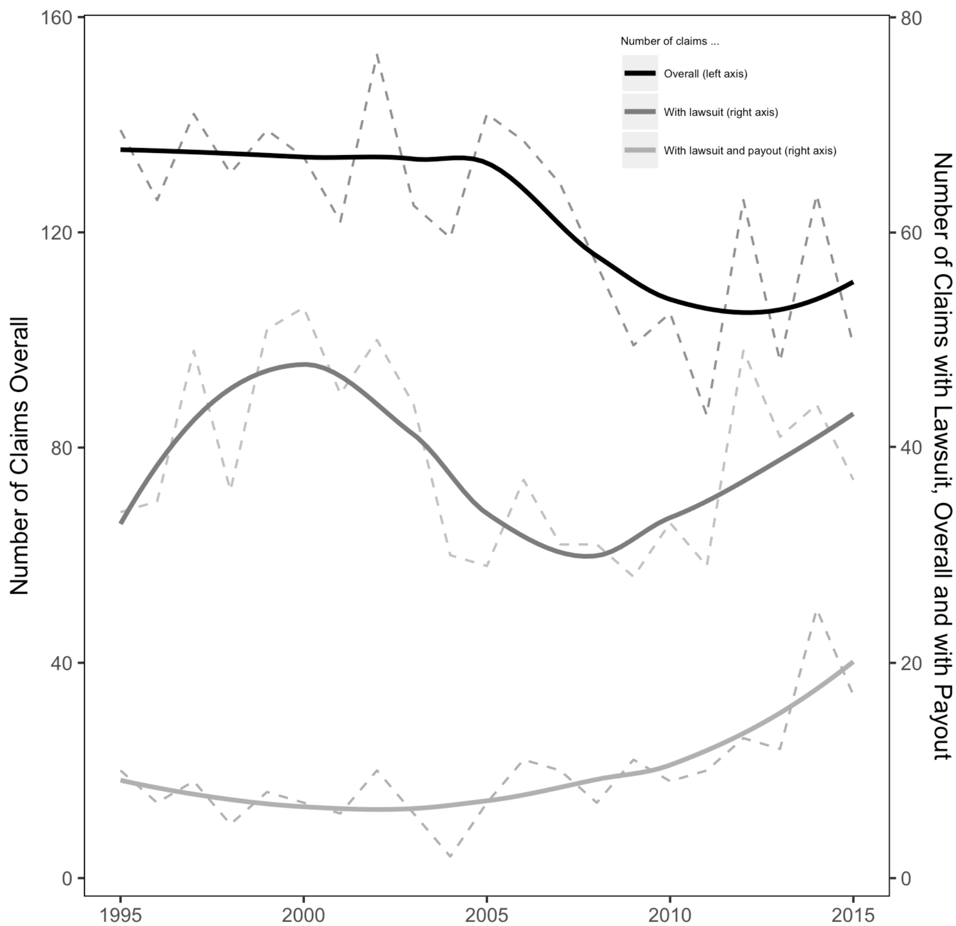
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 4: Distribution of payouts per claim, by year, for claims that led to positive payouts.



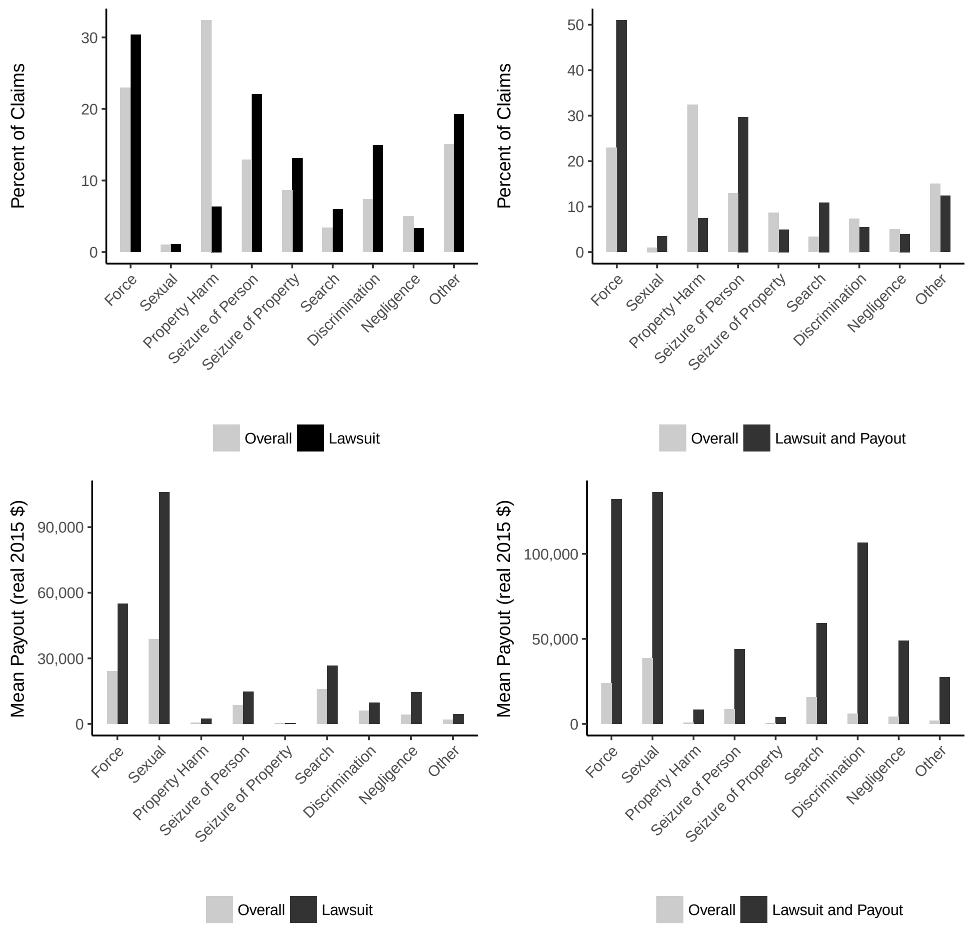
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 5: Number of claims per year: overall, with lawsuits, and with lawsuits and positive payouts.



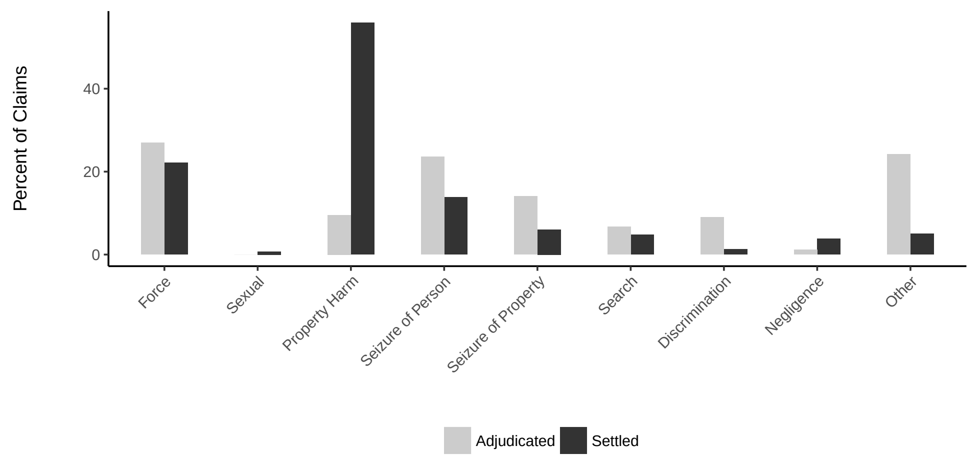
Electronic copy available at: https://ssrn.com/abstract=3325382

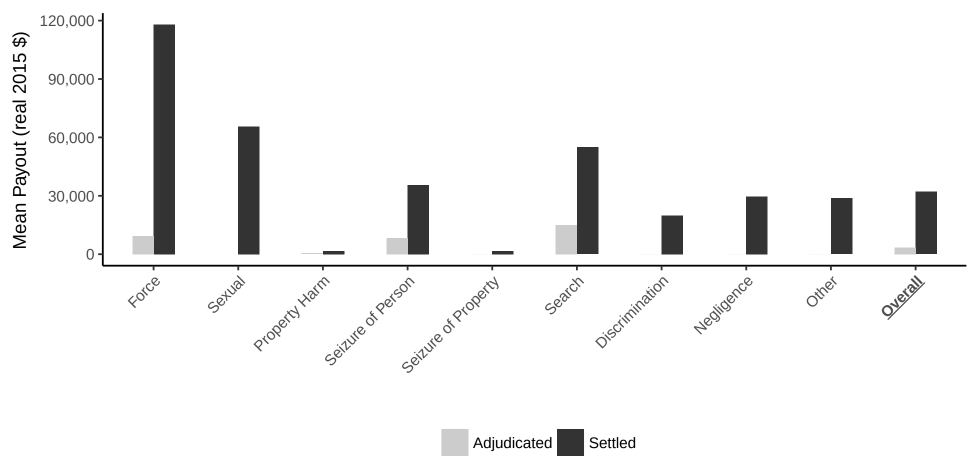
Figure 6: Composition of claims and payouts: full sample, compared to claims leading to a lawsuit (left column) and claims leading to both a lawsuit and a positive payout (right column).



Electronic copy available at: https://ssrn.com/abstract=3325382

Figure 7: Composition of claims and payouts: adjudicated claims compared to settled claims.





Electronic copy available at: https://ssrn.com/abstract=3325382

Table 1: Summary Statistics: Claims

		Percent with		Payouts (real 2015 \$)		
Type of Claim	Number (1)	Suit (2)	Payout (3)	Mean (4)	SD (5)	Median (6)
Force	595	42	23	103,600	252,000	15,300
Sexual	26	35	38	100,700	156,300	44,000
Property Harm	839	6	54	1,200	5,400	400
Seizure of Person	334	54	26	32,400	61,900	6,900
Seizure of Property	224	48	19	1,700	3,500	200
Search	88	56	35	45,000	72,800	9,200
Discrimination	191	64	6	106,500	279,400	16,600
Negligence	130	21	32	13,300	53,500	2,300
Other	390	40	10	19,300	35,900	3,600
Overall	2,590	32	30	23,700	116,000	700

Note. Payout figures are for claims that led to positive payouts.

Electronic copy available at: https://ssrn.com/abstract=3325382

Table 2: Claims by Type and Presence or Absence of Lawsuit and Payout

	Percent of claims with ...					
Type of Claim	Payout, Suit (1)	Payout No Suit (2)	No Payout, Suit (3)	No Payout, No Suit (4)	Number of claims (5)	Fraction of all claims (6)
Force	17	6	25	53	595	0.23
Sexual	31	15	12	58	26	0.01
Property Harm	2	52	5	42	839	0.32
Seizure of Person	18	9	36	38	334	0.13
Seizure of Property	5	15	44	38	224	0.09
Search	26	11	32	35	88	0.03
Discrimination	6	0	58	36	191	0.07
Negligence	7	26	15	55	130	0.05
Other	7	4	34	56	390	0.15
Overall	8	22	24	46	2590	

Note. Columns 1-4 present the percentage of claims of each type with and without a lawsuit and payout. Column 5 reports the number of claims of each type. Column 6 reports the proportion of all claims made up of claims of each type.

Electronic copy available at: https://ssrn.com/abstract=3325382

Table 3: Composition of Claims and Average Payouts: "Adjudicated" and "Settled" Claims

	Percent of Claims				Mean Payouts (real 2015 $)			
Type of Claim	Adjudicated	Settled (1)	Settled (2)	Settled (3)	Adjudicated	Settled (1)	Settled (2)	Settled (3)
Force	27	22	22	56	9,416	117,952	49,193	141,208
Sexual	0	1	1	2	-	65,602	21,867	65,602
Property Harm	10	56	42	4	483	1,553	882	21,301
Seizure of Person	24	14	14	34	8,334	35,500	15,019	42,372
Seizure of Property	14	6	6	6	0	1,663	713	4,434
Search	7	5	4	11	14,981	54,950	26,101	69,910
Discrimination	8	1	7	4	0	19,795	1,596	19,795
Negligence	1	4	6	3	0	29,594	8,376	95,178
Other	24	5	10	11	0	28,732	6,315	39,371
Overall	177	397	938	124	3,562	32,072	13,574	95,307

Note. Settled (1) follows Helland, Klerman, and Lee (2018) and includes only unadjudicated claims with positive payouts. Settled (2) includes all unadjudicated claims, regardless whether payouts were made. Settled (3) includes only unadjudicated claims in which a lawsuit was filed. Percentage values do not sum to 100 because some claims have multiple claim types. Data are from claims opened after 2005, when information about claim resolution becomes available. In the "overall" row, left panel, we report the number of claims in each claim-resolution category.

Electronic copy available at: https://ssrn.com/abstract=3325382

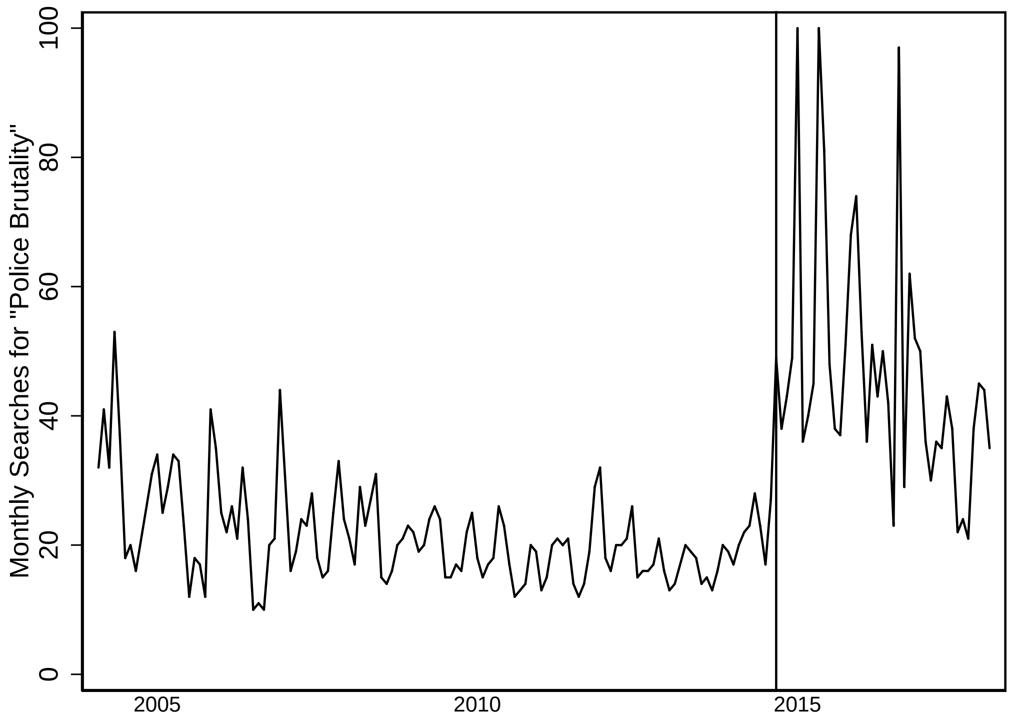
Table 4: Relationships Among Civil Rights Claims, Lawsuits, and Average Payouts

Panel A	Number of Claims	Mean Payout (real 2015 $)
All claims	1,278	12,970
Claims with lawsuit	592	26,440
Claims with lawsuit and positive payout	159	98,440

Panel B	Ratio of Claim Counts	Ratio of Payouts
Claims with lawsuit and positive payout / all claims	0.12	7.6
Claims with lawsuit and positive payout / claims with lawsuit	0.27	3.7

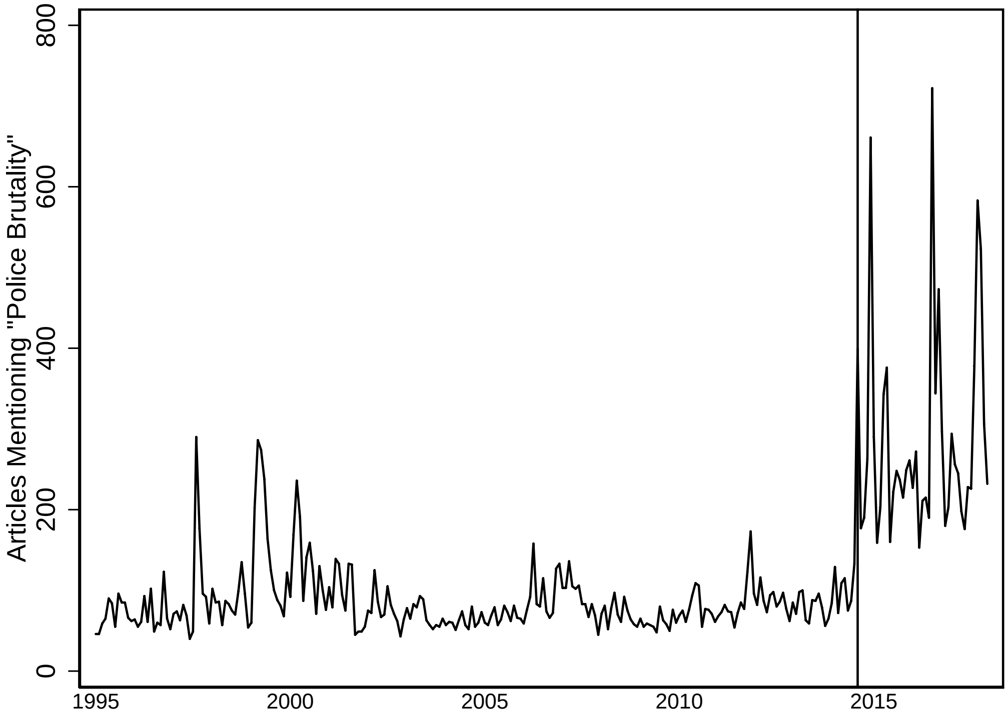
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure A.1: Monthly Google searches for "police brutality" in the United States: 2004 – 2017.



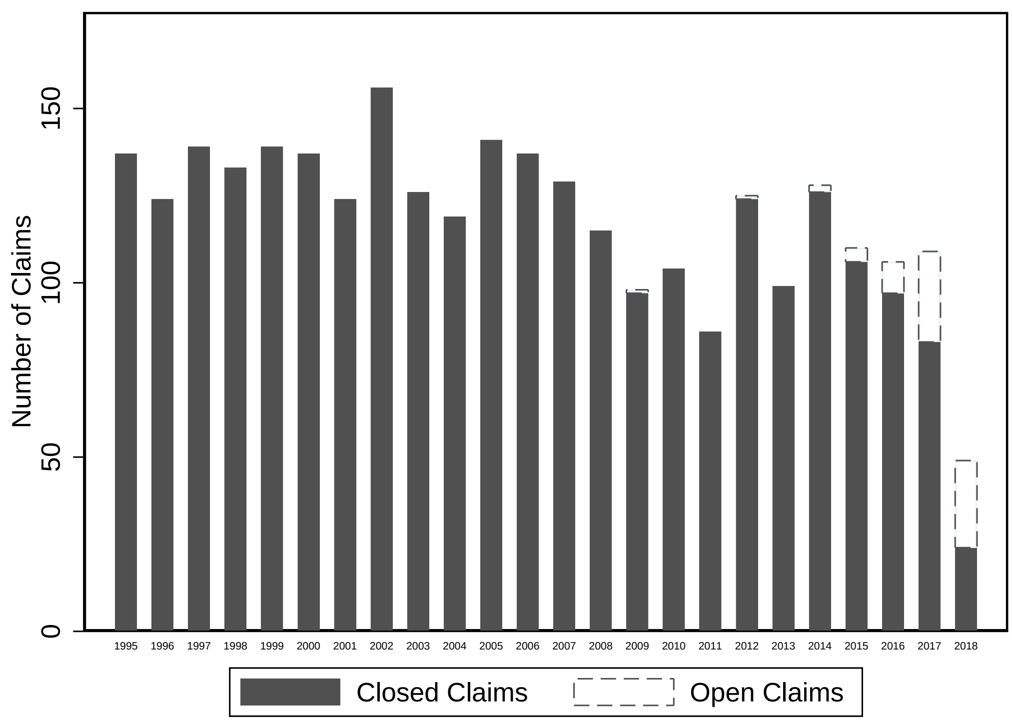
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure A.2: Number of newspaper articles per month mentioning "police brutality": 1995 – 2017.



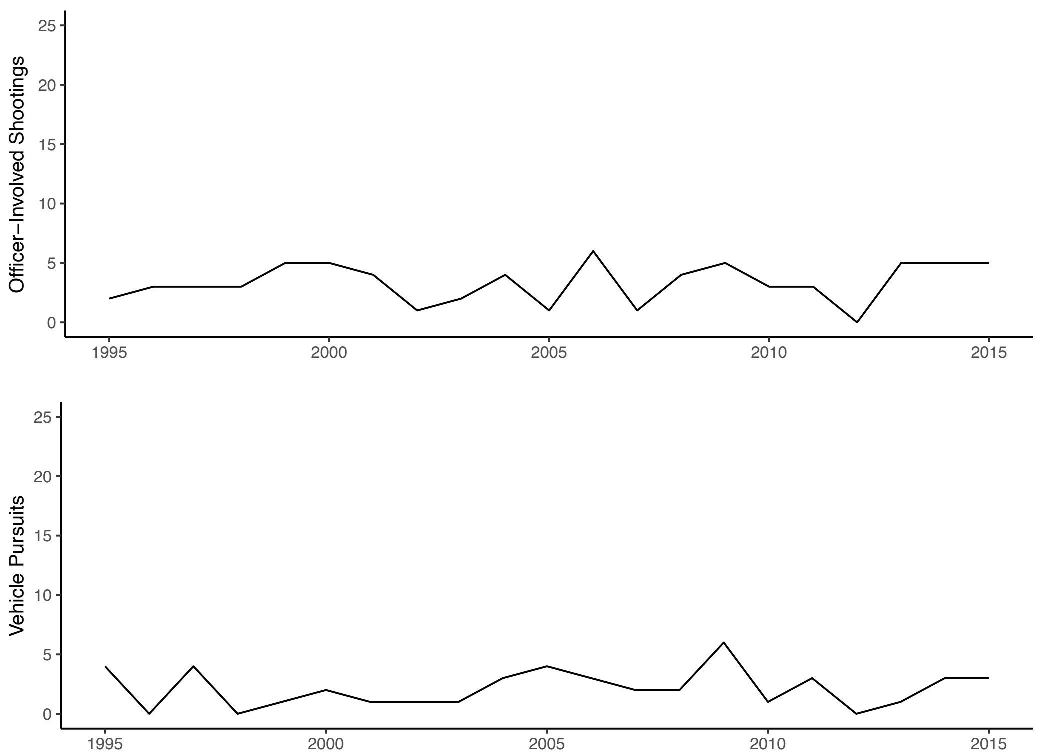
Electronic copy available at: https://ssrn.com/abstract=3325382

Figure A.3: Number of open and closed claims, by year. The data for 2018 goes until June 30th, 2018.



Electronic copy available at: https://ssrn.com/abstract=3325382

Figure A.4: Number of claims per year between 1995 and 2017 that mention officer-involved shootings (top figure) or vehicle pursuits (bottom figure).



Electronic copy available at: https://ssrn.com/abstract=3325382