

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**DEFENDANTS' MOTION TO BAR JON M. SHANE'S *MONELL* OPINIONS**

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## INTRODUCTION

Plaintiffs bring municipal liability claims against the City of Chicago pursuant to *Monell v. New York Police Dept. of Social Servs.*, 436 U.S. 658 (1978). Included is a claim that the City “directly encourages, and is thereby the moving force behind, the very type of misconduct [alleged in Plaintiffs’ Complaint] by failing to train, supervise, control, and discipline its police officers, such that its failure to do so manifests deliberate indifference.” Second Amended Compl. (“SAC”), Dkt. 238, ¶ 164. Plaintiffs allege, “the CPD has continued to respond to complaint[s] of police misconduct inadequately and without undue delay, and to recommend discipline in a disproportionately small number of cases.” SAC, at ¶ 172.

Plaintiffs have retained Jon Shane, Ph.D., to offer expert opinions regarding, *inter alia*, the *Monell* claim allegations regarding the quality of the City’s police disciplinary investigations and the rate at which complaints against officers were sustained during the years 1999-2011.

Shane opines overall that “the Chicago Police Department failed to properly conduct investigations of police misconduct in accordance with nationally accepted standards, and that their failure would be expected to cause officers involved in narcotics enforcement . . . to engage in corruption and extortion and to fabricate and suppress evidence.” Dkt. 304-2 (filed under seal), Shane Rpt. (“Rpt.”) at 11. He further concludes that

- The investigations do not comport with national standards for conducting internal affairs investigations.
- The actions of supervisory staff are not consistent with the nationally accepted standards for police supervision.
- Overall, the data reveal that the Chicago Police Department’s accountability systems (i.e., supervision and personnel investigations) are broadly ineffective for detecting misconduct and holding officers accountable when they violate CPD policy. The findings are not consistent with the nationally accepted standards discussed in my report.

Rpt. at 11-12.

Shane, however, lacks the requisite experience or knowledge that will help the trier of fact, fails to base his testimony on sufficient facts or data, and does not apply a reliable method in a trustworthy manner to the facts of this case. For these and the reasons set forth below, Shane' *Monell* opinions should be barred.

### **LEGAL STANDARD**

The admissibility of expert evidence is governed by Federal Rule of Evidence 702, 703 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Federal Rule of Evidence 702 imposes a special obligation upon a trial judge, acting as a gatekeeper, to "ensure that any and all scientific testimony ... is not only relevant, but reliable." *Daubert v.* 509 U.S. 579 at 589.

Rule 702, which was recently amended, provides that

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702.

To be relevant, expert testimony must "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. And when determining reliability, the Court's role is to assess if the expert is qualified in the relevant field and to examine the methodology that he used in reaching his conclusions. *Timm v. Goodyear Dunlop Tires North America, Ltd.*, 932 F.3d 986, 993 (7th Cir. 2019). The party offering the expert testimony bears the burden of demonstrating by a preponderance of the evidence that the evidence satisfies Rule 702 and *Daubert*. *Lewis v. CITGO Petroleum Corp.*, 561

F.3d 698, 705 (7th Cir. 2009); *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014); *Varlen Corp. v. Liberty Mutual Ins. Co.*, 924 F.3d 456, 459 (7th Cir. 2019); *see* Fed. R. Evid. 702, Committee Notes, 2023 Amendments (“the rule has been amended to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule.”). “Critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology,” are not questions of weight, but admissibility. Fed. R. Evid. 702, Committee Notes, 2023 Amendments.

## **ARGUMENT**

Shane’s opinions regarding the quality of the City’s police disciplinary investigations should be barred. Shane forms his opinions on the quality of disciplinary investigations by examining data from Complaint Register files (CR files). CRs are complaints initiated against officers and CR files contain the records of the investigation into those complaints. Shane states he used as the basis for his opinions: (1) training and experience, (2) the data he was supplied by Plaintiff’s counsel of a random sample of CR files from 1999-2011, and (3) the method of selecting the investigations to extract data and the data-coding process. *See* Rpt. 13.

Shane, however, lacks experience and reliable methodology to opine on the quality of the City’s police disciplinary investigations, and relies on data and sources well outside the relevant timeframe to draw his conclusions. Shane has no internal affairs experience to rely upon to determine the quality of investigations, and he made up the list of characteristics he extracted from the CR files and used to determine the quality of the investigations. Furthermore, to be relevant, Shane must look at the disciplinary system as it existed in 2005, when the arrests and prosecutions began against Baker and Glenn. Rpt. at 107. Of the 12 years he examined, however, six years post-dated 2005.

Shane also uses data from those files mined by individuals hired by Plaintiff's counsel to create various statistics. The reliance on individuals who were not well-trained and who were supervised by Plaintiff's counsel was not a reliable method of gathering data. Those individuals determined what characteristics (which Shane calls variables) were relevant to a given CR investigation, and Shane used those characteristics to conduct his statistical analysis. Important to this motion, Shane selected those characteristics without relying on any studies or other authority to determine that his selected "variables" were relevant to an assessment of the reasonableness of an investigation. Shane also goes well beyond his expertise to summarily conclude that he would expect officers involved in narcotics enforcement to engage in corruption and extortion and to fabricate and suppress evidence. *Id.*

Shane's opinions and testimony regarding the City's police disciplinary investigations should be barred because Shane lacks experience conducting such investigations, fails to utilize a reliable methodology in his data collection and use of national standards, and offers opinions that will not assist the trier of fact in understanding the evidence or determining a fact at issue in the case. Additionally, Shane provides irrelevant opinions about generalized or unrelated allegations of misconduct by CPD, such as the 1972 Metcalfe report, which should be barred because these opinions are outside any relevant timeframe, are unfairly prejudicial, and will not assist the jury in assessing a fact at issue at trial.

**I. Shane Is Not Qualified to Render Opinions Regarding the Sufficiency of the City's Police Disciplinary Investigations.**

"Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, experience, or education with the subject matter of the witness's testimony." *Carroll v. Otis Elevator Co.*, 896 F.2d 210, 212 (7th Cir. 1990). The question is not whether the expert is qualified in general, but "whether his qualifications provide a foundation for [him] to answer a specific question." *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010). The court

must look at each of the expert's conclusions individually "to see if he has the adequate education, skill, and training to reach them." *Gayton*, at 617.

In any field of social science, an expert should have to testify, at a minimum, to the longevity of that particular field, the amount of literature written about the subject, the methods of peer review among its scholarly journals, the quantity of observational or other studies conducted in that field, the comparative similarity of observations obtained, the reasons why those studies are deemed valid and reliable, and the general consensus or debate as to what the raw data means. In addition, the particular expert who wishes to testify must establish that he is sufficiently familiar with the topics mentioned above to render an informed opinion about them.

*United States v. Hall*, 974 F. Supp. 1198, 1203 (C.D. Ill. 1997); *see also Harris v. City of Chicago*, No. 14 C 4391, 2017 WL 3142755, at \*4 (N.D. Ill. July 25, 2017) (finding expert offering testimony about coercive interview techniques and false confessions but who had not researched or systematically analyzed documented factors that correlate with false confessions). Although "[t]he fact that an expert may not be a specialist in the field that concerns [his] opinion typically goes to the weight to be placed on that opinion, not its admissibility," *Hall v. Flannery*, 840 F.3d 922, 929 (7th Cir. 2016), the witness must still meet the Rule 702 threshold of knowledge, skill, experience, training, or education. *See* 2023 Committee Notes to Fed. R. Evid. 702, citing *Bourjaily v. United States*, 483 U.S. 171, 175 (1987) ("The preponderance standard ensures that before admitting evidence, the court will have found it more likely than not that the technical issues and policy concerns addressed by the Federal Rules of Evidence have been afforded due consideration.").

Shane's background is in criminal justice. His baccalaureate, Master of Arts, and doctoral degrees are each in criminal justice. Rpt., at 3, 159, Jon Shane Apr. 23, 2024 Deposition ("Dep."), Dkt. 304-5, at 10:8-13. He is currently a professor of criminal justice at John Jay College of Criminal Justice. Rpt., at 1. Prior to beginning his research and teaching career in 2005, Shane had a career in law enforcement, the majority of which was at the Newark Police Department. Rpt., at 1-2. Shane's law enforcement background, however, does not qualify him to render opinions about the nature and sufficiency of internal affairs investigations. Shane never worked as a supervisor or investigator in

internal affairs. Rpt., at 159-170, Dep., at 4-15. His only involvement in internal investigations was when he was delegated to investigate some theft investigations, a car accident investigation, and possibly some misdemeanor complaints. Dep., at 18:1-19:12. The opinions rendered in this case regarding the reasonableness of the CPD's internal affairs investigations far exceed Shane's expertise or experience. *See Hall*, 840 F.3d at 926 (noting that the court "must look at each of the conclusions [an expert] draws to see if has the adequate education, skill, and training to reach them"). In sum, Shane does not have the requisite expertise to examine disciplinary investigations, determine their quality, and offer opinions as to their sufficiency. He also lacks experience or a sufficient background in psychology to provide a foundation for the inferential leap that the City's disciplinary system "would be expected to cause officers involved in narcotics enforcement . . . to engage in corruption and extortion and to fabricate and suppress evidence." Rpt. at 11.

For these reasons, Shane is unqualified to provide *Monell* opinions concerning the sufficiency of the City's police disciplinary investigations.

**II. Shane Uses Irrelevant Data and Unreliable Methods to Extrapolate Unsupported Conclusions From His Statistical Analysis of the Sample CR Files.**

Without the requisite personal experience in police disciplinary investigations himself, Shane asserts the statistics show that Chicago's investigations into police misconduct are lacking. Shane concludes that clear patterns of allegations emerged across various years of several types of offenses, that supervisors should have known about these patterns, and that they should have taken steps to stop the alleged behavior based on an examination of data from 1999 to 2011. Rpt. at 11-12. He also opines the data shows supervision and personnel investigations were broadly ineffective for detecting misconduct and holding officers accountable when they violate CPD policy. *Id.* at 12.

Shane's statistical analysis is flawed because he draws conclusions related to how the City conducted police disciplinary investigations in 2005 with approximately half of the data coming from

2006 to 2011. Moreover, his reasoning for selecting the information from each file to extract for datapoints, and the use of individuals hired by Plaintiff's counsel to extract the data, did not follow any reliable methodology. Shane, who himself lacks sufficient experience in internal affairs, simply made up a list of characteristics he wanted to use as datapoints for each file. These characteristics, however, were not based on any nationally recognized or reliable standards. Further, he did not himself read the files, and he relied on others to extract the characteristics he requested from the CR files who were not well-trained and were biased individuals.

**A. Approximately half of Shane's data post-dates 2005 and therefore is not properly considered to make conclusions about police practices in 2005.**

The first issue with Shane's methodology is his reliance on statistics and reports outside the relevant period to support his opinions regarding the quality of the investigations. Shane states that he utilized a random sample of CR files, which document CPD's investigations into the complaints, to render his conclusion that CPD conducted substandard internal affairs investigations from 1999 to 2011. Rpt. at 13 ("The source data are a random sample of CPD internal affairs records known as Complaint Registers (CR) files from 1999 to 2011"). His report includes several tables that reflect his analysis of data derived from this "random sample" (see, e.g., Tables 8-48), as well as references to specific CRs or "examples" that he says support his opinions (see, e.g., pp. 33-34, 57, 66-69).

Shane identified 112,436 total CR files "available for selection" between 1999 and 2011. Rpt., at 14. To arrive at his opinions in this case, he analyzed a sample of 1,265 CR files. Shane, by using the period of 1999 to 2011, improperly relies on a wealth of data and sources outside the relevant period to draw his conclusions. The arrests underlying this case occurred in 2005. The data following that year are not a reliable indicator of what were the City's "widespread policies" at the time Baker and Glenn allege the wrongdoing occurred, and only policies then in effect could have caused any alleged harm to Baker or Glenn.

Under *Monell*, local governments can be held liable for constitutional violations only when they themselves cause the injury. 436 U.S. at 694 (“it is when execution of a government’s policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983”); *Bd. of Cnty. Comm. of Bryan County, Okla. v. Brown*, 520 U.S. 397, 403-404 (1997); *First Midwest Bank v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021). A constitutional injury is a threshold requirement for § 1983 municipal liability. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *First Midwest Bank*, 988 F.3d at 987. If a plaintiff proves a constitutional violation, three types of action can support § 1983 municipal liability under *Monell*: (1) an express policy; (2) a widespread practice that is so permanent and well-settled as to constitute a custom or usage within the force of law; or (3) a decision by a person with final policymaking authority. *McCormick v. City of Chicago*, 230 F.3d 319, 324 (7th Cir. 2000).

As a preliminary observation, Shane is not critical of CPD’s written policies for the investigation of misconduct complaints and, indeed, believes CPD’s policies comport with accepted national standards. Dep., at 184:18-185:21. Here, Plaintiffs claim that their constitutional injuries were caused by a widespread practice, so they must show the municipality acted with deliberate indifference and demonstrate a direct causal link between the municipal practice and the deprivation of federal rights. *J.K.J. v. Polk County*, 960 F.3d 367, 377 (7th Cir. 2020); *First Midwest Bank*, 988 F.3d at 987. Deliberate indifference “is a high bar. Negligence or even gross negligence on the part of the municipality is not enough.” *Bryan County*, 520 U.S. at 407. “A plaintiff must prove that it was obvious that the municipality’s action would lead to constitutional violations and that the municipality consciously disregarded those consequences.” *Id.* Municipal liability attaches only where the final policymaker acts with deliberate indifference as to the known or obvious consequences of that action. *Id.* at 407.

Finally, a *Monell* plaintiff must prove the municipality’s action was the “moving force” behind the constitutional violation. *First Midwest Bank*, 988 F.3d at 987. To satisfy this rigorous causation

standard, the plaintiff must show a “direct causal link” between the challenged municipal action and the violation of his constitutional rights. *Id.* “These requirements—policy or custom, municipal fault, and ‘moving force’ causation—must be scrupulously applied in every case alleging municipal liability.” *Id.* at 987. As the Supreme Court has warned:

Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability. As we recognized in *Monell* and have repeatedly reaffirmed, Congress did not intend municipalities to be held liable unless *deliberate* action attributable to the municipality directly caused a deprivation of federal rights.

*Id.* (citing *Bryan County*, 520 U.S. at 415).

Based on the foregoing, to be relevant to the elements of widespread practice, notice, deliberate indifference, and causation, the evidence a court considers (and allows the jury to consider) in evaluating a *Monell* claim must include a reasonable time frame before the incident at issue. A five-year period has been generally accepted in this district. *See, e.g., Brown v. City of Chicago*, 633 F. Supp.3d 1122, 1177, n.61 (N.D. Ill. 2022) (Pallmeyer, C.J.) (evaluating evidence five years before the plaintiff’s arrest for purposes of *Monell* liability). Shane made a statistical evaluation of data of CR investigations from 1999 to 2011 to draw his conclusions. However, the three arrests at issue in this case occurred in 2005, making the relevant time frame to be 2000 to 2005. Here Plaintiffs widen the period one year on the front end and six years on the back end.

As for the back end, the law is clear that post-event evidence is irrelevant under *Monell*. *Calusinski v. Kruger*, 24 F.3d 931, 936 (7th Cir. 1994) (“subsequent conduct is irrelevant to determining the Village of Carpentersville’s liability for the conduct of its employees on February 23, 1988. Holding a municipality liable for its official policies or custom and usage is predicated on the theory that it knew or should have known about the alleged unconstitutional conduct on the day of the incident”); *Prince v. City of Chicago*, 2020 WL 1874099, at \*5 (N.D. Ill. 2020) (Harjani, M.J.) (holding that “certainly CRs obtained by detectives after 1991 are not relevant to the *Monell* claim arising from alleged customs

and practices that were in place before the 1991 Porter homicide.”). Any reliance on data or information after 2005 is not a reliable or appropriate method of determining what caused the harm to Plaintiffs here, or a reliable indicator of what notice the City had prior to 2005 of the alleged unconstitutional practice. Moreover, Shane cannot establish that his conclusions would have been the same if he had relied only on CR data *pre-dating* the events at issue here. Though he breaks down his analysis into three different ranges, that tactic does not help. The subsets he uses are 1999-2003, 2004-2007, and 2008-2011. Rpt at 15. The last range should clearly be excluded, but the first two are not helpful either. His first timeframe of 1999-2003 does not consider 2004 or 2005, and the second timeframe covers 2006 and 2007, again post-dating the events here. Accordingly, and for different reasons, each of the three timeframes is insufficient.

Shane also cites numerous sources issued many years (even more than a decade) either before and after the 2005 arrests to prove the widespread policy. Shane (Rpt. at 72-83) regurgitates a cherry-picked set of reports and allegations against miscellaneous non-defendant police officers and at miscellaneous times over the past 50 years. Shane begins with the so-called Metcalfe report arising from congressional hearings in 1972, then discusses a 1997 report from the Commission on Police Integrity (“CPI”), and ends with the 2016 report of the Police Accountability Task Force (“PATF”) and the 2017 Department of Justice (“DOJ”) report. All of that material is irrelevant in time and scope to Baker and Glenn’s case arising from their arrests in 2005 (or 33 years after the Metcalfe report, 8 years after the CPI report, and 10 and 11 years before the PATF and DOJ reports, respectively). Shane’s reliance on materials from years before and years after 2005 does not pass muster under Rule 702 and *Daubert*. It is unreliable to opine that the City was on notice of or deliberately indifferent to something in 2005 based on evidence from 1972 or 2016, and those are not the types of facts and data an expert may rely upon in offering an opinion. Nor is it reliable to claim that material from 33 years before a 2005 event or 10 years after a 2005 event supports that there was a widespread practice at the

time of the 2005 event, or that the City's actions or inactions in 1972 or 2016 caused the 2005 event. This evidence is far too remote in time to have any bearing on the arrests at issue.

Approximately 50% of Shane's data is outside the relevant timeframe, and he mostly cites sources from many years before and after 2000-2005 to draw his conclusions, making his methodology unreliable and the information irrelevant to this case. For this additional reason, his testimony about the quality of investigations should be barred.

**B. Shane had no reliable basis for deciding which characteristics of the CR files warranted inclusion in his analysis, nor did he extract the characteristics himself, and those who did were inadequately trained and biased.**

To conduct a proper statistical evaluation of the CR files, Shane had to determine which datapoints to gather to evaluate the quality of the investigation and how to gather them. Shane's report and deposition testimony demonstrate he had no sound methodology for his data collection. Shane developed a system for identification of numerous "variables" to assess the quality of police disciplinary investigations between 1999 and 2011. Of significance, the variables chosen by Shane did not come from any nationally reliable standards. The variables are set forth in Shane's "code book." *See, e.g.*, Ex. 1, Code Book, at 6 (complaint variable) and 7-12 (evidence variables); *see also*, Dep., at 131:16-22 (Shane created the code book "[t]o be able to document the process that we went through to identify the variables, what the conceptualization of those variables are, and what their measurement levels are."). However, Shane cannot provide any evidence that his code book has ever been tested or used by anyone else. Shane then relied upon "coders" to identify and extract the variables from the random selection of CR files.

Shane's made up "code book" sets forth instructions for what data should be extracted from each of the sample CR files, which would then be entered into an Excel spreadsheet. Rpt., at 17; Dep., at 127:20-128:11; Ex. 1, Code Book. Shane identifies in his code book what he refers to as "evidence variables." Ex. 1, Code Book, at 7-12. According to Shane, "[t]hese variables reflect whether certain

steps were taken during the investigation.” *Id.* At 7. Shane testified that he relied on his “extensive experience in law enforcement since 1985,” his “scholarship,” and his “reading of internal affairs materials” to determine what variables should be coded. Dep., at 143:10-16. However, as set forth above, Shane has never worked in an internal affairs division, or any other municipal agency (e.g., OPS) tasked with conducting police disciplinary investigations, and he therefore is not qualified to render an opinion regarding the reasonableness of disciplinary investigations conducted by the City.

Shane claims he derived the standards for the reasonableness of police disciplinary investigations (and the component parts of his “code book”) from the July 2001 IACP model policy on Investigation of Employee Misconduct, the 1990 IACP Concepts and Issues Paper on Investigation of Employee Misconduct, and the 2001 IACP Training Keys (529, 530, and 531) on Investigation of Public Complaints. Rpt., at 19. In his deposition, Shane said he also relied upon a report by Terrill<sup>1</sup> (Ex. 2) and a 1993 Police Foundation report<sup>2</sup> (Ex. 3). Dep., at 131:4-11. However, none of the sources cited by Shane offers any standard for assessing the reasonableness of an administrative investigation. *See, Bielskis v. Louisville Ladder, Inc.*, 663 F.3d 887, 894 (7th Cir. 2011) (an expert’s opinion must utilize the methods of the relevant discipline).

To satisfy *Daubert*, the proffered testimony must have a reliable basis in the knowledge and experience of the relevant discipline, consisting of more than subjective belief or unsupported speculation. *Chapman v. Maytag Corp.*, 297 F.3d 682, 687 (7th Cir. 2002); see also *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the

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<sup>1</sup> Terrill, W., & Ingram, J. R. (2016). “Citizen complaints against the police: An eight-city examination,” Police Quarterly, 19(2). (Ex. 2).

<sup>2</sup> “Police Use of Force: Official Reports, Citizen Complaints and Legal Consequences,” Police Foundation (1993), Antony M. Pate and Lorie A. Fridel. (Ex. 3).

opinion proffered.”). By assessing reliability, the court ensures the expert “employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999).

Shane is unable to point to any studies of police disciplinary investigations that utilized the same variables for analysis that he used here. Dep., at 166:18-24, 167:9-169:11. Indeed, Shane “didn’t compare the CPD to anyone else.” Dep., at 168:3-11. This admission is fatal to the assessment of the reliability of his opinions.

Shane’s methodology also fails to provide a reliable mechanism for the collection of data from his identified sample of over 1200 CR files. His tables contain certain characteristics of each CR file that he relied upon to conduct his analysis of the police disciplinary investigations. The data for the tables was extrapolated from an Excel spreadsheet. Twelve individuals (referred to by Shane as “data coders”) were hired by Plaintiffs’ counsel to “code the data” in the CR files in accordance with the instructions in Shane’s code book. Rpt., at 17; Dep., at 122:1-11. The individuals entered the data into the Excel Spreadsheet.

While it is true that trained experts commonly extrapolate from existing data, Shane’s opinions rely upon the subjective assessments of individuals he briefly trained using the code book. These were not neutral participants but individuals paid by Plaintiff’s counsel and, other than a brief training session by Shane, supervised by Plaintiffs’ counsel. Shane testified that he did not assist in the hiring of the coders, does not know the process for selecting the coders, does not know the qualifications of the coders, does not know the names of the coders, does not know how much the coders were paid to conduct work on this case (including whether they were salaried or paid by the hour), does not know if the coders were required to maintain the confidentiality of the information within the CR files, and does not know if any of the coders have a financial interest in the outcome of the litigation.

Dep., at 122-127. The data coders were trained by Shane on the use of his code book during a 90-minute Zoom session. Dep., at 137:2-24.

The unreliability of the coding process is further compounded by its subjectivity. Shane relied on the coders to assess whether certain variables (or investigative steps) were necessary for each particular CR investigation. This is evident in Shane's instruction that “[f]or each variable, **you must judge** whether the category is applicable.” Ex. 1, Code Book, at 7 (emphasis added). The subjective nature of the coding, conducted by twelve separate individuals with 90 minutes of training, renders the data relied upon by Shane unreliable.

For all of the reasons discussed above, Shane's methodology is unreliable. His opinions based on his analysis of the subjectively identified and subjectively judged “variables” extrapolated from the CR files should be barred.

**C. Shane's methodology for drawing conclusions from the data has no sound basis.**

Shane also lacks any reliable methodology for drawing conclusions from the statistical analysis he conducts. Nor does he provide any explanation of how the statistics connect to the deficiencies he asserts.

As explained above, Shane renders opinions based on his analysis of CRs from three time periods: (1) 1999-2003; (2) 2004-2007; and (3) 2008-2011. For each period, Shane analyzed the total number of complaints made each year; the prevalence of certain types of allegations during the given time period; the prevalence of complaints made by external v. internal sources; and the rates at which the CPD sustained allegations. Rpt., at 28-37, 36-42, and 42-52. Shane then draws certain conclusions from his analysis of the data. For the same reason set forth above, Shane is not qualified to render opinions related to the quality of CPD's internal investigations. Additionally, the methodology utilized by Shane to render opinions about CPD's prioritization of certain types of complaints and the impact that alleged prioritization had on the defendant officers' actions renders those opinions unreliable.

For example, Shane compared external allegations (those generated by sources outside CPD) with those generated from an internal source. He conducted a statistical analysis and determined that internal complaints across three time periods are sustained more often than external allegations. *See* Rpt., at 31, 35-37, including Table 13, 41-42, including Table 22, and 44, 46, including Table 26. From this finding, Shane concludes that “[t]his means the outcome of an investigation (sustained or not sustained) depends, at least partly on the source of the allegation (internal or external).” Rpt., at 41. However, Shane admitted at his deposition that a higher rate of sustaining internal complaints is not unique to Chicago. Dep., at 231:6-10. He did not conduct any analysis to determine if any of the sustained rates for internal versus external complaints in other departments differed from CPD’s. Dep., at 231:11-15. And, Shane agreed that there are “probably” some empirical studies within the community that find something similar. Dep., at 231:16-23. When asked the statistical significance of rendering an opinion that internal sources have a higher sustained rate than external, Shane admitted he could “only speak to this particular analysis that he did” and said, “I don’t know why the disposition would depend on the source.” Shane’s admitted lack of knowledge regarding why his analysis reached a particular outcome confirms the unreliability of his methodology and subsequent analysis.

Shane also conducted an analysis of allegation categories based on frequency. His analysis concluded that excessive force was the leading allegation during the three time periods analyzed, followed by misdemeanor and Fourth Amendment violations (unlawful entry, search, or arrest). *See* Rpt., at 29-31, including Table 9, 38-39, including Table 17, and 43-44, including Table 25. From this finding, Shane concludes, that “[h]ad the Superintendent of Police and the command staff prioritized the effort to address the most common allegations - consistent with their job specifications – then they would have been able to intervene and stop the defendants’ adverse behavior through a personnel improvement plan and/or other adverse employment action.” Rpt., at 30, 38, and 43. Shane provides no basis for his conclusion that CPD did not prioritize common allegations, nor a basis for his

speculative conclusion that, had CPD prioritized the effort to address the most common excessive force complaints, it would have been able to stop the defendant officers' adverse behavior in this case. Indeed, this case has absolutely nothing to do with excessive force; neither Baker nor Glenn claim that they were physically mistreated in their complaint. It is a mystery Shane would put so much stock in the CPD's investigation of disciplinary complaints arising from excessive force allegations when those are immaterial. Moreover, Shane's methodology, which only consisted of his review of CPD data, similarly renders these opinions unreliable. *See* Dep., at 237:4-10 (admitting he didn't have any data to determine how the leading categories of complaints in Chicago compared to those in other comparable cities) and 237:21-238:3, 239:16-24 (admitting he didn't review any studies comparing data related to the prevalence of certain allegations).

Moreover, Shane's conclusions drawn from the few anecdotal examples he provides also lack any citation to any specific standard. Neither the IACP Model Policy<sup>3</sup> (Ex. 4) nor the IACP Concepts and Issues Paper<sup>4</sup> (Ex. 5) provide a list of investigatory steps or standards for assessing the reasonableness of an investigation. The Training Keys<sup>5</sup> (Ex. 6) have a general discussion of the investigation of employee misconduct, but none of the documents list investigative steps or standards that can be assessed to determine if an investigation is reasonable. For his study, Terrill reviewed 5,500 citizen complaints from eight cities. Ex. 2, at 157. However, Terrill examined only allegations of misconduct by citizens and did not include internal complaints of misconduct. Terrill examined the type of allegation (e.g., use of force, courtesy, etc.) and the disposition of the investigation (sustained rate). Terrill did not review the investigations to determine if the investigations were reasonable, nor did Terrill offer a standard to determine reasonableness of investigations. The Police Foundation

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<sup>3</sup> IACP Model Policy – Investigation of Employee Misconduct (July 2002). (Ex. 4).

<sup>4</sup> IACP – Investigation of Employee Misconduct: Concepts and Issues Paper (Jan 2007). (Ex. 5).

<sup>5</sup> IACP Training Keys 529, 530, and 531. (Ex. 6).

report (Ex. 3) was limited to use of force data and did not examine other allegations of officer misconduct. The report did not review any actual investigation but instead relied upon surveys to determine allegations and sustained rates. Importantly, the report did not establish any standards to determine if an investigation was reasonable.

Shane concludes that the City's police disciplinary investigations do not comport with national standards and that the actions of supervisory staff are not consistent with the nationally accepted standards for police supervision. Shane explained at his deposition that nationally accepted standards or policies, including those of the CPD, require investigations to be "complete" and "thorough." Dep., at 186:2-12. Shane concluded that many of the CR investigations were not complete and thorough because "they were missing component pieces." Dep., at 186:2-18.

However, Shane's lack of experience in internal affairs or police disciplinary investigations renders him unqualified to determine what, if any, "component pieces" should be present in a reasonable investigation. Additionally, Shane fails to employ any accepted and reliable methodology to support his opinions. These opinions should therefore be barred.

Shane's report (at 16) includes a discussion of the rate at which complaints of police officer misconduct are sustained, which he characterizes as "the variable of interest." However, any testimony or opinion offered by Shane regarding sustained rates should be barred. Shane's report is devoid of any basis by which this Court can evaluate the reliability of an opinion or testimony that criticizes CPD's sustained rates in administrative investigations. Specifically, the report does not provide sufficient data or uniformly accepted standards to support such a criticism.

Shane's report (at 16) also purports to recap the CPD's sustained rates over different time periods from 1999 to 2011. Although Shane references a few studies that discuss sustained rates in misconduct investigations, none provides a national standard that would allow this Court to assess the reliability of any criticism of the CPD's sustained rates. Specifically, Shane does not identify or cite to

any national standards or uniformly accepted criteria applicable to police departments across the country concerning the rates at which complaints of police officer misconduct are sustained or not sustained in administrative investigations. The absence of such standards in Shane's report by which the Court can assess the reliability of any criticism of the CPD's sustained rates renders such criticism inadmissible under Rule 702.

The few studies referenced by Shane provide no assistance to this Court's analysis of Shane's methodology concerning sustained rates. For example, Shane (at 16) discusses a 1993 report by the Police Foundation regarding sustained rates for citizen complaints of excessive force. (Ex. 3). Unmentioned by Shane, the Police Foundation report expressly cautioned that "complaint rate is one of the most badly abused police-based statistics." Ex. 3, at 35. Additionally, that report warned "the reliability and validity of these complaint data are affected by the many different ways departments categorize complaints of misconduct . . . Procedures used by departments to count complaints of misconduct may also vary and thus affect the reliability and validity of these data." *Id.* at 89. The Police Foundation Report, cited by Shane, thus underscores the absence of uniformly accepted standards by which to assess sustained rates and the unreliability of any opinion or testimony pertaining to the sustained rates in administrative investigations of police misconduct.

Another of the studies referenced by Shane confirms the unreliability of police misconduct complaint data for comparison purposes. Shane (Rpt., at 16) discusses a sustained rate from a 2019 study of 2007 LEMAS data. However, the authors of that same article acknowledge "that examining citizen complaint data requires caution for a variety of reasons. For example, agencies often vary greatly in how they record and process citizen complaints, and a citizen's decision to file a complaint is likely affected by a wide-range of factors not directly associated with the agency or specific police-citizen interaction." (Ex. 7, Pryor, Boman, Mowen, and McCamman (2019). A national study of sustained use of force complaints in law enforcement agencies. *Journal of Criminal Justice*, 64. at 31-32).

Thus, comparing the rates at which complaints of police officer misconduct are sustained or not sustained is not a sufficient, reliable measure to evaluate the quality of police misconduct investigations conducted by law enforcement agencies.

The unreliability of such data leads to an additional, independent reason to bar testimony or opinions from Shane concerning CPD's sustained rates in administrative investigations of complaints of police officer misconduct. The absence of identifiable, reliable, and applicable standards creates the very real likelihood of confusion of the issues to the jury. This case involves a wide-ranging *Monell* claim against the City in which plaintiffs must prove the City's policies and/or practices were the moving force behind the Defendant Officers' alleged violations of Plaintiffs' constitutional rights. Introduction of unreliable evidence concerning "sustained rates" will confuse the jury as to the actual issues to be determined at trial, resulting in unfair prejudice to the City.

Indeed, any testimony or offered opinion pertaining to the rates at which complaints of officer misconduct are sustained or not sustained will not assist the jury in evaluating the *Monell* claim. Mere statistics of the rates at which such complaints are sustained, without more, "fail to prove anything." *Bryant v. Whalen*, 759 F. Supp. 410, 423-24 (N.D. Ill. 1991), citing *Strauss v. City of Chicago*, 760 F.2d 765, 768-69 (7th Cir. 1985). This is because "[p]eople may file a complaint for many reasons, or for no reason at all." *Strauss*, 760 F.2d at 769. "Consequently, the Seventh Circuit requires evidence that complaints which were not sustained actually had merit." *Bryant*, 759 F. Supp. at 424. For that reason, mere statistics of unsustained complaints, without any evidence those complaints had merit, are insufficient to establish *Monell* liability against the City. *Id.* Testimony or opinions offered by Shane critical of CPD's sustained rates in administrative investigations therefore will not assist the jury in its assessment of the *Monell* allegations and should be barred.

**III. Shane's Has No Basis for His Opinion Suggesting the City's Failure to Conduct Adequate Investigations of Police Misconduct was the Moving Force Behind the Defendant Officers' Alleged Criminal Misconduct in This Case.**

Shane's report (at 11) includes a statement that the CPD's failure to properly conduct investigations "would be expected to cause officers involved in narcotics enforcement, like the Defendants in this case, to engage in corruption and extortion and to fabricate and suppress evidence." Although Shane's report offers multiple opinions critical of the CPD's practices in investigating complaints of police misconduct, he does not attempt to causally connect the alleged deficiencies with the specific officer misconduct alleged in this case. Accordingly, any "causation" opinion Shane might offer lacks a sufficient foundation and should be barred.

To be admissible under Rule 702, an expert's opinion must offer more than a "bottom line." *Minix v. Canarecci*, 597 F.3d 824, 835 (7th Cir. 2010), quoting *Wendler & Ezra, P.C. v. Am. Int'l Group, Inc.*, 521 F.3d 790, 791 (7th Cir. 2008) (per curiam). Rule 702 requires that the expert explain the methodology and principles supporting his opinion. *Minix*, 597 F.3d at 835. Any opinion offered by Shane that CPD's failure to conduct adequate investigations of police officer misconduct caused the specific criminal misconduct alleged in this case is nothing more than a "bottom line." There is no discussion in the report explaining the methodology and principles that would support such a "causation" opinion. Shane does not identify any studies to support his causation opinion. Although he discusses investigations involving general police misconduct and allegations of excessive force, there is no discussion or analysis of how those types of investigations can be reliably compared to a confidential investigation of alleged criminal behavior involving corruption and/or extortion, as was involved in this case. Even if Shane's criticisms of CPD's administrative investigations are considered valid, which the City disputes, Shane does not explain how those deficiencies would cause Defendant Officers Watts and Mohammed to act in the way alleged, *i.e.*, operating a criminal enterprise targeting drug dealers.

Absent such an analysis, this Court is left with a “bottom line” opinion on causation that lacks a sufficient foundation and is nothing more than a misguided attempt to make the City vicariously responsible for the alleged criminal misconduct of Defendant Officers. Because Shane provides no substantive analysis of his “causation” opinion, that opinion should be barred. *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010) (Experts “cannot simply assert a “bottom line.””); *Wendler & Ezra, P.C.*, 521 F.3d at 791 (“An expert who supplies nothing but a bottom line supplies nothing of value to the judicial process.”), quoting *Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 877 F.2d 1333, 1339 (7th Cir.1989).

**IV. Shane Should be Barred from Discussing the Cherry-Picked Evidence of Untimely, Unfairly Prejudicial, and Irrelevant Evidence Discussed at Pages 72-83 of his Report Pursuant to Rule 403.**

Even if Shane’s testimony is not barred entirely, he should be prohibited from testifying regarding the prejudicial and irrelevant evidence he handpicks. Under Rule 403, the Court may exclude evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. All the Rule 403 factors apply here to pages 72-83 of Shane’s report discussing the 1972 Metcalfe report, the 1997 CPI report, the 2016 PATF report, and the 2017 DOJ report.

As discussed above, the probative value of these reports is slim to none. In addition to the irrelevant time frames discussed above, they are also irrelevant as to subject matter. Baker and Glenn do not contend they were physically mistreated, and this case does not involve police shootings, but the overwhelming focus of the PATF and DOJ reports relate to allegations of excessive force and officer involved shootings (such as the high-profile Laquan McDonald case resulting in Officer Van

Dyke's murder conviction). The irrelevant 1972 Metcalfe report also relates to excessive force.<sup>6</sup> This is not an excessive force case, and to allow the jury to hear the findings of reports issued 33 years before or 10 years after Baker and Glenn's arrests have no probative value to the underlying false arrest and malicious prosecution allegations in this case. On the other hand, allowing such irrelevant evidence would be highly and unfairly prejudicial to the City.

Without any independent analysis, Shane quotes a full two pages of the 2016 PATF report that mentions allegations against miscellaneous officers who were indicted over the years, including Officers Finnegan and Flagg. (Rpt., at 74-75). At deposition, Shane admitted that he does not know anything about those cases and did not review the reasonableness of the Joint FBI/IAD investigations of Officers Finnegan and Flagg that led to their indictments and convictions. Dep., at 160:9-262:5. As noted, Rule 702 requires an expert's testimony to be based on sufficient facts or data; reliable principles and methods; and must reflect a reliable application of the principles and methods to the facts of the case. Fed. R. Evid. 702. Since Shane is simply parroting the PATF report published in 2016 without any knowledge of the reasonableness of the FBI/IAD investigations mentioned in that report, his opinions are unreliable and irrelevant for this reason as well. *U.S. v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014) ("[a]n expert who parrots [ ] out-of-court statement[s] is not giving expert testimony; he is a ventriloquist's dummy.")

In contrast to the absence of or limited relevance of these reports, they will be unfairly prejudicial to all Defendants, and in particular the Defendant Officers. The reports are essentially a compilation of instances of unrelated allegations of police misconduct, which should be excluded as irrelevant and highly prejudicial. *See Saunders v. City of Chicago*, 320 F. Supp.2d 735, 740 (N.D. Ill. 2004); *Bruce v. City of Chicago*, No. 09 C 4837, 2011 WL 3471074, at \* 5 (N.D. Ill. July 29, 2011). The Defendant

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<sup>6</sup> As to Shane's opinions concerning narcotics officers based on the 1997 CPI report, see Defendant Officers' Motion to Bar Certain Opinions of Plaintiff's Proposed Expert Jon M. Shane. (Dkt. 318 at 12-14).

Officers should not be associated with or forced to defend the conduct of others before the jury. Reference to these reports will activate juror's prejudices and improperly inflame the jury against police in general and Defendant Officers in particular. It would be impossible for the Defendants Officers to receive a fair trial in this case if this evidence, irrelevant in time and subject matter, was admitted.

Moreover, the findings of these reports are based on much broader issues than those that are material to this case; thus, they will confuse and mislead the jury. The Defendants Officers will have to extricate themselves from these reports, and the City will have to explain to the jury why the reports are not applicable here, such as that they are based in large part on evidence that is not material to Plaintiffs' claims, that there is a consent decree as a result of the 2017 DOJ report, or that the City took other actions in response to these reports. In addition to jury confusion and misleading the jury, the introduction of these reports into evidence through plaintiffs' expert Shane, and the need for Defendants to introduce rebuttal to these reports, will waste trial time that should be used to evaluate whether Baker and Glenn's constitutional rights were violated.

For all of these reasons, pursuant to Rule 403, Shane's discussion at pages 72-83 of his report should be barred, including his discussion of the 1972 Metcalfe report, the 1997 CPI report, the 2016 PATF report, and the 2017 DOJ report.<sup>7</sup>

**V. Shane Should Not Be Permitted to Testify That He Used a Multiple Regression or Multivariate Model to Determine the Appropriate Sample Size.**

Shane should not be permitted to testify that he used a multiple regression or multivariate model to determine the appropriate sample size for the CRs selected for analysis. Shane suggests that he utilized a random sample of CR files, which document CPD's investigations into the complaints, to render his conclusion that CPD conducted substandard internal affairs investigations from 1999 to

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<sup>7</sup> To the extent necessary, defendants will also be moving *in limine* to bar all these reports with their pretrial statement due on November 18, 2024.

2011. Rpt., at 13 (“The source data are a random sample of CPD internal affairs records known as Complaint Registers (CR) files from 1999 to 2011”). His report includes several tables that reflect his analysis of data derived from this “random sample” (*see, e.g.*, Tables 8-48), as well as references to specific CRs or “examples” that he says support his opinions (*see, e.g.*, pp. 33-34, 57, 66-69). Although his report suggests he used the multiple regression or multivariate methodology for selecting a random sample, Shane’s deposition testimony revealed he did not do so. Dep., at 104:23-105:6, 105:15-106:22. For that reason, he should not be permitted to claim he did so at trial.

Shane identified 112,436 total CR files from public “available for selection” between 1999 and 2011. Rpt., at 14. To arrive at his opinions in this case, he analyzed a sample of 1,265 CR files. Shane’s testimony as to the manner in which he determined that sample size is misleading. To determine the appropriate sample size, Shane alleges in his report that “G\*Power sample size calculator software was used based on developing a multiple regression model.” Rpt., at 14. Shane explained in his deposition that “a multiple regression model is a statistical technique that enables you to model the outcome of a particular variable on a set of individual predictor variables.” Dep., at 104:11-15. In such a model, the sample size is calculated using G\*Power software based on an assumption that the analysis to be conducted would include nine predictors. Dep., at 105:7-106:5. Notwithstanding this seemingly sophisticated statistical process, Shane never actually identified “individual predictor variables” because he never conducted a multivariate model of the selected CR files. Dep., at 104:23-105:6, 105:15-106:22. All of this misleadingly suggests a specialized technical expertise that was never actually utilized by Shane.

As Shane’s deposition testimony establishes, any trial testimony that the determination of the sample size was based on the use of a multiple regression model and made up of nine individual predictor variables would be untrue, despite what his report asserts. Shane should therefore not be able to mislead the jury with such testimony.

WHEREFORE, Defendants request that this Court enter an order barring Jon Shane as a witness, and for whatever other relief the Court deems just.

Date: June 24, 2024

Respectfully submitted,

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