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

	)	
	)	Master Docket Case No. 19-cv-01717
In re: WATTS COORDINATED	)	
PRETRIAL PROCEEDINGS	)	Judge Franklin U. Valderrama
	)	
	)	Magistrate Judge Sheila M. Finnegan
	)	

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO BAR THE TESTIMONY OF DR. JON M SHANE

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INTRODUCTION

Plaintiffs Ben Baker and Clarissa Glenn allege that Defendant Sergeant Ronald Watts and members of the tactical narcotics enforcement squad he supervised framed them because Baker refused to pay a bribe to Watts. As a result, Baker lost more than ten years of his life in prison and Glenn pleaded guilty in exchange for a probation sentence so she would not lose her children. Today, Defendant Watts and his accomplice Defendant Kallatt Mohammed have been convicted of felonies for their corruption, and many of the other Defendant Officers have been placed on the State's Attorney's do-not-call Brady list, have resigned under investigation, or are facing termination as the result of (long-delayed) disciplinary proceedings.

Plaintiffs allege that Defendant City of Chicago enabled and caused Plaintiffs' wrongful convictions by allowing a code of silence to fester within the Department; by maintaining a dysfunctional disciplinary system in which civilian complaints were routinely ignored and the City failed to properly respond to hundreds of complaints against the Defendant Officers; and by allowing an on and off criminal investigation against Defendants Watts and Mohammad to go on for nearly eight years without intervening to prevent further damage to innocent people framed by Watts's crew. Dkt. 238 (Pls.' Second Am. Compl.) ¶¶ 99-106; 115-139.

Plaintiffs retained Dr. Jon M. Shane to review evidence from this litigation and evaluate the quality of the City's disciplinary and supervisory systems from 1999-2011, along with the City's actions relative to Defendant Watts and members of his tactical team. Dr. Shane is a retired police captain and a current professor of criminal justice at John Jay College of Criminal Justice in New York, who has expertise in police policy and practices and in statistics. Ex. A (Shane Report) at 1. His many qualifications are discussed in more detail below. In this case, Dr. Shane described generally accepted standards in police discipline and supervision of narcotics enforcement police and provided an opinion on the practices of the Chicago Police Department

("CPD") during the time periods at issue. Ex. A. Using his training and background as a Ph.D. in Criminal Justice and his experience conducting statistical analysis, he also identified a statistically significant sample of police misconduct investigations from 1999-2011; wrote a codebook and trained data coders to identify and record information about those investigations; and conducted statistical analysis regarding Chicago's police disciplinary practices from 1999-2011. *Id.* Dr. Shane concluded that the Chicago Police Department's disciplinary and supervisory systems did not comply with nationally accepted standards despite ample notice of the risk of corruption in narcotics policing units. He also concluded that the criminal investigation resulting in Plaintiffs' arrests fell short of nationally accepted standards.

Defendants have filed two *Daubert* motions to exclude certain opinions made by Dr. Shane. Dkt. 304 (Officer Defs.' Mot.); Dkt. 326 (City Defs.' Mot.). Specifically, they challenge his qualifications; the timeframe of data and sources he relied on; the data Dr. Shane collected and analyzed; whether Dr. Shane's opinions on Plaintiff's arrests will help the jury; and whether Dr. Shane may rely in part on disciplinary investigations postdating the arrests and convictions of Defendants Watts and Mohammed, among other things. The Court should deny these motions because Shane is plainly well-qualified and used a routinely admitted methodology. Indeed, many of Defendants' arguments do not challenge Dr. Shane's qualifications or methodology, but instead seek evidentiary rulings based on other factors. *See* Dkt. 304 at 13 & n. 8-9 (Officer Defendants moving to exclude opinions as "highly prejudicial" under Rules 402 and 403 and promising to move again to exclude the opinions *in limine*); Dkt. 326 at 23 & n.23 (City Defendants moving to exclude opinions because of the risk of "wast[ing] trial time" and, again, promising to move again to exclude the opinions *in limine*). There is no merit to Defendants' arguments and Defendants do not justify asking the Court for multiple rounds of evidentiary

briefing. The Court should deny the Defendants' motions and deny their request to relitigate the same issues later.

SUMMARY OF DR. SHANE'S OPINIONS

To form his opinions in this case, Dr. Shane analyzed an extensive set of documents and information, which included contracts between the police union and the City of Chicago, discovery responses, CPD policies, annual reports from the City of Chicago, hundreds of CR (disciplinary investigation) files against the Defendant Officers, hundreds of CR files derived from a random sample, dozens of deposition transcripts, reports and articles addressing the state of police discipline and supervision in the CPD, the FBI investigative file regarding Watts and Mohammed's corruption and the investigation thereof, and numerous academic articles and other publications on topics germane to his opinion. *E.g.*, Ex. A at 16 n.5-9, 76 n.63, 79 n.64, 81 n.67, 82 n.68-69, 98 n.82, 100 n.84, 118-24; Ex. B (Shane Report Ex. F-1 - Waddy Report) at 48-56.[1]

A major piece of Dr. Shane's analysis (although by no means the only piece) involved collecting, reviewing, and analyzing data from a random sample of police misconduct investigations ("CRs") by the CPD from 1999-2011. Dr. Shane determined a conservative sample size for the 1999-2011 period and sample sizes required to analyze sub-periods within that timeframe. Ex. A at 15, 17. He then obtained a sample of 1,265 CRs and created a codebook so that meaningful data could be extracted from those files and trained a team of data coders employed by Plaintiffs' attorneys to extract the data, applying social science methodologies. *Id.* at 17-18. That data was compiled in a spreadsheet and provided to Dr. Shane. He then conducted a review and quality check to ensure the accuracy of the coding process. *Id.* at 18. Dr. Shane also

[1] Dr. Shane incorporated a previously written report on the disciplinary histories of various Defendant officers in this case—among other topics—into his opinion. Ex. B (Shane Report Ex. F-1 - Waddy Report).

reviewed a significant amount of material that was specific to the arrests of Mr. Baker and Ms. Glenn, including the reports documenting their arrests.

Applying his expertise and knowledge and using social science methodologies, Dr. Shane formed four global opinions:

1. The CPD did not follow accepted practices for conducting police misconduct investigations, and CPD's investigations did not comport with nationally accepted standards. Ex. A at 11.
2. The Defendant Officers accrued complaints at a rate that notified officials of a need for intervention and supervisory measures to stop adverse behavior and correct deficiencies, and the City's response to that notice did not comport with nationally accepted standards. *Id.* at 11.
3. CPD's accountability systems from 1999-2011 did not meet nationally accepted standards and did not effectively respond to patterns of allegations against officers that emerged during that time. *Id.* at 11-12.
4. The Defendant Officers' arrests of Plaintiffs Baker and Glenn did not comport with nationally accepted standards, including in deficient reports that obfuscated which officers took what actions in the arrests and the use of "raid tactics" of conducting indiscriminate mass arrests, which CPD failed to prevent. *Id.* at 12.

Dr. Shane formed numerous further opinions that Defendants did not specifically address, which include (but are not limited to):

1. CPD's investigations were characterized by (a) a focus on minor complaints at the expense of more serious allegations; (b) undue delays in investigations that compromised the effectiveness and integrity of the disciplinary system; (c) incomplete investigations that routinely omitted necessary steps, including collecting and reviewing relevant evidence; (d) frequent failures to conduct any investigation into complaints of misconduct; and (e) failures to conduct in-person interviews of accused and witness officers or otherwise ensure the integrity of those officers' responses. *Id.* at 52-72.
2. The City knew of serious deficiencies in its accountability systems, including especially the need to manage risks associated with exposure to drugs and money in narcotics units, such as Watts's tactical team. The City nonetheless failed to address those risks consistent with nationally accepted standards. For example, the City: set convoluted and unduly specific criteria for flagging problem officers and failed to use or review relevant information; failed to analyze or respond to trends of misconduct complaints against officers; did not specifically monitor narcotics policing units; and failed to rotate personnel out of corruption-prone assignments. *Id.* at 72-83.
3. The CPD's leaders were aware of mounting and extremely serious allegations against Defendants Watts, Mohammed, and others, and learned of evidence supporting those allegations, but did nothing to ensure that the allegations were promptly resolved to protect the community from harm. However, the CPD allowed the key whistleblowers

and police investigators involved in investigating Watts's misconduct to be retaliated against for breaking the code of silence. *Id.* at 87-96.

4. CPD failed to conduct timely and thorough integrity testing of the Defendant Officers, failed to regularly monitor their performance, failed to transfer them to non-enforcement assignments to protect the public, and failed to dissolve their unit despite mounting complaints and evidence of corruption. *Id.* at 96-100.
5. CPD endorsed mass search-and-arrests conducted in violation of generally accepted standards: specifically, stopping and searching everybody in public housing buildings despite lacking individualized and specific bases to do so. *Id.* at 100-101.

Defendants failed to discuss and address many of the above opinions and have thus forfeited *Daubert* argument on those opinions. Any arguments raised for the first time in Defendants' reply briefs are waived. *Williams v. Bd. of Educ. of City of Chicago*, 982 F.3d 495, 507 n.30 (7th Cir. 2020).

LEGAL STANDARD

Federal Rules of Evidence 702 and 703 govern the admissibility of expert witness testimony. Fed. R. Evid. 702 & 703. Opinion testimony is admissible if the expert's "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," if testimony is "based on sufficient facts or data," is "the product of reliable principles and methods," and if the opinion "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702.

The trial judge occupies a "gatekeeping role" and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*, 509 U.S. at 592-93, 597. The proponent of the expert evidence bears the burden of establishing, by a preponderance of the evidence, that the requirements set forth in Rule 702 and Daubert have been satisfied. *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009). This rule applies not only to scientific testimony but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). A *Daubert* inquiry ultimately requires a two-step analysis: first, a determination of the expert's reliability, and second, whether the proposed expert testimony is relevant and aids

the trier-of-fact. *Cummins v. Lyle Industries*, 93 F.2d 362, 367-68 (7th Cir. 1996). In civil rights cases such as this one, "[e]xpert testimony regarding relevant professional standards can give a jury a baseline to help evaluate whether a defendant's deviations from those standards were merely negligent or were so severe or persistent as to support an inference of intentional or reckless conduct that violated a plaintiff's constitutional rights." *Jimenez v. City of Chicago*, 732 F.3d 710, 721–22 (7th Cir. 2013).

ARGUMENT

I. Dr. Shane is qualified to provide opinions on the City of Chicago's failed police disciplinary system.

Defendants ask the Court to bar all of Dr. Shane's opinions relating to the sufficiency of the City's police disciplinary investigations because he "never worked as a supervisor or investigator in internal affairs." Dkt. 326 at 5-6. Defendants ignore Dr. Shane's relevant internal affairs experience: he was trained in conducting internal affairs investigations, conducted such investigations for ten years, and has ample further qualifications to provide his opinions.

Defendants' attack on Dr. Shane's qualifications is meritless. To start, Defendants failed to mention that Dr. Shane was trained in conducting internal affairs investigations when he became a sergeant with Newark Police Department and that he subsequently conducted dozens of internal affairs investigations as a supervisor from 1995 to 2005. Ex. C (Shane Dep.) at 15:24-16:23. They also did not mention that Dr. Shane has been qualified and has testified as an expert in internal affairs in state and federal court, and has reviewed internal affairs issues in numerous other lawsuits. *Id.* at 19:20-20:17, 21:18-37:10; Ex. A at 161.

Dr. Shane served in the Newark, New Jersey Police Department for twenty years, retiring as a captain in 2005. Ex. A at 1. For most of his career he drafted, reviewed, and implemented operational and administrative policy. *Id*. He regularly consults with attorneys and law

enforcement agencies on police policy and practice issues and training programs; completed training programs for senior law enforcement leaders in policy development, police policy, and research; and has served as a Senior Research Associate to the Police Foundation for the past twenty years.[2] *Id.* at 1, 3, 5.

Dr. Shane actively participates in national organizations addressing police policy including the American Society of Criminology, the Police Executive Research Forum, and the Academy of Criminal Justice Sciences. *Id.* at 6. He has served as a peer-review member for more than a dozen academic journals on policing, police policy, and criminal justice. *Id.* at 9. He has first-hand experience as a high-ranking officer in a major urban police department, which provided him experience in police administration, operations, and organizational culture. *Id.* at 10. For the past fifteen years, he has also conducted research and taught students on a wide variety of policing topics. *Id.* at 159. He has published articles on police discipline and police administration and has delivered lectures, training workshops, and conference presentations on police discipline and police administration. *Id.* at 163-65.

Even absent Dr. Shane's substantial experience in internal affairs and research on that topic, his general knowledge of police administration and his review and application of relevant standards alone would qualify him. Personal experience in the subfield under review is not required. *Andersen v. City of Chicago*, 454 F. Supp. 3d 808, 813 (N.D. Ill. 2020) (rejecting defendants' challenge to plaintiff's police practice expert on the basis that he did not "personally investigat[e] homicides or . . . tak[e] subjects to be polygraphed"). At best for Defendants, Dr. Shane's personal experience investigating internal affairs complaints is cross-examination rather than a basis for deeming him unqualified at the gatekeeping stage. *See id.* at 813 (explaining that

[2] Defendants accuse Dr. Shane of misusing a report by the Police Foundation in his analysis; however, as discussed in Section III(C), it is Defendants who misstate that report.

if the defendants want to "highlight the lack of experience Waller may have, for example, in personally investigating homicides or in taking subjects to be polygraphed, they may do so through cross-examination"); *Kluppelberg v. Burge*, No. 13 C 3963, 2016 WL 6821138 at *2 (N.D. Ill. Sept. 16, 2016) (explaining "that Adams was not an ASA during 1988 and 1989 may have some bearing on the weight of his testimony, just not its admissibility"); *see also Gayton v. McCoy*, 593 F.3d 610, 618 (7th Cir. 2010). Notably, Defendants identify no case where an expert with qualifications like Dr. Shane was found unqualified to testify on a subtopic within his area of expertise. They rely on cases that are far afield; for example, a holding that a law professor with no social science training could not opine on the methodology of a trained social scientist. *See Harris v. City of Chicago*, No. 14 C 4391, 2017 WL 3142755, at *4 (N.D. Ill. July 25, 2017).

Defendants also say that because Dr. Shane lacks experience in psychology, he is not "qualified" to testify that the failure to conduct appropriate police misconduct investigations would be expected to cause narcotics officers to engage in corruption, extortion, and fabrication of evidence. Dkt. 326 at 8. Of course, Dr. Shane is not going to opine on the specific psychological motivations of the Defendant Officers. He should, however, be permitted to testify that the reason for many accepted practices in police discipline and supervision is to prevent the very kinds of corruption that Plaintiffs allege. That is a police practices opinion within Dr. Shane's area of expertise, not a psychology opinion or an opinion about Defendants' state of mind. As discussed below, Dr. Shane has a reliable basis to offer that opinion.

II. Dr. Shane used a reliable and commonly accepted methodology based on sufficient facts and data.

In constitutional tort cases under Section 1983, police practices testimony is admissible when it provides "expert testimony regarding sound professional standards governing [the] defendant[s] actions." *Jimenez*, 732 F.3d at 721. Such testimony is "relevant and helpful"

because it can "give [the] jury a baseline to help evaluate whether [the] defendant[s'] deviations from those standards were merely negligent or were so severe or persistent as to support an inference of intentional or reckless conduct that violated [Plaintiffs'] constitutional rights." *Id.* at 721-22. Dr. Shane offers such testimony here.

Dr. Shane's report includes an extensive methodology section, and he has established that he used typical techniques in police practices and social sciences to form his opinions. Specifically, he identified and obtained a random sample of CRs from 1999-2011, gathered data from those CRs and ensured the reliability and quality of those data, and computed the frequency with which the City's investigators completed various investigatory tasks. Ex. A at 13-19. Likewise, Dr. Shane named and cited the sources for the generally accepted policing standards he applied. *E.g.*, *id.* at 19-20 (describing several sources for police standards for investigation of employee misconduct and public complaints); 20-21 (standards for supervising police personnel); 79-83 (standards for supervision of narcotics enforcement units). Throughout his report, he applies the standards he has identified. Defendants incorrectly assert that Dr. Shane did not read the CR files, but that is not true, and they ignored his testimony to the contrary. Ex. C (Shane Dep.) at 83:8-86:14. In short, Dr. Shane used a bread-and-butter police practices methodology, and Defendants provide no basis to take issue with it.

In short, Defendants do not identify anything fundamentally wrong with Dr. Shane's police practices methodology, which included reviewing relevant evidence from Plaintiffs' case and filtering it through his knowledge and experience, as well as reviewing disciplinary files to identify whether the City failed to conduct appropriate investigations of police misconduct. Nor could they, as courts in this Circuit frequently admit testimony from experts applying the same or similar methodologies. *See Washington v. Boudreau*, No. 16-CV-01893, 2022 WL 4599708, at

*8 (N.D. Ill. Sept. 30, 2022) (police practices experts use reliable methodology by reviewing case materials and filtering that evidence through the expert's knowledge and experience with policing); *id.* at *9 (holding that statistical analysis of sample of 1,230 CR files, including auditing of random 10 percent of those CRs, was reliable method of drawing opinion about whether the CPD exhibited a "widespread practice of failing to investigate and discipline police officers who engage in misconduct"). The review of CR files for patterns relevant to *Monell* claims "has been approved a number of times by courts in this circuit." *Arias v. Allegretti*, No. 05 C 5940, 2008 WL 191185, at *3 (N.D. Ill. Jan. 22, 2008) (citing *Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1030 (7th Cir. 2006); *Garcia v. City of Chicago*, 2003 WL 22175618 (N.D. Ill. 2003)).

A. Dr. Shane analyzed data from an appropriate timeframe.

Dr. Shane reviewed 1,265 CR files produced by the City in discovery spanning the years 1999-2011, reviewing the data as a whole and divided into three time periods: 1999-2003; 2004-2007; and 2008-2011. Ex. A at 28-52. He concluded that across the entire sample, and within each period, the CPD consistently failed to conduct thorough and timely investigations of police misconduct and failed to devote the resources necessary to ensure unbiased investigations of complaints. *Id.* at 52-72. Defendants argue that because Plaintiff was arrested in 2005, any material from 2006 or later is irrelevant to his claims. Not so.

First, Defendants argue that the timeframe for any *Monell* evidence in wrongful conviction constitutional tort litigation is five years preceding the date of the plaintiff's arrest. But Defendants provide no support for the contention that a "five-year period" has been "generally accepted" in this district. They cite just one case, a summary judgment ruling that criticized the plaintiff's *Monell* evidence for being distant in time and unrelated in topic to the police misconduct alleged by the plaintiff. *Brown v. City of Chicago*, 633 F. Supp. 3d 1122 (N.D.

Ill. 2022). That opinion referenced a "five-year period" leading up to the plaintiff's arrest on a few occasions, but without discussion of why that was the appropriate time period. The most direct discussion of that timeframe was when the court held the plaintiff could not proceed on a failure-to-discipline *Monell* theory at summary judgment because the three defendant detectives had only one allegation of misconduct between them within a **ten-year** timeframe, spanning from five years before and five years after the Plaintiff's arrest. *Id.* at 1176. In short, even if that court had reasons to define a five-year period based on the evidence and argument there, the opinion offers nothing (and Defendants identify nothing) to extend that framework to the facts of this case. Notably, *Brown* was not a *Daubert* decision and ultimately the time period was irrelevant because the court held that the plaintiff had failed to argue or provide evidence of causation. *Id.* at 1176.

Other courts resolving issues regarding the production of CR files in discovery related to constitutional tort *Monell* claims have not questioned that files beyond the five-year period may be **relevant** to plaintiffs' *Monell* claims. *See Velez v. City of Chicago*, No. 18 C 8144, 2021 WL 1978364, at *4 (N.D. Ill. May 18, 2021) (concluding there was "no question as to the relevance" of seven years of CR files requested by plaintiff, before going on to consider proportionality); *DeLeon-Reyes v. Guevara*, No. 18 C 1028, 2019 WL 4278043, at *9 (N.D. Ill. Sept. 10, 2019) (describing relevance of six years of CR files to *Monell* claims as "not seriously dispute[d]").

Second, there is no reason why the "end date" for admissible conduct should be set on December 2005. "The Seventh Circuit has recognized that 'subsequent conduct by a municipal policymaker may be used to prove preexisting disposition and policy.'" *Padilla v. City of Chicago*, No. 06-C-5462, 2009 WL 4891943 at *7 (N.D. Ill. Dec. 14, 2009) (quoting *Sherrod v. Berry*, 827 F.2d 195, 205 (7th Cir. 1987), *vacated on other grounds*, 835 F.2d 1222 (7th

Cir.1988)); *see also Salvato v. Miley*, 790 F.3d 1286, 1297 (11th Cir. 2015) (noting that "[p]ost-event evidence can shed some light on what policies existed in the city on the date of an alleged deprivation of constitutional right, " and inferences from such post-event facts "lend weight to a finding that there was a policy behind the actions which led to the constitutional violation") (citations omitted); *Groark v. Timek*, 989 F.Supp.2d 378, 398 (D. N.J. 2013) ("Subsequent incidents, however, may be relevant to show a continuous pattern that supports a finding of an accepted custom or policy."). This is logical: one sign that a city exhibited a pattern, practice, or policy is to evaluate whether it acted consistently with such a pattern, practice, or policy before and after the incident at issue. The longer the pattern continues, the more likely that such a pattern, practice, or policy was in place. Here, the evidence is relevant: Dr. Shane has concluded that the City's disciplinary and supervisory system fell far below accepted standards not only during the time of Plaintiffs' arrests and convictions, but also before and after—a continuing pattern of deficiencies and a continuing failure to enact necessary changes.

The cases Defendants cite, again, are not on point. In *Calusinski v. Kruger*, the plaintiff attempted to establish *at trial* a **pattern** of unconstitutional excessive force by citing a single incident of excessive force three-and-a-half years after the incident of alleged excessive force against the plaintiff. 24 F.3d 931, 936 (7th Cir. 1994). Setting aside that the Seventh Circuit was reviewing an evidentiary decision from a trial and not a *Daubert* motion, even that discussion was dicta because the plaintiff had not named the municipality as a defendant in the operative complaint and therefore did not have a *Monell* claim. In any event, Dr. Shane has reviewed hundreds of investigatory files relating to police misconduct and offered opinions on data from those investigations. The consistency of the Department's failures in each time period—1999-2003, 2004-2007, and 2008-2011—makes it more likely that the City knew of the deficiencies

but decided not to address them. As just one example, it tends to rebut any argument that the City took reasonable measures to address the deficiencies but that those reforms took time to work; the consistent (and indeed, deteriorating) quality of investigations and investigatory outcomes gives the lie to any such defense. Likewise, Defendants cite a discovery ruling about the scope of proportionate *Monell* discovery which did not appear to involve discussion of whether patterns of misconduct can be proven by post-event misconduct. *Prince v. Kato*, No. 18 C 2952, 2020 WL 1874099, at *5 (N.D. Ill. Apr. 15, 2020). The *Prince* court granted Plaintiffs' motion to compel four years of CR files, noting that documents from a four-year time period should be sufficient for establishing a pattern of behavior for *Monell* purposes. That decision did not suggest that a longer period would not have been relevant or helpful, and therefore its discussion of time periods is unhelpful here, where the parties are not debating the merits and potential burdens of a production request but are instead debating the merits of an expert opinion.[3]

In short, nothing in the cases that Defendants cite or in any other cases of which Plaintiffs are aware suggests, let alone holds, that an expert offering opinions relating to *Monell* claims must rely on data from a five-year period preceding the incident at issue in the complaint and no more. Defendants may cross-examine Dr. Shane on his decision to rely on time periods of 1999-2003 and 2004-2007 instead of running an additional analysis terminating in 2005, but that is a question of the weight the jury gives his opinion, not admissibility. There is no reason for the Court to bar or limit Dr. Shane's testimony based on his review of data from 1999-2011 and subperiods—which, in fact, encompass Defendants' proposed 5-year period of 2000-2005.

[3] The *Prince* court did state that CRs from after the relevant incident would not be relevant, but the opinion did not provide any explanation as to why that would be true. As discussed above, appropriate post-incident data have repeatedly been found relevant to *Monell* claims.

B. Dr. Shane analyzed relevant and appropriate materials.

Defendants take issue with Dr. Shane's use of reports from before and after the period of data analysis, including the Metcalfe Report from congressional hearings in 1972, the 1997 report from Mayor Daley's Commission on Police Integrity, a 2016 report from Mayor Emanuel's Police Accountability Task Force, and a 2017 report from the federal Department of Justice. "All of that material is irrelevant in time and scope to Baker and Glenn's case arising from their arrests in 2005," Defendants argue, because "[i]t 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." Dkt. 326 at 10. Defendants' argument might have merit if Dr. Shane were, indeed, arguing that policymakers in 2005 were on notice because of the 2016 Police Accountability Task Force report. But that argument is a strawman and does not reflect Dr. Shane's opinion.

Like other experts hired by Plaintiff and Defendants, Dr. Shane relied in part on secondary sources to form his opinion. That is a completely acceptable and noncontroversial way for experts to gather data. Indeed, the whole point of expert testimony is that experts may testify outside of their personal knowledge and involvement in the matter of litigation.

The report of the 1997 Commission on Police Integrity is especially germane to Plaintiffs' claims. Some history (which Defendants omitted) is necessary. In 1997, several Chicago Police Department officers were indicted on conspiracy, racketeering, and extortion charges. Ex. D (1997 Commission on Police Integrity Report) at 2. In response, former Chicago Mayor Richard Daley appointed the Commission on Police Integrity to study police corruption in Chicago and to recommend strategies to reduce "the kind of misconduct discovered last year in the Austin and Gresham police districts"—i.e., officers employed in tactical drug units "using their positions . . . to rob and extort money and narcotics from drug dealers" and "commit[ing] robbery and sales of illegally confiscated narcotics." *Id.* at 4, 11-12. The Commission concluded:

> The scandals that have unfolded in Chicago and around the country in recent years reveal an indisputable fact: the corruption problem in law enforcement today is inextricably linked to the flourishing narcotics trade. **It is no coincidence that the ten Chicago officers under indictment today were assigned to two of the police districts with the highest incidence of narcotics arrests, nor that they all worked on tactical teams whose primary function was narcotics enforcement.**

Id. at 10 (emphasis added). As discussed below, the City never implemented one of the primary recommendations of the Commission, which was monitoring for misconduct on a unit-wide level, not just an individual basis, especially among drug enforcement units. Complaints against the Watts tactical team were streaming in within a few short years of the Police Integrity Report. And Dr. Shane's reliance on the Police Integrity Report supports the argument that the City knew of the specific risks presented by tactical teams such as the Watts team and yet ignored those risks by failing to implement the safeguards its own Commission had identified as necessary.

Next consider the 2016 Police Accountability Task Force report, which reflects conclusions drawn by a government task force appointed by former Chicago Mayor Rahm Emanuel. Dr. Shane relied on this report, among other documents (including the actual Fraternal Order of Police contracts and the City's 30(b)(6) testimony), to form his understanding of the City's discipline and appeal processes, as well as historical attempts (and failures) to reform the CPD. For example, in 2016, that report concluded that many recommendations from Mayor Daley's 1997 Commission "were not addressed and still need attention." Ex. E (Police Accountability Task Force Report) at 24. And specifically, although the 1997 Commission recommended that CPD analyze **unit-wide** conduct—i.e., the same kind of drug unit misconduct that led the Commission to be appointed—it "[did] not appear [as of 2016] that CPD ever

adopted that recommendation." *Id.* at 100.[4] That Report also found that the attempted reforms of the late 1990's and 2000's "in large part, were allowed to wither on the vine or were never executed at all," including because the City decided not to fund those programs. *Id.*

Dr. Shane is not relying on the Task Force Report to discuss policing practices in 2016. Rather, he addresses that Report's discussion of practices and policies from the late 1990's and 2000's as well as discussions about how the City failed to implement necessary policies and procedures from that time period. There is no reason why the Task Force's discussion of practices and policies in the late 1990's and 2000's—**the exact time period at issue here**—may not be considered. In fact, the City's 30(b)(6) witness in this case on discipline issues admitted the City had no reason to disagree with numerous conclusions contained within the Police Accountability Task Force report as applied to the 1999-2011 timeframe. Ex. F (Timothy Moore 30(b)(6) deposition) at 185:16-186:18.

Beyond the fact that the Report is relevant in this case, numerous courts in this District have held that the Police Accountability Task Force (and the 2017 Department of Justice report) is admissible for the truth of its contents because it "includes factual findings made by a public office resulting from a legally authorized investigation." *Est. of Loury by Hudson v. City of Chicago*, No. 16-CV-4452, 2019 WL 1112260, at *2 (N.D. Ill. Mar. 11, 2019); *see also Simmons v. City of Chicago,* No. 14 C 9042, 2017 WL 3704844, at *8 (N.D. Ill. Aug. 28, 2017) (same, and also admitting the Police Accountability Task Force report as a statement of an authorized person or agent of an opposing party (the City); *Godinez v. City of Chicago*, No. 16-CV-07344, 2019

[4] The City's own 30(b)(6) representative in this case also admitted that he had no reason to believe the City had ever done anything to monitor for misconduct among drug units during the 1999-2011 timeframe. Ex. F (Timothy Moore 30(b)(6) Dep.) at 174:17-175:6.

WL 5597190, at *4 (N.D. Ill. Oct. 30, 2019) (same); *LaPorta v. City of Chicago*, 277 F. Supp. 3d 969, 989 (N.D. Ill. 2017) (same).

Dr. Shane's reliance on the 2017 Department of Justice report is narrow and similarly unproblematic. First, that report discusses Chicago's failures during the 2000's to implement a functional early warning system:

> A 2007 study noted that nearly 90% of individuals with multiple complaints were never flagged by the EIS [Early Identification System], including officers who amassed more than 50 abuse complaints within five years. This study also discussed how, of the 33 officers with 30 or more complaints between 2001-2006, fewer than half had been flagged for intervention. Seven years later, the City was again informed, via the Safer Report, that CPD needed to revise its BIS and PCP programs, including updating the data collection systems to make them more user friendly. In particular, the Safer Report recommended integrating the command staff PRS with systems used by investigative agencies into a single, streamlined case management system. Doing so, according to the study's authors, would eliminate a significant shortcoming of the current system: "the inability to track an officer's conduct throughout her career."

Ex. G (Department of Justice Report) at 117. The DOJ concluded that CPD "does not have a functioning [early intervention system]" and that each of the Department's programs "suffers from inefficiencies that render them essentially useless." *Id.* at 111. The Report further supports Shane's observation that after the 1997 Report of the Mayor's Commission on Police Integrity, which recommended improvements in officer monitoring and evaluation programs, the Department "abandon[ed]" efforts to expand or improve its early warning systems because of a grievance filed by the police union. *Id*. Again, this report specifically discusses and addresses the exact time periods at issue relevant to Plaintiff's claims. Dr. Shane also took note of the fact that the City's 30(b)(6) witness on its disciplinary systems did not deny that numerous criticisms within the Department of Justice report were applicable in the 1999-2011 timeframe. Ex. F (Timothy Moore 30(b)(6) deposition) at 195:10-204:11. And as discussed above, the DOJ Report

has been ruled admissible for the truth of its contents. There is nothing wrong with Dr. Shane relying on analysis from that report relating to the time periods at issue in this case.

Finally, Dr. Shane cited the 1972 report of the Blue Ribbon Panel convened by the Honorable Ralph H. Metcalfe, which found that as early as 1972, "complaints from citizens of abusive conduct by police are almost universally rejected by the Police Department's self-investigation system." Ex. A at 72. That report is by no means central to Dr. Shane's opinions, but it does provide relevant historical context. First, it explains the origin of the Office of Professional Standards, which was created in 1974 to investigate certain complaints of police misconduct and continued until 2007. Second, the report provides foundation for Dr. Shane's opinion that neither the Office of Professional Standards nor its successor, the Independent Police Review Authority, were effective in addressing the longstanding problem of failing to appropriately investigate and resolve citizen complaints. *Id.* at 72-83. It is unclear why Defendants think that, as a social scientist and policing expert, Dr. Shane should not review and understand the history and origins of the CPD's disciplinary system or provide historical context for the continuing failure to appropriately address citizen complaints.

In summary, the materials Dr. Shane relied on generally explicitly address the specific time period at issue in this case, and Defendants have identified no reason to bar his opinion based on his review of those materials.

C. Dr. Shane determined and achieved an appropriate sample size.

Dr. Shane conservatively determined the sample size of CRs that he required by (1) assuming he would need a big enough sample size to run a multiple variable analysis with up to nine predictor variables and (2) assuming a 60% error rate in cases. Ex. A at 17. As a result, he requested a sample size of 1,265 CR files, which the City produced and he analyzed. *Id.* However, although Dr. Shane obtained a big enough sample to run analyses using up to nine

variables, the most complex statistical analysis he conducted used only two variables. Ex. C (Shane Dep. at 235:6-20). Defendants argue that at trial Dr. Shane should not be able to explain how he calculated this sample size; they hypothesize that the jury will be unduly impressed if he explains the sample size assumed a nine-variable multivariate analysis. But they offer no reason why Dr. Shane should not be able to explain what he did: in short, he obtained a bigger sample size than he needed, because he ran a less complex analysis than his calculations assumed. Any confusion (which is unlikely) can be easily cleared up through cross-examination.

III. Dr. Shane reliably conducted his analysis of investigative quality.

Dr. Shane identified data to be extracted from the 1,265 CR files produced in this litigation as a random sample of CPD's police misconduct investigations from 1999-2011, and then analyzed that data (in addition to reviewing and discussing specific CRs and other evidence of the City's disciplinary and supervisory policies and practices) to form opinions about the quality of CPD's disciplinary and supervisory systems. He applied a standard and reliable methodology, and his thorough analysis will help the jury. Defendants launch several criticisms of Dr. Shane's methodology, but none provide a basis to exclude or limit his testimony.

A. Dr. Shane's analysis appropriately identified characteristics of CR files to consider in applying the "thorough and complete" standard for police misconduct investigations.

Defendants argue that Dr. Shane has not justified his methodology for identifying data points in the CR files to review in his analysis. However, Defendants misstate the applicable standard and ignore the logical connection between the data Dr. Shane analyzed and the conclusions he reached.

1. Dr. Shane applied the applicable standard for internal affairs investigations: thorough and complete.

The standard recognized by police departments, the Department of Justice, the International Association of Chiefs of Police ("IACP"), and local state agencies is that investigations of police misconduct must be thorough and complete. "A 'complete investigation' is one which includes all relevant information required to achieve the purpose of the inquiry" and "[t]he rules and procedures for an investigation must be framed to ensure its **integrity, thoroughness, and fairness.**" Ex. H (Department of Justice: Standards and Guidelines for Internal Affairs - Recommendations from a Community of Practice) at 27 (emphasis added). An IACP report says the same: "Police agencies have a duty to **investigate fully and completely** accusations of officer misconduct to protect the department's integrity and its credibility in the community, not to mention clearing the names of officers who have done no wrong." Ex. I (IACP Concepts and Issues) at 2 (emphasis added). The IACP Training Keys specify that an internal affairs investigation should not be reviewed until "the investigation is deemed to be complete" and that investigations that were incomplete should be designated as "[i]ncomplete investigations." Ex. J (IACP Training Key III) at 3. On paper, the Chicago Police Department also set a standard of conducting "**complete and thorough** investigations." Ex. K (Bureau of Internal Affairs Standard Operating Procedures) at 13 (emphasis added). Various other state and local entities reflect this standard. For example, the State of New Jersey has stated: "Each agency must **thoroughly, objectively, and promptly** investigate all allegations against its officers." Ex. L (New Jersey Office of the Attorney General: Internal Affairs Policy & Procedures) at 3 (emphasis added).

Dr. Shane applied the generally accepted "thorough and complete" standard in his analysis, and Defendants offer no basis to conclude that "reasonableness" is the standard he

should have applied. Thus, Defendants' criticism that the sources he cited do not offer a standard "for assessing the reasonableness of an administrative investigation" falls flat because reasonableness is not the standard. Dr. Shane's application of the "thorough and complete" standard also rebuts Defendants' criticism that Dr. Shane did not identify appropriate standards for assessing misconduct investigations. Dkt. 326 at 16-17.

2. Dr. Shane reliably applied the correct "thorough and complete" standard.

As discussed, Dr. Shane developed a codebook identifying data of interest to him in the 1,265 CRs he reviewed and then analyzed data collected by coders he trained. Ex. M (Codebook). Many of these data points collect basic descriptive information about the complaints: the complainant, victim, and accused officer; a summary of the allegation; how long the allegation took to resolve; and the disposition of the allegation. *Id.* at 3-6. Dr. Shane also sought data on various investigative steps, including whether the investigator contacted the complainant, victim, or witnesses, whether in-person interviews were conducted, whether statements were taken, and whether various kinds of evidence were collected and preserved. *Id.* at 6-12. As Dr. Shane notes, it is customary in the social sciences to hire coders to document data contained in voluminous documents, and his manner of analysis is consistent with tools and practices from the 1999-2011 time period, including similar spreadsheets Dr. Shane is personally familiar with from his experience in the Newark Police Department. Ex. A at 17-18.

Defendants complain that Dr. Shane has not identified a police department that used the exact same variables as he used in his analysis. Dkt. 326 at 13. But that is not the standard for reliability in this analysis. The question is whether there is a logical connection between the data Dr. Shane reviewed and the opinions he formed, and here there clearly is. His opinion was reasoned and is founded on those data. With that foundation, "[w]hether [the expert] selected the

best data set to use . . . is a question for the jury, not the judge." *Manpower, Inc. v. Ins. Co. of Pennsylvania*, 732 F.3d 796, 809 (7th Cir. 2013). Specifically, "[a]ssuming a rational connection between the data and the opinion—as there was here—an expert's reliance on faulty information is a matter to be explored on cross-examination; it does not go to admissibility." *Id.* Among other things, Dr. Shane relied on standards from the federal Department of Justice stating that "a 'complete investigation' is one which includes all relevant information required to achieve the purpose of the inquiry." Ex. H (Department of Justice: Standards and Guidelines for Internal Affairs) at 29. Dr. Shane also relied on his experience and the materials he reviewed to identify data points to collect about the CRs that would be relevant to the completeness of the investigation. Defendants' qualms about the data he selected go to weight, not admissibility. *See, e.g., Simmons*, 2017 WL 3704844, at *11 (at trial, "defendants are entitled to explore claimed flaws in one of the databases of police complaint file data upon which plaintiff's experts relied"); *Obrycka v. City of Chicago*, No. 07 C 2372, 2012 WL 4092653, at *6-7 (N.D. Ill. Sept. 17, 2012) (holding that arguments about choice of data and variables were for jury to consider and did not justify barring opinion).

Defendants also rely on an out-of-context quote from Dr. Shane about his methodology and the comparisons he made to other cities; specifically, that he "didn't compare the CPD to anyone else." Dkt. 326 at 17. That was an answer about specific data points within Dr. Shane's analysis, not a global statement about his methodology, as clarified by Dr. Shane during that deposition and as revealed in his report. For example, Dr. Shane reviewed numerous studies that considered internal affairs processes in other cities—including the rates of sustained complaints—and analyzed CPD's disciplinary and supervisory systems while applying that context. Ex. C (Shane Dep) at 348:15-349:8. However, Dr. Shane did not have access to the raw

data from other cities, meaning he could assess their processes and sustain rates but could not conduct his own analysis of other cites' data; nevertheless, Dr. Shane was able to rely on the City's own reports, as well as the studies cited on page 16 of his report (which included a 1993 Police Foundation report, a 2001 report from the New York City Civilian Complaint Review, an eight-city study of police complaint data, a study using 2007 data from multiple agencies; and the City of Chicago's own annual reports) to make comparisons between Chicago and other cities. *Id.* at 349:5-20; Ex. A at 16. And Dr. Shane's report is replete with discussion of and references to studies and papers that analyzed police practices in other cities. Ex. A at, *e.g.*, 79 n.64, 80 n.65, 82 n.68, 98 n.81-82. Thus, although it is true that Dr. Shane did not have complaint-level data from other cities to draw comparisons to, it is equally true that he made comparisons to disciplinary systems and sustain rates from other cities as well as police practices from other cities more generally. None of this is "fatal" to Dr. Shane's opinions, as Defendants suggest.

B. There is no evidence of bias or subjectivity among the data coders.

Defendants claim that the coders who extracted data from the random sample of CR files were "biased" and "inadequately trained" (Dkt. 326 at 11) but they fail to develop this argument and thus, have forfeited it. *See Hall v. Flannery*, 840 F.3d 922, 927 (7th Cir. 2016). The coders' work on this case involved taking data from the 1,265 CR files (any one of which may have included dozens or hundreds of pages of material) and encoding the information into a spreadsheet suitable for statistical analysis. Ex. A at 14, 17-18. Dr. Shane recognized the possibility of bias and addressed it via his methodology. He personally trained the coders and instructed them to resolve any ambiguities in favor of the City (i.e., marking an investigative step as completed if there was any evidence that it was completed). Ex. M (Codebook) at 1. Dr. Shane also personally audited the coding to ensure it had been done accurately. Ex. A at 18, 129-

132. Notably, Defendants' motion does not identify a single inaccuracy in the spreadsheet, let alone any inaccuracies attributable to bias.

Defendants also vaguely object that the data Dr. Shane gathered and analyzed is tainted because it relies on "subjective" assessments of the coders. Dkt. 326 at 13. Not so. First, the codebook includes explicit, objective instructions for how data should be gathered. Ex. M (Codebook) at 6-12. Second, Dr. Shane ensured the reliability of the analysis by personally inspecting it for accuracy, including that the variables in the data set matched the information contained in the CR documents. Ex. A at 18; Ex. C (Shane Dep.) at 177:1-178:14. By creating objective definitions for the data to be collected and personally ensuring that the data collected were accurate, Dr. Shane appropriately guarded against any subjectivity that the coders may have introduced. Defendants identify no authority suggesting that such a methodology (which, Dr. Shane has testified, is typical in the social sciences) is inappropriate. Defendants' arguments again go to weight, not admissibility. *Manpower*, 732 F.3d at 806 (noting it is abuse of discretion to "unduly scrutinize[]" data quality, which is typically a jury issue).

C. Dr. Shane appropriately considered the rate at which CPD sustained, and failed to sustain, complaints of misconduct.

Defendants argue that Dr. Shane's analysis of the rate at which CPD sustained complaints of misconduct is unreliable and irrelevant. Dkt. 326 at 17-19. But Defendants misconstrue Dr. Shane's analysis and the relevance of those data for his opinion. Dr. Shane has not opined, and will not opine, that there is a universal "target sustain rate" that all police departments should strive for—for example, that if a police department sustains fewer than ten percent of complaints, it is below national standards. Dr. Shane can, however, opine that the City of Chicago, starting in 1999 and going forward, had not fixed the problem identified decades before by the Metcalfe Report—namely, that "complaints from citizens of abusive conduct by police are almost

universally rejected by the Police Department[.]" Ex. A at 72. And the data Dr. Shane analyzed about the categories of complaints the City accepted and rejected—for example, that the City frequently sustained minor operations and personnel violations, but did not sustain a single coercive interrogation or coerced confession allegation across the entire sample—are relevant to his assessment of the integrity and effectiveness of the disciplinary system. *E.g.*, Ex. A at 32-33. Dr. Shane testified to the specific impact of the "very low" sustained rate—specifically, that it results in a failure to deter officer misconduct. Ex. C (Shane Dep.) at 195:5-196:11.

Certainly, as Defendants note, policing scholars have identified challenges in calculating complaint sustain rates and comparing them between police departments. But policing scholars have not rejected comparisons of sustained rates wholesale. Indeed, the very Police Foundation study that Defendants cite (and misuse)[5] in support of their position contains an entire section analyzing and comparing rates of sustained complaints between agencies of different sizes and kinds of municipalities. Ex. N (Police Foundation Report) at 4-53-4-65 (comparing sustained rates and disciplinary outcomes based on agency size and agency type). Clearly, the authors of that study did not think it was without value to analyze and compare sustain rates, and neither does Dr. Shane.

Defendants fail to identify any relevant support for their argument that Dr. Shane should be precluded from comparing discipline rates between municipalities, and the source they rely on (the Police Foundation Report) does that exact analysis. Thus, Dr. Shane should not be precluded from discussing discipline rates among municipalities as one piece of evidence supporting the

[5] Defendants' use of the 1993 Police Foundation report is a bait and switch. That report quotes an article commenting that the "complaints rate"—meaning the number of complaints **received** by a department—is "badly abused." Ex. xx (Police Foundation Report) at 35. But the complaints rate (number of complaints) is entirely distinct from the sustained rate (how often complaints are sustained). The quote has nothing to do with the issue of sustained rates.

conclusion that the City of Chicago has a widespread failure to discipline its officers. And there can be no doubt that the widespread failure to discipline officers, courts in this district have found, is evidence relevant to *Monell* liability. *LaPorta*, 277 F. Supp. 3d at 988 ("That none of Kelly's 18 or 19 CRs incurred prior to the LaPorta incident resulted in a sustained finding is further evidence from which a reasonable juror could infer that Kelly was reaping the benefits of the code of silence even before the LaPorta shooting."); *Obrycka v. City of Chicago*, No. 07 C 2372, 2012 WL 601810, at *8 (N.D. Ill. Feb. 23, 2012) (finding low rates of sustained complaints relevant to code of silence *Monell* theory); *Garcia v. City of Chicago*, No. 01 C 8945, 2003 WL 1715621, at *7 (N.D. Ill. Mar. 20, 2003) (finding low sustain rate of complaints similar to plaintiff's allegations relevant to issue of *Monell* deliberate indifference); *Kindle v. City of Harvey*, No. 00 C 6886, 2002 WL 230779, at *3 (N.D. Ill. Feb. 15, 2002) (same). Dr. Shane's analysis of patterns of complaint investigations and sustain rates, and his comparisons to sustain rates of other cities, are relevant and reliably formed.

D. Dr. Shane's opinions that CPD failed to invest sufficient resources into investigating community complaints and frequently received complaint categories should not be excluded.

Defendants' remaining arguments criticize Dr. Shane's reasoning, but they do not provide any basis to exclude or limit his testimony.

First, Defendants claim that Dr. Shane's finding that the City of Chicago was dramatically more likely to sustain internal than external complaints is not unique to Chicago and that Dr. Shane's conclusions are invalid because he did not specifically compare the difference in external versus internal complaint sustain rates between Chicago and other cities. Dkt. 326 at 15. As Dr. Shane noted, the City of Chicago has been aware for decades that it almost never sustains citizen (external) allegations of misconduct against its officers. That is true for the time period analyzed, during which only 1.7% of all citizen allegations of misconduct against officers were

sustained, compared to 42.8% of all internal allegations of misconduct. Ex. A at 36. Simple division reveals that the City of Chicago was thus **twenty-five** times as likely to sustain internal allegations as external allegations. (42.8%/1.7%=25.2). This gap is relevant to other findings made by Dr. Shane, including that the City failed to address its trend of almost always rejecting external misconduct complaints and that the City directed too many resources to investigating minor internal matters and not enough resources to more serious allegations. Ex. A at 53, 72. Defendants do not explain why Dr. Shane needed to explicitly compare the ratio of internal and external sustained complaints from other cities to reach valid conclusions.

Second, Defendants claim that Dr. Shane provides no basis for concluding that CPD should have but did not prioritize common complaint categories. Dkt. 326 at 15-17. Defendants are wrong because Dr. Shane has thoroughly described his basis. Dr. Shane noted that from 1999-2003, the CPD was more than ten times as likely to sustain an operation/personnel violations allegation—typically a minor infraction—than any other allegation type. Ex. A at 53. Dr. Shane further noted that the City was warned about the risks of investing too many resources in investigating minor administrative complaints, but as revealed by his data analysis (and an admission by the City's 30(b)(6) witness), the CPD did nothing to shift more resources towards more serious allegations. Ex. A at 53; *see* Ex. F (Moore 30(b)(6) Dep.) at 178:16-22 (Q: "As far as you know, was there any effort to shift the allocation of resources during this time period away from more minor administrative investigations and towards more serious allegations of misconduct? A: "No. I don't -- I don't think there was a shift in manpower at the -- at Internal Affairs."). Nor is Dr. Shane's analysis limited to excessive force (which Plaintiffs acknowledge is not one of their allegations in this case). Dr. Shane's point is broader: CPD was on notice that the most frequent complaints against its officers reflected potentially criminal action, actions

relating to legitimacy and community perception, and Fourth Amendment violations; nevertheless, CPD focused on minor administrative allegations and declined to invest the necessary resources into addressing more common and more serious complaints, leading to insufficient and below-standards investigations. Ex. A at 30. Thus, Dr. Shane has not failed to provide the basis for his opinions; instead, Defendants have failed to address the reasons Dr. Shane has provided.

IV. Dr. Shane has a valid basis to opine that the deficiencies in CPD's disciplinary and supervisory systems would be expected to cause the specific officer misconduct in this case.

Defendants contend that Dr. Shane cannot render a "moving force" opinion that the CPD's failures would be expected to cause corruption, extortion, and fabrication and suppression of evidence because he has not "attempt[ed] to causally connect the alleged deficiencies with the specific officer misconduct in this case." Dkt. 326 at 20. That is wrong, because Dr. Shane has ample basis (which he explains) for why the failures of supervision and discipline he discusses would be expected to lead to corruption. For example, he explained why the hazards of drug policing—including involvement with illicit drugs, financial temptations, limited oversight, and the high stresses of the work—increase the risks of corruption in the absence of specific accountability measures, citing academic publications in support of his opinion. Ex. A at 78-83. Dr. Shane also explicitly discussed the direct link between prompt and thorough internal affairs investigations and accountability among police officers, writing, "When adverse behaviors are not addressed promptly and effectively, they can be taken for granted, perpetuated, and eventually normalized within the department; this is commonly known as normalized deviance, and has been the focus of police corruption research for several decades." *Id.* at 100. Here again, Dr. Shane cited multiple academic publications describing and explaining how corruption is

normalized and socialized within policing. *Id.* at 100 n.84. Defendants cannot recast Dr. Shane's opinion as mere say-so by ignoring his analysis and the sources he cited.

Defendants also claim that such an opinion will unduly prejudice the Defendant Officers. In trying to make this point, Defendants strawman Dr. Shane's opinion by claiming he will testify that "the Defendant Officers were inevitably going to end up corrupted by virtue of the simple [fact] that they were involved in narcotics-related cases." Dkt. 304 at 15. But Dr. Shane was clear that he was discussing a well-known and documented risk factor requiring preventive action and could not say (and did not say) that all narcotics officers would necessarily succumb to corruption. Ex. C (Shane Dep.) at 289:9-209:18. As discussed above, that is a key risk that the City's own Commission on Police Integrity identified as a top priority for the City (and the City did nothing to address). This evidence is central to Plaintiff's *Monell* claims and should not be excluded.

Defendants also argue that Dr. Shane's opinion is improper because it is "character evidence" and that he cites "no evidence that *these* Defendant Officers were susceptible to any of these temptations to engage in dishonest acts or improper or illegal activity." Dkt. 304 at 13. To start, that isn't true. There is a lot of evidence on that point and Dr. Shane identifies it. For example, Defendant Mohammed was caught taking bribes in or around December 2007, as acknowledged by the then-head of CPD's Internal Affairs Division, Debra Kirby. Ex. A at 88. As early as 1999, Defendant Watts's name had surfaced as a "corrupt cop" who "was ripping off drug dealers and selling drugs," according to a former CPD officer who worked in internal affairs. *Id.* As is well-documented in the record, Defendants Watts and Mohammed were indicted for stealing money they believed to be drug proceeds and pleaded guilty to federal felony charges for that offense. Further, as discussed below in Section VI, Defendant Jones admitted to

lying under oath about his participation in arrests during his team on Defendant Watts's squad, and Defendant Mohammed admitted that the entire team's practice was to falsely list officers on arrest reports who had not in fact participated in those arrests. And as a group, the Defendant Officers racked up hundreds of citizen complaints of abusive behavior, including complaints that they framed innocent people and stole money from civilians.

Putting aside the abundant evidence that the Defendant Officers did, in fact, engage in dishonest acts and improper and illegal activities, the purpose of Dr. Shane's testimony is not to opine on the Defendant Officers' mental states but instead to help the jury understand the context and known risks of narcotics policing. This evidence is related to the City's obligation (and failure) to guard against corruption in narcotics units. *Cf. United States v. Foster*, 939 F.2d 445, 451–52 (7th Cir. 1991) (holding expert testimony on dynamics of narcotics trafficking and investigation would help jury, which was unlikely to be familiar with that specialized area).

V. There is no reason to bar Dr. Shane from discussing the relevant sources he reviewed.

Defendants seek to bar 12 pages of opinions contained in Dr. Shane's report at pages 72-83 because the evidence there—including evidence derived in part from the reports discussed in Section II(A) above—is too prejudicial to the City. Dkt. 326 at 21-23. This issue would be better addressed closer to trial when the Court has a full picture of the evidence that will likely be presented to the jury. If, however, the Court rules on the merits of this issue now, however, Defendants' request to limit Dr. Shane's testimony should be denied (and Defendants should not be allowed to relitigate the issue again at the *in limine* stage).

As discussed in Section II(A), the Police Accountability Task Force report is admissible as containing factual findings from a public office's legally authorized investigation and as the statement of an authorized person or agent of an opposing party. The City's own conclusion

through that Task Force, in 2016, was that "CPD's history is replete with examples of wayward officers whose bad behavior or propensity for bad behavior could have been identified much earlier if anyone had viewed managing this risk as a business imperative." Ex. A at 74. Dr. Shane discusses the case of Jerome Finnigan, who was indicted on criminal charges in 2006, and who was the subject of 89 CRs between 2000 and 2008, and 161 CRs in his career. *Id.* at 74-75. The Report acknowledges that CPD never attempted to "intercede in [Finnigan's] obvious pattern of misconduct." *Id.* at 75. This is a direct example of CPD's failed supervisory and disciplinary systems, and Defendants offer no reason why Dr. Shane may not rely on the City's own report as evidence on that point. Dr. Shane is not "parroting" the Report; he is relying on it as one source among many of the City's disciplinary and supervisory practices.

Defendants complain that the four reports they take issue with (the Metcalfe Report, Commission on Police Integrity Report, Police Accountability Task Force Report, and Department of Justice Report) "unfairly prejudicial . . . in particular [to] the Defendant Officers" and will lead to a parade of horribles—an extensive debate over the scope and nature of these reports and the City's institutional response to them (including, for some reason, the consent decree put in place following the DOJ Report). Dkt. 326 at 22-23. There is no reason why the evidence would play out that way. Dr. Shane will provide his opinion and may explain that he formed his understanding of the City's practices through numerous documents, including the reports of City-appointed task forces. The Court will make trial rulings about relevance and proportionality and the parties will be bound by those rulings. But Dr. Shane is capable of efficiently describing the basis for his opinion without bringing in irrelevant information. And it is unfair for Defendants to ask the Court to make proportionality rulings at this stage, without the

benefit of the pretrial materials the parties will provide or the context of any rulings the Court may make before that point.

The Defendants further overreach by asking the Court to exclude the entirety of Dr. Shane's opinions from pages 72 to 83 of his report. That section cites dozens of articles and reports addressing the relevant history of CPD's disciplinary and supervisory systems and is by no means limited to the four sources Defendants take issue with. For example, it includes a detailed discussion of standards for early warning systems and the City's failure to deploy an adequate system of that kind. Ex. A at 76-78. It also discusses the City's failures to proactively monitor groups or units of officers on a proactive basis or to focus such supervision on the most at-risk units. *Id.* at 78-83. The Court should reject Defendants' premature and inappropriately broad request to bar this testimony.

VI. Dr. Shane's testimony related to the COPA re-investigation is reliable and appropriate.

Dr. Shane offered numerous opinions relating to evidence that Defendant Alvin Jones, and other Defendant Officers, claimed to conduct two separate arrests in separate locations at the same time, and concluded that this evidence could have been discovered back in 2005 if the City had conducted an up-to-standards internal affairs investigation. Ex. A at 90-96. Defendants accuse Dr. Shane of calling Defendant Jones a liar (usurping the jury's role) and offering "thinly veiled" credibility assessments of his testimony. Dkt. 304 at 7-11. But in fact, Defendant Jones **admitted** that he lied under oath in connection with the events under discussion; Dr. Shane can take note of that admission without drawing any undue credibility determinations. Further, Defendants entirely ignore the nature and significance of Dr. Shane's opinion: that the City ignored evidence easily available to it and failed to supervise or discipline the Officer Defendants despite their easy-to-find misconduct.

A. Dr. Shane developed relevant opinions relying in part on the COPA reinvestigation of Plaintiffs' allegations.

The Officer Defendants were the subject of hundreds of citizen complaints, dozens of which included allegations similar to Plaintiffs'. Ex. A at 133-158. Plaintiffs made contemporaneous complaints that the Officer Defendants had fabricated evidence against them and extorted them. *Id.* at 12-13. However, the City failed to thoroughly investigate those complaints, including failing to collect contemporaneous activity reports from the officers involved in Plaintiffs' December 2005 arrests and failing to conduct in-person questioning of the Officer Defendants regarding those arrests. *Id.* at 94-95. A thorough internal investigation was not done until nearly two decades later, when the Civilian Office of Police Accountability ("COPA") investigated whether members of Watts's team who were still employed by the City had participated in fabricating evidence against Mr. Baker and Ms. Glenn. *Id.* at 90-96.

It is understandable that Defendants want to limit or exclude COPA's investigation, as the results are devastating for the defense. As Dr. Shane notes, multiple officers who claimed to have participated in Baker and Glenn's arrest also claimed to be involved in a simultaneous arrest at a different location. The below table and diagram from COPA's summary of its investigation show the conflicting details:

C. SUMMARY OF SIMULTANEOUS SURVEILLANCE AND ARRESTS

December 11, 2005		
	511 East Browning Avenue	574 East 36th Street
Time of Arrival	12:00 p.m.	12:00 p.m.
Time of Arrest	12:12 p.m.	12:08 p.m.
Time of Transport	12:30 p.m.	12:18 p.m.
Arrested	Ben Baker and Clarissa Glenn	Willie Robinson, Michael Henderson, Louis Moore, Larry Pulley, Laurence Little
Arresting Officers	Alvin Jones and Kallatt Mohammed	Kallatt Mohammed and Elsworth Smith Jr.
Assisting Officers	Elsworth Smith Jr., Robert Gonzalez, Manuel Leano	Alvin Jones
Additional Witnesses	David Soltis, Ronald Watts	
Approving Supervisor	Ronald Watts	Ronald Watts
Testimony	Alvin Jones (Grand Jury)	Elsworth Smith Jr. (Preliminary Hearing)
		Alvin Jones, Elsworth Smith Jr. (Motion to Quash Arrest)
	Sgt. Jones was in the vicinity of 511 East Browning Avnue on December 11, 2005, at approximately 12:12 p.m. Sgt. Jones observed Ben Baker commit a traffic violation, and he observed Clarissa Glenn hand a bag of suspect narcotics to Ben Baker.	On December 11, 2005, at approximately 12:00 p.m., Officer Smith was in the vicinity of 574 East 36th Street conducting a narcotics investigation with his partner, Officer Mohammed. They were in contact with surveillance officer Alvin Jones, who was with another partner. Sgt. Jones radioed to the enforcement team that he saw a Black male conducting narcotics transactions in front of 574 East 36th Street.

Figure 1. Combined Information from Reports of Simultaneous Arrests. Police personnel common to both sets of arrests appear in red.

Ex. O (COPA Log 1087742) at 14. As the below diagram shows, the Defendant Officers claimed, and represented in their reports, that Defendant Jones assisted in an arrest at 12:08 pm at 574 East 36th Street, even though Jones also claimed he was then conducting surveillance in support of a 12:12 pm arrest at 511 East Browning Ave:

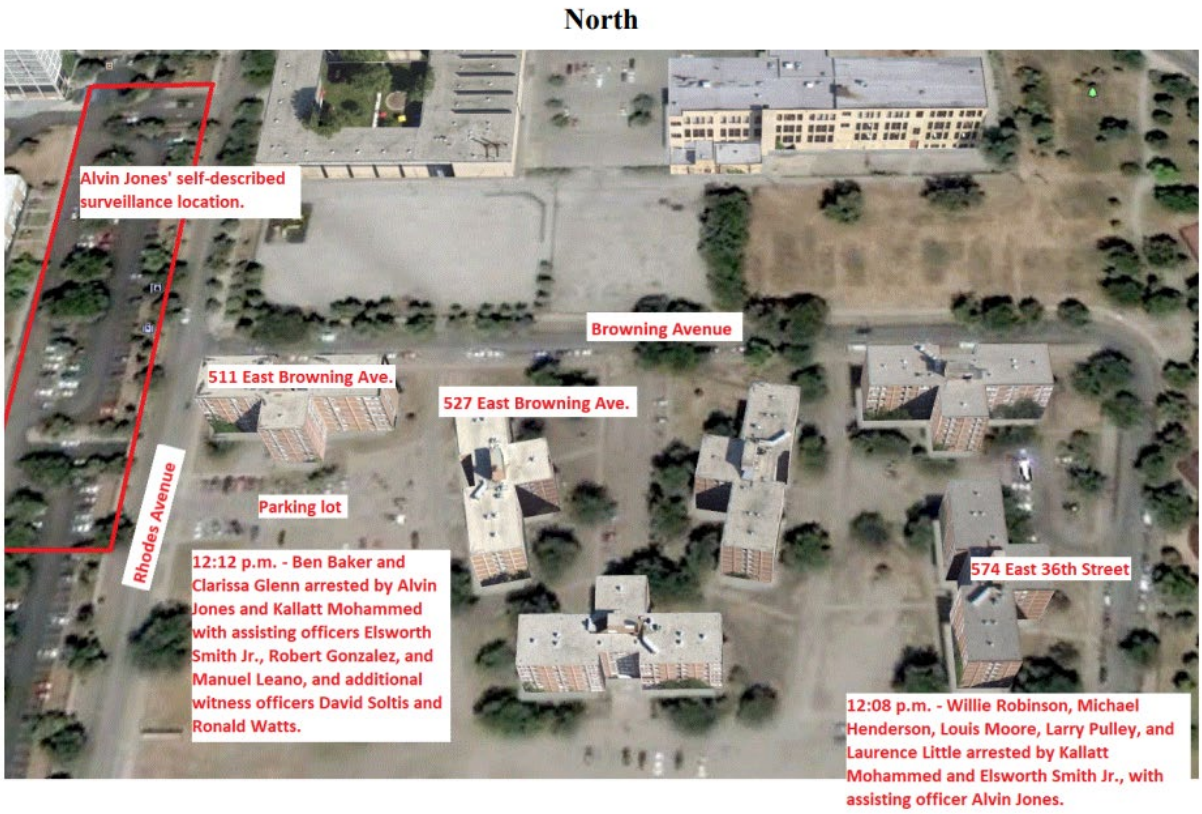

Figure 3. COPA Demonstrative Exhibit.

Ex. O (COPA Log 1087742) at 28. This is not a credibility issue, but simply the laws of physics: a person cannot be in two places at the same time. Confronted with this evidence, Alvin Jones admitted to lying under oath in connection with the simultaneous arrests, as documented in the log of COPA Report number 1087742:

COPA: Are you saying that you provided false testimony when it comes to [the 574 E. 36th Street] arrest as opposed to this [the Baker and Glenn arrests] one?

Jones: Yes.

COPA: You lied?

Jones: I didn't know I was lying, sir, but yes.

COPA: You agree now that it was probably a false statement?

Jones: Yes.

COPA: And that this arrest was likely made up?

Jones: I won't say it was made up. I'm saying it maybe didn't occur at that time.

COPA: How about it didn't – you weren't the surveillance officer and you actually didn't see the hand-to-hand narcotics transaction?

Jones: Maybe I didn't.

COPA: Is that the truth?

Jones: Yes.

COPA: That is the truth?

Jones: Yes.

COPA: That you lied under oath when it came to 574 East 36th Street?

Jones: Yes.[84]

Ex. O (COPA Log 1087742) at 17. As Dr. Shane explains, the purpose of his discussion is to explain the consequences of the City's failure to conduct a complete and thorough investigation of Plaintiffs' allegations back in 2005. This evidence—that multiple officers involved in Plaintiffs' arrests had claimed to be in two places at once—was available in 2005, when the arrest reports were written; it was available when Plaintiffs made their contemporaneous complaints that they had been framed, and it was available the entire time that Plaintiffs lived with their wrongful convictions on their records.

If Plaintiffs' original complaint to CPD had been thoroughly investigated in accordance with generally accepted standards, the investigators would have or could have identified these inconsistencies. Ex. A at 94. Dr. Shane found the same pattern in several other COPA investigations looking at evidence from past arrests and questioning involved persons. *Id.* at 94.

Notably, Defendant Mohammed has testified that Defendant Watts instructed his team to list all officers on the team as participants in arrests even if some where not present. *Id.* at 107. And as Dr. Shane notes, there is evidence that this practice was not limited to the Officer Defendants, but that other units followed the same practice of falsely listing team members on arrest reports. *Id.* at 95. Dr. Shane continues to discuss other organizational shortcomings, such as the absence of integrity testing, performance evaluations, transfers or dissolution of the problematic unit, tolerance of "sweeps" involving widespread false arrests, failures to supervise the reports signed by Defendant Watts, and failures to investigate complaints against the Defendant Officers consistent with generally accepted standards. *Id.* at 96-106. Here, as before, Dr. Shane opines on how deficiencies in the investigations against the Defendant Officers deviated from generally accepted standards.

B. Dr. Shane did not rely on improper credibility assessments

Placed in the context of Dr. Shane's full opinion, Defendants' accusations are little more than name-calling. The above summary gives the lie to Defendants' claim that "virtually everything Dr. Shane offers about the December 11, 2015 arrest is based on his biased assessment of officer Jones and his involvement in that arrest." Dkt. 304 at 9. That's just not true and Dr. Shane's report reflects as much. Ex. A at 90-106.

Frankly, it is not clear why Defendants believe that Dr. Shane made credibility determinations and "reject[ed]" Defendant Jones's "reasonable explanation" for the inconsistent reports. Dr. Shane's report does not include an assertion about whether Defendant Jones participated in fabricating evidence or not, and as he said at his deposition that "my opinion was not to determine whether or not [the Plaintiffs] were framed or whether or not they were wrongly arrested." Ex. C (Shane Dep.) at 91:22-92:5. His opinion in this section is about the evidence that could have been discovered, but wasn't, because of failures by the Chicago Police Department.

Plus, Dr. Shane did not "ignore" Defendant Jones's "reasonable explanation" that officers could have just made a mistake; he included it in his summary alongside Jones's admissions that it was impossible for both arrests to have been conducted at once and that his participation in the 574 E. 36th Street arrests "may not be the truth." Ex. A at 93. The jury will decide what evidence to believe. If the jury believes Plaintiff's version, then Dr. Shane's testimony about how the City's and the Defendant Officers' actions fell short of generally accepted standards will help them to decide liability issues.

Dr. Shane is clear that he relied on the summary contained in a report from COPA and did not review all of the materials from that investigation. If Defendants believe that those further materials undercut Dr. Shane's opinion, they are welcome to cross-examine him at trial (though the City of Chicago may find it difficult to do so because COPA, which made the relevant findings, is a part of the City and not an independent agency). But Defendants have identified no such materials that would undermine the reliability of Dr. Shane's conclusions and may not raise them for the first time on reply. *United States v. Kennedy*, 726 F.3d 968 n.3, 974 (7th Cir. 2013). And even if Dr. Shane had accepted one party's version of events as true, it is well established that "an expert may take one or the other party's version of disputed facts as true when offering an opinion." *Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1067 (N.D. Ill. 2018), opinion clarified, No. 12-CV-04428, 2018 WL 11469072 (N.D. Ill. May 17, 2018); *Sanders v. City of Chicago Heights*, No. 13 C 0221, 2016 WL 1730608, at *6 (N.D. Ill. May 2, 2016).

Dr. Shane's opinion is appropriate, goes to the City's failure to adequately supervise its officers, and the jury will be perfectly able to weigh it alongside the other evidence presented to them. If they decide that the many documented contradictions were all innocent mistakes, they can weigh Dr. Shane's opinion accordingly.

VII. Dr. Shane's opinions on Plaintiffs' arrests are reliably formed and relevant.

As Dr. Shane noted, Defendant Kallatt Mohammed has testified that Defendant Watts and the other Officer Defendants had a practice of listing the entire team as participants in arrests even if some members were not present. Ex. A at 107. In effect, the Officer Defendants engaged in "open casting" for their drug arrests—by failing to document who did what, any officer could play any role at trial and claim to have been involved even if they were not. As Dr. Shane opined, this method of writing arrest reports violated nationally accepted standards because such reports are not valuable to the prosecutor and are easily falsified. *Id.* at 108-10.

Dr. Shane noted that although **a** signature for Defendant Mohammed appears on Plaintiffs' December 11, 2005 arrest report, it is not Defendant Mohammed's signature, and the evidence indicates that Defendant Jones signed Mohammed's name without in any way indicating he was doing so. *Id.* at 108. Worse, Mohammed did not actually witness Plaintiffs' arrests on December 11, 2005, even though his signature as the "second reporting officer" indicated that he did. *Id.* at 108. The December 11, 2005 vice case report—a second official report written in connection with that arrest—also fell short of generally accepted standards because it lacked detail, was incomplete, and continually failed to specify what, specifically, was done and witnessed by the involved officers. Instead, it repeatedly referred to those officers as "R/O's." *Id.* at 108-09. The result, again, was open casting—any officer could fill in at the prosecution and claim responsibility for witnessing events or taking actions, whether or not they actually did. And the vice case report from March 23, 2005, documenting Plaintiff Baker's arrest, suffered from the same deficiencies. *Id.* at 109 n.87.

Like the vice case report, the December 11, 2005 arrest report falsely attributed knowledge and participation to Defendant Mohammed, who according to Defendants was not even involved in that arrest. *Id.* at 109. And as discussed above, Defendants Jones and

Mohammed were documented as being involved in separate arrests in a separate location at the same time as Plaintiffs' arrests—a physical impossibility. *Id.* at 109-10. Defendant Jones, in particular, testified in court for one of those other arrests that he was conducting surveillance at a time that would have conflicted with his purported involvement in Plaintiffs' arrests. *Id.* at 110. When confronted, Jones admitted that he had provided false testimony and that the reports documenting his near-simultaneous involvement could not have both been accurate. *Id.*

Dr. Shane applied his knowledge as a former police investigator and supervisor, and his knowledge of generally accepted standards, to form opinions about the adequacy of these reports compared to generally accepted standards. Ex. A at 6-10; Ex. C (Shane Dep.) at, *e.g.* 325:9-17; 327:6-328:22. Defendants do not challenge Dr. Shane's qualifications to articulate or apply generally accepted standards for report-writing or narcotics investigation.

A. Dr. Shane can opine that the reports he reviewed do not meet accepted standards because they obfuscate the details of the arrest to prosecutors.

Defendants take issue with an axiomatic principle of criminal investigations: police officers write police reports knowing they will be used by prosecutors. Defendants ask the Court to bar Dr. Shane from opining that the police reports written by Defendants obfuscated what each officer did, and therefore, would not have been useful to prosecutors. Dkt. 304 at 6-8.

Defendants ignore that Dr. Shane has provided ample support for his opinion that when officers write incomplete, misleading, and false reports, they impede and misdirect criminal prosecutions. As Dr. Shane notes in his report, "one of the primary goals of a police report is to serve as an aid for prosecutors to use when conducting criminal proceedings for the arrest." Ex. A at 107. He further relies on standards from the International Association of Chiefs of Police that elucidate what content and level of detail is necessary to meet accepted standards in police

reports. *Id.* There is no merit to Defendants' contention that Dr. Shane, an experienced police officer and scholar, does not understand how police reports are used by prosecutors.

Defendants also argue that Dr. Shane should not be allowed to opine that Defendants may have hidden evidence of their "two places at once" arrests on December 11, 2005 because it is "complete speculation" and he is not qualified because he is not a prosecutor or criminal defense attorney. Dkt. 304 at 8. But again, police officers like Dr. Shane are trained in the duty to document and disclose exculpatory evidence and Dr. Shane can opine that the apparent failure to document known facts violates accepted standards. Moreover, it is not speculation to think that if the officers had previously disclosed that they claimed to be in two places at once, there would have been documentation of that point before COPA discovered it when re-investigating the circumstances surrounding Baker and Glenn's arrest. Ultimately the jury will decide what evidence was withheld, but it is entirely proper for Dr. Shane to comment on deviations from generally accepted standards. *Jimenez*, 732 F.3d at 721–22.

B. Dr. Shane's opinions on Plaintiffs' December 11, 2005 and March 23, 2005 arrests are relevant and admissible.

Defendants make glancing arguments to exclude Dr. Shane's opinions regarding the above-discussed arrests and associated reports, but their contentions lack merit. Dkt. 304 at 6, 12. As discussed, Dr. Shane described generally accepted standards in police investigation and report-writing and described how the Defendant Officers' actions deviated from those standards. That is a standard methodology and a bread-and-butter police practices opinion, and is relevant to the jury making fact determinations about the Defendant Officers' states of mind—a required element of Plaintiff's claims. *Jimenez*, 732 F.3d at 721; *see also Abdullahi v. City of Madison*, 423 F.3d 763, 772 (7th Cir. 2005) (discussing relevance of deviation from standard police practices to state-of-mind opinions).

There is also nothing improper with Dr. Shane comparing testimony by the Defendants to their reports. Dr. Shane observes that Defendant Jones testified that Defendant Mohammed did not participate in the arrest of Plaintiffs on December 11, 2005, but the arrest report says that Mohammed did. Ex. A at 109. That is relevant to Dr. Shane's evaluation of whether the arrest reports and the arrests violated generally accepted standards. Of course, it will be for the jury to determine whether the Officer Defendants lied in their official reports. But Dr. Shane is certainly entitled to connect the dots, and courts have admitted substantially similar testimony. *See Ezell v. City of Chicago*, No. 18 C 1049, 2023 WL 5287919, at *20 (N.D. Ill. Aug. 16, 2023) (admitting police practices expert's opinion identifying conflicts between evidence in the record and assessing them in the context of generally accepted practices); *Andersen*, 454 F. Supp. 3d at 815-16 (admitting expert testimony concluding that police reports lacked detail sufficient to comply with nationally accepted standards). This testimony is not "obvious to the layperson," as the standards for police reporting, and whether Defendants met those standards, will be a contested issue at trial.

For the same reason, the Court should not exclude Dr. Shane's opinion about Plaintiff Baker's March 23, 2005 arrest. Dr. Shane noted that the March 23, 2005 vice case report for Mr. Baker's arrest lacked sufficient detail, was incomplete, and failed to discuss who saw what and who was involved among the officers. Ex. A at 108-09 & n.87. For the same reasons given above, Dr. Shane applies relevant expertise in rendering this opinion and it will help the jury.

VIII. Dr. Shane's opinions are not unduly prejudicial.

Defendants contend that Dr. Shane's opinions are too unfairly prejudicial for the jury to hear. Dkt. 304 at 14-15. Their arguments lack merit and are arguably premature; if the Court takes them up at this time, Defendants should not get a re-do at the *in limine* stage.

Defendants contend that Dr. Shane should not be allowed to provide any opinions based on COPA's summary of its own investigation (which is an official investigative report of Defendant City of Chicago) because that summary supposedly included statements from Defendant Jones that were taken out of context, violated COPA's rules, violated state law, and violated the union contract—and because Dr. Shane "fail[ed] to consider Officer Jones' version of events." Dkt. 304 at 15. Defendants have entirely failed to connect the dots: they have not explained how any of the rules they cite were broken or why, even if they were, that would undermine Dr. Shane's reliance on Mr. Jones's statements. Statements made by party-opponents, of course, are admissible. Fed. R. Evid. 801(d)(2)(a). And experts are permitted to rely on disputed facts, so long as there is support in the record for those facts. *See*, *e.g.*, *Simmons,* 2017 WL 3704844, at *10. Jones unquestionably made the admission at issue here, so there is certainly support in the record for Dr. Shane to rely on that admission even if Jones later tried to change his testimony. Beyond that, parties are required to support their arguments with citations to law and evidence, which Defendants have failed to do. *See Braun v. Vill. of Palatine*, 495 F. Supp. 3d 616, 618 (N.D. Ill. 2020), aff'd, 56 F.4th 542 (7th Cir. 2022) (emphasizing that a party is required to provide arguments and legal citations).

The same holds for Defendants' cursory argument that all reliance on the COPA investigations should be barred because of the risk that the jury "may conflate the employment-related issues of the COPA investigation with [Plaintiffs'] Constitutional and state law claims." Dkt. 304 at 15. It appears that Defendants are trying to confuse the issues here. COPA is an agency within the City of Chicago that investigates alleged police misconduct. Although there may be employment ramifications for officers who commit misconduct, COPA does not investigate employment disputes. Here, COPA investigated Plaintiffs' civilian complaint about

police misconduct during Plaintiffs' wrongful arrests that are at issue in this case. Just like Defendants' deposition testimony may be used in this case, Defendant Jones's statements, as recorded in the COPA investigation, are admissible. Defendants offer no reason to think the jury will be confused by admission of such a statement. It can be presumed that the jury will follow the Court's instructions. *United States v. Warner*, 498 F.3d 666, 683 (7th Cir. 2007).

Finally, Defendants argue that Dr. Shane should not be allowed to testify that officers on *Brady/Giglio* lists are not called to testify because of their dishonesty. The Court should wait to take that issue up until the *in limine* stage. Dr. Shane did not testify or opine, as Defendants accuse him, that the specific officers in this case were included on that list because of their dishonesty. And Dr. Shane's experience as a police officer and policing expert allows him to understand, in general, how and why officers are placed on prosecutors' *Brady/Giglio* lists. If this issue proves relevant, Dr. Shane should be allowed to opine on it.

CONCLUSION

Dr. Shane delivered a careful and well-reasoned opinion that will help the jury resolve issues central to Plaintiffs' claims. The Court should deny Defendants' *Daubert* motions against him.

Respectfully submitted,

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