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

Lionetta White, Special Administrator of the Estate of LIONEL WHITE, SR.,	)	
Plaintiff,	)	Case No. 17 C 2877
v.	)	Judge Sara L. Ellis Magistrate Judge Laura K. McNally
CITY OF CHICAGO, RONALD WATTS, ALVIN JONES, ELSWORTH SMITH JR., KALLATT MOHAMED, MANUEL LEANO, BRIAN BOLTON, ROBERT GONZALEZ, and DOUGLAS NICHOLS,	)	
Defendants.	)	

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

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INTRODUCTION

Plaintiff retained Jon Shane, Ph.D. to offer expert opinions in support of Plaintiff's *Monell* allegations regarding the quality of the City's police disciplinary investigations and supervisory systems. *See* Ex. 1, Pl.'s Fed. R. Civ. P. 26(a)(2) Disclosures incorporating by reference Jon Shane Report disclosed in *Baker/Glenn v. City of Chi.*, 16-cv-5120 on April 1, 2024 ("Rpt."), at 11-12 (Ex. 2), and Ex. 3, Jon Shane Supplemental Opinion disclosed in *Gipson v. City of Chi.*, 18-cv-5120 on June 3, 2024 ("Suppl. Rpt."). Shane's opinions regarding the City's disciplinary system should be barred because the opinions are based upon an unsupported and unreliable method of analyzing complaint investigations that is untested and not used by other experts in the field of internal affairs investigations. Shane, himself, lacks the necessary knowledge and experience in the field to support his methodology and improperly attempts to bolster his conclusions by discussing prejudicial, cherry-picked reports alleging miscellaneous, unrelated CPD misconduct from 34 years before Plaintiff's arrest and over a decade after. Shane's conclusions will not assist the trier of fact, are not supported by sufficient facts or data, and do not apply a reliable method in a trustworthy manner to the facts of this case. For these and the reasons set forth below, Shane's *Monell* opinions should be barred.

LEGAL STANDARD

The admissibility of expert evidence is governed by Federal Rules of Evidence 702 and 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*, 509 U.S. 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. 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 proposed testimony 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 opines 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." Rpt., at 11. He 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.
- And, overall, the data reveals that the CPD's accountability systems (i.e., supervision and personnel investigations) are broadly ineffective for detecting misconduct and holding officers accountable when they violate CPD policy.

Rpt., at 11-12. These opinions 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. CR files contain the records of the investigation into those complaints. Shane states he used: (1) his training and experience, (2) the data he was supplied by Plaintiff's counsel which consisted of a random sample of CR files from 1999-2011, and (3) data extracted from the CR sample by "coders" in accordance with Shane's untested data-coding process as the basis for his opinions. *See* Rpt., at 13. However, Shane lacks relevant experience, fails to utilize a reliable methodology to opine on the quality of the City's police disciplinary investigations, and relies on irrelevant data about generalized or unrelated allegations of misconduct by CPD well outside the relevant timeframe to draw his conclusions. Shane's opinions are also 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 that although expert possessed knowledge of false confessions and coercive interrogations, there is no indication he has researched the specialized area of coercive interrogations and false confessions drawing on the principles of rational decision making, perception, and interpersonal influence, or that he has 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.").

The "question" Shane purports to answer is whether CPD failed systemically to conduct investigations of police misconduct in accordance with nationally accepted standards and in a way that "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." Rpt., at 11. Importantly, Shane does not claim that CPD's *policies* failed to comply with nationally accepted

standards related to the investigation of internal affairs complaints. Ex. 4, Jon Shane Apr. 23, 2024 Deposition ("*Baker* Dep."), at 184:18-23; 185:17-21. He is critical of CPD's *practice*, explaining at his deposition that nationally accepted standards or policies, including those of the CPD, require investigations to be "complete" and "thorough." *Id.*, at 186:2-12. However, he opines, CPD's internal affairs investigations are not complete and thorough because they are missing what he refers to as "component parts." *Id.*, at 186:2-18. Shane relies on his own say-so as to what constitutes a complete and thorough investigation, including the need for each investigation to include his identified "component parts." Yet, Shane is not qualified to render generalized opinions of what constitutes a "complete and thorough" internal affairs investigation and, importantly, the expected causal impact of any such investigative deficiencies on narcotics officers' behavior.

Shane's background is in criminal justice. His baccalaureate, Master of Arts, and doctoral degrees are each in criminal justice. Rpt. at 159; Ex. 4, *Baker* Dep. at 10:8-13. He is currently a professor of criminal justice at John Jay College of Criminal Justice. Rpt., Appx. C, 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 (March 1989-December 2005). *Id.*, at 1-2; Ex. 4, *Baker* Dep., at 13:21-23. Shane never worked as a supervisor or investigator in internal affairs (Rpt., at 159-170, Ex. 4, *Baker* Dep., at 4-15, 17). Nor has he ever investigated a police officer for corruption, "unlawful conduct," or "anything criminal." Ex. 5, Jon Shane Deposition in *Waddy v. Chi.*, 19 L 10035, on Aug. 29, 2023 ("*Waddy*" Dep.), at 58:12-59:8, 61:7-14.

Shane is not qualified to render opinions about the nature and sufficiency of internal affairs investigations. Shane claims he has experience in "internal affairs" based solely on some instances when he was a sergeant at the Newark Police Department and was asked to investigate allegations of officer misconduct that the Newark Police Department determined did *not* need to be investigated by their Internal Affairs Division. *Baker* Dep., at 17:16-24. This included occasions when Shane was

delegated to investigate "some theft investigations," a car accident investigation, and possibly "some minor things like demeanor complaints[1]." *Baker* Dep., at 18:1-19:12. Other rule violations that he was tasked with investigating in his capacity as a sergeant or lieutenant included, tardiness, care of property, and officers' presence in "corruption-prone locations." *Waddy* Dep., at 60:19-61:6. Even crediting Shane's attempt to categorize his investigation of these personnel issues as "internal affairs experience," it provides no support for Plaintiff's claim that Shane is qualified to offer opinions regarding the quality of CPD's entire disciplinary system.

Shane also lacks experience and/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. The opinions rendered in this case regarding the reasonableness of the CPD's internal affairs investigations and the impact of those investigations on the conduct of its officers 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 individually to see if he has the adequate education, skill, and training to reach them"); *see also Sanchez v. City of Chi.*, No. 18 C 8281, 2024 WL 4346381, at *8 (N.D. Ill. Sept. 20, 2024) (Hunt, J.) (barring expert's opinions that defendant officers' failure to follow the entities' policies and procedures was the proximate cause of plaintiff's injuries and that the plaintiff would still be alive but for those actions as outside the expert's expertise). In sum, Shane does not have the requisite expertise to examine disciplinary investigations, determine their quality, and offer opinions as to their sufficiency.

[1] Shane defines "demeanor complaints" as "the way in which officers interact with the public. They way they speak to somebody." His examples include using foul language, ethnic or racial slurs, inappropriate hand gestures. Ex. 4, *Baker* Dep., at 18:12-19:12.

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

II. Shane Relies Upon Irrelevant, Immaterial, and Insufficient Data and Documents to Provide a Reliable Foundation for His Opinions.

Without the requisite personal experience in police disciplinary investigations himself, Shane presents certain statistics that he asserts show the City's investigations into police misconduct are lacking. Shane concludes that "clear patterns of allegations" emerged across various years of several types of offenses, supervisors should have known about these patterns, and they should have taken steps to stop officers from engaging in 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 at detecting misconduct and holding officers accountable when they violated 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 2006 with over 40% the data coming from 2007 to 2011. Moreover, his use of certain information from the CR files as datapoints for his statistical analysis and his process of having individuals hired by Plaintiff's counsel categorize the data from the CR files, 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. He did not read the files himself. Rather, he relied on others (who were not well-trained) to subjectively assign characteristics he deemed "of interest" from the CR files.

A. Shane's data, which far exceeds any relevant time frame, is not properly considered to make conclusions about police practices in April 2006.

The first issue with Shane's methodology is his reliance on data 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 data from a sample of 1,265 CR files. By using the period of 1999 to 2011, Shane improperly relies on a wealth of data and sources outside the relevant period to draw his conclusions. The arrest underlying this case occurred in April of 2006. The data following April 2006 is not a reliable indicator of the City's "widespread policies" at the time Plaintiff alleges the wrongdoing occurred, and only policies then in effect could have caused any alleged harm to Plaintiff.

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. *Baker* Dep., at 184:18-185:21. Here, Plaintiff claims that his constitutional injuries were caused by a widespread practice, so he 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 Chi.*, 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 arrest at issue in this case occurred in April 2006, making the relevant time frame April 2001 to April 2006. Here, Plaintiff widens the time period by over seven years.

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 Chi.*, No. 18 C 2952, 2020 WL 1874099, at *5 (N.D. Ill. Apr. 15, 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 April of 2006 is not a reliable or appropriate method of determining what caused the harm to Plaintiff here, or a reliable indicator of what notice the City had prior to Plaintiff's 2006 arrest 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.

Shane also cites numerous sources issued many years (even more than a decade) before and after his arrest 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 this material is irrelevant in time and scope to Plaintiff's case arising from his arrest in 2006 (approximately 34 years after the Metcalfe report, nine years after the CPI report, and ten and 11 years before the PATF and DOJ reports, respectively). Shane's reliance on materials from years before and years after Plaintiff's 2006 arrest 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 2006 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 34 years before a 2006 event or eleven years after a 2006 event supports that there was a widespread practice at the time of Plaintiff's 2006 arrest, or that the City's actions or inactions in 1972 or 2016 caused the events. This evidence is far too remote in time to have any bearing on the arrest at issue.

Over half of Shane's data is outside the relevant timeframe, and the majority of the additional sources he cites to draw his conclusions are from many years before and after 2006, 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 did not have a reliable basis for deciding which characteristics of the CR files warranted inclusion in his analysis, nor was the characterization of data by others (in accordance with Shane's instructions) reliable.

To conduct a proper statistical evaluation of the quality of the CR files, Shane had to determine which datapoints to gather. Shane's report and deposition testimony demonstrate he failed to utilize a 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. 6, Code Book and Instructions, at 6 (complaint variables) and 7-12 (evidence variables); *see also*, Ex. 4, *Baker* 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."). 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 a random selection of 1265 CR files. Shane's made up "Code Book" sets forth instructions for how the data should be categorized and extracted from each of the sample CR files and entered into an Excel spreadsheet. Rpt., at 17; Ex. 4, *Baker* Dep., at 127:20-128:11; Ex. 6, Code Book and Instructions. According to Shane, "[the evidence variables identified in his Code Book] 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 how the complaint variables should be coded. Ex. 4, *Baker* 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.*, the Office of Professional Standards) 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 (Ex. 9), the 1990 IACP Concepts and Issues Paper on Investigation of Employee Misconduct (Ex. 10), and the 2001 IACP Training Keys (529, 530, and 531) on Investigation of Public Complaints (Ex. 11). Rpt., at 19. In his deposition, Shane said he also

relied upon a report by Terrill[2] (Ex. 7) and a 1993 Police Foundation report[3] (Ex. 8). Ex. 4, *Baker* 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). Shane is unable to point to any studies of police disciplinary investigations that utilized the same variables for analysis that he used here. Ex. 4, *Baker* Dep., at 166:18-24, 167:9-169:11. Indeed, Shane "didn't compare the CPD to anyone else." *Id.*, at 168:3-11. This admission is fatal to the assessment of the reliability of his opinions. Shane relies simply on his own say-so to support his opinion of what constitutes a "component part" of an internal affairs investigation.

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 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).

The unreliability of Shane's methodology is further compounded by the process for coding the presence (or absence) of the identified investigative tasks. Twelve individuals (referred to by Shane as "data coders") were hired by Plaintiff's counsel to "code the data" in the CR files in accordance

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[2] Terrill, W., & Ingram, J. R. (2016). "Citizen complaints against the police: An eight-city examination," Police Quarterly, 19(2). (Ex. 7).

[3] "Police Use of Force: Official Reports, Citizen Complaints and Legal Consequences," Police Foundation (1993), Antony M. Pate and Lorie A. Fridel. (Ex. 8).

with the instructions in Shane's Code Book. Rpt., at 17; *Baker* Dep., at 122:1-11. The individuals entered the data into the Excel spreadsheet which Shane relied upon to create his data tables. While it is true that trained experts commonly extrapolate from existing data, Shane's opinions rely upon his own unique definition of various investigative tasks and the subjective assessments of individuals he briefly trained using the Code Book - not merely the accuracy of their extrapolation of existing data.

For example, Shane instructed the data coders to code "whether the investigator took a statement from any [complainant/victim/witness] as part of the investigation." *Id.*, at 9-10. However, Shane's defines "statement" as "a formal, transcribed question and answer session between an investigator and the [complainant/victim/witness]" wherein the "[complainant/victim/witness] is always given the opportunity to review the statement before it is concluded. An affidavit should not be coded as a 'statement.'" *Id.* Accordingly, any written account of what occurred that was not a transcription of a question/answer session that was reviewed by the subject was to be "coded" as a "no" – suggesting the investigator did not take the investigative step of obtaining a statement.

Further, the unknown data coders were tasked with assessing 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. 6, Code Book and Instructions, 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.

Further, the "data coders" were not neutral participants but individuals paid by Plaintiff's counsel and, other than a brief training session by Shane, supervised by Plaintiff's 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. Ex. 4, *Baker* Dep., at 122-127. The data coders were trained by Shane on the use of his Code Book during a 90-minute Zoom session. Ex. 4, *Baker* Dep., at 137:2-24. There is no evidence that Shane had any contact with the coders after the 90-minute Zoom session.

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 lacks a sound basis.

Shane also fails to utilize a reliable methodology for drawing conclusions from his statistical analysis and fails to provide any explanation of how the statistics connect to the deficiencies he asserts. Shane renders opinions based on his analysis of CR files 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 drew 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, 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 sustained internal complaints is not unique to Chicago. Ex. 4, *Baker* 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. Ex. 4, *Baker* Dep., at 231:11-15. Shane agreed that there are "probably" some empirical studies within the community that find something similar. *Baker* 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." *Id.* 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 demeanor, 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, there is no excessive force claim in this case. 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 to the claims in Plaintiff's case. Moreover, Shane's methodology, which only consisted of his review of CPD data, similarly renders these opinions unreliable. *See* Ex. 4, *Baker* 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[4] (Ex. 9) nor the IACP Concepts and Issues Paper[5] (Ex. 10) provide a list of investigatory steps or standards for assessing the reasonableness of an investigation. The Training Keys[6] (Ex. 11) 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. 7, 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, discourtesy, *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 the reasonableness of investigations. The Police Foundation report (Ex. 8) 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.

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[4] IACP Model Policy – Investigation of Employee Misconduct (July 2001) (Ex. 9).
[5] IACP – Investigation of Employee Misconduct: Concepts and Issues Paper (Jan 2007) (Ex. 10).
[6] IACP Training Keys 529, 530, and 531 (Ex. 11).

Shane also concludes (at 11) that the CPD failed to supervise officers through the internal affairs process consistent with accepted industry practices when complaints against the officers were generated. Specifically, he alleges the "supervisory staff knew or should have known that complaints against officers were accruing in a manner that signaled a need for intervention." *Id.* He opines that "the actions of supervisory staff are not consistent with the nationally accepted standards for police supervision [and] [t]he failure to supervise the defendants in the instant case would lead a reasonable officer to conclude that the Chicago Police Department accepted the defendants' conduct." *Id.* Yet, here again, his opinions rely on unidentified "industry practices" and "nationally accepted standards for police supervision." Accordingly, the opinions are baseless and undeveloped.

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 provide 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. 8). Unmentioned by Shane, the Police Foundation report expressly cautioned that "complaint rate is one of the most badly abused police-based statistics." *Id.*, 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. 12, 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 Plaintiff must prove the City's policies and/or practices were the moving force behind the Defendant Officers' alleged violations of Plaintiff's 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 Chi.*, 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 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" legal conclusion which the Courts have found to be inadmissible. *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003) ("expert testimony as to legal conclusions that will determine the outcome of the case is inadmissible."). As this Court found in *Ezelle v. City of Chicago,* Case Nos. 18 C 1049, 18 C 1053, 18 C 1062, 18 C 1068, 2023 WL 5287919, at *17 (N.D. Ill. Aug. 16, 2023) (Ellis, J.),

> At bottom, [the expert's] causation opinion tells the jury that Defendants violated Plaintiffs' constitutional rights. Rather than being helpful to the jury, this opinion would usurp its role. *See Thompson v. City of Chicago*, 472 F.3d 444, 458 (7th Cir. 2006) (barring issue-dispositive expert testimony because the "jury ... was in as good a position as the experts to judge whether" the defendants violated the plaintiff's constitutional rights.

Here, Shane also fails to explain 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 Federal Rule of Evidence 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.

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. Plaintiff does not assert an excessive force claim 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. This is not an excessive force case, and Shane should not be allowed to present to the jury findings of reports issued 34 years before and 11 years after Plaintiff's arrest that have no probative value to the underlying false arrest and malicious prosecution allegations in this case. This irrelevant evidence does not support Shane's findings and 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. Ex. 4, *Baker* 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 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 Chi.*, 320 F. Supp.2d 735, 740 (N.D. Ill. 2004); *Bruce v. City of Chi.*, No. 09 C 4837, 2011 WL 3471074, at * 5 (N.D. Ill. July 29, 2011). The Defendant Officers should not be associated with or forced to defend the conduct of others before the jury. Reference to these reports will activate jurors' 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 Plaintiff's 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 Plaintiff's expert Shane, and the need for Defendants to introduce rebuttal to these reports, will waste trial time that should be used to evaluate whether Plaintiff's constitutional rights were violated.

For all of these reasons, pursuant to Fed. R. Evid. 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.[7]

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 CR files selected for analysis. Shane suggests that he utilized a random sample of CR files 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,*

[7] To the extent necessary, Defendants will also be moving *in limine* to bar all these reports with their pretrial statement.

e.g., Tables 8-48), as well as references to specific CRs or "examples" that he says support his opinions (*see, e.g.*, Rpt., at 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. Ex. 4, *Baker* Dep., at 104:23-105:6, 105:15-106:22. For that reason, and because Defendants are not contesting the sufficiency of the sample size, he should not be permitted to testify at trial that he used a multivariant regression model or to determine the size of his sample.

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'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." *Baker* 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. *Baker* 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. Ex. 4, *Baker* 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: March 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **March 31, 2025**, I electronically filed the foregoing **Defendants' Joint Motion to Bar Jon M. Shane's *Monell* Opinions** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

/s/ Elizabeth A. Ekl