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,	)	(This case is part of *In re: Watts Coordinated Pretrial Proceedings*, Master Docket Case No. 19 C 1717)
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION
TO BAR JON M. SHANE'S *MONELL* OPINIONS

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INTRODUCTION

Dr. Jon Shane's unique, untested, and unsupported method of analyzing the quality of the City's complaint investigations does not provide a legal basis for admitting his opinions related to City's disciplinary system as a whole. Rather than utilizing a valid statistical model, for purposes of this litigation only, Shane concocted a first of its kind process for analyzing individual City of Chicago CR files (implemented through his code book), which included Shane's identification of investigative variables that he found to be "of interest to him." (Resp., at 21). Shane then analyzed (by use of an Excel spreadsheet) the frequency with which the variables he identified were missing from CR investigations. Without any experience working in internal affairs and without identifying any national standards supportive of his opinions, Shane concluded that the absence of these variables proves that Chicago routinely engages in insufficient internal affairs investigations.

Crucially for purposes of this Court's gate-keeping role, Shane's process (*i.e.* code book) has never been used on any other City, so neither he nor anyone else knows how New York, Los Angeles, Houston, Milwaukee, Cleveland, *etc.* would fare if this process was applied to them. For all we know, every other city would "fail" Shane's analysis based on this made-up code book designed for the result he reached. This is not a matter of cross examination; it is a matter of applying Fed. R. Evid. 702 and *Daubert* as they teach to bar this junk social science. It would be reversible error to allow Shane to offer his opinions based on this invented process.

Moreover, Shane's code book leads to absurd results because Shane failed to actually evaluate the merits of the CR investigations themselves by looking at their substance. In Case Log No. 1022370, for example, the complainant alleged that the police had "implanted a device inside [the complainant's] body and are stalking [him]." Despite the preposterous and impossible nature of the complaint allegations, Shane's methodology (as set forth in the code book) required the coders to identify the absence of certain tasks (such as interviewing the complainant and accused officers and conducting a

photo array) in Shane's spreadsheet, which was then used by Shane to support his opinion that CPD's complaint investigations were not thorough and complete. Dkt. 273-1, Case Log No. 1022370; Dkt. 273-2, Excerpt of Shane Spreadsheet.

Plaintiff offers this Court nothing material to support Shane's opinions. The only thing that Plaintiff (and/or Shane) identifies that reflects national standards for internal affairs investigations is the DOJ publication titled, *Standards and Guidelines for Internal Affairs Investigations: Recommendations from a Community of Practice* ("DOJ Standards"), which was created with the assistance of former Assistant Deputy Superintendent of the CPD assigned to the Internal Affairs Division, Debra Kirby[1]. Yet Plaintiff cites to nothing in the DOJ Standards that remotely supports Shane's code book. Rather, Plaintiff cites the vague and out of context phrase "thorough and complete" and then suggests those three words support the variables Shane invented (which are nowhere in the DOJ Standards). What's more, Shane's *ipse dixit* as to what constitutes a thorough and complete investigation is contradicted by the "guiding principle" of the DOJ Standards he relies on. The DOJ Standards do not support Shane's extrapolation of those three words into his code book. Contrary to Shane's code book, the DOJ Standards instruct that "the extensiveness of the investigation may vary from complaint to complaint commensurate with the seriousness and complexity of the case." Pl.'s Ex. H, Dkt. 187-8, DOJ Standards, at 7. There is nothing in Shane's methodology that accounts for differences in the seriousness and complexity of any CR complaint. Quite the opposite, Shane's code book contradicts the DOJ Standards by requiring that each disciplinary investigation follow the exact same cookie cutter steps, a "one size fits all" standard made up for this litigation that is rejected by the DOJ. Accordingly, all of Shane's opinions should be barred because they are based on the flawed methodology he

[1] Debra Kirby was initially named as a defendant in this lawsuit but was voluntarily dismissed from the case on January 27, 2025. *See* Dkt. Nos. 204, 205.

invented for purposes of this case that has never been tested and is not supported by any standard, national or otherwise.

Furthermore, although Shane did not review an insufficient number of CR files, his opinions regarding the City's disciplinary practices should also be barred because his data set includes CR files from irrelevant time periods (with over 40% of the data coming from 2007 to 2011) and investigations by agencies other than Internal Affairs (*i.e.* excessive force complaints, which were investigated by the Office of Professional Standards (OPS) or Independent Police Review Authority (IPRA)). Shane also improperly tries to bolster his opinions by inapplicable studies, including the 1972 Metcalfe report, the 1997 Commission on Police Integrity (CPI) report, a 2016 Police Accountability Task Force report, and the 2017 DOJ report. All testimony and opinion based on this data should be barred because the data is irrelevant and insufficient to provide a basis for Shane's opinions.

Finally, Plaintiff has not shown that Shane is qualified, nor that he has a proper foundation to offer opinions tying any deficiencies in the CPD's disciplinary system to the unconstitutional conduct Plaintiff alleges against the Defendant Officers.

It is Plaintiff's burden to demonstrate by a preponderance of the evidence that the evidence he seeks to elicit from Shane 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). Plaintiff has failed to do so. As explained in the Rule 702 Committee Notes, "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. Rule 702 imposes a special obligation upon this Court, acting as a gatekeeper, to "ensure that any and all scientific testimony ... is not only relevant, but reliable." *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993). As set forth herein, Plaintiff has failed to meet his burden and this Court should bar Jon Shane as a witness.

ARGUMENT

I. Shane Should be Barred from Providing Testimony Regarding How He Determined the Appropriate Sample Size Because it is Misleading, Unduly Prejudicial, and Will Not Assist the Jury.

Defendants' Motion (at 24-25) seeks to bar misleading testimony by Shane about the manner in which he determined the sample size and any testimony about the statistical significance of his sample. Contrary to Plaintiff's apparent misreading, Defendants are not seeking to bar Shane's opinions on the basis that his analysis of 1,265 complaint register ("CR") files is not sufficiently large. *See* Plaintiff's Resp., at 18 (arguing "Dr. Shane determined and achieved an appropriate sample size"). As set forth in further detail below, Shane did not utilize a proven statistical method to render his opinions in this case. Therefore, any testimony by him suggesting he used a valid statistical model, or that the sample size has statistical significance, will be confusing and misleading to the jury and should be barred. Further, because Defendants are not contesting the sufficiency of the sample size, such testimony will not assist the trier of fact in understanding the evidence or determine a fact at issue, as required by Fed. R. Evid. 702 and 703.

Shane's determination of an appropriate sample size was based on an assumption that a multiple regression model (with nine predictor variables) would be used. Shane explained in his report (at 14),

> To determine [the] sample size, the G*Power sample size calculator software was used based on developing a multiple regression model. Using standard statistical parameters, the minimum sample size was 791 cases. Allowing for a 60% error rate in cases, the total sample selected was 1,265, which resulted in proportional draw of 1.13% of the total CRs available for the time period.

See also, Table 5 (reflecting use of G*Power software for multiple regression with 9 predictors). This explanation of Shane's statistical analysis is misleading and should not be presented to the jury. During his deposition (at 104-106), Shane explained that he "didn't identify variables (or predictors) because he didn't conduct a multiple regression model." Dkt. 255-4, Jon Shane Apr. 23, 2024 Deposition

("Shane *Baker* Dep."), at 104:4-105:6. He *conceptually* thought of using predictors. Despite the references to it in his report, Shane never actually conducted a multivariant or multiple regression model. Any suggestion or inference that he did so would be false and misleading.

Plaintiff's argument (Resp. at 19) that Shane should be able to explain how he calculated the sample size because he simply "ran a less complex analysis than his calculations assumed" overstates what was actually done. Shane's determination of an appropriate sample "assumed" a regression model with nine predictors. At no point in time did he run a regression model with fewer predictors than the nine he assumed for purposes of determining an appropriate sample size. Shane's discussion of these concepts imputes a statistical expertise to Shane and a validity to his analysis that is unwarranted because he did not use *any* regression model or other proven statistical model. The juror confusion resulting from any testimony about use of a regression model (conceptual or otherwise) cannot simply be "cleared up" on cross-examination. Further, this testimony will not assist the trier of fact to understand the evidence or determine a fact at issue, as required by Fed. R. Evid. 702 and 703. In sum, any testimony about Shane's "use" of such a model to determine the appropriate sample size and/or any purported statistical significance of the sample size (*see* Shane *Baker* Dep, at 106:23-109:7) will be confusing and misleading to the jury and should be barred.

II. Shane's Methodology for Rendering his Opinion that CPD Failed to Conduct Investigations in Accordance with Nationally Accepted Standards is Unreliable.

Shane's opinion (Report, at 11) that "CPD caused the Defendants in this case to engage in corruption and extortion and to fabricate and suppress evidence" is premised on his finding "that CPD failed to properly conduct investigations of police misconduct in accordance with nationally accepted standards." Shane reached his conclusions as to the investigative quality of 1,265 randomly selected complaint register (CR) files by analyzing the presence (or absence) of certain "characteristics" that *Shane alone* deems necessary for every investigation. Despite Plaintiff's claims (at 19) that Shane's

methodology was "standard and reliable," neither Plaintiff nor Shane have identified any study or other expert (police practices or social scientist) who has *ever* employed Shane's methodology for analyzing an agency's internal affairs practices.[2] Nor do they identify any nationally recognized standard that requires the investigative steps identified by Shane to be present in each investigation. It is Plaintiff's burden pursuant to Fed. R. Evid. 702 to demonstrate that Shane's opinions are not only relevant, but reliable. Plaintiff has not met his burden pursuant to Fed. R. Evid. 702 of establishing that Shane utilized a reliable methodology.

A. Shane Failed to Identify a Nationally Recognized Standard or Procedure for Investigating Police Misconduct.

Plaintiff explains in his Response (at 19) that national standards require investigations of police misconduct to be "thorough and complete." In support, he cites generally (at 19-20) to Shane's reliance on "police departments," the Department of Justice ("DOJ"), and the International Association of Chiefs of Police ("IACP"). Yet, none of the cited publications from these agencies reference a "thorough and complete" *standard* for internal affairs investigations. To the extent one is implied, Shane's determination of what constitutes a "thorough and complete investigation" is contradicted by the very publications he relies upon.

The DOJ Standards "w[ere] developed by the National Internal Affairs Community of Practice group, a collaborative partnership of the Los Angeles (California) Police Department and 11 other major city and county law enforcement agencies. The agencies shared and developed standards and best practices in internal affairs work, discussed differences and similarities in practice, and looked at various approaches to improving their individual and collective agencies' internal affairs practices." DOJ Standards, Pl.'s Ex. H, at 6. Plaintiff argues (at 19) that Defendants "misstate the applicable

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[2] Plaintiff alleges "Shane has testified" his methodology "is typical in the social sciences." (Resp., at 24). He provides no citation to any such testimony and none has been found by Defendants in his deposition.

standard." However, a review of the DOJ Standards makes clear that it is Shane who ignores the standards and practices set forth by the project team responsible for their creation. Of note, the team included the CPD Assistant Deputy Superintendent Defendant Debra Kirby. *Id.,* at 7. The City's *Monell* expert, Jeffrey Noble, also contributed to the discourse and ideas in the report. *Id.*, at 8.

Plaintiff accurately quotes (at 22) the DOJ Standards as stating, "[a] 'complete investigation' is one which includes all relevant information required to achieve the purpose of the inquiry." *See,* DOJ Standards, Pl.'s Ex. H, at 27. However, aside from embracing the terminology of "complete" and "thorough," Shane's analysis ignores the guidance within the DOJ Standards for how an internal affairs investigation should be conducted as well as its explanation that, "[a] complete investigation is not necessarily exhaustive." Pl.'s Ex. H, at 27. Even more problematic is Shane's failure to follow the "guiding principle" set forth in the Investigation section of the DOJ Standards, which states that,

> All complaints made by members of the public and all internal complaints of a serious nature, as determined by the agency, must be investigated. The extensiveness of the investigation may vary from complaint to complaint commensurate with the seriousness and complexity of the case. Some small number may be capable of resolution after a cursory or truncated investigation." Pl.'s Ex. H, at 27.

Shane's analysis that CPD complaint investigations are deficient for failure to include all the investigatory steps identified in his code book contravenes the standards and best practices for conducting internal affairs investigations set forth in the DOJ Standards. Indeed, there is nothing in Shane's code book or in his Report that reflects that Shane took into account the seriousness or complexity of the allegations in the 1,265 CRs when rendering his opinions as to whether the investigations were "thorough and complete." This is a fatal flaw in his methodology.

Plaintiff's argument (at 19-20) that Shane relied upon publications by IACP fares no better. Pl.'s Ex.s I, J. Neither the IACP Concepts and Issues Paper (Pl.'s Ex. I) nor the IACP Training Key (Pl.'s Ex. J) discuss the "thorough and complete standard" Shane relies upon. More to the point, none

of the publications or sources cited by Shane support his methodology for determining what constitutes a thorough and complete investigation.

B. Shane Did Not Utilize A Reliable Methodology for Collecting Data Within the CR File Sample.

As discussed in Defendants' Motion (at 11-15), Shane determined what data to extract from the CR files and how it should be coded. Shane explained in his report (at 159) that he identified "fundamental" investigative tasks or "data points" and created a code book instructing how these tasks should be coded in an Excel spreadsheet. *See also,* Def.s' Ex. 6, Dkt. 255-6, Code Book, at 6-12. Shane utilized individuals hired by Plaintiff's counsel ("Coders") to code the data. The coders were instructed (during a 90-minute training session) to follow Shane's code book to identify the indicated data points from the files for inclusion in the Excel spreadsheet. Shane's opinions thus are dependent on the manner in which the information in the CR files is coded in the spreadsheet. However, as Defendants explained in their Motion (at 11-15), Shane had no reliable basis for deciding which characteristics of the CR files warranted inclusion in his analysis nor did he ensure the reliability of how the information would be extracted by others.

Tellingly, Plaintiff's only response to this point is that "Dr. Shane developed a code book **identifying data of interest to him** in the 1,265 CRs he reviewed and then analyzed data collected by coders he trained." Resp., at 21 (emphasis added). Plaintiff failed to rebut that:

- Shane's code book has never been tested or used by anyone else (Mot., at 11);
- None of the sources cited by Shane offer any standard for assessing the reasonableness of an administrative investigation (Mot., at 12); and
- Shane cannot point to any studies or police disciplinary investigations that utilized the same variables for analysis that he used here (Mot., at 13).

He only states, in essence and without support, that - it doesn't matter. *See* Resp., at 21 ("Defendants complain that Dr. Shane has not identified a police department that used the exact same variables as

he used in his analysis. Dkt. 255 at 13. But that is not the standard for reliability in this analysis."). Plaintiff provided this Court with no basis for finding Shane's methodology reliable.

Additionally, none of the sources cited by Plaintiff[3] support Shane's statement (at 59 of his Report) that the activities identified in his code book "are fundamental to any internal affairs investigation and are expected to be completed in each applicable case to ensure a thorough investigation." While the data points consist of valid investigatory tasks in a general sense (*e.g.*, photos of victim taken, scene canvass), there is no basis for Shane's opinion that each and every investigatory task must be performed in every internal affairs investigation, lest the investigation be deemed incomplete. Nor does he provide any basis for how it should be determined that a particular data point is not needed for a particular investigation.

Plaintiff attempts to mischaracterize Defendants' argument as a criticism not of Shane's methodology but of his data set and argues "'[w]hether [the expert selected the best data set to use…is a question for the jury, not the judge.'" Resp., at 21, *citing Manpower, Inc. v. Ins. Co. of Pennsylvania,* 732 F.3d 796, 809 (7th Cir. 2013). However, Plaintiff's reliance on *Manpower* is misplaced.

The court in *Manpower,* and the cases upon which it relies, found as an initial matter that the expert "utilize[d] the methods of the relevant discipline." *Id.*, at 807. The expert in *Manpower* relied upon a growth-rate extrapolation methodology, a commonly relied upon methodology in the field. To prove this point, the court in *Manpower* pointed to "[t]he latitude afforded to statisticians employing a regression analysis, [another] proven statistical methodology used in a wide variety of contexts." *Id.*

> Regression analysis permits the comparison between an outcome (called the dependent variable) and one or more factors (called independent variables) that may be related to that outcome. As such, the choice of independent variables to include in

[3] Including the: DOJ Standards (Pl.'s Ex. H); IACP Concepts and Issues (Pl.'s Ex. I); IACP Training Keys (Pl.'s Ex. J); the CPD Bureau of Internal Affairs Standard Operating Procedures (Pl.'s Ex. K); the New Jersey Office of the Attorney General: Internal Affairs Policy & Procedures (Pl.'s Ex. L), and Terrill, W., & Ingram, J. R. (2016). "Citizen complaints against the police: An eight-city examination," Police Quarterly, 19(2). (Def.s' Ex. 7).

> any regression analysis is critical to the probative value of that analysis. Nevertheless, the Supreme Court and this Circuit have confirmed on a number of occasions that the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility.

Id. (citation omitted). The court concluded, "how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury." *Id.* Critically, Shane did not use a regression model[4] (nor any other proven methodology) to analyze the sufficiency of the internal complaints. His methodology involved tallying up data (that was of interest *to him*) from the Excel spreadsheet, including the frequency with which certain investigative tasks were completed across all sampled CRs. Unlike proven statistical methodology (like regression analysis), there is nothing to support a finding that Shane's methodology is reliable. "Reliability … is primarily a question of the validity of the methodology employed by an expert, not the quality of the data used in applying the methodology or the conclusions produced." *Manpower*, 732 F.3d at 806. Unlike *Manpower*, the reliability of Shane's opinions is directly at issue because of his failure to utilize a reliable methodology for identifying the quality of CPD's internal affairs investigations.

Plaintiff claims (at 21) "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." However, this argument is vague and undeveloped. That social scientists customarily hire coders to document data contained in voluminous documents does not address the reliability of the decisions made by Shane and the Coders regarding how information from the CR files should be coded. Even assuming that bias did not factor into the manner in which the Coders mined data from the CR files (an assumption that neither Defendants nor Shane can test because we don't know anything about the Coders, other than they are purportedly

[4] Dkt. 255-4, Shane *Baker* Dep., at 104:4-106:22.

attorneys hired by Plaintiff's counsel), Plaintiff does not meaningfully address Defendants' argument (at 14) regarding the subjectivity of the coding process.

The subjectivity required to comply with the instruction in Shane's code book that "[f]or each variable, **you must judge** whether the category is applicable" reflects the unreliability of the coding process. Def.s' Ex. 6, Dkt. 255-6, Code Book, at 7 (emphasis added). Plaintiff claims (at 24) that, "[b]y 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." However, Defendants' criticism is not that Shane failed to clearly define the nature of a given activity, it is that he left the *applicability* of any investigative task in relation to a given CR investigation up to the Coder's discretion. The fact that Shane may have checked the Coders' work and agreed with the assessment does not eliminate the subjectivity of the exercise. Similarly, Shane's "familiarity" with collecting data on "similar spreadsheets" from his time in the Newark Police Department does not address questions regarding the reliability of Shane's methodology for collecting and assessing data (again, on points of interest to him) to determine if CPD's system for conducting internal affairs investigations failed to comply with national standards.

Plaintiff argues (at 25) that Defendants have not provided authority reflecting that Shane's methodology is inappropriate. As explained in the Committee Notes in the 2023 Amendments to Fed. R. Evid. 702, "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. Plaintiff's attempt to shift the burden to Defendants should be rejected.

In *Daubert,* the Supreme Court offered the following non-exclusive factors to aid courts in determining whether a particular expert opinion is grounded in a reliable scientific methodology: (1) whether the proffered theory can be and has been tested; (2) whether the theory has been subjected to peer review and publication; (3) whether the theory has a known or potential rate of error; and (4) whether the relevant scientific community has accepted the theory. *See Bielski v. Louisville Ladder, Inc.*, 663 F.3d 887, 894 (7th Cir. 2011) citing *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 593-94 (1993). None of the *Daubert* factors are present here to support a finding of reliability. To the contrary, Plaintiff does not substantively address that: the investigative tasks identified by Shane are not derived from any nationally reliable standards; Plaintiff has not identified any peer review or publication testing Shane's theory that the presence/absence of certain investigative tasks in internal investigations reflects that the investigative outcomes were incorrect; the potential error rate for Shane's Excel spreadsheet analysis is unknown; and, there is no evidence to suggest Shane's theories or methodology have ever been accepted in the scientific or law enforcement community.

Plaintiff has failed to establish the reliability of Shane's methodology for rendering opinions based on the CPD's purported failure to conduct internal affairs investigations in accordance with accepted standards. Those opinions should be barred.

III. Shane is Not Qualified to Render Opinions Regarding the Sufficiency of the City's Police Disciplinary System including its Impact on the Behavior of the Defendant Officers.

Defendants' Motion (at 3-7) also challenges Shane's qualifications to render opinions about CPD's disciplinary system, including its impact on the behavior of the Defendant Officers. Shane's opinions reach far beyond his qualifications – he has never worked in internal affairs, has never conducted any studies related to the quality of internal affairs investigations and their impact on officer behavior, and does not have training or background in psychology that allows him to render the causation opinions included in his report.

Shane was a Newark police officer for twenty years. During his career, he never worked as an investigator or supervisor in the Internal Affairs Division. Shane *Baker* Dep., at 14:9-13; Jon Shane Aug. 29, 2023 Deposition in *Waddy v. Chi.* ("Shane *Waddy* Dep."), Dkt. 255-5, at 58:2-11. He also never investigated a police officer for unlawful conduct or criminal conduct. Shane *Waddy* Dep., at 58:12-59:8, 61:7-14. Plaintiff's argument (at 6) misleadingly states that Shane has "relevant" internal affairs experience, "including training in conducting internal affairs investigations when he became a sergeant" and that he "subsequently conducted dozens of internal affairs investigations as a supervisor from 1995 to 2005." However, Shane has explained that his experience was limited to times when he was a supervisor and the Internal Affairs Division would delegate to him certain complaints related to rules violation complaints against his subordinates, including things like tardiness, care of property, and demeanor (*i.e.*, the manner in which they spoke to the public). Shane *Baker* Dep., at 17:4-19:12; Shane *Waddy* Dep., at 60:4-62:18. Additionally, despite Shane's vague testimony that when he "conducted internal affairs investigations as a supervisor," he received training that entailed "what things to look for," Plaintiff has not established that he has sufficient training or experience to allow him to render the opinions related to the sufficiency of the CPD's entire disciplinary system and its impact on officer behavior.[5]

Plaintiff points to Shane's background in policy development (at 6-7). However, Shane does not challenge CPD's policies; his opinions relate to his criticism that the City's practice of investigating police misconduct did not comply with CPD and "national policy" requiring that investigations be complete and thorough. Shane *Baker* Dep., at 185-86. Plaintiff also claims (at 7) that Shane has "published articles on police discipline." However, the cited pages of Shane's Report (at 163-65) do

[5] *See e.g.*, Rpt., at 30 ("Had the Superintendent of Police and the command staff prioritized the effort to address the most common allegations 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.")

not reflect any such relevant publication (nor is any publication authored by Shane referenced by Plaintiff or Shane in support of Shane's methodology). Plaintiff fails to meet his burden of establishing that Shane is qualified to render opinions about the CPD's disciplinary system. *See* Fed. R. Evid. 702(a); *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 1597384, *5 (N.D. Ill. May 7, 2012) citing *Lewis v. CITCO Petroleum Corp,* 561 F.3d 698, 705 (7th Cir. 2009) ("The proponent of the expert bears the burden of demonstrating that the expert's testimony would satisfy the *Daubert* standard."); *Schrott v. Bristol–Myers Squibb Co.,* No. 03–CV–1522, 2003 WL 22425009, at *1 (N.D. Ill. Oct. 23, 2003) (excluding medical expert, where proponent failed to offer sufficient evidence of the expert's qualifications in response to an attack on the expert's qualifications).

Additionally, Plaintiff does not meaningfully address Defendants' contention (at 6) that Shane also lacks experience or a sufficient background in psychology to provide a foundation for the inferential leap that the City's disciplinary system "would be expected to cause officers involved in narcotics enforcement . . . to engage in corruption and extortion and to fabricate and suppress evidence." Rpt., at 11. Plaintiff states (at 8), "[o]f 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 Plaintiff alleges." Plaintiff's failure to address Shane's lack of qualifications to offer opinions related to causation waives the argument and should bar him from presenting any such testimony at trial. *Ennin v. CNH Industrial America LLC*, 878 F.3d 590, 595 (7th Cir. 2017); *see also Weber v. Univ. Research Assoc.*, Inc., 621 F.3d 589, 594 (7th Cir. 2010) ("A single sentence that mentions a theory of direct proof ... is not enough to preserve the issue....").

Defendants' Motion (at 20-22) further challenges Shane's conclusory opinion that CPD's alleged failure to properly conduct administrative investigations of police misconduct was the moving force that caused the Defendant Officers in this case to engage in the underlying criminal activities

alleged by Plaintiff on the basis the opinion lacks insufficient foundation. Shane's report offers multiple criticisms of the CPD's practices and processes in investigating complaints of police misconduct. However, and critically, Shane does not causally connect these alleged investigative deficiencies to the specific officer misconduct alleged in this case. For this additional reason, any "causation" opinion Shane might offer lacks a sufficient foundation and should be barred.

Plaintiff's Response overlooks an important step in the analysis. The causation element of a *Monell* claim (*i.e.*, "moving force") cannot simply be inferred, as Shane's report would require. As an example, the Response (at 28) describes Shane's reference to studies that suggest the hazards of drug policing increase the risk of corruption in the absence of specific accountability measures. Shane, however, does not explain how that general principle applies to the specific facts of this case. Most of Shane's report discusses disciplinary investigations involving general police misconduct and allegations of excessive force. He does not explain 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. More importantly, Shane does not explain how the deficiencies he identifies in CPD's administrative investigations were the moving force that caused Defendant Officers Watts and Mohammed to act in the specific ways alleged, *i.e.*, operation of a criminal enterprise targeting drug dealers. The Court is left to speculate as to the causal link between Shane's criticisms and the type of misconduct alleged here.

The failure on the part of Shane to causally connect his criticisms of the CPD investigative process to the alleged criminal misconduct of Watts and Mohammed is not just a matter of semantics. Absent this critical link, Plaintiff (through Shane) essentially would be imposing vicarious liability on the City for the alleged criminal misconduct of the Defendant Officers. (*See* Motion, at 22). A municipality cannot be held liable under the common-law doctrine of *respondeat superior* for constitutional violations committed by its employees and agents. *First Midwest Bank v. City of Chicago*,

988 F.3d 978, 986 (7th Cir. 2021). A plaintiff asserting a *Monell* claim must prove the municipality's action was the "moving force" behind the alleged constitutional violation. *Id.*, at 987; *Bohanon v. City of Indianapolis*, 46 F.4th 669, 675 (7th Cir. 2022). As *First Midwest Bank* explained about the "moving force" requirement:

> [T]his rigorous causation standard guards against backsliding into respondeat superior liability. To satisfy the standard, the plaintiff must show a "direct causal link" between the challenged municipal action and the violation of his constitutional rights.

988 F.3d at 987. Indeed, "it is not enough to show that a widespread practice or policy was a *factor* in the constitutional violation; it must have been the *moving force*." *Johnson v. Cook County*, 526 Fed. Appx. 692, 696 (7th Cir. 2013) (emphasis in original).

As noted above, Shane's report fails to show this "direct causal link" between the CPD's alleged investigative deficiencies and the alleged criminal misconduct involving Plaintiff. It is not enough to suggest CPD's alleged failure to conduct adequate investigations of police misconduct was a factor in the criminal misconduct alleged by Plaintiff; it must have been the moving force. Absent a "direct causal link," this Court is left with a "bottom line" opinion on causation that lacks a sufficient foundation. Shane should not be allowed to offer any causation opinion at the trial of this matter.

IV. The Data and Documents that Shane Relied upon are Irrelevant, Immaterial and Insufficient to Provide a Reliable Foundation for His Opinions.

Plaintiff's discussion (at 10-13) of an appropriate *Monell* timeframe essentially amounts to a concession that post-event data is irrelevant. And Plaintiff's failure to defend Shane's reliance on excessive force data is equally as fatal to Shane's opinions.

Indeed, the only data and documents relied upon by Shane that Plaintiff attempts to salvage is his discussion of the 1997 CPI report. (Resp., at 14-15). Plaintiff's argument necessarily fails because Shane made no attempt to evaluate data from tactical units focused on narcotics arrests, which is the

subject of the CPI report that Shane claims is pertinent. As further explained below and in Defendants' Motion, Shane should be barred because he relies on irrelevant and immaterial data.

A. Post-2006 Data Is Irrelevant Under the Case Law, Including the Cases Cited by Plaintiff; the Relevant *Monell* Time Frame is Five Years Before Plaintiff's Arrest.

As explained in Defendants' Motion (at 7-11), Shane's statistical analysis is flawed because he draws conclusions related to how the City conducted police disciplinary investigations in 2006 with over 40% of the data coming from 2007 to 2011. However, where a plaintiff seeks to hold a municipality liable for its official polices or practices, black letter law in this Circuit holds that "subsequent conduct is irrelevant to determining the [municipalities'] liability for the conduct of its employees on [the date of an arrest]." *Calusinski v. Kruger*, 24 F.3d 931, 936 (7th Cir. 1994); *accord Prince v. City of Chicago*, 18 C 2952, 2020 WL 1874099, at *5 (N.D. Ill. 2020) (Harjani, M.J.).

Rather than provide this Court with applicable case law that supports the relevance of post-arrest data, Plaintiff cites two cases (at 11) that actually support Defendants' position and confirm that post-arrest data is irrelevant. *Velez v. City of Chicago*, 18 C 8144, 2021 WL 1978364, *4 (N.D. Ill. 2021) (Cole, M.J.); *DeLeon-Reyes v. Guevara*, 18 C 1028, 2019 WL 4278043, *9 (N.D. Ill. 2019) (Harjani, M.J.). The court in *Velez* found that data from **five years before the subject arrest** was relevant and proportional for discovery purposes.[6] *Id.* Likewise, the court in *DeLeon-Reyes* found that data from **four years before the arrest** was relevant and proportional for discovery purposes.[7] *Id.* While the plaintiffs in both *Velez* and *DeLeon-Reyes* did not move to compel post-arrest data from the court, the plaintiff

[6] Plaintiff incorrectly claims (at 11) that the court in *Velez* found that "there was 'no question'" as to the relevance of seven years of CR files" before the arrest. However, the court in *Velez* made no such statement, and in fact, rejected the plaintiff's request for seven years of CR files before the arrest. *Id.* at *4.

[7] Once again, Plaintiff incorrectly claims (at 11) that the court in *DeLeon-Reyes* concluded that the relevance of six years of CR files was "not seriously dispute[d]." However, the court in *DeLeon-Reyes* made no such statement, and in fact, rejected the plaintiff's request for six years of CR files before the arrest. *Id.* at *9.

in *Velez* had asked for post-arrest data in their initial discovery request, which the court found (along with the request for data years before the event) "*staggeringly* overly broad." *Velez*, 2021 WL 1978364, *4. The overwhelming weight of authority – even the cases cited by Plaintiff - holds that post-arrest data is irrelevant. *Calusinki*, *Prince*, *Velez*, and *DeLeon-Reyes*.[8]

Plaintiff contends (at 10-11) that "Defendants provide no support for the contention that a 'five year period' has been 'generally accepted' in this district." Again, in addition to the cases cited by Defendants, the *Velez* case cited by Plaintiff directly contradicts that contention. *Velez*, 2021 WL 1978364, *4. As *Velez* found after conducting a thorough review of the case law on this issue, "[f]ive years' worth of production has become a sort of benchmark in these types of cases." *Id.* at *4. Plaintiff's denigration (at 11) of Chief Judge Pallmeyer's well-reasoned 2022 decision in *Brown* is also unwarranted, as she found on at least four separate occasions that the five-year period preceding the plaintiff's arrest was the relevant time frame for a *Monell* claim. *Brown v. City of Chicago*, 633 F. Supp.3d 1122, 1148-50 (N.D. Ill. 2022). Specifically, Judge Pallmeyer confirmed the relevant *Monell* time period was five years when ruling on the following:

(1) Excluding the 1972 Metcalfe Report as "immaterial" because it fell "outside of the five-year time period leading up to Mr. Brown's arrest." (*Id.* at 1148);

(2) "Otherwise, [plaintiff's expert] Waller identified four cases of police misconduct, only one of which took place during the period from May 1983 to May 1988." (*Id.* at 1149);

(3) "A significant portion of the documents Waller cites or references do not concern police misconduct in Area 1 or the Bomb and Arson Unit in the five-year period leading up to Mr. Brown's arrest, let alone the City's awareness of police misconduct in those units during the timeframe relevant to this case." (*Id.* at 1150);

(4) "The [1982] Wilson case is outside of the five-year time period leading up to this [1988] case and, except for this one noted instance, outside of Area 1." (*Id.* at 1149, n. 28).

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[8] The only reason post-arrest data was produced here was because this case is part of the Coordinated Proceedings (which includes cases arising from arrests well after 2006), not because data after 2006 is relevant to Plaintiff's claims.

What's more, in points 2 and 3 above, Judge Pallmeyer found that the data relied on by the plaintiff's expert outside of the relevant five-year period in *Brown* was immaterial and irrelevant, refuting Plaintiff's attempt to distinguish *Brown* by contending it was a ruling on summary judgment and not a *Daubert* motion. *Id.*

Plaintiff's attempt (at 12-13) to distinguish *Calusinki* is without merit. But even if any of Plaintiff's points regarding *Calusinski* had merit, *Calusinski* certainly does not stand for the illogical proposition that post-arrest data is somehow relevant. Plaintiff proffers the magistrate judge's ruling in *Padilla v. City of Chicago*, 06 C 5462, 2009 WL 4891943, *7 (N.D. Ill. 2009), as well as two cases from outside the Seventh Circuit, to support his attempt to rely on data created years after his 2006 arrest. But the magistrate judge in *Padilla* relied on a vacated panel opinion issued in *Sherrod v. Berry*, 827 F.2d 195 (7th Cir. 1987), *reh'g granted and opinion vacated*, 835 F.2d 1222 (7th Cir. 1988). As a vacated opinion, *Sherrod* is no longer binding precedent. *See United States v. Carmel*, 548 F.3d 571, 579 (7th Cir. 2008). Accordingly, the magistrate judge's ruling in *Padilla* is not persuasive authority and does not control. Moreover, the magistrate judge's ruling in *Padilla* expressly disclaimed that it was ruling on the admissibility of the discovery request, as it simply concluded the request could "lead to admissible evidence" under the old Rule 26(b)(1) standard. *Calusinski* remains the law of the Seventh Circuit and is binding on this Court. The remaining two cases cited by Plaintiff are outside the Seventh Circuit and therefore do not take precedence over *Calusinski* or the district court cases cited herein. And even if considered, those cases are distinguishable.[9]

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[9] In *Salvato v. Miley*, 790 F.3d 1286, 1297 (11th Cir. 2015), the Court was not addressing a *Monell* pattern and practice theory of liability but addressed whether the municipality ratified the officer's shooting of the plaintiff's decedent. The court actually held as follows: "The sheriff argues that the failure to investigate a single incident, of which the sheriff was unaware until after-the-fact, cannot ratify a constitutional violation. We agree." As such, *Salvato* is inapposite and irrelevant. As for *Groark v. Timek*, 989 F. Supp.2d 378, 398 (D. N.J. 2013), the magistrate judge merely compelled the municipality to produce the internal affairs files against the two defendant officers under the old Rule 26(b)(1) discovery standard, an issue that is not in dispute here as the City agreed to produce similar files for the defendant officers.

Left with no legal support, Plaintiff surprisingly urges (at 12-13) this Court to disregard *Calusinski* by pointing out that it did not arise in the context of a *Daubert* motion and by calling it "dicta." Both points are specious. The Seventh Circuit ruled on the relevance and admissibility of evidence after a trial in *Calusinki*, just as this Court is being asked to rule on the relevance and admissibility of evidence here for purposes of trial. *Calusinski*, 24 F.3d at 936. Legally, it is the exact same trial admissibility analysis. Plaintiff's assertion that *Calusinki* is "dicta" fares even worse. The Seventh Circuit squarely addressed the admissibility of evidence for a plaintiff's *Monell* claim in *Calusinski* that was also addressed by the trial court, just as this Court is addressing the relevance of evidence to Plaintiff's *Monell* claim here. The mere fact the Seventh Circuit identified an additional procedural basis to affirm the district court in *Calusinski* does not make the substantive holding dicta, nor does Plaintiff develop his cursory point with any case law or argument, resulting in waiver. *Shipley v. Chi. Bd. Election Comm'rs*, 947 F.3d 1056, 1062-63 (7th Cir. 2020) ("Arguments that are underdeveloped, cursory, and lack supporting authority are waived").

In sum, *Calusinski* is not only binding precedent, but as explained above, the case law developed since *Calusinski* overwhelming concludes that post-arrest data is irrelevant.[10] *See e.g., Prince*, 2020 WL 1874099, at *5 ("[C]ertainly 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."); *see also, Brown,* 633 F. Supp.3d at n.61 (N.D. Ill. 2022) (Pallmeyer, C.J.) (evaluating evidence five years before the plaintiff's arrest for purposes of *Monell* liability). Accordingly, Shane's opinions should be barred for the additional reason that the data he relies on after Plaintiff's 2006

[10] Plaintiff also contends (at 13) that the irrelevant post-arrest data "tends to rebut any argument that the City took reasonable measures to address the deficiencies but that those reforms took time to work." Defendants, however, make no such argument. As a result, Plaintiff's strawman argument is simply a distraction that need not be considered.

arrest (comprising about 40% of his data set), and from more than five years before the Plaintiff's arrest, is irrelevant and immaterial.

B. Shane Should Also Be Barred Because of His Reliance on Irrelevant and Immaterial Data Relating to Excessive Force Investigations.

Defendants' Motion (at 16-17) also contends that Shane should be barred because he relies improperly on excessive force data:

> 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.

Id. In his Response, Plaintiff does not meaningfully contest Defendants' point that excessive force data is irrelevant, merely noting (at 27) that "Dr. Shane's analysis [is not] limited to excessive force." It therefore remains a mystery why Plaintiff would provide data relating to excessive force investigations to his expert to rely on in a case that has nothing to do with excessive force. Of course, the case law does not support such a tactic. *Strauss v. City of Chicago*, 760 F.2d 765, 769 (7th Cir. 1985) ("Strauss' data similarly represent nothing more than generalized allegations bearing no relation to his injury.).

Moreover, at the CPD, excessive force allegations were and are investigated by an entirely separate unit than the Internal Affairs Division ("IAD"), which investigates allegations such as corruption and false arrest - claims at issue in this case. *See* Def.s' Group Ex. 13, Addendum to CPD General Order 93-3, at 2-4; CPD General Order 08-01-02, at 2-4; and Ch. 2-57 Independent Police Review Authority, 2-57-040. Yet Shane intermixes data relating to excessive force cases investigated by the OPS and IPRA with non-excessive force investigations conducted by IAD. This flaw in Shane's analysis is another separate, independent basis to bar his opinions because there is no way to segregate

out the irrelevant excessive force data he relied on with the more relevant data from IAD. Neither Shane in his report nor Plaintiff in his Response make any attempt to do so.

Plaintiff suggests (at 27) that "Dr. Shane's point is broader," arguing that "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…" This confusing argument does not solve the mystery, either. Plaintiff again fails to explain how excessive force data has anything to do with Plaintiff's claims. Plaintiff does not cite any legal authority supporting his confusing position, and Shane does not point to any generally accepted police practice that would support the insertion of irrelevant data from one kind of investigatory unit into an analysis of data from an entirely different unit that investigates a different type of misconduct. Colloquially, it is the classic case of apples and oranges. In the parlance of Rule 702, the data Shane purports to rely upon is unreliable and insufficient to supply a foundation to support his opinions.

C. The 1972 Metcalfe Report, the 1997 CPI Report, the 2016 PATF report, and the 2017 DOJ report Relied on by Shane are Irrelevant.

Defendants' Motion (at 10-11, 22-24) established that the 1972 Metcalfe Report addressing allegations of excessive force is irrelevant and immaterial. As Defendants explained, it is unreliable for Shane to opine that the City was on notice of or deliberately indifferent to an alleged widespread practice of corruption at the time of Plaintiff's arrest in April of 2006 based on evidence relating to excessive force allegations from 1972. In response, Plaintiff states (at 18) that the Metcalfe Report "is by no means central to Shane's opinions," but he nevertheless claims it is "unclear" to him why Defendants are moving to bar it. Plaintiff then insists Shane should be permitted to introduce this report to the jury. Plaintiff's argument is emblematic of the tenor of his entire defense of Shane's report: because he relied on something, it is admissible *ipse dixit*. While Plaintiff may prefer that courts not act as gatekeepers when evaluating the admissibility of expert opinions, that is the law under Rule

702 and *Daubert*. It is unreliable for Shane to rely on a report from 34 years before Plaintiff's arrest to render an opinion with respect to the City's disciplinary system in 2006. As the case law set forth above regarding relevant *Monell* time frames demonstrates, this evidence is far too remote in time and scope to have any bearing on the arrest at issue. Indeed, Judge Pallmeyer in *Brown* barred the Metcalfe report relative to a 1988 arrest. *Brown*, 633 F. Supp.3d at 1148. Plaintiff (through Shane) should not be permitted to proffer it here for an arrest that occurred in 2006.

Shane's reliance on the 2016 PATF report and the 2017 DOJ report should also be barred. In addition to the irrelevant post-arrest time frames discussed above (*i.e.*, these reports cannot be relevant to what the City's final policymaker knew in 2006), they are also irrelevant as to subject matter. As argued in Defendants' motion, but ignored by Plaintiff in response, the overwhelming focus of the PATF and DOJ reports relate to allegations of excessive force and officer involved shootings, such as the high-profile 2014 Laquan McDonald shooting.

Plaintiff contends (at 14-17) that Shane is relying on the PATF and DOJ reports because he comments on the CPD's early warning systems. But Shane conducted no analysis or evaluation of the CPD's early warning systems and is simply parroting what those two reports said about that subject. Report at 76-80. As such, his opinions are not supported by sufficient data and a reliable methodology. Moreover, in his Response, Plaintiff intermingles the concepts of the City's disciplinary system (which Plaintiff asserts was deficient) with the CPD's early warning systems, which Plaintiff does not criticize in his Complaint. This case is not about the City's early warning systems, as it is uncontroverted that the CPD identified Watts's alleged corruption and brought it to the FBI in September 2004. Dkt. 247 (JSUMF) at ¶¶ 2, 4, 6-7; Dkt. 229 (Noble Report) at 55-57. Accordingly, for these reasons as well, Shane should not be permitted to rely on the 2016 PATF report or the 2017 DOJ report.

Shane's reliance on the 1997 CPI report suffers from the same problems. It is irrelevant in time and subject matter. Again, Shane relies on the CPI Report to opine that the City did not

implement an early warning system to focus on units as a whole, rather than specific officers. However, Shane made no attempt to isolate and evaluate data from tactical units focused on narcotics arrests. As a result, there is a disconnect between the City's alleged failure to focus its early warning systems on units as a whole, and any relevant issue in this case. Certainly, neither Plaintiff nor Shane make a connection. Therefore, Shane's opinions and testimony with respect to the 1997 CPI Report should also be barred.

V. Shane Should Not Be allowed to Offer Opinions or Testimony Regarding CPD's Sustained Rates in Administrative Investigations.

As set forth in Defendants' Motion (at 15-20), testimony or opinion offered by Shane regarding CPD's sustained rates in administrative investigations 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. 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. Moreover, allowing Shane to introduce unreliable testimony concerning "sustained rates" will mislead and confuse the jury as to the actual issues to be determined at trial, resulting in unfair prejudice to the City.

As an initial matter, Shane did 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. Plaintiff's Response (at 24) concedes there is no universal "target sustain rate" applicable to police departments. The absence of such standards in Shane's report prevents this Court from assessing the reliability of any criticism of the CPD's sustained rates, which renders such criticism inadmissible under Rule 702. Plaintiff nevertheless suggests that even in the absence of such standards, Shane

should be allowed to testify about the "specific impact" of the "very low" sustained rate. (Resp., at 24-25). But without a national standard or other uniformly accepted criteria, Shane's conclusion that CPD had a "very low" sustained rate lacks a sufficient foundation or basis by which this Court can assess the reliability of that conclusion. Further, any opinion that is based upon the unsupportable "very low" sustained rate, such as the purported "specific impact" on CPD officers, fundamentally fails for the same reasons.

Plaintiff attempts (at 25) to salvage Shane's opinions based on the sustained rate by noting that the 1993 Police Foundation Report[11] did not think analysis of sustained rates was without value. The sections of the Police Foundation Report cited in Plaintiff's Response (at 25) used sustained rates to analyze complaint dispositions among agency types and agency sizes, and the disciplinary outcomes among those agencies. Whatever value such analyses may have, the Police Foundation Report did not use sustained rates to assess the sufficiency of an agency's administrative disciplinary process.

Plaintiff's Response (at fn.2, 4) also accuses Defendants of misusing the Police Foundation Report for the propositions that "complaint rate is one of the most badly abused police-based statistics" and that simply relying on complaint data is an unreliable method to assess an agency's administrative investigations of police misconduct. *See* Motion, at 19. According to Plaintiff (at fn.4), a "complaint rate" is "entirely distinct" from a "sustained rate." Once again, Plaintiff disregards what the Police Foundation report actually concludes:

> As with the rate of complaints received, *findings with regard to complaint dispositions are subject to multiple interpretations*. A low sustained rate, for example, could be the result of a number of factors, including, but not limited to, a less than rigorous complaint review process, a high standard of proof for sustaining complaints, or a high rate of false complaints. (Emphasis added).

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[11] Pate, Fridell, and Hamilton (1993); Police Use-of-Force: Official Reports, Citizen Complaints, and Legal Consequences, Volumes I and II; Washington D.C., The Police Foundation (attached as Exhibit N to Plaintiff's Response).

Police Foundation Report, Exhibit N to the Response, at 5-7. In short, the Police Foundation Report provides no basis to support Shane's use of or reliance on CPD's sustained rates to criticize its administrative disciplinary investigations.[12]

Plaintiff's Response (at 25) also argues Defendants failed to provide any relevant support for their contention that Shane should be precluded from comparing sustained rates between municipalities. As the previous paragraph establishes, Plaintiff's argument is without merit, as the very studies Shane referenced in his report acknowledge that 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. Defendants' Motion also provided case law for the proposition that 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*, 760 F.2d at 768-69. Plaintiff's Response does not address or even mention this case law.[13]

Defendants' Motion (at 19-20) also raised 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 likelihood of confusion of the issues to the jury.

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[12] The Response does not address Defendants' discussion of Shane's misplaced reliance on the 2019 study of 2007 LEMAS data. (Motion, at 18-19). As that study further confirmed, 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.

[13] The Response (at 25-26) does cite four District Court cases for the proposition that "widespread failure to discipline officers . . . is evidence relevant to *Monell* liability." *LaPorta v. City of Chicago*, 277 F. Supp. 3d 969 (N.D. Ill. 2017); *Obrycka v. City of Chicago*, No. 07 C 2372, 2012 WL 601810 (N.D. Ill. Feb. 23, 2012); *Garcia v. City of Chicago*, No. 01 C 8945, 2003 WL 1715621 (N.D. Ill. Mar. 20, 2003); *Kindle v. City of Harvey*, 2002 WL 230779 (N.D. Ill. Feb. 15, 2002). Besides a parenthetical reference, Plaintiff provides no discussion of the facts of those cases. Plaintiff does not explain how sustained rates relate to the proposition for which the cases are cited, *i.e.*, widespread failure to discipline officers is relevant to *Monell* liability, or more importantly, how the facts of those cases support Shane's attempt to compare the CPD's sustained rates to other municipalities or agencies. Plaintiff also does not explain how or why those cases should lead to a different conclusion than *Strauss* or *Bryant* would ordain. Plaintiff's cursory and undeveloped arguments should be considered waived. *Shipley,* 947 F.3d at 1062-63.

Introduction of unreliable evidence concerning "sustained rates" creates a real risk of misleading or confusing the jury as to the actual issues to be determined at trial, resulting in unfair prejudice to the City. As noted in the Motion (*id.*, at 20), "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. Moreover, Plaintiff's failure to respond to this argument in his Response results in forfeiture. *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010).

VI. 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 Fed. R. Evid. 403.

Defendants alternatively contend in their Motion (at 22-24) that Federal Rule of Evidence 403 should prohibit Shane from discussing the cherry-picked reports discussing alleged miscellaneous CPD misconduct from 34 years before Plaintiff's 2006 arrest and over a decade after his arrest. As discussed above, the 1972 Metcalfe report, the 1997 CPI report, the 2016 PATF report, and the 2017 DOJ report are irrelevant and immaterial to the allegations of this case. And even if they have any limited relevance, they should be barred because they would unfairly prejudice all Defendants and mislead and confuse the jury.

Plaintiff responds by asserting that Defendants' Rule 403 argument should be made in a motion *in limine*. As Defendants stated in their motion, they will file such a motion, if necessary, with their pretrial statement on, but Defendants also raise it in this motion to preclude Shane from relying on this material.

The reasons Plaintiff offers to introduce the reports prove Defendants' point that the reports will unfairly prejudice Defendants. Plaintiff quotes (at 30-31) the 2016 PATF report as concluding

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." This type of sentence that Shane cherry-picks from the PATF report highlights the reason Shane should be barred from offering or relying on it. Plaintiff's quotation of this sentence in his Response reveals his intention to inject into the trial completely irrelevant and prejudicial allegations of CPD misconduct over the years to pollute the jury's evaluation of this case and these Defendants. It also directly contradicts Plaintiff's argument (made just a paragraph later, at 31) that "Dr. Shane is capable of efficiently describing the basis for his opinion without bringing in irrelevant information." It remains to be seen whether Shane is capable of such discretion, but Plaintiff apparently is not.

Likewise, Plaintiff relies (at 31) on Shane's parroting of the PATF report's discussion of Officer Jerome Finnigan and quotes the PATF report as "acknowledging that CPD never attempted to 'intercede in [Finnigan's] obvious pattern of misconduct.'" While Plaintiff suggests that Shane is not parroting the PATF when it comes to Finnigan, Shane admitted at his deposition that he does not know anything about the Finnigan case and did not review the reasonableness of the IAD investigation of Finnigan conducted with both state and federal partners that led to his indictment and conviction. Shane *Baker* Dep., at 160:9-262:5. In fact, the IAD identified allegations that Finnigan was engaged in a pattern of misconduct, IAD brought those allegations to the prosecutors, and IAD's efforts led to Finnigan's 2006 arrest and conviction for corruption. (Dkt. 229, Noble Report at 69-70). By his admission, Shane knows nothing about Finnigan's case so he knows nothing about those facts, but the City will be forced to relitigate the Finnigan case and prove these facts if Shane is allowed to parrot the PATF report. What's more, the Defendant Officers will need to extricate themselves from the taint of Finnigan's misconduct even though they had nothing to do with Finnigan. The unfair

prejudice is obvious, and Plaintiff's Response demonstrates he fully intends to use Finnigan's case for that improper purpose.

Finally, Plaintiff argues (at 32) that Defendants "overreach" by asking the court to exclude the entirety of pages 72 to 83 because that section "cites dozens of articles and reports addressing the relevant history of CPD's disciplinary and supervisory systems." But again, that proves Defendants' point: Plaintiff, through Shane, is attempting to unfairly prejudice all Defendants by interjecting a hand-picked history of alleged CPD misconduct that has nothing to do with this case. The only unfairness pertaining to such evidence would be to Defendants if this type of extraneous and irrelevant material, which is outside the relevant *Monell* five-year time frame and concerns a myriad of unrelated allegations, were admitted. It should be barred.

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: May 22, 2025

Respectfully submitted,

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