

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

Germin Sims and Robert Lindsey, )  
   ) No. 19-cv-2347  
Plaintiffs,                        )  
  ) (Judge Pallmeyer)  
-vs-                                )  
                                      )  
City of Chicago, et al.,        )  
                                      )  
Defendants.                       )

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION  
TO BAR OPINIONS OF DR. JON SHANE (ECF No. 131)**

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## **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO BAR OPINIONS OF DR. JON SHANE (ECF No. 131)**

Plaintiffs have retained Dr. Jon M. Shane to evaluate the City of Chicago's police disciplinary and supervisory systems from 1999-2011, including the City's failure to discipline the individual officer defendants. Defendants have moved to bar Dr. Shane's opinions. (ECF No. 131.) Plaintiffs show below that Dr. Shane is qualified to provide his opinions, he used generally accepted standards, and his testimony will assist the jury. The Court should therefore deny the motion to bar expert testimony from Dr. Shane.

### **I. A Brief Summary of Dr. Shane's Opinions**

To form his opinions in this case, Dr. Shane analyzed an extensive set of documents and information, which included contracts between the police union and the City of Chicago, discovery responses, Chicago Police Department policies, annual reports from the City of Chicago, hundreds of files of misconduct investigations against the Defendant Officers, hundreds of files of misconduct investigations culled from a random sample, dozens of deposition transcripts, reports and articles addressing the state of police discipline and supervision in the Chicago Police Department, the FBI investigative file regarding the investigation into the corruption of defendants Watts and Mohammed, and numerous academic articles and other publications on

topics germane to his opinion. (Shane Report of April 1, 2024 at 16 n.5-9, 76 n.63, 79 n.64, 81 n.67, 82 n.68-69, 98 n.82, 100 n.84, 118-24, ECF No. 131-2.)

One part of Dr. Shane's analysis was to collect, review, and analyze data from a random sample of Chicago Police department misconduct investigations from 1999-2011. (Files of misconduct investigations are commonly called "CR files" or "CRs," short for "Complaint Register.") Dr. Shane determined an appropriately sized sample for the 1999-2011 period and selected sub-samples to analyze periods within that timeframe. (Shane Report of April 1, 2024 at 15, 17, ECF No. 131-2.) He then obtained a sample of 1,265 CRs, created a codebook so that data could be reliably extracted from those files, and trained a team of data coders to extract the data, applying standard social science methodologies. (*Id.* at 17-18.) The coders compiled the data in a spreadsheet and provided it to Dr. Shane who conducted a review and quality check to ensure the accuracy of the coding process. (*Id.* at 18.)

Dr. Shane applied his expertise and knowledge and used generally accepted social science methodologies to form three global opinions that apply to plaintiffs' *Monell* claim:

1. The Chicago Police Department did not follow accepted practices for conducting police misconduct investigations, and CPD's investigations did not comport with nationally accepted standards. (Shane Report of April 1, 2024 at 11, ECF No. 131-2.)

2. The defendant officers accrued complaints at a rate that notified officials of a need for intervention and supervisory measures to stop adverse behavior and correct deficiencies, and the City's response to that notice did not comport with nationally accepted standards. (*Id.* at 11.)
3. The Chicago Police Department's accountability systems from 1999-2011 did not meet nationally accepted standards and did not effectively respond to patterns of allegations against officers that emerged during that time. (*Id.* at 11-12.)

Dr. Shane formed other conclusions that defendants do not address in their motion:

1. CPD's investigations were characterized by (a) a focus on minor complaints at the expense of more serious allegations; (b) undue delays in investigations that compromised the effectiveness and integrity of the disciplinary system; (c) incomplete investigations that routinely omitted necessary steps, including collecting and reviewing relevant evidence; (d) frequent failures to conduct any investigation into complaints of misconduct; and (e) failures to conduct in-person interviews of accused and witness officers or otherwise ensure the integrity of those officers' responses. (Shane Report of April 1, 2024 at 11, ECF No. 131-2.)
2. The City knew of serious deficiencies in its accountability systems, including especially the need to manage risks associated with exposure to drugs and money in narcotics units, such as Watts's tactical team. The City nonetheless failed to address those risks consistent with nationally accepted standards. (*Id.* at 72-83.)
3. The CPD's leaders were aware of mounting and extremely serious allegations against defendants Watts, Mohammed, and others, and learned of evidence supporting those allegations, but did nothing to ensure that the allegations were promptly resolved to protect the community from harm. However, the CPD allowed the key whistleblowers and police investigators

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

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

## **II. Dr. Shane's Opinions Are Admissible Expert Opinions**

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

Defendants' first argument about Dr. Shane's qualifications misstates his experience as a police officer. (ECF No. 131 at 5-6.) Dr. Shane was trained in conducting internal affairs investigations when he became a sergeant with Newark Police Department, and he personally conducted many internal affairs investigations. (Deposition of Dr. Jon M. Shane, April 23, 2024, at 15:24-17:3, ECF No. 131-7.) Dr. Shane has also been qualified and has testified as an expert in internal affairs in state and federal courts and has reviewed internal affairs issues in numerous other lawsuits. (*Id.* at 19:20-20:17, 21:18-37:10; Shane Report of April 1, 2024 at 161, ECF No. 131-

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In the Newark Police Department, some investigations were handled by the internal affairs department and some investigations were handled by

supervisors outside the department, like Dr. Shane. (Deposition of Dr. Jon M. Shane, April 23, 2024, at 17:16-17:24 ECF No. 131-7.) That Shane was not assigned to the internal affairs department when he gained experience conducting internal affairs investigations, as defendants point out (ECF No. 131 at 5), is of no consequence. Defendants also point out that Shane did not conduct criminal investigations into other officers, which is how he interpreted the term “corruption,” but this is another insignificant quibble. (ECF No. 131 at 5-6.)

Dr. Shane served in the Newark, New Jersey Police Department for twenty years, retiring as a captain in 2005. (Shane Report of April 1, 2024 at 1, ECF No. 131-2.) For most of his career he drafted, reviewed, and implemented operational and administrative policy. (*Id.*) He regularly consults with attorneys and law enforcement agencies on police policy and practice issues and training programs; he has provided training programs for senior law enforcement leaders in policy development, police policy, and research; and he has served as a Senior Research Associate to the Police Foundation for the past twenty years. (*Id.* at 1, 3, 5.)

Dr. Shane participates in national organizations addressing police policy including the American Society of Criminology, the Police Executive Research Forum, and the Academy of Criminal Justice Sciences. (Shane

Report of April 1, 2024 at 6, ECF No. 131-2.) He has served as a peer-review member for more than a dozen academic journals on policing, police policy, and criminal justice. (*Id.* at 1.) For the past fifteen years, he has also conducted research and taught students on a wide variety of policing topics. (*Id.* at 159.) He has published articles on police discipline and police administration and has delivered lectures, training workshops, and conference presentations on police discipline and police administration. (*Id.* at 163-65.)

These qualifications are sufficient. *See Andersen v. City of Chicago*, 454 F. Supp. 3d 808, 813 (N.D. Ill. 2020) (rejecting defendants' challenge to plaintiff's police practice expert on the basis that he did not "personally investigat[e] homicides or . . . tak[e] subjects to be polygraphed"). At best, defendants may seek to use Dr. Shane's police experience in cross-examination. *Id.* at 813 (explaining that if the defendants want to "highlight the lack of experience Waller may have, for example, in personally investigating homicides or in taking subjects to be polygraphed, they may do so through cross-examination"); *Klappelberg v. Burge*, No. 13 C 3963, 2016 WL 6821138 at \*2 (N.D. Ill. Sept. 16, 2016) (explaining "that Adams was not an ASA during 1988 and 1989 may have some bearing on the weight of his testimony, just not its admissibility.")

Defendants contend that Shane is not qualified to state that a deficient disciplinary system would be expected to cause officers to commit misconduct (ECF No. 131 at 6), but they fail to provide any support for this claim. Shane is not going to offer any opinion about the individual motivations of the defendant officers. Any such opinion would be like the medical proximate causation opinion the Court excluded in *Sanchez v. City of Chicago*, No. 18 C 8281, 2024 WL 4346381, at \*8 (N.D. Ill. Sept. 30, 2024). The opinion that Shane will offer is simply that one reason for a police department to have a working disciplinary system is to prevent officer misconduct. That opinion is plainly within Shane's expertise.

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

In constitutional tort cases under Section 1983, police practices testimony is admissible when it provides “expert testimony regarding sound professional standards governing [the] defendant[s] actions.” *Jimenez v. City of Chicago*, 732 F.3d 710, 721 (7th Cir. 2013). Such testimony is “relevant and helpful” because it can “give [the] jury a baseline to help evaluate whether [the] defendant[s’] deviations from those standards were merely negligent or were so severe or persistent as to support an inference of intentional or reckless conduct that violated [Plaintiff’s] constitutional rights.”

*Id.* at 721-22. Dr. Shane offers such testimony here.

Dr. Shane's report includes an extensive discussion of the methodology he applied and shows that he used standard techniques in police practices and social sciences to form his opinions. Specifically, Dr. Shane identified and obtained a random sample of CRs from 1999-2011, gathered data from those CRs, ensured the reliability and quality of those data, and computed the frequency with which the City's investigators completed various investigatory tasks. (Shane Report of April 1, 2024 at 13-19, ECF No. 131-2.) Likewise, Dr. Shane named and cited the sources for his opinions about generally accepted policing standards. (*Id.* at 19-21.)

Throughout his report, Dr. Shane applies the standards he has identified. Defendants incorrectly assert that Dr. Shane did not read the CR files (ECF No. 131 at 7), but Dr. Shane testified to the contrary. (Deposition of Dr. Jon M. Shane, April 23, 2024, at 83:8-86:14, ECF No. 131-7.)

As plaintiffs show below, Dr. Shane's methodology is consistent with that of experts whose opinions have been admitted by other courts in this district. *E.g., Washington v. Boudreau*, No. 16-CV-01893, 2022 WL 4599708, at \*8 (N.D. Ill. Sept. 30, 2022) (police practices experts use reliable methodology by reviewing case materials and filtering that evidence through the expert's knowledge and experience with policing). The review of CR files for patterns relevant to *Monell* claims "has been approved a number of

times by courts in this circuit.” *Arias v. Allegretti*, No. 05 C 5940, 2008 WL 1911185, at \*3 (N.D. Ill. Jan. 22, 2008) (citing *Sornberger v. City of Knoxville*, Ill., 434 F.3d 1006, 1030 (7th Cir. 2006); *Garcia v. City of Chicago*, 2003 WL 22175618 (N.D. Ill. 2003)).

**C. Dr. Shane used an appropriate timeframe**

Dr. Shane reviewed 1,265 CR files produced by the City in discovery spanning the years 1999-2011. He reviewed the data as a whole and divided into three time periods: 1999-2003; 2004- 2007; and 2008-2011. (Shane Report of April 1, 2024 at 28-52, ECF No. 131-2.) Dr. Shane concluded that across the entire sample, and within each period, the Chicago Police Department consistently failed to conduct thorough and timely investigations of police misconduct and failed to devote the resources necessary to ensure unbiased investigations of complaints. *Id.* at 52-72.

Defendants argue that because plaintiffs were arrested in 2009, material from other time periods is irrelevant to their claims. (ECF No. 131 at 8-10.) The Court should reject this argument.

First, defendants ask the Court to adopt a rigid rule that the appropriate timeframe for any *Monell* evidence in wrongful conviction constitutional tort litigation is five years preceding the date of the plaintiffs’ arrest. (ECF No. 131 at 9.) Defendants provide no support for the contention that a “five-year period” has been “generally accepted” in this district. (*Id.* at 9.)

They cite just one case, this Court’s ruling at summary judgment that criticized the plaintiff’s *Monell* evidence for being distant in time and unrelated in topic to the police misconduct alleged by the plaintiff. *Brown v. City of Chicago*, 633 F. Supp. 3d 1122 (N.D. Ill. 2022). In a footnote, that ruling referred to a five-year period as a shorthand for stating that certain evidence was very remote in time, but the Court did not adopt the rigid five-year rule that defendants propose. *Id.* at 1177 n.61.

Other courts have not questioned the relevancy of evidence from more than five years before the incident in question. *See Velez v. City of Chicago*, No. 18 C 8144, 2021 WL 1978364, at \*4 (N.D. Ill. May 18, 2021) (concluding there was “no question as to the relevance” of seven years of CR files requested by plaintiff, before going on to consider proportionality); *DeLeon-Reyes v. Guevara*, No. 18 C 1028, 2019 WL 4278043, at \*9 (N.D. Ill. Sept. 10, 2019) (describing relevance of six years of CR files to *Monell* claims as “not seriously dispute[d]”).

Second, defendants’ contention that post-event evidence is never relevant is simply wrong. (ECF No. 131 at 9.) “The Seventh Circuit has recognized that subsequent conduct by a municipal policymaker may be used to prove preexisting disposition and policy.” *Padilla v. City of Chicago*, No. 06-C-5462, 2009 WL 4891943 at \*7 (N.D. Ill. Dec. 14, 2009) (cleaned up.) “On a

Monell claim, post-event evidence is admissible if it sufficiently relates to the central occurrence.” *Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1070 n.23 (N.D. Ill. 2018) (cleaned up.)

Post-event evidence is relevant here based on the consistency of Dr. Shane’s conclusion that there was a deficient disciplinary system in all three time periods—1999-2003, 2004-2007, and 2008-2011. This means that it is more likely that the City knew of the deficiencies but decided not to address them. That evidence rebuts any argument that the City took reasonable measures to address the deficiencies but that those reforms took time to work.

For all these reasons, there is no reason to limit Dr. Shane’s opinions to a certain time period. And even under defendants’ rigid five-year rule, Dr. Shane’s opinions about 2004-2007 and 2008-2011 are plainly relevant to plaintiffs’ claims about their wrongful arrests in 2009. This argument is not a basis to exclude Dr. Shane’s opinions.

#### **D. Dr. Shane analyzed relevant and appropriate materials**

Defendants complain about Dr. Shane’s discussion of reports from before and after the period of data analysis, including the Metcalfe Report from congressional hearings in 1972, the 1997 report from Mayor Daley’s Commission on Police Integrity, a 2016 report from Mayor Emanuel’s Police Accountability Task Force, and a 2017 report from the federal Department

of Justice. (ECF No. 131 at 10.) But defendants are mistaken when they claim that Dr. Shane will rely on evidence from 1972 or 2016 to argue that the City had notice of that evidence in 2009. (*Id.*) As explained below, Dr. Shane relies on this evidence for other purposes.

Dr. Shane relies on the 1972 report of the Blue Ribbon Panel convened by the Honorable Ralph H. Metcalfe only for historical context. (Shane Report of April 1, 2024 at 72, 116, ECF No. 131-2.) The report of the 1997 Commission on Police Integrity is relevant to plaintiffs' claims because it shows that the City was on notice of the risks posed by tactical drug units and failed to implement recommendations to improve its disciplinary system. (Shane Report of April 1, 2024 at 77-80, 116, ECF No. 131-2.)

The 2016 Police Accountability Task Force report is also relevant despite its date of publication. Dr. Shane relied on this report, among other documents, to form his understanding of the City's discipline and appeal processes, as well as historical attempts (and failures) to reform the CPD. (Shane Report of April 1, 2024 at 56, 73, ECF No. 131-2.)

Finally, the 2017 report by the Department of Justice is plainly relevant because it includes conclusions about the relevant time period. (Shane Report of April 1, 2024 at 85, ECF No. 131-2.) Defendants are unable to provide any reason why Dr. Shane could not rely on these reports for historical

context, for showing notice from before the relevant time period, and for factual information about policies and practices within the relevant time period.

Defendants also argue that some of this evidence should be excluded as prejudicial or irrelevant. (ECF No. 131 at 21-23.) The Court should reserve ruling on these arguments until motions in limine or trial.

**E. Dr. Shane used an appropriate sample size**

Dr. Shane conservatively determined the sample size of CRs that he required by (1) assuming he would need a big enough sample size to run a multiple variable analysis with up to nine predictor variables and (2) assuming a 60% error rate. (Shane Report of April 1, 2024 at 15, ECF No. 131-2.) Defendants state that they are not contesting the sufficiency of the sample size, but they ask the Court to bar Shane from testifying that he used a multiple regression or multivariate model to determine the appropriate sample size. (ECF No. 131 at 24-25.) Plaintiffs do not expect Shane to offer any such testimony.

**F. Dr. Shane conducted his analysis reliably**

Dr. Shane identified the data to be extracted from the 1,265 CR files produced in this litigation as a random sample of CPD's police misconduct investigations from 1999-2011; he then analyzed that data (in addition to reviewing and discussing specific CRs and other evidence of the City's

disciplinary and supervisory policies and practices) to form opinions about the quality of CPD's disciplinary and supervisory systems. Dr. Shane applied a standard and reliable methodology, and his thorough analysis will help the jury. The Court should reject defendants' attempts to challenge Dr. Shane's methodology

**G. Dr. Shane properly applied the appropriate standard for internal affairs investigations**

Dr. Shane performed his analysis by developing a codebook identifying data of interest to him in the 1,265 CRs he reviewed and then analyzed data collected by coders he trained. (Shane Report of April 1, 2024 at 17, ECF No. 131-2.) Many of these data points collect basic descriptive information about the complaints: the complainant, victim, and accused officer; a summary of the allegation; how long the allegation took to resolve; and the disposition of the allegation. (Shane Codebook at 3-6, ECF 131-9.) Dr. Shane also sought data on various investigative steps, including whether the investigator contacted the complainant, victim, or witnesses, whether in-person interviews were conducted, whether statements were taken, and whether various kinds of evidence were collected and preserved. (*Id.* at 6-12.)

It is customary in the social sciences to use coders to document data contained in voluminous documents, and Dr. Shane's manner of analysis is

consistent with tools and practices from the 1999-2011 time period, including similar spreadsheets Dr. Shane knows from his experience in the Newark Police Department. (Shane Report of April 1, 2024 at 17-18, ECF No. 131-2.)

Defendants argue that Shane's variables are unreliable because the variables themselves are not contained in a nationally reliable standard, but this is the wrong test. (ECF No. 131 at 11-12.) As defendants acknowledge (*id.* at 12-13), Shane relied on multiple sources for his determination of what is required for a reasonable internal investigation. Shane then used his expertise to choose the right variables to apply that standard to the data he reviewed.

Defendants' challenge to the data and variables chosen by Shane is "a question for the jury, not the judge." *Manpower, Inc. v. Ins. Co. of Pennsylvania*, 732 F.3d 796, 809 (7th Cir. 2013). "Assuming a rational connection between the data and the opinion—as there was here—an expert's reliance on faulty information is a matter to be explored on cross-examination; it does not go to admissibility." *Id.* Other district courts have applied this rule to expert opinion similar to Shane's. *Simmons v. City of Chicago*, No. 14 C 9042, 2017 WL 3704844, at \*11 (N.D. Ill. Aug. 28, 2017) (at trial, "are entitled to explore claimed flaws in one of the databases of police complaint file data upon which plaintiff's experts relied"); *Obrycka v. City of Chicago*, No. 07 C

2372, 2012 WL 4092653, at \*6-7 (N.D. Ill. Sept. 17, 2012) (holding that arguments about choice of data and variables were for jury to consider and did not justify barring opinion).

**H. There is no evidence of subjectivity in the data on which Dr. Shane relied**

Dr. Shane relied on a dataset containing information derived from 1,265 CR files (each of which may include dozens or hundreds of pages of material), which was encoded into a spreadsheet suitable for statistical analysis. (Shane Report of April 1, 2024 at 14, 17-18, ECF No. 131-2.) Dr. Shane recognized the possibility of subjectivity and addressed it by instructing the coders to resolve any ambiguities in favor of the City (i.e., marking an investigative step as completed if there was any evidence that it was completed). (Shane Codebook at 1, ECF 131-9.) Dr. Shane also personally audited the coding to ensure it had been done accurately. (Shane Report of April 1, 2024 at 18, 129-132, ECF No. 131-2.) Notably, Defendants' motion does not identify a single inaccuracy in the spreadsheet.

Defendants object that the data Dr. Shane gathered and analyzed is tainted because it relies on "subjective" assessments of the coders. (ECF No. 131 at 13.) This is incorrect. First, the codebook includes explicit, objective instructions for how data should be gathered. (Shane Codebook at 6-12, ECF 131-9.) Second, Dr. Shane ensured the reliability of the analysis by

personally inspecting it for accuracy, including that the variables in the data set matched the information contained in the CR documents. (Shane Report of April 1, 2024 at 18, 129-132, ECF No. 131-2.) By creating objective definitions for the data to be collected and personally ensuring the accuracy of the data, Dr. Shane appropriately guarded against any subjectivity that the coders may have introduced. Defendants are unable to identify any authority suggesting that such a methodology is inappropriate. Defendants' arguments again go to the weight of Shane's opinion, not to its admissibility.

*Manpower, Inc. v. Ins. Co. of Pennsylvania*, 732 F.3d 796, 806 (7th Cir. 2013) (noting it is abuse of discretion to “unduly scrutinize[]” data quality, which is typically a jury issue).

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

Defendants argue that Dr. Shane's analysis of the rate at which CPD sustained complaints of misconduct is unreliable and irrelevant. (ECF No. 131 at 17-19.) But Defendants misconstrue Dr. Shane's analysis. Dr. Shane has not opined, and will not opine, that there is a universal “target sustain rate” that all police departments should strive for—for example, that if a police department sustains fewer than ten percent of complaints, it is below national standards. Dr. Shane can, however, offer the opinion that the City of Chicago, starting in 1999 and going forward, had not fixed the problem

identified decades before by the Metcalfe Report—namely, that “complaints from citizens of abusive conduct by police are almost universally rejected by the Police Department.” (Shane Report of April 1, 2024 at 72, ECF No. 131-2.) And the data Dr. Shane analyzed about the categories of complaints the City accepted and rejected—for example, that the City frequently sustained minor operations and personnel violations, but did not sustain a single coercive interrogation or coerced confession allegation across the entire sample—are relevant to his assessment of the integrity and effectiveness of the disciplinary system. (*Id.* at 32-33.)

Defendants point to the works of policing scholars identifying challenges in calculating complaint sustain rates and comparing them between police departments. (ECF No. 131 at 23.) But policing scholars have not rejected comparisons of sustained rates wholesale. Defendants have not shown that Dr. Shane should be precluded from discussing discipline rates as one piece of evidence supporting the conclusion that the City of Chicago has a widespread failure to discipline its officers.

The Court should follow other courts in this district that permit such evidence. *Obrycka v. City of Chicago*, No. 07 C 2372, 2012 WL 601810, at \*8 (N.D. Ill. Feb. 23, 2012) (finding low rates of sustained complaints relevant to code of silence *Monell* theory); *Garcia v. City of Chicago*, No. 01 C 8945,

2003 WL 1715621, at \*7 (N.D. Ill. Mar. 20, 2003) (finding low sustain rate of complaints similar to plaintiff's allegations relevant to issue of *Monell* deliberate indifference); *Kindle v. City of Harvey*, No. 00 C 6886, 2002 WL 230779, at \*3 (N.D. Ill. Feb. 15, 2002) (same).

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

Defendants contend that Dr. Shane cannot render a “moving force” opinion that CPD’s failures would be expected to cause corruption, extortion, and fabrication and suppression of evidence because he has not “attempt[ed] to causally connect the alleged deficiencies with the specific officer misconduct in this case.” (ECF No. 131 at 20.) As plaintiffs explained above, Dr. Shane will not offer testimony about the individual motivations of the defendant officers. And causation is a question for the jury.

Instead of giving an improper causation opinion, Dr. Shane’s opinion is limited to stating how the failures of supervision and discipline he discusses would be expected to lead to corruption. For example, Dr. Shane explains why the hazards of drug policing—including involvement with illicit drugs, financial temptations, limited oversight, and the high stresses of the work—increase the risks of corruption in the absence of specific accountability measures, citing academic publications in support of his opinion.

(Shane Report of April 1, 2024 at 73-83, ECF No. 131-2.) Dr. Shane also discusses the direct link between prompt and thorough internal affairs investigations and accountability among police officers, writing: “When adverse behaviors are not addressed promptly and effectively, they can be taken for granted, perpetuated, and eventually normalized within the department; this is commonly known as normalized deviance, and has been the focus of police corruption research for several decades.” (*Id.* at 100.) As he does through his report, Dr. Shane cites multiple academic publications describing and explaining how corruption is normalized and socialized within policing. (*Id.*) Defendants cannot recast Dr. Shane’s opinion as an unsupported “bottom line” opinion by ignoring his analysis and the sources he cited.

Defendants are in error (ECF No. 131 at 20) when they seek to rely on Judge Ellis’s ruling in *Ezell v. City of Chicago*, No. 18 C 1049, 2023 WL 5287919 (N.D. Ill. Aug. 16, 2023), which barred an expert’s opinion that the defendants’ departures from standard police practices caused plaintiffs’ wrongful convictions, which the Court found was “part-and-parcel [to plaintiff’s alleged] constitutional violations.” *Id.* at \*17.<sup>1</sup> Dr. Shane has not usurped the jury’s role because he offers inferential causal links—based on his analysis, expertise, and relevant sources—that (1) CPD failed to

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<sup>1</sup> Defendants are also in error to attribute Judge Ellis’s ruling to this Court.

properly conduct investigations into police misconduct; and (2) that failure could cause narcotics officers, like the Defendant Officers, to engage in corruption. The jury would have to determine if those premises are true when they are put to the test at trial. Moreover, contrary to *Ezell*, Dr. Shane determined the City’s failures could predictably cause corruption, not that they necessarily did in plaintiffs’ cases. (Shane Report of April 1, 2024 at 12, ECF No. 131-2) (“I was not retained to assess whether these individuals were framed.”). This is a far cry from doing the “jury’s work for it.” *Ezell*, 2023 WL 5287919, at \*17. *Cf. United States v. Foster*, 939 F.2d 445, 451–52 (7th Cir. 1991) (holding expert testimony on dynamics of narcotics trafficking and investigation would help jury, which was unlikely to be familiar with that specialized area).

Dr. Shane relies on ample evidence connecting the general, known risks of drug policing to the specific pattern of misconduct exhibited by the Watts Team, which Dr. Shane discusses. For example, Defendant Mohammed was caught taking bribes in or around December 2007, as acknowledged by the then-head of CPD’s Internal Affairs Division, Debra Kirby. (Shane Report of April 1, 2024 at 88, ECF No. 131-2.) As early as 1999, Defendant Watts’s name had surfaced as a “corrupt cop” who “was ripping off drug dealers and selling drugs,” according to a former CPD officer who worked

in internal affairs. (*Id.* at 88.) And, as is well-documented in the record, Defendants Watts and Mohammed were indicted for stealing money they believed to be drug proceeds and pleaded guilty to federal criminal charges.

Apart from the abundant evidence that the defendant officers engaged in dishonest acts and improper and illegal activities, the purpose of Dr. Shane's testimony is not to deliver a "bottom line" opinion on *Monell* liability. The purpose of Dr. Shane's testimony is to establish the City's obligation (and failure) to guard against corruption in narcotics units. *Cf. United States v. Foster*, 939 F.2d 445, 451–52 (7th Cir. 1991) (holding expert testimony on dynamics of narcotics trafficking and investigation would help jury, which was unlikely to be familiar with that specialized area).

### **III. Conclusion**

For all these reasons, the Court should deny defendants' motion to bar the testimony of Dr. Jon Shane.

Respectfully submitted,

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