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Monell Claims in Police Litigation

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Introduction

- Overview of *Monell* Claims
- Elements, Common Theories, & Questions
- Motion Practice (MTD, Bifurcation, MSJ)
- *Monell* Discovery & Trials

What Is a *Monell* Claim?

- Direct Liability Against A Municipal Entity For Its Own Unconstitutional Conduct*

- IT IS NOT *Respondeat Superior*

*** *Connick v. Thompson*, 563 U.S. 51 (2011)**

What is NOT a *Monell* Claim?

- ***Connick v. Thompson*, 563 U.S. 51 (2011)** - "A municipality or other local government may be liable under [42 U.S.C. § 1983] if the governmental body itself "subjects" a person to a deprivation of rights or "causes" a person "to be subjected" to such deprivation. See *Monell v. New York City Dept. of Social Servs*., 436 U.S. 658, 692, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). But, under § 1983, local governments are responsible only for "their own illegal acts." *Pembaur v. Cincinnati*, 475 U.S. 469, 479, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (citing *Monell*, 436 U.S., at 665-683, 98 S.Ct. 2018). They are not vicariously liable under § 1983 for their employees' actions. See id., at 691, 98 S.Ct. 2018; *Canton*, 489 U.S., at 392, 109 S.Ct. 1197

- ***Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 405 (1997)** ("Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee").

Often There Are No Independent Damages Beyond Damages Already Available From A Verdict Against Individual Defendants

- *Swanigan v. City of Chi.*, 775 F.3d 953, 963 (7th Cir. 2015) ("We do not doubt that Swanigan's *Monell* claim faces jurisdictional and substantive legal barriers. Principles of double recovery may prevent him from recovering damages to the extent that his injuries are already covered by his successful claim [against the individual officers]. . ."); *Bender v. City of New York*, 78 F.3d 787, 793 (2d Cir. 1996) (prohibiting generally double recovery).
- *Kuri v. Folino*, 409 F. Supp. 3d 626, 653 (N.D. Ill. 2019) ("[T]he Court has already entered judgment on the compensatory damages award [and] [s]ince Kuri is not able to collect anything in addition to that, regardless of any *Monell* claims, and since he has not brought claims for injunctive relief, there is no live case or controversy against the City on which Kuri can move forward.").

So Why Do Plaintiffs File *Monell* Claims?

- **Increased fees for prevailing party under 42 U.S.C. § 1988 if plaintiff engaged in more discovery.**
- Increased discovery available to prove *Monell* claim to (a) help prove claims and (b) fish for potential plaintiffs
- Avoids indemnification risk for Plaintiff where state indemnification statutes are permissive or provide statutory indemnification caps.
- Addresses a "liability gap" situation where identity of offending officers is unknown or individual defendants are entitled to qualified immunity for constitutional violation that was not clearly established. (See *Jakes v. Boudreau*, Case No. 19 C 2204 (N.D. Ill.), Tr. of Nov. 26, 2019 Hr'g at 5:3-6, ECF No. 66 ("Qualified immunity poses a possibility of Monell liability without individual liability, but we could fashion a jury verdict [form] that ensures that the City's limited consent gets triggered.") (Shah, J.).)
- Injunctive relief sometimes possible with *Monell* claim. *Los Angeles County v. Humphries*, 562 U.S. 29, 30 (2010)

3 Avenues to *Monell* Liability

- Express/Written Unconstitutional Policy
- Direct Action By Policymaker (Related Point: Who is a policymaker?)
- Indirect Method: Implied Policy/Unwritten Policy/De Facto Policy
  - *Source: See, e.g.*, *Rossi v. City of Chicago*, 790 F.3d 729, 737 (7th Cir. 2015); (*Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992).

Examples of Express Unconstitutional Policies

- 48 Hour Rule Violation
  - *Dunn v. City of Chicago*, 231 F.R.D. 367, 376 (N.D. Ill. 2005), *amended on reconsideration*, No. 04 C 6804, 2005 WL 3299391 (N.D. Ill. Nov. 30, 2005) (certifying under Rule 23 class of pretrial detainees held more than 48-hours without *Gerstein* hearing in violation of *McLaughlin*).

- Outright Bans On Videotaping Police Officers
  - *Arizona Broadcasters Association v. Kris Mayes*, 2:22-v-01431-J0T Dkt 66-1 (There is a clearly established right to record law enforcement officers engaged in the exercise of their official duties, see e.g., *Askins v. Dep't of 3 Homeland Sec*., 899 F.3d 1035, 1044 (9th Cir. 2018).

- Certain Strip Searches
  - *Sumpter v. Wayne Cnty.,* 868 F.3d 473, 489 (6th Cir. 2017) (granting qualified immunity for jail guard who conducted visual inspection of nude inmates but question as to whether the policy itself was unconstitutional)

Consider Using An Offer of Judgment

- Cap attorneys' fees on litigation where plaintiff is likely to prevail
- Admission of liability can be avoided through limiting language within Rule 68 offer
- *Monell* does not trigger additional damages

Elements for *Monell* Liability Using Indirect Method

- Underlying Constitutional Injury (see slide below)
- Widespread Unconstitutional Conduct
  - "[T]he gravamen [of a *Monell* claim] is not individual misconduct by police officers...but *widespread practice* that permeates a critical mass of an institutional body." *Rivera*, 319 F. Supp. 3d at 1071 (N.D. Ill. 2018) (quoting *Rossi v. City of Chicago*, 790 F.3d 729, 737 (7th Cir. 2015)); see *Connick v. Thompson* 563 U.S. 51, 61 (2011).
- Culpability by Policymakers/Deliberate Indifference
  - *Phelan v. Cook Cnty*., 463 F.3d 773, 790 (7th Cir. 2006) (…"so pervasive that acquiescence on the part of the policymakers was apparent and amounted to a policy decision.")
- Causation
  - "It is not enough to show that a municipal policy 'might lead' to police misconduct. Rather the plaintiff must show an affirmative link between the policy and the particular constitutional violation alleged." *Mayhew v. Gutierrez*, *et al*., 08 C 4154, 2010 WL 3155977, *3 (N.D. Ill. Aug. 9, 2010) (citing *City of Oklahoma City v. Tuttle*, 471 U.S. at 808, 823 n. 8 (1985)).

What is a "Widespread Practice"?

Probably More Than One Instance

- *Connick v. Thompson* 563 U.S. 51, 61 (2011) (reversing plaintiff's verdict in 18 year reversed conviction case based on withholding of crime lab report because prosecutor's office cannot be liable under theory that it had a widespread unconstitutional practice of failing to train its prosecutors regarding their *Brady* obligations based upon a **single instance** of evidence withholding); See Also *Johnson v. Baltimore Police Dep't*, No. CV ELH-19-0698, 2022 WL 9976525, at *80 (D. Md. Oct. 14, 2022), *aff'd in part, appeal dismissed in part,* No. 22-2095, 2024 WL 1209744 (4th Cir. Mar. 21, 2024)

- *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002) (**three incidents** insufficient to establish a widespread practice).

- Theoretical single instance indicative of widespread practice is possible as contemplated by *Canton v. Harris*, 489 U.S. 378, 388

What is a "Widespread Practice"? (continued)

Examples Over What Time Time Period

- *Dean v. Wexford Health Sources, Inc*., 18 F.4th 214 (7th Cir. 2021) (finding an abuse of discretion where district court permitted a report from **4 years** after the incident at issue to serve as evidence of deliberate indifference for purposes of a *Monell* claim)

- *D.T. v. County of San Diego*, 2024 WL 4246085 at *6 (dismissing *Monell* claim against County based on failure to demonstrate "widespread practice" of permitting jail assaults notwithstanding Complaint's reference to a report citing 126 instances of prison assault)

- *Starks*, 946 F.Supp.2d at 793 ("Even assuming that these four cases involved misconduct by the Waukegan police similar to that to which Starks allegedly was subjected, five cases (including Starks's) over a period **of more than twenty years** are insufficient to create municipal liability for a 'widespread practice.'").

What is Deliberate Indifference?

- Deliberate indifference requires proof of both awareness of a pattern of constitutional violations and the awareness to a substantial certainty that an unconstitutional injury will result from such a pattern. *See City of Canton, Ohio v. Harris*, 489 U.S. 378 396 (1989).

- "Liability attaches only when the inaction evidences an extremely high degree of culpability" such as "deliberate indifference." *Owens v. Haas*, 601 F.2d 1242, 1246 (2d Cir. 1979).

Causation: Plaintiff's Alleged Unconstitutional Practice Must Be Causally Connected with Plaintiff's Constitutional Injury

Plaintiff must show the policy was the "direct cause" or "moving force" behind the constitutional violation. *See, e.g. Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917,927 (7th Cir. 2004); *Ruiz-Cortez v. City of Chicago*, No. 11 C 1420, 2016 WL 6270768, at *22 (N.D.111. Oct. 26, 2016) (Leinenweber, J.); *see also Thomas v. Cook County Sheriffs Dept.*, 604 F.3d 293, 306-07 (7th Cir. 2009) (policy must directly inflict an injury and not merely be a contributing factor).

Common Theories for Unconstitutional Implied Policy/Widespread Practice

- Failure To Discipline
- Failure To Train
- Withholding Of *Brady* Evidence
- Fabrication Of Witness Statements
- Unreliable Confessions
- Unreliable Identifications

Source: The custom or policy cannot be so amorphous that it effectively turns into *respondeat superior* liability. *See Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 403 (1997).

Is An Underlying Constitutional Violation Needed?

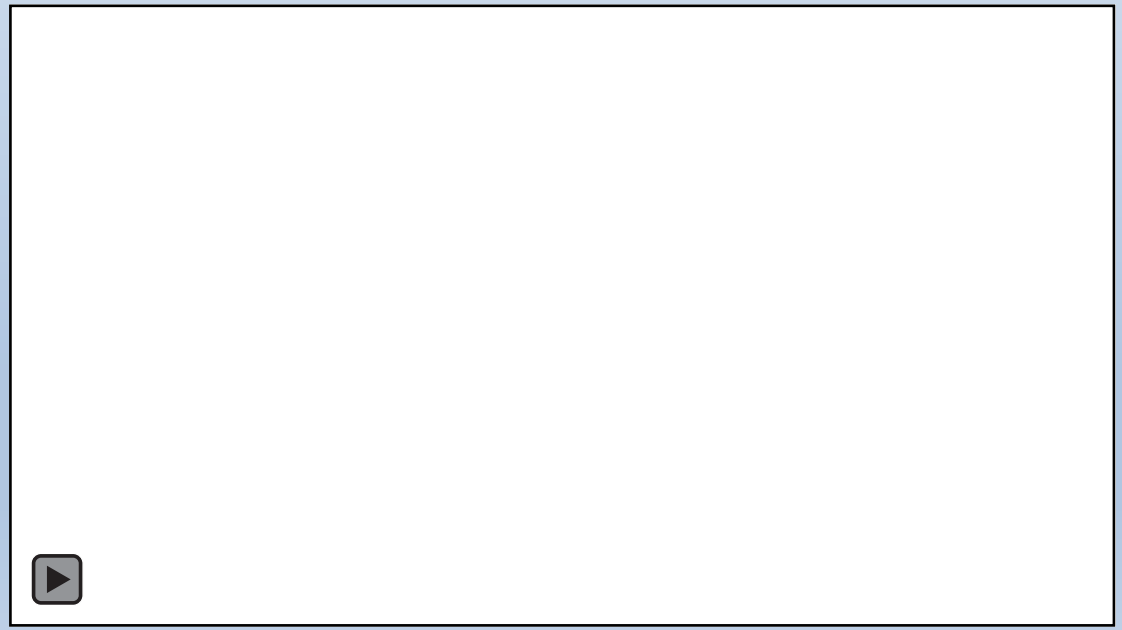
- *City of Los Angeles v. Heller*, 465 U.S. 796, 799 (1986) ("[N]either *Monell*, nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm.").

- *Thomas v. Cook Cty. Sheriff's Dept.*, 604 F.3d 293, 305 (7th Cir. 2010)(Creates an exception to the *Heller* rule, permitting a plaintiff to recover directly from a municipality under *Monell* even in the absence of individual liability under Section 1983 so long as such an outcome would not create an inconsistent verdict)

- *First Midwest Bank Guardian of Est. of LaPorta v. City of Chicago*, 988 F.3d 978 (7th Cir. 2021) (reversing $44.7M *Monell* verdict based on failure to discipline theory because Plaintiff was unable to establish an underlying constitutional violation by the officer.)

Monell Case Study
Williams v. City

- Factual Background:
  - Plaintiff Williams was driving in a car when his passenger was shot. He was charged and ultimately acquitted. He claimed that his passenger was shot by a passing car. Williams claims he was picked up as suspect because a ShotSpotter alert was triggered at the point in time that he drove through this intersection. Plaintiff further alleges that the City has a pattern and practice of using ShotSpotter in a discriminatory matter and that it triggers unreliable detentions.



Monell Claim Alleged in *Williams*

ShotSpotter Technology

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

MICHAEL WILLIAMS, LUCY PARSONS LABS, and DANIEL ORTIZ, on behalf of himself and a class of similarly situated people.	)	
Plaintiffs,	)	
v.	)	Case No. 22-cv-3773
	)	Class Action
CITY OF CHICAGO, SUPERINTENDENT DAVID O'NEAL BROWN, CHICAGO	)	JURY TRIAL DEMANDED

COUNT I – 42 U.S.C. § 1983
***Monell* Liability – Violation of the Fourth and Fourteenth Amendments**
(On Behalf of Lucy Parsons Labs, Plaintiff Ortiz and the class of similarly-situated individuals against Municipal Defendants)

414. Each paragraph of this Complaint is incorporated as if restated fully herein.

415. Count I is alleged against Municipal Defendants City of Chicago and Superintendent Brown in his official capacity.

416. The City of Chicago's use of ShotSpotter results in illegal investigatory stops or arrests of the Plaintiff and members of the Plaintiff Class and Plaintiff Organization in violation of the Fourth Amendment. Such violations are a continuing, persistent, and widespread practice.

417. CPD officers falsely manufacture reasonable suspicion for these searches and seizures by relying on ShotSpotter alerts that have never been tested for reliability and are not sufficiently reliable to be used as any part of the basis for a Fourth Amendment search or seizure.

Motion to Dismiss *Monell*
Williams v. City

- *Monell* Allegation:
  - The City used ShotSpotter in a manner that unconstitutionally targeted minorities and that resulted in unreliable detentions.
- Problem with Causation:
  - It is undisputed that a gunshot occurred in the area alleged. Therefore ShotSpotter is besides the point. ShotSpotter in this case was not unreliable and did not cause an unreliable detention.

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

Elgin Jordan,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 20-cv-4012
	)	
City of Chicago, Bryan Cox, Peter Theodore, David Salgado, and Rocco Pruger,	)	*(Judge Gottschall)*
	)	
Defendants.	)	

AMENDED COMPLAINT

12. On December 13, 2019, the prosecutor dropped all charges against plaintiff.

13. At all relevant times, the Chicago Police Department maintained official policies, practices, and customs that facilitated, encouraged, and condoned the officer defendants' misconduct.

14. Specifically, defendant City of Chicago has known and encouraged a "code of silence" among its police officers that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be severely penalized by the Department.

15. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that "Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

17. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that as of February 2007, "the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence."

18. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

19. In April 2016, the City's Police Accountability Task Force found that the code of silence "is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City."

20. As determined by the United States Department of Justice in its official report entitled "Investigation of the Chicago Police Department," January 13, 2017, at 75:

Motion to Dismiss *Monell*
Jordan v. City

- Plaintiff's "Code of Silence" Theory Does Not Identify An Express Policy That Violates The Fourth Or Fourteenth Amendments, therefore he is proceeding under an implied practice *Monell* theory.

- Plaintiffs Have Not Pled Facts Suggesting That Police Department Had A Widespread Practice Or Custom That Caused Their Injuries.

- Plaintiffs Do Not Allege Facts Suggesting That City Policymakers Had Actual Or Constructive Knowledge Of A Widespread Practice Of Unconstitutional Stops.
- Complaint Does Not Establish Causation Because It Does Not Allege How The "Code of Silence" Caused Plaintiff's Injuries.

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

Elgin Jordan,	)	
	)	
Plaintiff,	)	
	)	Case No. 20-cv-4012
v.	)	
	)	Judge Joan B. Gottschall
City of Chicago, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Still, Jordan must do more than plead that the city had a code of silence. Though he need not plead evidence, Jordan must plead enough facts to raise the inference that the code of silence was the moving force behind the constitutional violations he suffered above the speculative level. *See Iqbal*, supra, 556 U.S. at 678; *Ex rel. LaPorta*, 988 F.3d at 987 (citing *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404 (1997)); *Teesdale v. City of Chicago*, 690 F.3d 829, 833 (7th Cir. 2012).

To plead *Monell* causation, Jordan alleges in full: "The City's above described 'code of silence' was a proximate cause for the actions of the officer defendants to concoct a false story and fabricate evidence. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States." Compl. ¶¶ 16–17 (paragraph numbers omitted). These "[t]hreadbare recitals" of causation "supported by mere conclusory statements, do not suffice" to plead a plausible claim. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Jordan's allegations that officer defendants fabricated and concealed evidence are at most *consistent* with causation by the code of silence. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotations omitted); *see McCauley v. City of Chicago*, 671 F.3d 611, 617–18 (7th Cir. 2011) (disregarding complaint's conclusory allegations supporting *Monell* claim).

Typical Evidence Used to Prove *Monell* Claims

- Written Policies/Training Materials
- Investigative Files, Prosecutor Files, Criminal Defense Files
- Past Citizen Complaints, Lawsuits, And Other Incidents
- Testimony From Police Officers
- Internal Reports, DOJ Investigations, Independent Reports
- Corporate Designee Depositions On *Monell* Theories
- Expert Witnesses On Police Training And Oversight

Handling *Monell* Claims at the Discovery Stage

- Obtaining Policy/Client Documents (see above)
- Interrogatories and Requests for Admissions
- Disclose Designees On Key Topics (Timing is Critical)
- Depositions of Key Officials
- Utilizing Expert Witnesses

Use Contention Interrogatories To Frame Underlying Claims

- Please identify and state with specificity **each and every piece of evidence that you contend was fabricated and why you believe that evidence was fabricated**. For each such piece of evidence identified, identify all witnesses, documents, physical or other evidence which you will rely upon in support of your assertions and/or contention that such piece of evidence was fabricated.
- Please identify the **specific exculpatory evidence that you claim was withheld from you at your criminal trial.** In your response, please also identify: (a) the individuals you claim were involved with respect to the alleged withholding of each piece of evidence; (b) whether you allege the evidence was destroyed, lost, or suppressed; (c) whether the evidence was otherwise known to you; (d) when and how you first learned of this evidence; and (e) why you could not have discovered this evidence through the exercise of reasonable diligence.

Compel Responses To Contention Interrogatories

- The basic idea of contention interrogatories is to require a party to commit to a position and to give support for that position. *Inojosa v. Bd. of Trustees of City Colleges of Chicago, Cmty. Coll. Dist. 508*, No. 20 C 1114, 2021 WL 4461579, at *3 (N.D. Ill. Apr. 12, 2021).

- Courts have discretion to allow use contension interrogatories before discovery is complete. *Wigod v. Wells Fargo Bank, N.A.*, No. 10 C 2348, 2012 WL 13395246, at *2 (N.D. Ill. Nov. 15, 2012); *In re Northfield Labs. Inc. Sec. Litig.*, 264 F.R.D. 407, 412 (N.D. Ill. 2009).

Compel Responses To Contention Interrogatories (continued)

- The plaintiff makes repeated references to his Complaint throughout his responses and incorporates by reference his response to Interrogatory No. 7. That's not allowed. Interrogatory responses are supposed to stand on their own. *See, e.g., United States ex rel. Gill v. CVS Health Corp*., No. 18 C 6494, 2024 WL 3028958, at *7 (N.D. Ill. June 17, 2024).

- It is generally enough that a responding party offers the principal or material facts that support its contentions. *See, e.g., Segerdahl Corp. v. Ferruzza*, No. 17-CV-03015, 2018 WL 11199218, at *4 (N.D. Ill. Mar. 9, 2018); *Am. Needle, Inc. v. New Orleans*, No. 04 C 7806, 2012 WL 4327395, at *2 (N.D. Ill. Aug. 17, 2012); *Fox v. City of Austin*, No. 1:22-CV-00835-DAE, 2023 WL 6119383, at *5 (W.D. Tex. Sept. 18, 2023); *Santillan v. Verizon Connect, Inc*., No. 21CV1257-H-KSC, 2022 WL 428170, at *2 (S.D. Cal. Feb. 10, 2022); *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig*., No. CV14MD2542VSBSLC, 2020 WL 6290584, at *3 (S.D.N.Y. Oct. 27, 2020).

Monell Interrogatories (Reversed Conviction)

- Without resorting to legal conclusions, with respect to your policy claim in Count VI, identify **each and every policy, practice, or custom you contend existed** in March 2001 and that you contend was the moving force behind the alleged misconduct set forth in your complaint. For each such contention, identify each and every document that you will rely on to support your contention and identify each document you will rely upon or witness you will call at trial to support this contention.
- Without resorting to legal conclusions, with respect to your contention in paragraph 92, **identify each and every basis to support your contention that "as a matter of widespread custom and practice, members of the Police Department**, including the Defendants in this action, contrived false witness narratives that were fed to vulnerable witnesses who then adopted those false witness narrative as their own for the purpose of wrongly convicting an innocent person." For each such contention, identify each and every document that you will rely on to support your contention and identify each witness you will call at trial who will support this contention.

Monell Interrogatories (Reversed Conviction) (continued)

- Without resorting to legal conclusions, identify **each and every basis** to support your contention in paragraph 143 that "the constitutional violations described in this Complaint were also **undertaken pursuant to the policy and practices** of the [] Department in that the constitutional violations were committed **with the knowledge or approval of persons with final policymaking authority for the City of [].**" Identify each and every document that you will rely on to support your contention and identify each witness you will call at trial who will support this contention.

Examples of Plaintiff's Monell Interrogatories (Failure to Discipline/Train Theory)

- Any and all Documents related to any Complaint of any person against any of the individual Defendant City Officers at any time. This request specifically seeks the complete Department "CR" file for each Complaint; a print-out of the disciplinary histories of each of the Defendant Officers with information sufficient to determine the date of any Complaint, the type of Complaint, and the result of any investigation or disciplinary proceeding with respect to each such Complaint; and any Complaints filed in criminal or civil court.
- Any Documents relating to any written policies, procedures, or training that the Department had in place in for the last 30 years.
- The contents of any training that you received on any of the following topics: (a) interrogating witnesses and suspects; (b) interrogating juvenile suspects; (c) disclosing evidence to the State's Attorney's Office; (d) memorializing information about a criminal investigation in police documents, including but not limited on supplementary reports and General Progress Reports; (e) maintaining files, personal files or personal notes; and (f) maintaining the Investigative File, Investigative File Case Folder and any associated inventories, logs, or control cards.

Examples of Plaintiff's Monell Interrogatories (Pattern of Withholding/Fabrication Theory)

- All Documents related to homicide investigations in the period from 1983 (i.e., the enactment of Special Order regarding the maintenance and disclosure of homicide files) through 2011 (i.e., murder at issue). This request includes each and every unit of the Police Department in which Documents related to homicide investigations are stored or maintained, including but not limited to Police Headquarters, the Office of Legal Affairs, the Records Division, Detective Division Areas, Gang Crimes, the Special Operations Section, the Evidence Section, the Crime Lab, and the Identification Section, as well as any storage warehouses, rooms, repositories, or other areas used by any unit of the Police Department.
- All Documents related to homicide investigations in the period from 1983 (i.e., the enactment of Special Order 83-1 regarding the maintenance and disclosure of homicide files) through 2011 (i.e., murder at issue), where there was any claim of actual or alleged withholding of exculpatory or impeaching information from a criminal defendant. This request includes each and every unit of the Police Department in which Documents related to homicide investigations are stored or maintained, including but not limited to Police Headquarters, the Office of Legal Affairs, the Records Division, Detective Division Areas, Gang Crimes, the Special Operations Section, the Evidence and Section, the Crime Lab, and the Identification Section, as well as any storage warehouses, rooms, repositories, or other areas used by any unit of the Police Department.

Examples of Plaintiff's Monell Interrogatories (Failure to Discipline Theory)

- All Documents related to any Allegation of Misconduct against any Police Department officer in the ten years prior to and ten years after the Murder Investigation alleging dishonest behavior; lying under oath; witness manipulation; improper behavior during interrogations or interviews; use of improperly suggestive, coercive, or torturous methods on suspects, arrestees, or witnesses; use of unduly suggestive visual, voice, or clothing identification procedures such as in-person or photo lineups, photo arrays, or show-ups, including with juvenile witnesses; use of excessive force; false arrest; **malicious prosecution; fabrication or planting of evidence; concealment or suppression of evidence**; and lawsuits or administrative complaints filed in state or federal courts or agencies alleging police or prosecutorial misconduct. This request specifically seeks but is not limited to (a) Documents reflecting the date of any Allegation of Misconduct, the type of Allegation of Misconduct, and the result of any investigation or disciplinary proceeding with respect to each such Allegation of Misconduct, and (b) the complete file for each Allegation of Misconduct within the period specified in this request.

Bifurcating *Monell* Claims to Avoid Burdensome Discovery

- What is Bifurcation?
- Legal Basis and Standards
  - Fed. R. Civ. P. 42(b) allows district courts to separate the trial of any issue if separation is warranted "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy."
- Benefits of Bifurcation
  - Streamlining the Trial
  - Reducing Discovery Burden
- When to Move for Bifurcation
  - Are you going to file a MTD?
  - Does your Plaintiff's Counsel Have Experience Litigating *Monell* Claims
  - Did Plaintiff issue *Monell* Discovery

Arguments in Favor of Bifurcation

- **Judicial Economy**
  - Given The Facts Of This Case, Individual Liability On Plaintiff's Underlying Claims Is A Necessary Predicate For A Finding Of *Monell* Liability Against The City
  - Discovery Necessary To Adjudicate Plaintiff's *Monell* Claim For Trial Is Anticipated To Be Voluminous.
- **Avoiding Prejudice to Individual Defendants and The City**
- **Zero Prejudice To Plaintiff**
  - Fact to Consider: Does your City presumptively indemnify Officers
  - Another Fact to Consider: Qualified Immunity
- **No Injunctive Relief Requested**

Motion For Summary Judgment (Reversed Conviction)

Argument

- If Summary Judgment Is Granted In Favor Of The Defendant Officers, It Should Also Be Granted In The City's Favor On The *Monell* Claim.
- *Monell* Theories Based On *Brady* And Failure To Train Lack Any Evidentiary Support In The Record.
  - Plaintiff Cannot Establish A Widespread Policy Or Practice Of Withholding Brady Evidence.
  - There Is No Evidence Of A Widespread Practice By The City Of Fabricating Lineup Identifications.
  - Plaintiff Cannot Establish A Widespread Practice Of Fabrication Of Witness Statements.
  - Any Failure To Train Or Supervise Theory Also Lacks Evidentiary Support.

Motion For Summary Judgment (Reversed Conviction) (continued)

- Plaintiff Cannot Establish A Policy Or Practice Of The City Failing To Discipline Officers For Misconduct.
  - Plaintiff's Police Oversight Expert Failed To Identify Any Cr File That Was Not Appropriately Investigated.
  - It Is Undisputed That Department's "Sustained Rate" of Citizen Complaints Alone Cannot Form The Basis Of A *Monell* Claim Based On A Failure To Discipline Theory.
  - Any Reference To The Complaint Histories Of Defendant Officers Cannot Amount To A Citywide Practice.
- Plaintiff Failed To Identify Any Evidence From Which A Jury Could Reasonably Conclude That A City Policy Rather Than Isolated Individual Action Was **The Cause Of A Constitutional Injury.**
  - Plaintiff's Expert Does Not Tie Plaintiff's Injury to The Alleged Pattern.

Motion For Summary Judgment Exercise Based on In Custody Death

Factual Background: Assume an officer was convicted of murdering a detainee during a street stop after the officer placed his knee on the neck of the detainee's neck and the medical examiner determined that the detainee died from asphyxiation.

Hypothetical Monell Claim: Assume that the representatives of the Estate of Detainee alleged a *Monell* claim against the officer's municipal employer based on a failure to train/failure to discipline theory.

Motion For Summary Judgment (In Custody Death Hypo)

- Plaintiff's *Monell* Claim Fails As A Matter Of Law.
  - Plaintiff Cannot Establish The Existence Of A Widespread Practice Or Policy Of Improper Restraint Techniques Or Encouraging Police Misconduct.
  - Plaintiff Cannot Show The City Was Deliberately Indifferent To In-custody Deaths Through A Failure To Investigate Theory Or Any Other.
  - Plaintiff Has Failed To Show Any City Practice Was The Moving Force Behind Plaintiff's Alleged Constitutional Injury.
    - The death is directly attributable to individual's criminal behavior and not any municipal policy.
    - The City Is Not Liable For Any Damages On Claims For Excessive Force, Failure To Intervene, Conspiracy, Supervisory Liability, Or Survival because Plaintiff cannot tie his injury to any policy of the City.

Monell Experts

- Role of Experts in *Monell* Claims
  - Establishing Policy, Custom, and Causation

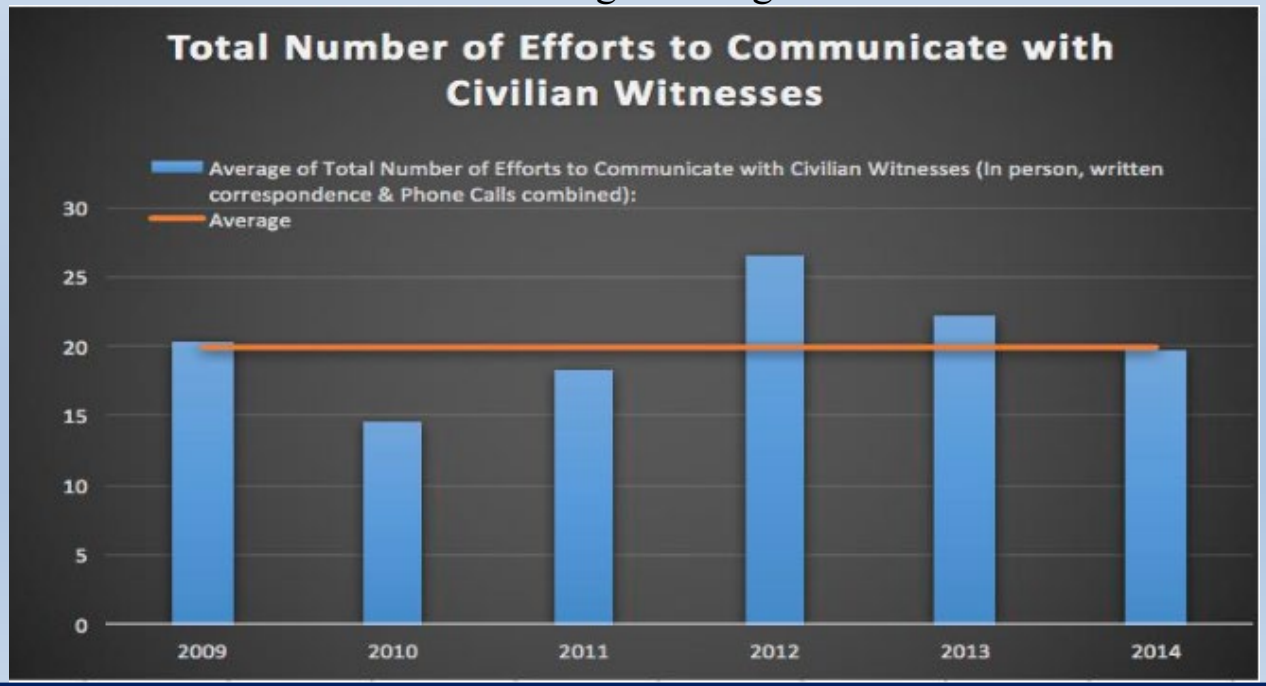
- Types of Experts
  - Police Practices (e.g. Historical Investigative Standards)
  - Police Oversight (e.g. Former Federal Monitor or Chief Oversight Officer)
  - Statistics (e.g., the municipality's rate of sustained citizen complaints is unusually low as compared with sustained rates of similarly situated municipalities)
  - Training (e.g., the training on a specific topic was severely deficient as compared with similarly situated police departments)

Factual Background For Example of Monell Claim in Police Shooting Case based on Alleged Failure to Discipline *Monell* Claim

- Defense turned over investigative files from approximately 120 officer involved shootings.
- Plaintiff's expert pointed to these files in support of his opinion that the municipality failed to investigate officer involved shootings.

Rebut Failure to Discipline *Monell* Claim With Data From Actual Police Oversight Investigations (EF Example)

Defense Expert Reviewed All 120 Files And Opined: [Police Oversight Agency] conducts interviews of witnesses and they conduct area canvasses in an attempt to locate additional witnesses. In the cases I reviewed in this matter there were 4,156 total attempts to contact witnesses (in person, written correspondence and by phone). In one case alone [] made 104 attempts to conduct interviews and in another case there were 57 total communications with witnesses. The total number of communications that [] conducted with civilian witnesses in the case reviewed in this matter was 1,462 and [investigative Agency] conducted a total of 1,045 in person interviews with 31 of those occurring in a single case.



Alleged Practice of Excessive Force Through Failure to Discipline (continued)

The officer involved shooting investigations by [] that I reviewed demonstrate that the administrative investigation begins swiftly and without delay. As illustrated by the chart below, [] investigators are typically assigned and dispatched to so quickly that they are able to make it to the scene of the shooting within hours and while the scene is still being processed.



Handling *Monell* Claims at Trial



VERDICT FORM

We, the jury, find as to each of the claims of plaintiff in this case as follows:

(Place an "X" on the appropriate line to indicate your finding as to each claim.)

Part I

1. **Plaintiff's Coerced Confession Claim:**

_____ For Plaintiff __X__ For Defendant

2. **Plaintiff's Equal Protection Claim:**

_____ For Plaintiff __X__ For Defendant

3. **Plaintiff's Intentional Infliction of Emotional Distress Claim:**

_____ For Plaintiff __X__ For Defendant

Part II

If you have found in favor of the defendant on all the claims enter a zero award for plaintiff. If you have found for the plaintiff and against defendant as to one or all of plaintiff's claims on this verdict form, fill in the amount of compensatory damages that plaintiff is awarded as to the claims:

Plaintiff, Oscar Walden Jr., is awarded $__0__ in compensatory damages.

SPECIAL INTERROGATORY No. 1

1. The City of Chicago had a policy and practice in 1951-2 of coercing confessions.

YES _____ NO _X_

2. Plaintiff, Oscar Walden Jr's. confession was coerced.

YES _____ NO _X_

3. Plaintiff's confession was coerced as a proximate result of the City of Chicago policy and practice.

YES _____ NO _X_

SPECIAL INTERROGATORY No. 2

1. The City of Chicago had a policy and practice in 1951-2 of coercing confessions from an individual because he was African American.

YES _____ NO _X_

2. Plaintiff, Oscar Walden Jr's, confession was coerced because he is African American.

YES _____ NO _X_

3. Plaintiff's confession was coerced as a proximate result of the City of Chicago policy and practice.

YES _____ NO _X_

Conclusion and Q&A

Summary of Key Points

- Recap of Stages: Pleading, Discovery, Summary Judgment, Trial
- Importance of Bifurcation and Experts
- Key Strategies for Success

