

# Exhibit A

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

MICHAEL A. LA PORTA, as Guardian)  
of the estate and person of )  
Michael D. LaPorta, a disabled )  
person, )  
Plaintiff, )  
v. ) No. 14 CV 09665  
CITY OF CHICAGO, a municipal )  
corporation, et al., ) Chicago, Illinois  
Defendants. ) October 2, 2017  
10:00 a.m.

VOLUME 1  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

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1 weapon belonging to Patrick Kelly, an off-duty Chicago police  
2 officer. The plaintiff, Mr. LaPorta, contends that he was  
3 shot by Officer Kelly.

4           Plaintiff also contends that the City of Chicago is  
5 responsible for the actions of Officer Kelly even though he  
6 was off duty at the time because the City of Chicago had  
7 widespread policies and practices that sought to protect  
8 police officers who commit violence against citizens while  
9 they're off duty so that they are encouraged to believe that  
10 they can commit such violence with impunity.

11           The City of Chicago contends that Mr. LaPorta shot  
12 himself. It also contends that it had no such policies or  
13 practices so that it is not responsible for the actions of the  
14 police officers while they're off duty. The plaintiff claims  
15 to have suffered severe damages as a result of the shooting.

16           That's what this case is generally about. Again,  
17 that's my personal conclusion of what the case is about so the  
18 parties, to the extent that I might be misinformed slightly on  
19 some of the facts or contentions, that is not -- neither party  
20 is bound to accept my complete statement there.

21           The participants in this case, Mr. -- plaintiff is  
22 represented by Mr. Antonio Romanucci. Would you represent --  
23 excuse me, introduce the people at your table?

24           MR. ROMANUCCI: Yes, your Honor.

25           Good morning, ladies and gentlemen. My name is

## Opening Statement - Plaintiff

1 explanation about the phone records where you see the duration  
2 after the 911 calls of zero. Those are text messages being  
3 sent. So the zeros are text messages. And then you can see  
4 that there are calls being made to and from his phone over a  
5 certain period of time all the way into the 5:00 o'clock  
6 morning hour.

7 And that is the web that began by Patrick Kelly. He's  
8 in the middle. I don't have a pointer here, but he's in the  
9 middle right there. And those are just the phone calls that  
10 were made by Patrick Kelly to and from.

11 And then Melissa Spagnola is the girlfriend, and you  
12 can see that one phone call made out at 5:01 a.m. from Patrick  
13 Kelly then resulted in all of those calls made by her to him  
14 and then out into the web.

15 So this case has many issues for you to decide, but  
16 there are five main categories which it rests upon. And I'm  
17 going to give you those -- those broad -- broad scope  
18 categories right now so you can keep these in mind as the case  
19 progresses.

20 The first one is whether the City had an adequate  
21 mechanism to detect police officers who were not fit to be  
22 police officers, the one that we're referring to as the early  
23 warning system.

24 The second one is whether the City had a code of  
25 silence, which was the cause of this needless harm. The third

## Opening Statement - Plaintiff

1 was whether the City should have terminated Patrick Kelly at  
2 any time before January 12, 2010, so that he could not have had  
3 a gun or bullets to shoot with.

4 Four, whether the City should have been disciplined --  
5 or should have disciplined Patrick Kelly for his repeated acts  
6 of misconduct before so that he knew that there were  
7 consequences for punishment for his misconduct. And five,  
8 whether the City should have investigated Patrick Kelly for  
9 those repeated acts of misconduct.

10 Ladies and gentlemen, we are very confident that we  
11 have overwhelming evidence that Patrick Kelly shot Michael  
12 LaPorta. But we are going to show you that it was the City's  
13 actions based upon these issues here which caused this needless  
14 harm.

15 This is all the moving force is because you're going  
16 to hear that term used throughout this case. You're going to  
17 hear the City say to you, we were not the moving force in the  
18 cause of these injuries, but indeed, the opposite is true. We  
19 will show you that the moving force is nothing more than a  
20 direct link. It is the cause for something to occur.

21 The City's policies of not disciplining and not having  
22 an early warning system ultimately were the moving force behind  
23 this tragedy and the link which led to Michael LaPorta being  
24 shot. So simply, had Patrick Kelly been disciplined or caught  
25 as one of these repeaters, had the City been transparent in its

1 responded, you'll hear their testimony. You'll hear that the  
2 crime scene was protected. You'll hear that Pat Kelly never  
3 was allowed to go back in the house. You'll hear that  
4 immediately after Pat Kelly left the house, everything  
5 remained as it was so that forensic investigators could come  
6 out and collect whatever the evidence was and take the  
7 photographs.

8           You will hear that detectives arrived on the scene  
9 because whenever there's an incident involving a police  
10 officer, there's two types of investigations that could get  
11 initiated. There's obviously a criminal investigation because  
12 a police officer, they're accused of criminal activity. The  
13 police department investigates that. But police officers also  
14 are subject to a different type of investigation: An  
15 administrative investigation. And that administrative  
16 investigation happens for any type of allegation of misconduct  
17 against a police officer, whether it's criminal or not.

18           When you have an incident that involves a police  
19 officer's weapon -- which this was Pat Kelly's weapon that was  
20 used in this incident. It was a weapon that he purchased.  
21 The Chicago Police Department does not purchase weapons or  
22 ammunition for any of its police officers. When they start in  
23 the academy, one of the prerequisites for starting in the  
24 academy is for them to purchase their own gun and get their  
25 ammunition from a prescribed list. There's -- they don't get

1 latter part. Investigator Querfurth, I believe. And I've  
2 seen his name ever since the '80s. He's been a long-term  
3 investigator with OPS and now IPRA. Officer Bowen, who was an  
4 investigator of one of the CRs involving Officer Kelly;  
5 Mr. O'Neill, who came back as a civilian and is now head of  
6 the human resources division for Chicago Police Department.

7 Q. What is it about Mr. O'Neill's deposition, for example,  
8 that would stand out to you? Why is that relevant, one that  
9 rises to the top of the list?

10 A. I think he explains how the two early warning systems --  
11 in Chicago, it's either called a BIS or a PC. BIS stands for  
12 Behavioral Intervention System. PC stands for Personnel  
13 Concerns. Those are their form of early warning system. He  
14 identified how they should work.

15 He also, I think it was him and several of the  
16 others, said that the philosophy of the Chicago Police  
17 Department is that if you lie, you will more likely than not  
18 be terminated. They couldn't keep you on the job.

19 Q. Is that the Rule 14 violation?

20 A. Yes.

21 Q. So is Rule 14 the "lie, you die" rule violation?

22 A. Well, it's the lie. In Chicago, you don't die. We use,  
23 lie, if you lie, you die, which means if you lie -- we can  
24 cut -- we can handle most anything, but if you lie during an  
25 administrative investigation, because you're compelled to tell

1 the truth, from an integrity standpoint, we can't keep you on  
2 the job anymore. And that's pretty much the general trend  
3 throughout law enforcement.

4 Q. Did Mr. O'Neill have anything to say about Patrick Kelly  
5 as to whether or not he lied?

6 A. Yes. And he reviewed the information from the  
7 investigation, I believe, and the information from Querfurth  
8 and Broderdorf, I believe, was the investigator from internal  
9 affairs that conducted the chemical -- the breathalyzer test  
10 of Officer Kelly after the LaPorta incident. And he, O'Neill,  
11 said, in his opinion, Officer Kelly was not truthful.

12 Q. And you mentioned also Querfurth who has been, as you  
13 said, around for a long time. Did Mr. Querfurth, an IPRA  
14 investigator, have any opinions about Mr. Kelly's truthfulness?

15 A. Yes.

16 Q. What were --

17 A. In his opinion, he was not truthful in the interview that  
18 was conducted with Wordorf, I believe it was, about --

19 Q. Can I just say, is it Broderdorf, Ray Broderdorf?

20 A. Broderdorf, yes. And it was really about his drinking.  
21 And that was the essential element he looked at. In addition,  
22 I believe he referenced, Querfurth also was aware of Boden's  
23 CR involving the Frances Brogan incident that occurred in  
24 2005. Yes, 2005. And he agreed with Boden that in that case,  
25 Officer Kelly lied about drinking and lied about battering



1 that you can see.

2 In addition, it could be that an officer who is not  
3 conducting himself reasonably is protected by other officers  
4 who won't come forward and, as a consequence, that officer can  
5 led to believe -- can be led to believe that he or she can do  
6 police work as they see fit whether it's constitutional or  
7 not.

8 Q. So along those same lines then, what are the dangers of  
9 not having an adequate early warning system? How do -- how  
10 does that pattern and practice lead to that constitutional  
11 violation, if any?

12 A. The early warning system is really a supervisory system  
13 designed to alert supervisors to officers who are doing  
14 something different than their fellow officers. So it could  
15 be that if you are garnering more citizen complaints than  
16 another officer, it could be that your attitude, behavior, and  
17 performance is deficient and/or you're being abusive in your  
18 policing tactics and you're abusing the rights of the people  
19 you're stopping. So you want to make sure that that's not  
20 happening.

21 Another reason you want an early warning system is to  
22 identify officers who may believe that numbers and arrests and  
23 seizures are more important than the means by which you get  
24 those. That's a continuous trend in law enforcement, that we  
25 hire proactive officers. We expect them to go out there and

1 MR. ROMANUCCI: Just on that portion?

2 THE COURT: Yes, the subjective motivation.

3 MS. ROSEN: I move to strike that testimony, your  
4 Honor.

5 THE COURT: I'll strike that based on the ruling in  
6 limine.

7 BY MR. ROMANUCCI:

8 Q. Sure. What's the message that's being sent to an officer  
9 who has 18 CRs, different allegations of misconduct, and only  
10 one of them result in an interview?

11 A. In my belief, it's going to send a message to a reasonable  
12 officer that, "We're really not intent on doing a professional  
13 investigation that would meet generally accepted practices in  
14 law enforcement and, more likely than not, you won't be  
15 sanctioned."

16 Q. And could or might that lead to the feeling of impunity?

17 A. Absolutely.

18 Q. And why?

19 A. Well, if you know your department might get a complaint  
20 and they're not going to hold you accountable for it and not  
21 do a reasonable investigation and you know that more often  
22 than not, your buddy is going to stick up for you because of  
23 the code of silence and they're not going to look at the  
24 objective physical evidence that might come from the  
25 investigation and use that against you, an officer can believe

1 Q. Mr. Reiter, I'd like to move on a little bit to the early  
2 warning system or early intervention system, as we've used  
3 those two terms interchangeably here. Can you tell us whether  
4 or not during the time period of 2004 to 2011 whether the City  
5 of Chicago had in place an early warning system and, if you  
6 believe it did, tell us whether or not you -- your opinion as  
7 to whether or not it was adequate?

8 A. They did have a system, and they've had for years. They  
9 had the Behavioral Intervention System which really focuses in  
10 on things like anger management, substance abuse, chronic  
11 tardyism, prescription abuse, domestic misconduct, but it  
12 could also be for other things as well.

13 And then they had what they called Personnel  
14 Concerns. And by the way, the BIS said that if an officer  
15 had, in a 12-month period, two sustained CRs or three not  
16 sustained CRs, they would -- they would be recommended by  
17 their commanding officers to participate in this BIS, or the  
18 Behavioral Intervention System.

19 Q. So is what you're saying that an officer does not have to  
20 have a sustained CR in order to be placed in the Behavioral  
21 Interventional System?

22 A. Right. The order says you can have both. And you can  
23 have three not sustained within a 12-month period. We know  
24 with Officer Kelly in '05, he had five, and in '06, he had  
25 six.

1 Q. So if we were to use the '06, technically, if the  
2 Behavioral Intervention System, which is the early warning  
3 system, was being applied adequately, he should have been  
4 referred to that system twice within one calendar year?

5 A. Yes.

6 Q. And, in your opinion, was he referred to Behavioral  
7 Intervention?

8 A. For sustained -- for not sustained CRs, never. And, in  
9 fact, the Police Accountability Task Force said that, I forget  
10 if it's human resources or IPRA, didn't begin tracking CRs  
11 until 2014. So they had no method to even identify who might  
12 be eligible for that BIS program.

13 Q. So could or might then the fact that an officer who should  
14 have been eligible, such as Officer Kelly, to be placed in the  
15 Behavioral Intervention during a year such as 2005 or 2006 for  
16 non-sustained CRs, not being placed in there when he should  
17 have, could or might that cause that officer to feel impunity?

18 A. In my opinion, absolutely, because the department wasn't  
19 even following its own guidelines that are designed to help  
20 officers and protect citizens.

21 Q. So specifically with Officer Kelly, in 2005-2006, you  
22 stated he was not entered into Behavioral Intervention; is  
23 that correct?

24 A. That's true.

25 Q. And could or might that cause him to continue to act with

1 impunity?

2 A. In my belief, that could be one of the causes, yes.

3 Q. Was he ever entered into Behavioral Intervention in 2007,  
4 2008, or 2009 for any reason?

5 A. He was.

6 Q. When?

7 A. I don't remember the exact years, but it was after the  
8 Brogan incidents, the domestic misconduct-related incidents.  
9 Investigator Bowen recommended, advised him to seek counseling  
10 and advised him to go to Father Murphy House. I believe it's  
11 Father Murphy House or St. Murphy House.

12 There's no indication that he did either of those.  
13 And that was only a recommendation. But there is an  
14 indication that on two times, BIS was implemented with Officer  
15 Kelly stemming from the domestic-related incidents with the  
16 Brogans.

17 Q. Is Behavioral Intervention System considered a  
18 disciplinary action?

19 A. No.

20 Q. Why?

21 A. Well, it's really -- it's a supervisory personnel issue.  
22 What you're trying to do is help the employee overcome their  
23 attitude, behavior, or performance problems that created the  
24 necessity for them to be referred to them.

25 Private sector, we use the term "employee assistance

1 A. It talks about the number of officers in the behavior  
2 intervention and Personnel Concerns Program combined.

3 MR. ROMANUCCI: Your Honor, may I publish?

4 THE COURT: Any objection?

5 MS. ROSEN: No objection.

6 THE COURT: You may.

7 (Plaintiff's Exhibit 51 received in evidence.)

8 MR. ROMANUCCI: Thank you, your Honor.

9 By MR. ROMANUCCI:

10 Q. Just one moment. It's the year 2017, but technology  
11 sometimes doesn't want to cooperate with us, so we can do it  
12 the old-fashioned way.

13 Why don't you tell us what that graphic reads and  
14 what it says. And if we get it working before then, we'll  
15 continue on.

16 A. It discusses a number of officers who were in the BIS or  
17 the Personnel Concerns. And in 2007, it was 276. In 2008,  
18 219. 2009, 134. 2010, 82. 2011, 22. 2012, 13. 20' -- I  
19 might have missed one. The next year, it's zero, and then in  
20 '14, it was seven officers, and in '15, 15 officers. A  
21 significant decrease.

22 Q. So what was happening to those numbers then over time?

23 A. It was not being used. And it had such a drastic decline,  
24 I mean, to a point where we are talking about 12,000 officers.  
25 You've got 22, 13, zero, or seven in it. The odds of you

1 it's a department member involved in a domestic violence  
2 situation, a supervisor must be dispatched to the scene.  
3 There's another section that talks about if he's subject to a  
4 protective order. That's the only thing that has any  
5 reference, that if the suspect of the domestic violence is a  
6 department member, there's something special that has to be  
7 done.

8 Q. And does this special order specify that if Patrick Kelly  
9 were charged or convicted of domestic violence that he would  
10 be separated?

11 A. No.

12 Q. Did you review the other Brogan incident regarding her  
13 brother Patrick?

14 A. I did.

15 Q. And can you tell us what your review of that file  
16 indicated?

17 A. That occurred just short of one year of the incident with  
18 Frances Brogan. It occurred back at their house, the house  
19 that she shared with Patrick Kelly. It was four months after  
20 her case was adjudicated as not sustained.

21 Patrick Brogan and Frances got involved in a verbal  
22 argument at the house, and at some period of time, Patrick  
23 Kelly threw a TV remote at him, and Mr. Brogan said it broke  
24 his nose and lacerated his -- gave him a laceration above one  
25 of his eyes.

## Reiter - Cross by Rosen

1 A Yes.

2 Q So a SPAR investigation under your understanding of the  
3 Chicago Police Department's framework for conducting  
4 investigations, is that force complaints?

5 A No, not a force complaint. It's when an officer uses force  
6 and has to identify. It's my understanding that is like a  
7 supervisory. It's not a force complaint, no.

8 Q So it's -- I'm not understanding what you think it is with  
9 respect to the use of force.

10 A I think it has to do with an officer reporting that they  
11 used some degree of force or used, I believe that also covers  
12 OC spray, it covers baton, and I believe it covers pursuits.

13 And over the period of time '04 to 2011, there were  
14 30,000 of those. So that's a large amount of data of field  
15 performance that it wasn't captured in any form of early  
16 warning system.

17 Q Since you brought up early warning systems, early warning  
18 systems are not disciplinary; isn't that correct?

19 A They are not.

20 Q So the fact that Chicago's BIS and PCP program are not  
21 disciplinary -- are not disciplinary in nature is not unusual  
22 or different from other early warning systems across the  
23 country, correct?

24 A Correct, it's not.

25 Q And they're not intended to be, right? They're designed to



## Reiter - Cross by Rosen

1 remediate is I think what you said.

2 A Yes.

3 Q Now, I just want to talk a little bit about your  
4 background. You retired from the Los Angeles Police Department  
5 in 1981; is that correct?

6 A Yes.

7 Q And you've since 1981 never been an active law enforcement  
8 officer; is that correct?

9 A True.

10 Q And when you retired, you retired at the age of 42; is that  
11 correct?

12 A Yes.

13 Q And at some point in time after your retirement, you  
14 started doing the consulting work that you do now; is that  
15 correct?

16 A A couple years after.

17 Q Okay. And that includes doing expert review like you're  
18 doing for this case, audits and the training that you talked  
19 about; is that correct?

20 A Yes.

21 Q And by the way, the expert review that you do, that's for  
22 compensation, right?

23 A Well, it's all for compensation, yeah. My time is -- there  
24 are different, different amounts, but yes.

25 Q Okay. So you are being paid for the review that you did in

## Reiter - Cross by Rosen

1 doing administrative investigations, you want to collect all  
2 the information that you can before you interview the police  
3 officer, correct?

4 A Yes.

5 Q And I believe you testified earlier that you have no  
6 criticisms about the written procedures of the Chicago Police  
7 Department other than your criticism as it relates to the  
8 domestic violence issue, correct?

9 A Yes.

10 Q Now, with respect to the CRs that you reviewed in this  
11 case, you reviewed all of Pat Kelly's CR's that you were  
12 provided, correct?

13 A I did.

14 Q And that was 28, I think you said, CRs?

15 A I believe it is 28.

16 Q And over the course of the 25 years that you have been  
17 reviewing the Chicago Police Department, you've reviewed  
18 approximately a thousand CRs, correct?

19 A Yes.

20 Q And that dates back to the 1990s, correct?

21 A Actually into the '80s, yes.

22 Q Into the '80s, okay.

23 And the bulk of the CRs that you reviewed comes from  
24 the time period of the late '90s to the early 2000s, correct?

25 A Yes.

## Reiter - Cross by Rosen

1 proof that she would need to sustain an administrative  
2 allegation as it relates to domestic violence?

3 A I'm not sure she answered that question about what the  
4 level of burden of proof was and that there was a difference.  
5 I don't recall that.

6 Q Okay. Now, you talked a little about the federal statute  
7 that would prevent an individual from possessing or carrying a  
8 weapon if they've been convicted of domestic violence, correct?

9 A I did.

10 Q And you're not giving any opinion here today, are you, that  
11 had Officer Kelly been charged for that particular domestic  
12 violence incident that he would have been convicted, correct?

13 A I don't have an opinion there, correct.

14 Q And you're aware, correct, that after this incident and the  
15 one with Ms. Brogan's brother that Pat Kelly was referred for  
16 BIS, behavioral intervention, correct?

17 A Yes.

18 Q And, in fact, he was actually referred to a fitness for  
19 duty evaluation, correct?

20 A Yes.

21 Q And that was offered by the Chicago Police Department?

22 A Yes.

23 Q And he completed that review and, in fact, was originally  
24 found unfit for duty, correct?

25 A Correct.

## Reiter - Cross by Rosen

1 Q And then under the processes that are provided, he was able  
2 to, after a period of time, get that finding overturned through  
3 the regular process that's provided to a police officer if they  
4 want to grieve a finding like that, correct?

5 A He did.

6 Q And you saw no indication in that process that the Chicago  
7 Police Department or the City of Chicago simply laid down and  
8 allowed Officer Kelly without a fight to grieve that finding  
9 that the department originally made?

10 A You know, I don't have any information one way or another  
11 on that.

12 Q Let me back up. Other than the thousand CRs you've  
13 reviewed over the last 25 years that you've had occasion to  
14 review CRs from the Chicago Police Department, you have no  
15 opinion regarding that precise number of those investigations  
16 that were deficient, correct? You can't tell us how many were  
17 deficient?

18 A No.

19 Q In fact, with respect to all the thousand plus CRs that you  
20 reviewed during the course of your 25 years, you can't sit here  
21 and tell us that CRs that were not sustained should have been  
22 sustained, correct?

23 A Not as I sit here today. I know when I was involved in the  
24 case, I would do the same kind of workup matrix to capture my  
25 perceptions as I read it, so at one time I probably could. But

## Reiter - Cross by Rosen

1 no, today I can't.

2 Q Okay. But you currently recently reviewed Mr. Kelly's CRs,  
3 right?

4 A I did.

5 Q The 28. And of the 28, there's only two, right, that you  
6 disagree with, the two Brogan ones that you think should have  
7 been sustained that were not?

8 A No. I also disagreed with the process, you know, the fact  
9 that ten of them were simply dropped for no affidavit and nine  
10 of them were simply to/from, and he was only interviewed on  
11 one. But beyond that, I didn't go into the validity of each  
12 one, correct.

13 Q And the 10 that were just disregarded, that's because there  
14 was no affidavit, correct?

15 A That was the notation, yes.

16 Q Well, there was no signed affidavit in the CR, right?

17 A There wasn't.

18 Q The form was blank? Wasn't there a blank form? It's a  
19 form, right, and it details the state law?

20 A Yes.

21 Q And so each of the forms that were in those 10 CRs, they  
22 were unsigned, and pursuant to state law, they were closed?

23 A I believe they were.

24 Q And while you were critical of the process, you have no  
25 opinion on whether or not the rest of them were meritorious

## Reiter - Cross by Rosen

1 complaints, correct?

2 A Correct. I didn't look at it from that point of view.

3 Q And you agree, don't you, that the number of complaints a  
4 police officer can receive differs -- can differ based on their  
5 assignment, right?

6 A It could.

7 Q And you would agree that certain geographical assignments,  
8 but also work assignments could drive the number of CRs police  
9 officers get, correct?

10 A It could.

11 Q And I think it's your opinion that the way to assess those  
12 CRs and the number is to look at CRs for officers in a  
13 comparable unit or the same unit, right?

14 A Yes.

15 Q You're aware that Pat Kelly was assigned to the 9th  
16 District, correct?

17 A I don't specifically recall which precinct. I think he was  
18 on a task force at different times.

19 Q He was a tactical officer.

20 A Tactical officer.

21 Q Do you know what a tactical officer is within the Chicago  
22 Police Department?

23 A My understanding in Chicago, it's basically a directed  
24 patrol where they're not answering regular calls for service.  
25 And they're out there making suspicious person stops, and they

## Reiter - Cross by Rosen

1 may be assigned to a specific crime area.

2 Q And did you do any comparison between the number of  
3 complaints Pat Kelly got during the time frame to the other  
4 officers that were assigned to his unit?

5 A No.

6 Q With respect to the early warning systems, you agree that  
7 the written policies of the Chicago Police Department are sound  
8 policies, correct?

9 A They're adequate, yes.

10 Q They're adequate. And your quarrel is with respect to the  
11 way that they're utilized, correct?

12 A Or not utilized, yes.

13 Q Have you reviewed, other than the graphic that was included  
14 in the Police Accountability Task Force report, any  
15 documentation from the Chicago Police Department about the use  
16 of either the BIS or PCP programs?

17 A I don't believe I have.

18 Q Now, let's talk just for a second about the code of  
19 silence.

20 It is your opinion, is it not, that the potential  
21 exists in all police departments across the country?

22 A Yes.

23 Q From the smallest to the largest police departments?

24 A Yes.

25 Q And it's your opinion that every major metropolitan police

## K. LaPorta - Cross by Novy

1 A Yes.

2 Q It's to Detective Weber from Joe LaPorta. Who is Joe  
3 LaPorta?

4 A My uncle.

5 Q What relate, what...

6 A He's my father's younger brother.

7 Q And if we go a little bit further down, it says he would  
8 like you to call him. And then it says -- and I will highlight  
9 this area -- "Joe states Kyle LaPorta, Mike's cousin, dropped  
10 off Mike and Pat at Pat's house before the shooting. Joe  
11 thinks Kyle should be interviewed. Joe thinks Mike and Pat may  
12 have argued over Mike's ex-girlfriend Kelly, who is Pat's  
13 little sister." Do you see that?

14 A I do, yes.

15 Q Now, you were confronted with that information by Detective  
16 VanWitzenburg a day later, correct?

17 A Yes.

18 Q And you've testified that there was no altercation that you  
19 witnessed or no argument between Pat Kelly and Mike LaPorta on  
20 January 12th, 2010, correct?

21 A Correct, nothing that I witnessed.

22 Q If we look, we continued down this page, it says, Joe  
23 states Mike is right-handed and does not make -- go to the  
24 next page. Your Honor, we will publish this as well. This is  
25 the second page of this exhibit. It's Bates label RFC LaPorta



1 MR. ROMANUCCI: Page 34. You're there?

2 MS. LONGION: Yes.

3 BY MR. ROMANUCCI (Reading):

4 Q. Do you remember talking at all with Mike LaPorta?

5 A. I don't know.

6 Q. So you don't recall any specific conversations with Mike  
7 LaPorta?

8 A. No.

9 Q. How were he and Mr. Kelly interacting?

10 A. Nothing sticks out in my head, so fine.

11 Q. Do you recall any types of arguments between Mr. Kelly and  
12 Mr. LaPorta?

13 A. No.

14 Q. Do you recall if Mr. Kelly arguing with anybody that  
15 evening in the bar?

16 A. No.

17 Q. You then stayed there until closing time, correct?

18 A. I don't remember.

19 Q. Approximately what time did you leave McNally's?

20 A. I really don't remember.

21 Q. Do you recall how much you had to drink while at  
22 McNally's?

23 A. No.

24 Q. If I told you that you told the Independent Police Review  
25 Board that you had two or three Miller Lites, would you

1 disagree with that?

2 A. No.

3 Q. And I believe you told the Independent Police Review Board  
4 that you left at closing time. Do you know what time closing  
5 time is for McNally's?

6 A. No.

7 Q. What time was closing time if you had stayed until closing  
8 time in the past at McNally's?

9 A. I would be guessing that it would be closed at 2:00.

10 Q. Okay. So your best guess is that you were at McNally's  
11 from roughly midnight until 2:00?

12 A. Yes.

13 Q. What were you -- what were you guys all doing in  
14 McNally's; just sitting around talking or --

15 A. Yes.

16 Q. -- were you playing darts or watching a game or just  
17 conversing?

18 A. From what I remember, yes.

19 Q. Do you remember what you were talking about?

20 A. No.

21 Q. Do you have any specific recollection of Mr. LaPorta  
22 making any physical complaints of pain or injuries or anything  
23 like that?

24 A. I don't remember.

25 Q. Did he make any comments or have any discussion about

1 problems he was having with his girlfriend?

2 A. I don't remember.

3 Q. Did he mention his girlfriend at all?

4 A. I don't remember.

5 Q. What is it that you specifically do remember about that  
6 evening at McNally's?

7 A. Nothing.

8 Q. Nothing? Okay. So nothing was of consequence?

9 A. No.

10 Q. You then decide to leave McNally's, correct?

11 A. Yes.

12 Q. You decide to go to Brewbakers?

13 A. Yes.

14 Q. Where is Brewbakers located?

15 A. Roughly 103rd and Western.

16 Q. Had you been to Brewbakers before that early morning hours  
17 of the 12th?

18 A. Yes.

19 Q. How many times?

20 A. A couple.

21 Q. What are their hours? What are their license hours, if  
22 you know?

23 A. I know they are later than the normal bars, which is why  
24 I'm assuming we went there, but I have no idea what time they  
25 close.

1 Q. When you arrived at Brewbakers, did you have anything  
2 further to drink of an alcoholic nature?

3 A. I believe I had a beer.

4 Q. Did you witness or see Mr. Kelly have anything further to  
5 drink while at Brewbakers?

6 A. No.

7 Q. How long were you at Brewbakers?

8 A. I don't remember.

9 Q. Do you remember telling the Independent Police Review  
10 Board you were there until 3:30?

11 A. Yes.

12 Q. And that you specifically recall getting home sometime  
13 before 4:00 a.m., correct?

14 A. That's what I stated to them, yes.

15 Q. So are you saying you just don't remember whether or not  
16 Mr. Kelly drank, or are you saying he didn't drink in the two  
17 hours or so you were at Brewbakers?

18 A. I'm saying I don't remember the hours specifically. I  
19 don't know if anyone had anything to drink at -- I don't know  
20 if anyone had anything else to drink because April and I were  
21 off on our own when we were at Brewbakers. I don't know what  
22 the guys did.

23 Q. So when you walked in to Brewbakers, you went into a  
24 separate section than the guys?

25 A. No. We sat -- I guess you could say, yes, we sat at a

1 table, and they went, I guess which would be behind us to play  
2 bean bags.

3 Q. When they were playing bean bags, did you see any of them  
4 going to the bar to purchase alcoholic beverages?

5 A. I don't remember. I wasn't paying attention.

6 Q. Did you see Mike LaPorta drinking at Brewbakers?

7 A. I don't remember if any of them were drinking at  
8 Brewbakers.

9 Q. Did you ever stop and watch them play bean bags, or did  
10 you and April just kind of stay to yourself?

11 A. We were having girl talk.

12 Q. I'm going to show you a copy of your statement to the  
13 independent police authority. I believe it was taken January  
14 1st of 2010.

15 A. Yes.

16 Q. So that's roughly ten days from the incident?

17 A. Yes.

18 Q. And just glancing, that bears your signature on the bottom  
19 of each page, correct?

20 A. Correct.

21 Q. And again, you signed this with your full knowledge and  
22 consent, correct?

23 A. Yes.

24 Q. And everything contained in that report, if I'm correct,  
25 in reading it today is more accurate than today because it's

1 true?

2 A. Correct.

3 Q. And were all of those relevant to you when you reviewed  
4 them?

5 A. Everything is relevant. As long as provided to me, I  
6 review it. Obviously, there's a lot of repeated information.  
7 That's okay. As a background information, I read all of it.  
8 Some things, I agree. Some things, I might not, depending  
9 on -- the results from my analysis is based on objective  
10 science.

11 Q. Was there anything -- if we were to look at a scale, if we  
12 were to hold a scale, was there anything that was more  
13 relevant than other things in items that you have reviewed?

14 A. Sure. In this particular case, you specifically asked me  
15 to review the statements and deposition of Officer Kelly and  
16 look at the statements and description from scientific  
17 perspective and see whether or not they're consistent with  
18 science. So this was specific assignment in this case, which  
19 is a little bit different than the majority of other legal  
20 cases.

21 Q. So in this case, if I can try and synopsise it, if I say  
22 it wrong, you can please correct me, we had asked you to  
23 analyze as much data as possible. You looked at the  
24 statements of Patrick Kelly, and you determined whether or not  
25 his statements or his deposition were consistent with the body

1 A. Here's the opening. So you have to position the body that  
2 will be consistent with the left-hand side pointing in the  
3 direction, in the area where you have the blood. So you're  
4 not facing north. You're actually facing south.

5 Some small correction, remember the tissue on the  
6 frame? It got there. So, in my opinion, it is south and a  
7 little bit west because the part of the tissue went over  
8 there.

9 And if you want to understand how the tissue got  
10 there, look at the puddle again. When somebody steps in a  
11 puddle, right, the water will just flow. Imagine there are  
12 some connective tissue in the skull that eventually will  
13 separate and just carry through to the location. But you have  
14 to have a part of the -- of the wound in line with those  
15 locations. The objects during the flight don't turn corners.  
16 It doesn't happen. You have to have some kind of external  
17 force to change the path. If you launch something, laws of  
18 physics take care of it. It doesn't turn corners.

19 So, in my opinion, he was facing south, a little bit  
20 to the west, and during the gunshot, part of the skull went  
21 into the window frame and the couch.

22 Q. I'm going to move the gun for the moment because we know  
23 that it wasn't there at the time that the gun discharged -- or  
24 at least at the time that the gun fell to the floor or was  
25 dropped to the floor.

1 accident cases, too?

2 A. Yes.

3 Q. And were those recent, or were those a little bit further  
4 along?

5 A. Well, definitely it wasn't the last couple of years. It  
6 was older than that.

7 Q. In this case, you were asked to render an opinion, I think  
8 you've already testified to, regarding Patrick Kelly's version  
9 of events against the physical evidence when you were retained  
10 by Romanucci's office, correct?

11 A. Correct.

12 Q. You were never given any access to statements by the  
13 plaintiff about Michael LaPorta's version of how he was shot  
14 prior to drafting your report, correct?

15 A. Correct.

16 Q. And prior to giving a deposition in this case back in  
17 November, correct?

18 A. That's correct.

19 Q. Consequently, it's fair to say that you were never asked  
20 to render an opinion regarding Michael LaPorta's version of  
21 events in connection with the physical evidence in this case?

22 A. Correct.

23 Q. I'd like to look a little bit at your opinions. I think  
24 we've discussed the trajectory. I think you've told me today  
25 that you didn't conduct any measurements on the trajectory.



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1 Q That was not their sole responsibility, true?

2 A No. Their responsibility was all matters pertaining to  
3 police and fire issues.

4 Q Alderman Moore, you are the chairman of the north side  
5 subcommittee of the joint committee hearing testimony on  
6 recommendations that were made for changes to the Independent  
7 Police Review Authority?

8 A That's correct.

9 Q And indeed changes were made to the Independent Police  
10 Review Authority; is that correct?

11 A That's correct.

12 Q You were sitting under Mayor Richard M. Daley in 2007 when  
13 IPRA was recommended for -- when IPRA was recommended to  
14 replace the Office of Professional Standards, true?

15 A That's correct.

16 Q The Office of Professional Standards was recommended  
17 dissolved in 2007; is that correct?

18 A Well, we made a -- we made a decision to dissolve the  
19 Office of Professional Standards and replace it with the  
20 Independent Police Review Authority, that is correct.

21 Q And the reason that the Office of Professional Standards  
22 was recommended dissolved because the community had lost the  
23 trust that the Office of Professional Standards could  
24 adequately oversee police accountability, true?

25 A Well, we -- we, as members of the City Council, together

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1 with the mayor, felt that -- that the confidence of the  
2 residents and citizens of the City of Chicago was failing  
3 because -- the confidence in the police department and the  
4 ability of OPS to independently investigate allegations of  
5 misconduct. And we felt it was important to bring in and  
6 create an agency that was more independent of the police  
7 department.

8 Q Because indeed OPS was actually part of the Chicago Police  
9 Department, correct?

10 A It was under its jurisdiction, yes. It was part of the  
11 police department.

12 Q Office of Professional Standard employees were actually  
13 employees of the Chicago Police Department?

14 A Right.

15 Q The budget item, when you're creating the budget for the  
16 Chicago Police Department, their budget was actually the CPD's  
17 budget, correct?

18 A In terms of the organizational structure, they came under  
19 the Department of Police, yes, it did.

20 Q And at that time, OPS had lost the entire trust of the City  
21 of Chicago in its independence in the ability to oversee police  
22 misconduct, true?

23 MS. ROSEN: Objection, foundation as to the entire  
24 City of Chicago's --

25 THE COURT: Overruled.

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1 MS. ROSEN: -- trust.

2 THE COURT: Overruled.

3 THE WITNESS: There were concerns on the part of  
4 members of the City Council in responding to our concerns  
5 expressed to us by our constituents that OPS was not  
6 independent enough to enjoy the confidence of a majority of our  
7 residents.

8 BY MR. ROMANUCCI:

9 Q And that's because when there were investigations of police  
10 misconduct, OPS was basically investigating their own, correct?

11 A Well, given that that certainly was -- that was the  
12 appearance, given the fact that they were under the  
13 jurisdiction of the Chicago Police Department.

14 Q How long had this appearance been going on with OPS?

15 A Well, I guess it would depend on whose opinion you asked.  
16 People had various opinions about it. But certainly my own  
17 personal opinion was that this was a measure that was long  
18 overdue and that -- and that there were certain incidents that  
19 brought the independence of OPS into question and that we felt  
20 it was important to restore public trust, if you will, in the  
21 independence of an agency investigating the misconduct by  
22 creating a separate agency that was separate and apart from the  
23 Chicago Police Department.

24 Q By the time OPS was dissolved in 2007, you would agree,  
25 sir, that police accountability in the City of Chicago was

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1 failing its citizens, true?

2 A There were concerns expressed by many of us in the City  
3 Council and members of the public at large that there needed to  
4 be a greater degree of independence to ensure the integrity of  
5 oversight over police misconduct.

6 Q Would the answer to my question be a "yes," sir? Would it  
7 be yes?

8 A I think I answered your question, sir.

9 Q Is that the best that you can answer it?

10 A Yes. As I said, we're a city with a diverse population  
11 with a diverse number of viewpoints. And clearly there were  
12 concerns expressed by many that OPS was not sufficiently  
13 independent of the police department, and we needed to -- I  
14 felt and many of my colleagues felt that it was important to  
15 establish an agency that was separate and apart from the police  
16 department in order to ensure the citizens that investigations  
17 were independent and had integrity.

18 Q Those failings in independence, Alderman Moore, do you  
19 agree that they were leading to the constitutional rights of  
20 the citizens of this city being violated?

21 A There are instances where -- clearly where constitutional  
22 rights of a number of citizens had been violated by -- by the  
23 police -- police, and -- and we wanted to make sure that those  
24 incidents were as infrequent as possible.

25 Q And those instances of citizens' rights being violated by

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1 officers who had been committing misconduct with this lack of  
2 independence of OPS and their lack of oversight had been going  
3 on for years, sir; is that correct?

4 A Well, the -- some incidents, high-profile incidents brought  
5 this all to a head.

6 Q And when I say years, OPS had been in existence for more  
7 than 10 years; had it not?

8 A And I'm not -- I don't entirely recall when it was created,  
9 but it had been in place for quite a long period of time.

10 Q It had been in place for at least 15 years before 2007,  
11 true?

12 A Yes.

13 Q And those high-profile incidents you're talking about that  
14 led to this idea of dissolving OPS and then creating IPRA, one  
15 of those instances is known as the *Obrycka v. Abbate* case; is  
16 it not?

17 A That's correct.

18 Q And that case was the one where the off-duty police officer  
19 went behind a bar, beat a bartender; is that correct?

20 A Yes, a very -- a young female bartender who had -- with  
21 short physical stature. She was a very tiny woman.

22 Q And after he beat her, there was a coverup; is that  
23 correct?

24 A Those were the allegations.

25 Q Well, that case went to trial, did it not, Alderman Moore?

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1 A Yes, sir.

2 Q And you know what happened in that case, correct?

3 A Yes.

4 Q The evidence established that there was indeed a coverup in  
5 that case?

6 A And there were --

7 MS. ROSEN: Objection, foundation.

8 THE COURT: Well, I'll sustain the objection. It  
9 seems to me ...

10 BY MR. ROMANUCCI:

11 Q You know what the outcome of that case was, right?

12 A Well, there was a lot of media coverage because there was  
13 videotape of the incident, and so that brought a lot of public  
14 attention to this issue.

15 Q And you hit the nail on the head, Alderman Moore.

16 There was a videotape of that incident, correct?

17 A There was indeed.

18 Q If there wasn't a videotape, whose story would we have  
19 believed then?

20 MS. ROSEN: Objection, your Honor.

21 THE COURT: Objection sustained.

22 BY MR. ROMANUCCI:

23 Q So you understand that before the Abbate incident, there  
24 were other very high-profile incidents of police misconduct  
25 that were going on in the City of Chicago; do you not?

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1 A Yes, there were.

2 Q Do you recognize the name "Commander Burge"?

3 MS. ROSEN: Objection, your Honor.

4 THE COURT: Objection sustained. I think we're  
5 getting a little beyond.

6 BY MR. ROMANUCCI:

7 Q Well, the point is, Alderman Moore, that besides the Abbate  
8 incident, there were other instances of police misconduct that  
9 were occurring within the City?

10 A Sadly, that is the case.

11 Q But the Abbate incident, because it was on videotape,  
12 really brought it to the top of the crest and people started  
13 crying out for change?

14 A Yes.

15 Q And the Chicago City Council at that time finally then  
16 brought that change to the citizens of the City, true?

17 A That's true. But those in comm and the members of the City  
18 Council working with the mayor's office, yep.

19 Q So when we are now that we're in the year about 2007, the  
20 City Council dissolved the Office of Professional Standards and  
21 brought forth IPRA, which we've heard, Independent Police  
22 Review Authority?

23 A That's correct.

24 Q Now, my understanding -- and you can correct me if I'm  
25 wrong. I know I say this to a lot of witnesses, but I don't

1 with the citizens of the City of Chicago in accounting for  
2 police misconduct?

3 A. Well, I wouldn't say I personally thought I had it,  
4 quote/unquote, nailed when IPRA was created, but the hope was  
5 that -- that we would -- that IPRA would professionalize the  
6 investigatory methods of the City of Chicago, that we would  
7 have more professional investigations of police misconduct  
8 involving -- involving unlawful use of force, which was  
9 primarily IPRA's charge. And I do believe we had made  
10 progress but, clearly, it was not enough progress.

11 Q. So, Alderman, with regard to the length of OPS and now the  
12 term of IPRA, that's 25 years, you would agree that's 25 years  
13 where this city has lacked independence in police  
14 accountability. Do you agree with that?

15 A. As I indicated, I believe IPRA was a significant  
16 improvement over OPS, but clearly, there's more work to be  
17 done, and that's one reason why -- why the COFA -- or COPA  
18 office was created.

19 Q. So this is another attempt at independence in police  
20 accountability?

21 A. Yes. With more resources, broader investigatory  
22 authority, increasing the number of types of misconduct that  
23 can be investigated including an inspector general who --  
24 within the office of civilian police accountability who will  
25 be charged not only with investigating allegations of



1 A. Yes.

2 Q. And you would agree that the city council of our city was  
3 charged with accountability over IPRA; is that correct?

4 A. We created IPRA because we recognized that things weren't  
5 working under OPS.

6 Q. So the responsibility for whether IPRA was either broken  
7 or not broken, year after year when you appropriated money to  
8 IPRA to pay the people who did their job for police  
9 accountability and oversight, was the city council?

10 A. City council and the mayor.

11 Q. And every year, you gave money to a broken system that  
12 could not account for itself and police accountability for not  
13 violating the constitutional rights of citizens, true?

14 A. We funded an organization that was making significant  
15 progress, that was reducing the backlog of investigations.  
16 But was it moving fast enough? Was it improving fast enough?  
17 Clearly, not.

18 Q. Well, it states --

19 A. Which is why we stepped in and created an organization  
20 that has much more funding, much greater breadth of  
21 investigatory authority and has -- and it's charged not only  
22 with investigating individual acts of misconduct but also  
23 broader policy issues and patterns in Chicago Police  
24 Department.

25 Q. Well, you know, Alderman Moore, interestingly, IPRA, the

1    imagine they're not going to readily acknowledge that just as  
2    any other profession isn't going to readily acknowledge a code  
3    of silence in their respective professions.

4    Q.   Part of the healing process would be to accept and admit  
5    that a code of silence exists in order to root out the  
6    problem, agreed?

7               MS. ROSEN:  Objection, your Honor, to "the healing  
8    process," relevance.

9               THE COURT:  He can answer.  He doesn't have to --  
10   again, you don't have to --

11   BY THE WITNESS:

12   A.   Well, I think it's important that -- to the healing  
13   process that we all acknowledge that we are imperfect.  And  
14   our -- you know, our mission in life is to try to -- while  
15   acknowledging we'll never be perfect, to try to move closer to  
16   that goal of trying to be as good as possible.

17   BY MR. ROMANUCCI:

18   Q.   Alderman Moore, it states -- it continues on by stating  
19   that "The CBAs discourage reporting misconduct by requiring  
20   affidavits, prohibiting anonymous complaints, and requiring  
21   that accused officers be given the complainant's name early in  
22   the process."

23               With respect to that line that I just read to you,  
24   would you agree that that was a recurring element in those  
25   contracts, over contract over contract period, true?

1 A. Yes. And that's actually kind of one of the challenges  
2 that -- that we as city officials, that union negotiators  
3 face, because that requirement that we can't investigate an  
4 allegation of misconduct without a signed affidavit was  
5 something that was put into place by the Illinois General  
6 Assembly. We are required by the Illinois General Assembly to  
7 require affidavits before we're able to investigate complaints  
8 of misconduct. That's something that we didn't want to do.

9 And, in fact, the City lobbyist worked -- tried to  
10 work hard to prevent that law from being enacted in  
11 Springfield. And, in fact, quite honestly, we tried to avoid  
12 it as much as possible to the point where we had -- you know,  
13 we had the union file a grievance against the City for trying  
14 to do that. So we did everything we could to prevent that  
15 requirement of an affidavit from being actualized, but  
16 unfortunately, our hands were tied.

17 Q. So your --

18 A. I thought it's kind of -- sort of unfair of the report to  
19 blame the City for something that we had no control over. And  
20 we're in full agreement that -- that the anonymous complaints  
21 are important because not everyone has the courage to sign  
22 their name to an affidavit.

23 Q. And that's because --

24 A. And --

25 Q. -- of fear and because of retribution for signing an

1 affidavit, true?

2 A. That's certainly -- that's certainly what people believe  
3 in.

4 Q. But you --

5 A. But the fact of the matter is, the Illinois General  
6 Assembly put that requirement into state law, and we are  
7 obligated to follow that state law.

8 Q. But, Alderman Moore, you agree, as you sit here today, and  
9 you're well aware that there are exceptions to that affidavit  
10 requirement, correct?

11 A. There are exceptions in what way?

12 Q. Well, if there's a crime that was committed by a police  
13 officer, the exception to the affidavit is that someone else  
14 other than the complainant can sign the affidavit, right?

15 A. I'm sorry. In order to file a complaint, it has to be --  
16 someone has to sign the affidavit.

17 Q. Right. And that affidavit --

18 A. But it can't be an investigator.

19 Q. So your understanding is that an investigator is never  
20 authorized to sign an affidavit when there's a crime committed  
21 by a police officer?

22 A. That's my understanding, but if you have a copy of the  
23 law, I'd be happy to take a look at it. Do you have a copy of  
24 the law?

25 Q. Yes. We're getting it for you.

1 A. Okay.

2 MR. ROMANUCCI: I can't see that page. Thank you.

3 THE COURT: In the meantime, you can proceed with  
4 other portions.

5 BY MR. ROMANUCCI:

6 Q. On Page 71, we put that up on your complaint there -- on  
7 your screen, and it states that, "without a signed affidavit,  
8 there is generally no investigation at all."

9 Do you see that? It's in the first full paragraph.  
10 Do you see that, sir?

11 A. Yes.

12 Q. Okay. So without a signed affidavit, there is generally  
13 no investigation.

14 Now, let's skip to the next paragraph where it says:

15 "The CBAs allow for the chief administrator of IPRA  
16 and the BIA to, in effect, override the affidavit  
17 requirement after reviewing objective verifiable evidence  
18 and affirming that based upon that evidence, it is  
19 necessary and appropriate for the investigation to  
20 continue."

21 Do you see that?

22 A. Yes.

23 Q. That was part and parcel of the affidavit requirement  
24 during all those contracts, wasn't it?

25 A. I would like to -- again, I'd like to look at the actual

1 MR. ROMANUCCI: If I may have a moment, I actually  
2 could be done, please.

3 THE COURT: All right.

4 (Pause.)

5 BY MR. ROMANUCCI:

6 Q. The last questions. And we're not even going to put the  
7 documents up. You recall -- or you know that in July -- in  
8 January of 2017, the Department of Justice issued its report  
9 on the City of Chicago?

10 A. Yes.

11 Q. And without going -- laboring into it, would you agree  
12 that the Department of Justice also agreed that the City of  
13 Chicago had a longstanding culture with the code of silence?

14 A. I don't remember if they used that term, but they  
15 clearly -- the City had -- the Chicago Police Department had  
16 some issues regarding police misconduct for sure.

17 Q. And they also criticized the lack of an early warning or  
18 early intervention system?

19 A. Absolutely.

20 Q. And the Department of Justice also warned that the lack of  
21 having an early warning system could lead to repeated acts of  
22 abuse against the citizens leading to constitutional  
23 violations?

24 A. Yes.

25 MR. ROMANUCCI: Thank you very much.

1 A. Yes. He's at the University of Chicago, and he's also a  
2 member of the plaintiffs' bar.

3 Q. Okay. And so as a member of the plaintiffs' bar, he, too,  
4 is looking at the issues he's bringing to the city council  
5 through the lens of his role as a plaintiff's attorney in  
6 litigation that he has brought for years and years and years  
7 against Chicago police officers and the Chicago Police  
8 Department and the City of Chicago?

9 A. Yes.

10 And both of them have done quite well for themselves  
11 financially.

12 MR. ROMANUCCI: Objection, your Honor. Move to  
13 strike.

14 THE COURT: I'll sustain that.

15 BY MS. ROSEN:

16 Q. Okay. With respect to -- you were asked some questions  
17 about the research that Mr. Futterman did with respect to the  
18 sustained rate his research claimed to find with respect to  
19 allegations of police misconduct. Do you remember those  
20 questions?

21 A. Yes.

22 Q. Now, you're aware, aren't you, Alderman, that the Chicago  
23 Police Department for many, many years, up until maybe 2013,  
24 produced an annual report?

25 A. Yes.

1 Q. And the annual report contained all kinds of information  
2 related to the operations of the Chicago Police Department,  
3 correct?

4 A. That's correct.

5 Q. It had crime statistics. It had personnel statistics. It  
6 had crime trends, all kinds of information about the year  
7 preceding the publication of the report, correct?

8 A. That's correct.

9 Q. And included within the annual report, you know, Alderman,  
10 don't you, that there is also information about the number of  
11 complaints that are brought every year against the Chicago  
12 Police Department, right?

13 A. That's right.

14 Q. And there's also the numbers of the sustained rate or the  
15 number of complaints that were sustained in any given year in  
16 that report, correct?

17 A. That's correct.

18 Q. And you are aware, aren't you, Alderman, that the  
19 sustained rate based on the data that is contained in the  
20 annual report differed significantly from Mr. Futterman's 2  
21 out of 1,000; isn't that correct?

22 A. Yes. And I was at a disadvantage, you know, sitting here  
23 on the witness stand that I could not access those reports.

24 Q. Okay. And you have no idea, when Mr. Futterman came to  
25 city council to express his concerns and reported the



1 (Proceedings heard in open court. Jury in.)

2 THE COURT: Please be seated.

3 Good morning. Alderman, you're still under oath from  
4 yesterday. Do you understand that, sir?

5 THE WITNESS: Yes. Yes, your Honor.

6 THE COURT: Ms. Rosen, you may continue with your  
7 cross.

8 MS. ROSEN: Thank you, your Honor.

9 JOSEPH MOORE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

10 CROSS-EXAMINATION (Resumed)

11 BY MS. ROSEN:

12 Q. Okay. So, Alderman Moore, yesterday, we left off talking  
13 about a myriad of topics. This morning, we'll start with the  
14 testimony that you gave yesterday regarding incidents that led  
15 to the creation of IPRA and then more recently incidents that  
16 led to the creation of the new independent police  
17 accountability entity, COPA.

18 Between -- in the years leading up to 2007 before any  
19 of these incidents that occurred that sort of crystallized the  
20 concerns and that were brought to the attention of the  
21 council, did council on a regular basis monitor in any way the  
22 operations of the Chicago Police Department and the Office of  
23 Professional Standards?

24 A. Yes, on a regular basis.

25 Q. Okay. And can you just describe as it relates to the

1 Chicago Police Department what kind of oversight the council  
2 exercised as it relates to operations of the Chicago Police  
3 Department?

4 A. Well, I can divide it into three different categories.  
5 One would be just when an issue arose involving the police  
6 department or anything regarding public safety, we could  
7 convene hearings on that matter.

8 Whenever a new police superintendent was appointed,  
9 of course, we would have hearings on that to determine whether  
10 we should confirm the mayor's appointment. But certainly on a  
11 regular basis, the committee on finance considered settlements  
12 in matters involving allegations of police abuse of authority,  
13 so-called Section 1983 cases.

14 And so the city council would on a regular basis  
15 deliberate over the recommended settlements. The law  
16 department would reach a settlement with the plaintiffs'  
17 attorneys, and then we would consider that settlement. And in  
18 the course of those discussions, we would often question both  
19 the law department and, occasionally, officials from the  
20 police department about what measures they were undertaking to  
21 prevent these matters from occurring in the future.

22 Now, obviously we knew that just because you settle a  
23 case doesn't mean that the officer was necessarily guilty but,  
24 occasionally, the facts seemed pretty clear that if it had  
25 gone to trial, we would have lost. And so we were --

1 MR. ROMANUCCI: Objection, your Honor. Leads to a  
2 conclusion.

3 THE COURT: Overruled. He can continue.

4 BY THE WITNESS:

5 A. And so that would give us an opportunity to ask the City  
6 administration what efforts they were taking in terms of  
7 training, in terms of holding police officers accountable.

8 And then, finally, on an annual basis, we consider  
9 the budget for the entire city of Chicago. And each  
10 department in the city, including the police department, comes  
11 before the council, and we ask questions, not only about the  
12 budget, but also any other matter pertaining to that  
13 department. They are generally accountability sessions, if  
14 you will, on an annual basis.

15 And so that also provided us with a regular  
16 opportunity to grill the police superintendent and his team  
17 about all issues pertaining to the police department, be they  
18 budgetary issues or issues involving concerns about overtime  
19 or, indeed, police training and instances where there may be  
20 concerns about police brutality.

21 BY MS. ROSEN:

22 Q. And with respect to the budget hearings specifically,  
23 during the budget hearings when you would call in, say, let's  
24 talk about the police department, and you bring in people from  
25 the police department to discuss the budgets that are being

1 time within which investigations were started and completed  
2 was -- was shortened considerably.

3 Q. And how did she --

4 A. And the backlog was decreased as well.

5 Q. So when she took over, there was a significant backlog?

6 A. Significant backlog, and cases went on for years. It was  
7 really an intolerable situation.

8 Q. Okay. And then with respect to the reporting requirement,  
9 so if there were cases that went beyond the six years --

10 A. Six months.

11 Q. Six months. Sorry.

12 -- six months, she would have to create a report and  
13 send it to city council so that city council would be aware?

14 A. That's right, and to the public as well.

15 Q. Okay. And then when you say "to the public," how was that?

16 A. There were annual reports issued by -- by IPRA that, you  
17 know, gave all statistics, how many complaints were filed, how  
18 many complaints were resolved, what is the nature of those  
19 complaints. The transparency of the investigatory process  
20 increased tremendously under her -- under her tenure, which is  
21 why --

22 (Cell phone ringing.)

23 THE WITNESS: Oh, I'm so sorry. Sorry about that.  
24 My apologies.

25 So --

1 BY MS. ROSEN:

2 Q. Transparency.

3 A. Yes. Transparency increased, which was very important in  
4 attempting to restore an element of -- a degree of trust in  
5 the process.

6           There were also, IPRA also made considerable efforts  
7 to reach out to the community, to engage and to hold community  
8 meetings, to have -- give people an opportunity to express  
9 their concerns about allegations of police brutality in  
10 general, and express -- you know, look for ways of how the  
11 police department and the community could begin to restore a  
12 sense of trust and communication, and particularly in  
13 communities of color where there had been, you know, to say  
14 the least, strained relationships for a long time between the  
15 police department and the residents of the community.

16 Q. Did IPRA also have a website that it maintained?

17 A. They did maintain a website, again, as a way of increasing  
18 transparency that contained all the information that was  
19 posted in their written -- written reports and given an  
20 opportunity for people to file complaints. They didn't have  
21 to go down to the police station. They could do it online  
22 from the comfort and safety of their home.

23 Q. Okay. And then, as we know, recently, other issues have  
24 brought this to the forefront again, an incident that  
25 Mr. Romanucci referenced in 2015. And changes, again, were

1 know, that we know is that police officers can't do their job  
2 without having the trust of the community. If people don't  
3 trust police officers, they don't share information. If  
4 police officers don't have this kind of information, they're  
5 not able to, number one, solve crimes and, number two, prevent  
6 crimes from occurring in the future.

7           So we factor in that as well, that it's not only a  
8 good thing from protecting people's rights point of view to  
9 make sure that police officers are trained well and that they  
10 know that they are being monitored, but it's also good  
11 policing. More professional police officers make for safer  
12 communities.

13 Q. And can you tell us, Alderman Moore, you talked about --  
14 that you talked yesterday about the percentage of the entire  
15 city budget that is taken up by police and fire, and you told  
16 us the percentage of that particular budget that was devoted  
17 to personnel. How many police officers does the City of  
18 Chicago employ?

19 A. Over 13,000. I'm going to guess around 13,500, to the  
20 best of my recollection, which is -- per capita, the city of  
21 Chicago has more police officers per capita than the city of  
22 New York and twice as many police officers as -- per capita as  
23 the city of Los Angeles. It's hard to believe, but that's --  
24 that's, in fact, the case.

25 Q. And with respect to the new agency that's been created, do

1 A. Well, when did the incident occur?

2 Q. January 12, 2010.

3 A. Okay. And it was investigate -- and was an investigation  
4 opened at this time, at the time right after the incident  
5 occurred, or did it happen later on?

6 Q. Well, the investigation opened at 9:00 a.m. that morning.

7 A. Okay.

8 Q. The notification -- the notification from Lieutenant  
9 McNicholas, who testified yesterday, went to IPRA at 9:00 a.m.  
10 that morning. So you can fairly assume that on the same day  
11 that this shooting occurred, IPRA was notified that there was  
12 a problem.

13 A. That's right. And I think one of the reasons we're here  
14 today, I would assume, is because this is a very big and  
15 complicated case. I think I indicated in my testimony earlier  
16 that six weeks -- six months was the goal, but that doesn't  
17 mean that all investigations were completed in six months and  
18 that there are some cases that are outliers, particularly what  
19 they call heater cases, as this one undoubtedly is, a  
20 controversial case with a lot of contradictory facts and --  
21 and conflicting testimony from various witnesses.

22 Those investigations are complicated and take longer,  
23 and it's better to conduct an investigation thoroughly and  
24 carefully than abide by some artificial deadline.

25 Q. True. Now, you are aware that -- strike that.

1           You told us that on an annual basis, IPRA was to  
2 submit what's called an annual report. Do you agree?

3 A. Yes.

4 Q. And that should have started in 2007 -- or the first full  
5 year, 2008, correct?

6 A. That's correct.

7 Q. And you agree that in those annual reports, the statistics  
8 were contained for each CR that was open and what the status  
9 is, correct, sir?

10 A. Yes.

11 Q. And you agree that after 2010, IPRA stopped submitting  
12 annual budgets, correct, sir?

13 A. Reports.

14 Q. Annual reports. Is that correct?

15 A. There was a period -- there was a year within which they  
16 did not issue a report, but then the subsequent year, to the  
17 best of my recollection, they issued a report for both years.

18 Q. You would agree that the reason that IPRA stopped issuing  
19 annual reports was because of lack of funds, correct, sir?

20 A. I do not know the reason.

21 Q. Well, you gave a deposition in this case, didn't you?

22 A. I did.

23 Q. And in your deposition, you said that the reason that IPRA  
24 stopped issuing annual reports was because of lack of funds.

25 A. Well, the deposition was taken over a year ago, so I was



1 Q. And in none of those cases was Patrick Kelly ever  
2 disciplined, right?

3 A. Again, you're asking me to just generalize.

4 Q. If I -- are you aware of Patrick Kelly ever being  
5 disciplined for any CRs directed against him between 2005 and  
6 2009?

7 A. During my services in the 9th District, no, sir.

8 Q. Now, the jury has already heard about several of these  
9 CRs, and I'm just going to briefly touch on a few of them.  
10 Okay? You're familiar with a CR directed against Patrick  
11 Kelly for allegedly beating his girlfriend, Frances Brogan,  
12 correct?

13 A. Yes.

14 Q. And you're aware of the allegations that he had physically  
15 choked her and he had punched, kicked, and hit her with a fan,  
16 correct?

17 A. Correct.

18 Q. And you're aware that the Office of Professional Standards  
19 investigated that CR directed at Patrick Kelly, right?

20 A. That is correct.

21 Q. I'm going to direct your attention to another document  
22 here, sir.

23 MS. ROSEN: What page?

24 MR. GOULD: It's FCRL 1369.

25 BY MR. GOULD:

1 A. Is that a question?

2 Q. Yes. Can you tell if that's Fran Brogan's signature?

3 A. I can tell that it looks like "Fran Brogan." Whether or  
4 not she signed it, I have no reason to doubt, but I have no  
5 personal knowledge of whether she signed that or not.

6 Q. All right. What's contained in these three pages of  
7 writing, multiple lines, 20, 30 lines per page? What's  
8 contained in Frances Brogan's statement that she initialed and  
9 signed that you believe is not consistent enough so that you  
10 found that you could not sustain charges against Patrick  
11 Kelly? List all the reasons for us.

12 A. My finding of "not sustained" for this case was not  
13 limited to a particular document, particular item. It was  
14 based on my experience both as a human having life experiences  
15 and my review of the file, as being a State's Attorney, and  
16 everything, so it was not just one particular thing.

17 From my recollection of this case, it was found not  
18 sustained, which does not mean it didn't happen. It means  
19 that there was not evidence on either side sufficient for it  
20 to be a finding of sustained. My recollection is that there  
21 were credibility issues on both sides, and based on the fact  
22 that there were credibility issues on both sides and my review  
23 of everything that was available, that's what the finding of  
24 "not sustained" was based on.

25 Q. Did you find that Frances Brogan picked up that fan and

1 beat herself with it?

2 A. No.

3 Q. Did you find that Frances Brogan threw herself to the  
4 ground and caused herself to bleed?

5 A. I found based on everything that was known to me at the  
6 time along with my life experiences, my experience as an  
7 Assistant State's Attorney, human nature, everything that was  
8 available, that based on that, there was not enough evidence  
9 to sustain the finding.

10 That does not mean it did not happen. That does not  
11 mean that it happened one way in particular or another way.  
12 It means that based on the evidence that was available that I  
13 found that it should not be sustained.

14 Q. Well, I've asked you to give us, list all the specific  
15 reasons for why you didn't sustain it. Can you do that?

16 A. I -- specifically, based on my knowledge, my human  
17 knowledge; based on my experience, life experience; based on  
18 my experience of assessing people's credibility; based on  
19 everything, that is why.

20 Now, when you're asking particulars, my understanding  
21 was at a particular point that she had said something  
22 inconsistent with something else. Now, specifically, I do not  
23 remember, but I know that there were inconsistencies in some  
24 of the statements that she gave.

25 Q. That's exactly what I'm asking you. What -- what is it

1 that would call into question Ms. Brogan's credibility.

2 Q. Right.

3 A. As I sit here today, I do not recall that.

4 Q. Okay. Fair enough.

5 Can you go to RFC 21284, please?

6 A. Do I have that up here?

7 Q. You will in a moment.

8 A. Oh, okay.

9 Q. And you can just highlight the top half since the bottom  
10 half is empty. And what's the plaintiff's exhibit number?

11 So I'm showing you what's marked as 236-F2. Once  
12 again, do you see your signature at the bottom there?

13 A. I see somebody has signed on my behalf, yes. That's why  
14 the initial is there.

15 Q. That's your signature block that has the full power and  
16 effect of you signing it, correct?

17 A. Yes. It's not -- it doesn't look like it's a stamp. It  
18 looks like somebody actually wrote my name and then put their  
19 initials by it.

20 Q. And this is a to/from memo to the superintendent of  
21 police; is that correct?

22 A. Yes.

23 Q. And you told us earlier what his name was, Phil Cline?

24 A. Yes.

25 Q. And the subject is, "Sustained override." Do you see

1 A. Pat Kelly was two grades lower than Mike.

2 Q. But they were at the high school at the same time for a  
3 couple years?

4 A. At the same time, but I don't remember Pat Kelly during  
5 Brother Rice years.

6 Q. Okay. But you knew that they were friendly during high  
7 school, correct?

8 A. Yes.

9 Q. Okay. And then when they -- when your son and Pat Kelly  
10 went to SIU, they were college roommates, right?

11 A. I really don't know if they were college roommates or  
12 if -- because Chris was also a roommate. So he did have a  
13 bedroom there, but I'm not too sure. I don't remember that  
14 they were actual roommates. Garden apartments, I think is  
15 where they lived.

16 Q. While they were attending SIU?

17 A. Yes.

18 Q. So they shared an apartment?

19 A. Right.

20 Q. So when you're saying you don't think they were roommates,  
21 you mean like in a dorm?

22 A. A dorm, correct.

23 Q. But you know they shared an apartment while they were at  
24 SIU?

25 A. Right.

1 Q. And you know that after they both graduated from college,  
2 they remained friends, correct?

3 A. Yes.

4 Q. And that he was -- Mr. Kelly was at your house all the  
5 time, correct?

6 A. Correct.

7 Q. And he would come to family parties, correct?

8 A. Correct.

9 Q. And you knew that your son and Mr. Kelly socialized  
10 together, right?

11 A. Yes.

12 Q. You knew they went to bars together, correct?

13 A. Yes.

14 Q. They remained friends, correct?

15 A. Yes.

16 Q. And then once your son moved to Sandwich, you didn't see  
17 Mr. Kelly all that often --

18 A. No.

19 Q. -- correct?

20 And isn't it true that at some point in time, your  
21 son dated Pat Kelly's sister Jane?

22 A. She was an on-and-off date.

23 Q. Okay. And you know Jane, right?

24 A. Correct.

25 Q. And you know Pat Kelly's mother, correct?

1 I believe you.

2 Q. Yeah. And that you actually asked for an extrapolation,  
3 did you not?

4 A. Yes, sir. I wanted to find out what his blood alcohol  
5 level was at the time of the incident.

6 Q. And the blood alcohol at the time of the incident -- let's  
7 see. At the time he was tested, about eight hours later, .093,  
8 agreed?

9 A. If you say that's what it is in there.

10 Q. Yes.

11 A. Okay.

12 Q. And the extrapolation, you agree, was .169 to .246 at the  
13 time it happened.

14 A. I know it's a range. That seems about right for the math,  
15 yeah.

16 Q. Does that seem right to you?

17 A. It seems about right. I haven't checked the numbers. I  
18 don't remember the numbers, but --

19 Q. So you would agree that if Mr. Kelly was driving a  
20 vehicle, this was two to three times the legal limit of  
21 intoxication?

22 A. He was super intoxicated.

23 Q. Two to three times the level of intoxication. Did you  
24 take that into consideration when Patrick Kelly was giving you  
25 his statement that he gave to you one year later after this

1 A. Yeah. I did say that yesterday.

2 Q. Okay. And how would you describe what they all reported  
3 to you about the events of that night?

4 A. They described a night out with coworker, you know. It  
5 was unexceptional.

6 Q. Did anyone report any altercations or animosity between  
7 Kelly and Mr. LaPorta?

8 A. I don't recall anybody saying that.

9 Q. Did you ask questions of all of those officers about  
10 whether or not Kelly had his gun while he was off duty that  
11 night?

12 A. I don't think I did. I think I missed one or two of them.

13 Q. Okay. Why don't you --

14 A. Sorry.

15 A JUROR: I can't --

16 MS. BENJAMIN: Still?

17 THE WITNESS: Sorry.

18 BY MS. BENJAMIN:

19 Q. Did you ask -- why don't you turn to FCRL 148. And it's  
20 Officer Coughlin's statement. Do you see that?

21 A. Yes, ma'am.

22 Q. Did you ask generally the same questions? Like, do you  
23 kind of write them out before you conduct interviews like  
24 this?

25 A. I usually produce an outline. I did have information that



1 No. 1?

2 A. I sustained that allegation.

3 Q. Okay. And what was that allegation again? Just remind  
4 us.

5 A. That Patrick Kelly was intoxicated while off duty.

6 Q. Okay. And what is the basis in your report for why you  
7 made that conclusion?

8 A. Because he submitted to a breathalyzer test where his  
9 blood alcohol content was .093, and then a back-extrapolation  
10 of those results indicated that his blood alcohol content at  
11 the time of the incident was between .169 and .246.

12 Q. All right. And I'm just --

13 A. Also --

14 Q. -- going to put on the screen, this is FCRL 44. And you  
15 also describe evidence that you obtained from witnesses on the  
16 scene?

17 A. Right. Every officer at the scene said that he displayed  
18 signs of intoxication.

19 Q. Okay. The breathalyzer alone was enough, though?

20 A. Yes.

21 Q. And with regard to allegation No. 2, this was the failure  
22 to secure his weapon. What was the basis of your conclusion  
23 for sustaining that allegation --

24 A. Let's see.

25 Q. -- recommending that it be sustained?

1 trigger on the gun on the night of January 12, 2010, sometime  
2 after 4:00 o'clock in the morning in Patrick Kelly's home?

3 A. I have come to an opinion on that.

4 Q. What is your opinion?

5 A. Considering the location and direction of the fired bullet  
6 and damage to Mr. LaPorta, the fired cartridge case remaining  
7 fully within the chamber, the position that I'm being told by  
8 Mr. Kelly that Mr. LaPorta was in at the point in time that  
9 the weapon was discharged, that I feel it's impossible for  
10 Mr. LaPorta to have had a self-inflicted gunshot wound as  
11 being described by Mr. Kelly. And Mr. Kelly is the only other  
12 person in the room. Therefore, he would had to have been the  
13 one doing the shooting.

14 Q. Can you tell us in conclusion what all the bases of your  
15 opinions are with respect to why it was Patrick Kelly who  
16 discharged the gun that evening?

17 A. Well --

18 Q. And that's -- may I preface it because I need to, your  
19 opinions are all based upon a reasonable degree of certainty  
20 within the fields of your expertise of firearms, guns, armory,  
21 and, I think you said, bomb squad, also; is that correct?

22 A. Correct. Well, all of the reasons I just gave you, and  
23 you can couple that with the fact that it -- that it is  
24 Mr. Kelly's gun to begin with. It was in his home. It was  
25 never owned by that. You would understand where it was at.

1 A. I do.

2 Q. Why don't you take a look at the first page of your report  
3 that's dated June 8th of 2017.

4 A. Correct, I have it.

5 Q. Okay. So if you look at --

6 A. Pardon me.

7 Q. Sure. If you look at the first page of the report, this  
8 indicates that basically, it sounds like you were retained  
9 around May 8th of 2017; is that fair?

10 A. Correct.

11 Q. All right. And then subsequent to that, a couple of days  
12 later, you received a batch of documents from the plaintiff,  
13 correct?

14 A. Correct.

15 Q. And then about six days after that, on May 18th, you  
16 received even more documents, correct?

17 A. That is also correct, yes, sir.

18 Q. And the documents that were provided to you, you didn't  
19 request those documents; those were decided upon by the  
20 plaintiff to give to you. Is that fair to say?

21 A. Yes.

22 Q. All right. And you can appreciate the fact that you  
23 haven't been provided with all of the documents in this case,  
24 right?

25 A. After having seen this, absolutely correct, I wouldn't

1 have had all the documents. That is correct.

2 Q. And you'd also agree that of the documents you were  
3 provided with on this list, you didn't look at everything  
4 either, right?

5 A. That is correct. There's specifically one that had 9700  
6 pages that I did not -- I glanced at a few of them, but I  
7 certainly couldn't have the opportunity to have gone through  
8 them.

9 Q. When you say you glanced at a few of them, you didn't  
10 glance at any of them before you drafted your report, right?  
11 You didn't even open the file?

12 A. No, I did open the file. Once I realized how large it  
13 was, that's what I mean, I glanced at a few of them but did  
14 not go through that file. It would not have been possible for  
15 me to do that.

16 Q. So as you sit here today, you can't tell me what was  
17 contained in those 9700 pages, right?

18 A. That would be correct, sir.

19 Q. So you don't know if there's any document that was  
20 contained within those 9700 pages that would have affected  
21 your opinions and conclusions that you gave in this case;  
22 isn't that true?

23 A. I guess there could be something in there that might have  
24 affected it, that's true.

25 Q. There was some discussion on Friday about the type of gun

1 Q. When you first started talking to Pat Kelly, what did you  
2 say to him?

3 A. I recall being, like, really upset because at the time,  
4 Pat was kind of like -- kind of like an older brother to me  
5 but, you know, in between my brother and me, so middle  
6 brother, you know, but -- I'm sorry. What was the question?

7 Q. What did you say to Pat when you had the opportunity to  
8 finally talk to him after this?

9 A. I just wanted to know, I asked him what -- what happened  
10 because at this time, I didn't really have any kind of answers  
11 or anything.

12 Q. When you asked him what happened, what did he first say to  
13 you?

14 A. He asked me -- he didn't ask. He said, started to say  
15 that, "You know how your brother is depressed, right?" And  
16 that's not how Pat would talk at all to me. So it kind of  
17 felt like -- and it was only me and him in the elevator.  
18 Just, something didn't feel right about him asking me that or  
19 saying that.

20 Q. So I want to take you back a couple of steps. So the  
21 members of the jury have heard an audio recording of you  
22 discussing this conversation, and I believe your response to  
23 that statement by Pat Kelly may have been clipped.

24 So when he said to you, "You know how your brother is  
25 depressed," what was your -- what was your response to that?

1 he started to begin to say, you know, that they were out  
2 drinking and they went back to his place and then he seen --  
3 he seen my brother go into the bathroom and then was taking a  
4 while. He'd come out of the bathroom, and he had Pat's gun in  
5 his hand.

6 And Pat, I guess, said that it happened quick. And  
7 he jumped up and he -- my brother pulled the trigger and then  
8 cocked it back -- I guess it went "click," and he cocked it  
9 back to pull it again, and that's when the gun went off. And  
10 by the time he, I guess, could get to him, he was already  
11 falling to the floor, is what Pat said.

12 Q. So what is Pat Kelly's demeanor like as he's giving you  
13 this account?

14 A. Well, we're -- we were like brothers right then, so I'm an  
15 emotional wreck, crying kind of, you know, and he was like  
16 cold, almost like somebody was telling him just to say  
17 these -- say words.

18 Q. You said a moment ago that he was using words that you  
19 didn't commonly use with each other. I think I'm paraphrasing  
20 you. But could you explain what you meant when you said that?

21 A. More like -- like street talk. Like, I just -- you know,  
22 he didn't -- he was saying everything that was -- it just  
23 sounded -- everything sounded coached or something, you know.  
24 It wasn't, like, how we normally talked to each other.

25 Q. Now, I want to walk you through the things that Patrick

1 my brother."

2 Can you recall having said that, if not to this  
3 specific officer, then to some officer while you were at  
4 Christ Hospital?

5 A. I do.

6 Q. I want to be clear. This document wasn't written by you,  
7 correct?

8 A. Written by me?

9 Q. Yes. Did you write this document?

10 A. No.

11 Q. Do you see your signature anywhere on it?

12 A. No, I don't.

13 Q. Okay. But it is safe to say that you said something  
14 similar to an officer?

15 A. Yes.

16 Q. Okay. Can you recall what you meant when you said, "I  
17 also know Pat, and he would never hurt my bro"?

18 A. I do.

19 Q. You can recall what you meant by that?

20 A. Yes.

21 Q. Could you explain to the members of the jury what you  
22 meant when you said that to the officers?

23 A. I'm going to say that at this time, I was still, you know,  
24 in shock with everything, and I didn't want to make any kind  
25 of assumptions. So I know that, you know, my brother would

1 never do it to himself, and I -- I know that Pat would never  
2 premeditated any kind of, like, intentions to do any of this,  
3 I would hope.

4 Q. So what you meant by that was that you didn't think that  
5 Pat would premeditate --

6 MS. BENJAMIN: Objection to form, leading.

7 THE WITNESS: Yes, that he wouldn't -- he wouldn't  
8 intentionally -- he didn't have it planned. I didn't -- as  
9 far as -- I don't think he would have done it and had it  
10 planned out to do it, you know.

11 BY MS. WARD:

12 Q. So at this point, this is about three days after the  
13 shooting happened; is that correct?

14 A. Yes.

15 Q. Did you know what to make of everything that had happened  
16 at that point?

17 A. No.

18 Q. I want to -- it's a little wide, so I'm going to take you  
19 to a third statement. If I'm able to read this, it says, "Has  
20 always seen Pat with his gun off duty. He always has revolver  
21 and takes it off and lays it down in his house next to him,"  
22 and then in parenthesis, "within reach."

23 Is that your reading, also, what those words say?

24 A. I'm sorry. Can you repeat that?

25 Q. I read that out loud. Is that your reading, also, of what



1 BY MS. BENJAMIN:

2 Q. Hello, Mr. LaPorta. The -- do you know what your cousin  
3 Kyle's phone number is?

4 A. I -- no, I can't recall it.

5 Q. You don't have it in your phone today?

6 A. I do.

7 Q. Would you look for us?

8 A. Sure -- oh, I left my phone in the other room.

9 Q. Okay. All right. Now, you told us earlier that you are,  
10 is it, three or four years younger than your brother?

11 A. Three.

12 Q. But actually, you were four years apart in school, right?

13 A. Yes and no. I mean, like, my brother took off in college.  
14 He actually stayed back a year or skipped a year so that I  
15 could be a freshman and he could be a senior.

16 Q. Okay. So but in high school, by the time you were  
17 starting high school, he was already gone?

18 A. That's correct.

19 Q. And you knew that Pat Kelly and your brother were good  
20 friends in high school?

21 A. Yes.

22 Q. And then when you started at -- was it Brother Rice?

23 A. Yes.

24 Q. Okay. When you started at Brother Rice, Pat Kelly kind of  
25 acted like a surrogate older brother to you because you didn't

1 have your brother there, would you agree?

2 A. Yes.

3 Q. And the Kelly family lived just a couple of blocks away  
4 from your family's home?

5 A. That's correct.

6 Q. He attended family parties and other activities and was  
7 generally part of your life?

8 A. Yes.

9 Q. Now, when your brother went to Southern Illinois  
10 University for school, do you recall what he was going to  
11 study?

12 A. Veterinarian.

13 Q. And Pat Kelly followed him to Southern Illinois, right?

14 A. I -- I'm not positive on that.

15 Q. But it's your understanding that after Pat graduated high  
16 school, he went to Southern?

17 A. Yes. Oh, yes.

18 Q. And they were friends when they were at school?

19 A. Yes.

20 Q. Your brother and Pat?

21 A. Yes.

22 Q. And then you came down?

23 A. Yes.

24 Q. I think you said, what was it, 2003 or '4?

25 A. '4.

1 Q. Okay. And that is when the three of you lived together in  
2 an apartment?

3 A. Correct. I mean, I actually lived on campus, but for the  
4 most part, I stayed there.

5 Q. So your dorm room pretty much stayed empty, and you got to  
6 stay with your brother?

7 A. Yes.

8 Q. Now, when you were in college, that was when you actually  
9 became closer with Pat Kelly than you had been in high school,  
10 right?

11 A. Yes.

12 Q. And I think earlier, you described your relationship as  
13 being close?

14 A. Yes.

15 Q. In fact, you would describe it as being like brothers.  
16 You were living together?

17 A. Yeah.

18 Q. Okay. And your brother shared that same closeness with  
19 Pat Kelly?

20 A. Yeah.

21 Q. Okay. In fact, Pat Kelly and your brother were like  
22 brothers all the way up until your brother was shot?

23 MS. WARD: Object to speculation, your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I'm sorry. Can you repeat the

1 question?

2 BY MS. BENJAMIN:

3 Q. Sure. Your brother and Pat Kelly were like brothers,  
4 their closeness, all the way up until the time your brother  
5 was shot?

6 A. Yeah.

7 Q. Now, you were not living at home when your brother and Pat  
8 Kelly returned to the Chicago area, correct?

9 A. Correct.

10 Q. You stayed down at Southern Illinois for a couple of years  
11 to continue on with school or an internship, correct?

12 A. Uh-huh, yes.

13 Q. So you never again lived with your brother, right?

14 A. No.

15 Q. By the time you came back to Chicago, he was already  
16 living in Sandwich, Illinois?

17 A. That's correct.

18 Q. All right. And do you remember when it was that he moved  
19 in -- when he moved to Sandwich, when was that?

20 A. You know, I don't recall exactly when he moved.

21 Q. He'd been living down there for at least a couple of years  
22 in January of 2010, though, right?

23 A. I would -- I think it was, like, maybe two years.

24 Q. And who was he living there with?

25 A. Julie.

1 THE COURT: Mr. Romanucci?

2 MR. ROMANUCCI: With respect to No. 12, I think  
3 there's been evidence placed in the record that would support  
4 the asking of that question. I don't see that there's any  
5 prejudice to the defendant, City of Chicago, by me asking  
6 whether or not Pat Kelly placed and received phone calls and  
7 text messages before and after he placed the 911 call.

8 With respect to 16 through 20, those go to the heart  
9 of the investigation as to whether or not the investigations  
10 were complete. One of our allegations is that the City failed  
11 to investigate, the City failed to discipline. And whether or  
12 not Mr. Kelly responds to these, I think, goes to the heart of  
13 our issues, your Honor, as to whether or not they did either  
14 one.

15 If he admits to beating Fran Brogan, that clearly  
16 goes to the heart of what we're saying, is that they did not  
17 investigate and that they didn't discipline him for it. The  
18 same with Patrick Brogan, the same with Jesus Rios, and the  
19 same with the Turner matter which is -- relates to Question  
20 No. 20.

21 With respect to 21 and 24, I don't know what their  
22 objection is other than those -- those questions go strictly  
23 to bias and motive and code of silence. That's what those  
24 questions go to.

25 And then 28 would be my same response that I gave to

1 above this threshold, whether or not their assignments  
2 required them to, for example, deal with a particular gang in  
3 a particular area on -- for a year or two or three?

4 A. I do not.

5 Q. Do you know whether or not gang members make it a habit or  
6 as part of their interaction with police officers to make  
7 complaints in order to take the heat off?

8 A. Well, whether it's take the heat off or otherwise, I have  
9 no knowledge of how complaints are generated by members of the  
10 community.

11 MR. GOULD: Objection, your Honor. The expert is not  
12 a police policies and procedures expert.

13 THE COURT: I think that's true. So I think he's not  
14 an expert in police. So these are questions which would, I  
15 assume, be directed to one who is. So I'll sustain the  
16 objection.

17 MS. ROSEN: I'll move on.

18 BY MS. ROSEN:

19 Q. With respect to the comparison that you made with Officer  
20 Kelly to the other population, you have no idea the nature of  
21 any of the complaints that were made against Officer Kelly,  
22 correct?

23 A. Well, they're all called CRs.

24 Q. Other than that, you don't know what they are?

25 A. No.

1 Q. And with respect to the other complaints that you compared  
2 Officer Kelly's complaints to, you don't know the nature of  
3 those complaints either?

4 A. That's what I said, yes.

5 Q. Okay.

6 A. That's correct.

7 Q. Now, let's talk about the second chart that you talked  
8 about, when a citizen complaint is filed and what its likely  
9 outcome is. So again, you looked at the December 31, 2004/  
10 January 12, 2011, time period; is that correct?

11 A. Correct.

12 Q. Okay. And you were looking at CRs for sworn officers with  
13 five or more CRs. That was the data that you were looking at?

14 A. That's correct, yes.

15 Q. Okay. And from that, you identified that 46 percent of  
16 those are no -- categorized as no-affidavit complaints,  
17 correct?

18 A. That's correct.

19 Q. And on your chart there, underneath there, it says "not  
20 investigated." Do you see that there?

21 A. Yes.

22 Q. What's your basis for saying that no affidavit -- the  
23 complaints that fit in the no-affidavit category are not  
24 investigated?

25 A. Well, it certainly came up in my deposition. When you

1 asked me a similar question, I -- there was no investigation  
2 of these other than perhaps calling people several times to  
3 see if they would fill out an affidavit.

4 Q. Have you ever --

5 A. But beyond that, I know nothing about the nature of the  
6 finding.

7 Q. And you've never looked at any -- an actual CR to look at  
8 the amount of work that's done in a complaint that's  
9 ultimately categorized as "no affidavit" to determine whether  
10 or not it's accurate to say that it was not investigated?

11 A. Right. It had nothing to do with the amount of work that  
12 was done or how extensive they went about seeking an  
13 affidavit, but we found that there were no findings subsequent  
14 to "no affidavit."

15 In other words, if somebody had a CR directed at them  
16 and no affidavit was attached, as far as I know, there were no  
17 findings that led to a suspension or any action against those  
18 individuals. And it's with respect to that that I'm  
19 suggesting that there was no investigation because there was  
20 no action --

21 Q. Well, there --

22 A. -- that resulted in it.

23 Q. So should there have been an action?

24 A. I don't know. I don't know. I'm not here to testify as  
25 to the quality of these decisions, simply what the data said.



1 Q. And then you identified in the chart here that of the  
2 total CRs that you reviewed, 54 percent of the affidavits then  
3 fit in the other category that's not the "not affidavit"  
4 category, correct?

5 A. That's correct, yes.

6 Q. And of those 54 percent, you identified 95 percent that  
7 fit into the category of "not sustained, unfounded, and  
8 exonerated," correct?

9 A. That's right. The other 5 percent resulted in "sustained,"  
10 yes.

11 Q. And I think when you were testifying on direct, you said  
12 on multiple occasions that it was only 5 percent that were  
13 sustained; is that right?

14 A. That's correct.

15 Q. What -- how many should have been sustained?

16 A. Well, I don't know, but here I'm -- if you look at the  
17 title of the slide, it says, "When a citizen complaint is  
18 filed, what is the likely outcome?" And it was with respect  
19 to that 5 percent, that 1 in 20, 1 in 20 of them led to some  
20 finding with a potential penalty. 19 out of 20 resulted in no  
21 such finding, right. So it -- that's a rather rare outcome.

22 MR. GOULD: Your Honor, I'm just going to object  
23 again. The expert made it clear that he's not here to talk  
24 about police procedures, policies, the meaning of the  
25 discipline --

1 reports, but I don't have a short witness, so to speak.

2 THE COURT: All right. Why don't you do that.

3 MR. ROMANUCCI: Read?

4 THE COURT: Yes. Proceed.

5 MR. ROMANUCCI: So at this time, your Honor,  
6 plaintiff would introduce and read from the investigation of  
7 the Chicago Police Department, the United States Department of  
8 Justice, Civil Rights Division, and the United States  
9 Attorney's Office, Northern District of Illinois, from January  
10 13, 2017. And we're starting on Page 21, Subparagraph F.

11 (Reading) "Investigation of the Chicago Police  
12 Department:

13 "On December 7, 2015, the United States Department of  
14 Justice, Civil Rights Division, Special Litigation  
15 Section of the United States Attorney's Office for the  
16 Northern District of Illinois, jointly initiated an  
17 investigation of CPD and IPRA. This investigation was  
18 undertaken to determine whether the Chicago Police  
19 Department is engaging in a pattern or practice of  
20 unlawful conduct and, if so, what systemic deficiencies  
21 or practices within CPD IPRA and the City might be  
22 facilitating or causing this pattern or practice.

23 "We open this investigation pursuant to the Violent  
24 Crime Control and Law Enforcement Act of 1994, 42 USC  
25 Section 4014, 141, and Title 6 of the Civil Rights Act of

1 1964, and the Omnibus Crime Control and Safe Streets Act  
2 of 1968, and the Safe Streets Act, Section 141, prohibits  
3 law enforcement agencies from engaging in a pattern or  
4 practice of conduct that violates the Constitution or  
5 laws of the United States.

6 "The CPD investigation addressed CPD's and IPRA's  
7 system of accountability both as they relate to use of  
8 officer force and officer misconduct including the intake  
9 investigation and review of allegations of officer  
10 misconduct and the imposition of discipline or other  
11 corrective action.

12 "We relied on several sources of information. First,  
13 we reviewed thousands of pages of documents provided to  
14 us by CPD, IPRA, and the City including policies,  
15 procedures, training plans, department orders and memos,  
16 internal and external reports, and more. We also  
17 obtained access to the City's entire misconduct complaint  
18 database and data from all reports filled out following  
19 officers' use of force.

20 "From there, we reviewed a randomized representative  
21 sample of force reports and the investigative files for  
22 incidents that occurred between January of 2011 and April  
23 of 2016 as well as additional incident reports and  
24 investigations, and overall, we reviewed over 170  
25 officer-involved shooting investigations and documents

1 related to over 425 incidents of less lethal force,  
2 including representative samples of officers' own reports  
3 of force and of investigations of civilian complaints  
4 about officer force between January of 2011 and April of  
5 2016.

6 "We also reviewed documents provided to us by other  
7 city agencies such as the Office of Inspector General and  
8 the City's law department.

9 "We also spent extensive time in Chicago, over 300  
10 person-days, meeting with community members and City  
11 officials, interviewing current and former CPD officers  
12 and IPRA investigators. In addition to speaking with the  
13 superintendent and other CPD leadership, we met with the  
14 command staff of several specialized units, divisions,  
15 and departments. We toured the CPD training facilities  
16 and observed training programs, and we also visited each  
17 of Chicago's 22 police districts where we addressed roll  
18 call, spoke with command staff and officers, and  
19 conducted over 60 ride-alongs with officers.

20 "We met several times with Chicago's officer union,  
21 Lodge No. 7 of the Fraternal Order of Police, as well as  
22 the sergeants, lieutenants, and captains unions. All  
23 told, we heard from over 340 individual CPD members and  
24 23 members of IPRA staff.

25 "In addition to document review and conversations

1 with CPD and IPRA, our findings were significantly  
2 informed by our conversations with members of the Chicago  
3 community. During the course of our investigation, we  
4 met with over 90 community organizations including  
5 non-profits, advocacy, and legal organizations and  
6 faith-based groups focused on a wide range of issues.

7 "We also met with several local researchers,  
8 academics, and lawyers who have studied CPD extensively  
9 for decades, and overall, we talked to approximately  
10 1,000 community members. We received nearly 600 phone  
11 calls, emails, and letters during the course of our  
12 investigation from individuals who were eager to provide  
13 their experiences and insights.

14 "In addition to attorneys, paralegals, outreach  
15 specialists, and data analysts from the Civil Rights  
16 Division of DOJ and the United States Office for the  
17 Northern District of Illinois, 11 independent subject  
18 matter experts assisted with this investigation. Most of  
19 these experts are current or former law enforcement  
20 officials from police departments across the country.

21 "Accordingly, these experts have decades of expertise  
22 in areas such as the use of force, accountability,  
23 training, supervision, policing, officer-involved  
24 domestic violence, and sexual misconduct, officer  
25 wellness, and more. These experts accompanied us on

1 site, reviewed documents and investigative files, and  
2 provided invaluable insights that informed both the  
3 course of this investigation and its conclusion.

4 "To the section that's entitled 'Accountability,' the  
5 City received over 30,000 complaints of police misconduct  
6 during the five years preceding our investigation, but  
7 fewer than 2 percent were sustained, resulting in no  
8 discipline in 98 percent of these complaints. This is a  
9 low sustained rate.

10 "In evaluating the City's accountability structures,  
11 we looked beneath these and other disconcerting  
12 statistics and attempted to diagnose the cause of the low  
13 sustained rate by examining the systems in place, the  
14 resources, and leadership involved with the City's  
15 accountability bodies including CPD's Bureau of Internal  
16 Affairs -- which is BIA -- IPRA, and the Chicago Police  
17 Board.

18 "We reviewed their policies and practices,  
19 interviewed many current and former supervisors,  
20 investigators, and other members involved, and we  
21 reviewed hundreds of force and misconduct investigative  
22 files from an accountability standpoint. We discovered  
23 numerous entrenched systemic policies and practices that  
24 undermine police accountability.

25 "The City does not investigate the majority of cases

1 it is required by law to investigate. Most of those  
2 cases are uninvestigated because they lack the supporting  
3 affidavit from the complaining party. Those cases that  
4 are investigated suffer from serious investigative flaws  
5 that obstruct objective fact finding.

6 "Civilian and officer witnesses and even the accused  
7 officers are frequently not interviewed during an  
8 investigation. The potential for inappropriate  
9 coordination of testimony, risk of collusion, and witness  
10 coaching during interviews is built into the system,  
11 occurs routinely, and is not considered by investigators  
12 in evaluating the case.

13 "The questioning of officers is often cursory and  
14 aimed at eliciting favorable-type statements, justifying  
15 the officer's actions rather than seeking truth.  
16 Questioning is often marked by a failure to challenge  
17 inconsistencies and illogical officer explanations as  
18 well as leading questions favorable to the officer.

19 "Investigators routinely failed to review and  
20 incorporate probative evidence from parallel civil and  
21 criminal proceedings based on the same police incident.

22 "Inconsistent with these biased investigative  
23 techniques, the investigators' summary reports are often  
24 drafted in a manner favorable to the officer by omitting  
25 conflicts in testimony or with physical evidence that

1       undermine the officer's justification or by exaggerating  
2       evidence favorable to the officer, all of which  
3       frustrates the reviewer's ability to evaluate for  
4       investigative quality and thoroughness.

5                "Investigative fact-finding into police misconduct  
6       and attempts to hold officers accountable are also  
7       frustrated by police officers' code of silence. The  
8       City, police officers, and leadership within CPD and its  
9       police officer union acknowledge that a code of silence  
10      among Chicago police officers exists extended to lying  
11      and affirmative efforts to conceal evidence. Officers  
12      may also be inclined to cover up misconduct, will be  
13      deterred from doing so if they understand that honesty is  
14      the most crucial component of their job and that the  
15      department will aggressively seek to identify dishonest  
16      officers and appropriately discipline them.

17              "However, our investigation found that IPRA and BIA  
18      treat such efforts to hide evidence as ancillary and  
19      unexceptional misconduct and often do not investigate it,  
20      causing officers to believe there is not much to lose if  
21      they lie to cover up misconduct.

22              "Investigators employ a higher standard to sustain  
23      claims against officers for making false statements under  
24      what is known as a Rule 14 charge, and they rarely expand  
25      their investigation to charge accused and witness



1 officers with lying to cover up misconduct, nor has the  
2 City focused much attention on officers' efforts to  
3 conceal by mishandling video and audio equipment or by  
4 retaliating against civilians who witness misconduct.

5 "In the rare instances when complaints of misconduct  
6 are sustained, we found that discipline is haphazard and  
7 unpredictable. It is meted out in a way that does little  
8 to deter misconduct. Officers are often disciplined for  
9 conduct far less serious than the conduct that prompted  
10 the investigation and, in many cases, a complaint may be  
11 sustained but the officer is not disciplined at all.

12 "Our review of files for complaints that were  
13 investigated reveal consistent patterns of egregious  
14 investigative deficiencies that impede the search for the  
15 truth. Witnesses and accused officers are frequently not  
16 interviewed at all or are not interviewed until long  
17 after the incident when memories have faded.

18 "When interviews do occur, questioning is often  
19 biased in favor of officers, and witnesses -- and witness  
20 coaching by union attorneys is prevalent and unimpeded, a  
21 dynamic neither we want" -- excuse me -- "a dynamic  
22 neither we nor our law enforcement experts had seen to  
23 nearly such an extent in other agencies.

24 "Investigators routinely failed to collect probative  
25 evidence. The procedures surrounding investigations

1 allow for ample opportunity for collusion among officers  
2 and are devoid of any rules prohibiting such  
3 coordination.

4 "We also found that investigations founder because of  
5 the pervasive cover-up culture among CPD officers which  
6 the accountability entities accept as an immutable fact  
7 rather than something to root out.

8 "CPD's unions correctly note that the  
9 investigation -- investigators can override the  
10 requirement for a sworn affidavit, and we agree that IPRA  
11 and BIA should make more use of the override option.  
12 IPRA investigators we interviewed relayed that overrides  
13 are not encouraged, and no training was provided on how  
14 to obtain one. And not surprisingly, this override  
15 provision was used only 17 times in the last five years."

16 This is on Page 67, Subsection 9, which is entitled,  
17 "Superficial investigation documentation and investigative  
18 bias in favor of officers."

19 "We also identified numerous shortcomings in IPRA and  
20 BIA's final reports concerning officer-involved shootings  
21 and office misconduct investigations. For example, the  
22 reports typically do not discuss or cross-reference  
23 inconsistencies between officer statements and physical  
24 evidence or civilian eyewitness accounts.

25 "Similarly, very few point out inconsistencies

1       between officers' written reports and their interview  
2       statements. They often gloss over or simply fail to  
3       mention conflicts between officer accounts of the  
4       incident. IPRA reports sometimes omitted mention of  
5       crucial physical evidence that appeared to undermine  
6       officer accounts. We found other IPRA reports that  
7       either exaggerated or misstated evidence in a manner  
8       favorable to the officer.

9               "Finally, in sexual assault and domestic violence  
10       cases, we also found that investigators were quick to  
11       credit officers' version of events despite the  
12       availability or potential availability of additional  
13       evidence."

14              This is on Page 75, and it's entitled "Code of  
15       Silence."

16              "One way to cover up police misconduct is when  
17       officers affirmatively lie about it or intentionally omit  
18       material facts. Not only are Rule 14 investigations not  
19       encouraged but past IPRA leadership prohibited  
20       investigators from initiating such Rule 14 investigations  
21       without obtaining approval from the IPRA chief  
22       administrator, sending a strong message to investigators  
23       not to expand their investigations into collateral Rule  
24       14 charges. Such Rule 14 requests require a de facto,  
25       higher standard of proof and were rarely approved.

1           "Officers who lie cannot be effective officers. They  
2 should not be testifying in court proceedings, cannot  
3 instill confidence in the community, and discredit and  
4 demoralize the many honest officers on the force, nor do  
5 investigators hold witness officers responsible for  
6 covering up misconduct of others.

7           "Investigators do not diligently review the  
8 investigative records to determine whether witness  
9 officers have lied in police reports or whether  
10 supervisors had blindly approved reports without  
11 attempting to determine whether the reports are  
12 fabricated.

13           "Furthermore, even in the rare case where a Rule 14  
14 charge is made and results in a sustained finding,  
15 officers face little risk that such finding will impact  
16 their ability to testify in criminal cases in support of  
17 the prosecution.

18           "We learned in our investigation that there is no  
19 system in place to ensure that all of the officer  
20 disciplinary findings bearing on credibility, including  
21 Rule 14 findings, are supplied to the State's Attorney's  
22 Office and criminal defendants even though this is  
23 required under *Giglio versus United States*," which is a  
24 case cited as 405 U.S. 150. And that's from 1972.

25           On Page 114, Subsection C, entitled:

1           "The lack of a functional early intervention system  
2 coupled with inadequate supervision has placed officers  
3 and members of the public at risk. These longstanding  
4 systemic deficiencies in CPD's early intervention systems  
5 have prevented CPD from taking two steps that are crucial  
6 to ensuring officer safety and wellness as well as  
7 ensuring policing that is effective and lawful.

8           "First, CPD does not adequately and accurately  
9 identify officers who are in need for this type of action  
10 and, second, CPD does not consistently or sufficiently  
11 address officer behavior where CPD identifies negative  
12 patterns. Because of these failures, CPD officers are  
13 able to engage in problematic behavior with impunity  
14 which can and do escalate into serious misconduct. This  
15 has dramatic consequences for the public.

16           "In particular, we found that the current" -- let me  
17 start over. "In particular, we found that the current  
18 EIS, Early Intervention System, does not adequately  
19 identify patterns or trends of misconduct related to  
20 force and domestic violence."

21           THE COURT: All right. We'll suspend now until  
22 2:00 o'clock for lunch.

23           (Recess from 12:59 p.m. to 2:00 p.m.)  
24  
25

1 THE COURT: Yeah, I would think so. He's a member of  
2 the public, so from that standpoint.

3 MR. MONACO: Thank you, your Honor.

4 (Proceedings heard in open court. Jury in.)

5 THE COURT: Please be seated.

6 Call your next witness, please.

7 MR. ROMANUCCI: Your Honor, plaintiff calls Patrick  
8 Kelly.

9 THE COURT: Okay. Mr. Kelly? Please raise your  
10 right hand.

11 (Witness sworn.)

12 THE WITNESS: I do.

13 THE COURT: Please be seated.

14 THE WITNESS: Good afternoon, your Honor.

15 THE COURT: Good afternoon.

16 Mr. Romanucci, you may question the witness.

17 MR. ROMANUCCI: Thank you, your Honor.

18 PATRICK JAMES KELLY, PLAINTIFF'S WITNESS, SWORN

19 DIRECT EXAMINATION

20 BY MR. ROMANUCCI:

21 Q. You are Patrick Kelly?

22 A. Yes, sir.

23 Q. State your full name, spell your last name, please.

24 A. Patrick James Kelly, K-e-l-l-y.

25 Q. Mr. Kelly, on January 12th, 2010, you were employed as a

1 sworn police officer for the city of Chicago's police  
2 department, true?

3 A. Yes.

4 Q. Are you taking instruction from anyone in this courtroom,  
5 Mr. Kelly, on your answers?

6 A. No, sir.

7 Q. As you sit here today, you remain employed by the Chicago  
8 Police Department, correct?

9 A. On advice of my counsel, I exercise my constitutional  
10 right to remain silent per the Fifth Amendment.

11 Q. On January 12th, 2010, at approximately 4:25 a.m., you  
12 were intoxicated to a level two to three times over the legal  
13 limit for driving a motor vehicle in Illinois, true?

14 A. On the advice of counsel, I exercise my constitutional  
15 right to remain silent per the Fifth Amendment.

16 Q. You are an admitted alcoholic; isn't that true, sir?

17 A. On the advice of counsel, I exercise my constitutional  
18 right to remain silent per the Fifth Amendment.

19 Q. Mr. Kelly, you were with Michael LaPorta alone in your  
20 home on the date of January 12th, 2010, at 4:25 in the  
21 morning, true?

22 A. On the advice of counsel, I exercise my constitutional  
23 right to remain silent per the Fifth Amendment.

24 Q. You and Michael LaPorta got into an argument that evening  
25 on that date and time, true?

1 A. On the advice of counsel, I exercise my constitutional  
2 right to remain silent per the Fifth Amendment.

3 Q. Michael LaPorta wanted to leave your home; isn't that  
4 true, sir?

5 A. On the advice of counsel, I exercise my constitutional  
6 amendment to remain silent per the Fifth Amendment.

7 Q. You were beating your dog that night, weren't you,  
8 Mr. Kelly?

9 A. On the advice of counsel, I exercise my constitutional  
10 right to remain silent per the Fifth Amendment.

11 Q. You removed the P226 from its holster on the TV stand,  
12 that is the gun that you own, held it in your hand, and you  
13 pulled the trigger on the gun causing the bullet to discharge  
14 and strike Michael LaPorta on the side of his head and enter  
15 his brain, true?

16 A. On the advice of counsel, I exercise my constitutional  
17 right to remain silent per the Fifth Amendment.

18 Q. You never told anyone at any time during any statement  
19 that you gave, sworn or otherwise, that Michael LaPorta used  
20 his thumb to pull the trigger on your service weapon, true?

21 A. On the advice of counsel, I exercise my constitutional --  
22 excuse me. I'm sorry. On the advice of counsel, I exercise  
23 my constitutional right to remain silent per the Fifth  
24 Amendment.

25 Q. You don't know how much time passed by after the gun



1 discharged and when you called 911 emergency, true?

2 A. On the advice of counsel, I exercise my constitutional  
3 right to remain silent per the Fifth Amendment.

4 Q. You placed and received phone calls and text messages  
5 before and after you placed the 911 call, true?

6 A. On the advice of counsel, I exercise my constitutional  
7 right to remain silent per the Fifth Amendment.

8 Q. You took photographs of your bedroom and nightstand prior  
9 to your deposition in May of 2012 and never turned them over  
10 to a police -- to the police at any time, correct?

11 A. On advice of counsel, I exercise my constitutional right  
12 to remain silent per the Fifth Amendment.

13 Q. Michael LaPorta dated your sister, Jane, in the past, true?

14 A. On the advice of counsel, I exercise my constitutional  
15 right to remain silent per the Fifth Amendment.

16 Q. Mr. Kelly, as you sit here today, as an employee of the  
17 Chicago Police Department, you have a total of 26 complaint  
18 registers lodged against you since you were sworn as a member  
19 of the City of Chicago Police Department, true?

20 A. On the advice of counsel, I exercise my constitutional  
21 right to remain silent per the Fifth Amendment.

22 Q. One of those allegations was that in 2005, you beat Fran  
23 Brogan, your girlfriend, bloody causing her to go to the  
24 hospital and being injured, true?

25 A. On the advice of counsel, I exercise my constitutional

1 right to remain silent per the Fifth Amendment.

2 Q. You were arrested for battery in 2006 for throwing a TV  
3 remote control at her brother, Patrick Brogan, true?

4 A. On the advice of counsel, I exercise my constitutional  
5 right to remain silent per the Fifth Amendment.

6 Q. You were never prosecuted for that incident, true?

7 A. On the advice of counsel, I exercise my constitutional  
8 right to remain silent per the Fifth Amendment.

9 Q. Mr. Kelly, in 2007, you beat Jesus Rios, who was 5 foot 4  
10 and 140 pounds, in front of his daughter while you were on  
11 duty because he allegedly resisted arrest, true?

12 A. On the advice of my counsel, I exercise my constitutional  
13 right to remain silent per the Fifth Amendment.

14 Q. In 2013, you tased a pregnant woman, Alana Turner, during  
15 a traffic stop while you were on duty; isn't that true?

16 A. On the advice of counsel, I exercise my constitutional  
17 right to remain silent per the Fifth Amendment.

18 Q. You have never been disciplined or lost a day of pay ever  
19 for any allegation lodged against you by a citizen of the city  
20 of Chicago, true?

21 A. On the advice of counsel, I exercise my constitutional  
22 right to remain silent per the Fifth Amendment.

23 Q. Your father is a retired City of Chicago police officer,  
24 true?

25 A. On the advice of counsel, I exercise my constitutional

1 right to remain silent per the Fifth Amendment.

2 Q. Your brother-in-law is a City of Chicago police officer,  
3 true?

4 A. On the advice of counsel, I exercise my constitutional  
5 right to remain silent per the Fifth Amendment.

6 Q. Melissa Spagnola comes from a family of Chicago police  
7 officers who all knew you prior to Michael LaPorta being shot,  
8 true?

9 A. On the advice of counsel -- excuse me. On the advice of  
10 counsel, I exercise my constitutional right to remain silent  
11 per the Fifth Amendment.

12 Q. You urinated on your hands at 6:43 a.m. on January 12,  
13 2010, just ten minutes prior to the forensic investigators  
14 coming to swab your hands for GSR on that morning, true?

15 A. On the advice of counsel, I exercise my constitutional  
16 right to remain silent per the Fifth Amendment.

17 Q. Based upon police department protocol, you were aware that  
18 you were likely to get your hands tested for GSR after Michael  
19 LaPorta was shot since you were the only two witnesses, true?

20 A. On the advice of counsel, I exercise my constitutional  
21 right to remain silent per the Fifth Amendment.

22 Q. You requested that your Sig Sauer P226 service weapon be  
23 returned to you before the end of this civil case despite the  
24 fact that it still had blood on it, true?

25 A. On the advice of counsel, I exercise my constitutional

1 right to remain silent per the Fifth Amendment.

2 Q. You erased the text messages that were on your cell phone  
3 prior to approximately 5:30 a.m. on January 12, 2010, after  
4 your phone was returned to you by the Chicago Police  
5 Department; isn't that true?

6 A. On the advice of counsel, I exercise my constitutional  
7 right to remain silent per the Fifth Amendment.

8 Q. You held Michael LaPorta after he was shot, true?

9 A. On the advice of counsel, I exercise my constitutional  
10 right to remain silent per the Fifth Amendment.

11 Q. You knelt by his side after he was shot, true?

12 A. On the advice of counsel, I exercise my constitutional  
13 right to remain silent per the Fifth Amendment.

14 Q. You touched his body and clothing after he was shot, true?

15 A. On the advice of counsel, I exercise my constitutional  
16 right to remain silent per the Fifth Amendment.

17 Q. Mr. Kelly, isn't it true that you removed evidence and/or  
18 biological material from your hands and clothes after Michael  
19 LaPorta was shot and before you were placed into custody on  
20 January 12th, 2010?

21 A. On the advice of counsel, I exercise my constitutional  
22 right to remain silent per the Fifth Amendment.

23 MR. ROMANUCCI: Your Honor, at this time, I would  
24 like to declare that this witness be made unavailable for  
25 purposes of trial.

1 Q. And did you complete your probation?

2 A. Yes.

3 Q. You were hired as a full-time officer, correct?

4 A. Correct.

5 Q. And what was your first unit of assignment within the  
6 Chicago Police Department after you completed the academy?

7 A. The 9th District.

8 Q. And from mid-2004 through January 2010, did you have any  
9 other districts you were assigned to besides the 9th?

10 A. No.

11 Q. You were only assigned to the 9th District?

12 A. Correct.

13 Q. And were you assigned as a beat officer?

14 A. For the time, yes.

15 Q. At any time before January 10, 2010, did you own a gun?

16 A. Yes.

17 Q. Can you give me the make and model?

18 A. Sig Sauer P226.

19 Q. When did you purchase the weapon?

20 A. Exact date, I don't know. Sometime when I was in the  
21 police academy.

22 Q. Was that a new purchase or an old purchase?

23 A. A new purchase.

24 Q. Where did you purchase it?

25 A. I don't remember exactly where I purchased the gun.

1 I was a veterinarian before I was a, like, a construction  
2 worker, like -- not construction worker. I had a business.

3 Q. What happened when you were praising the dog and Patrick  
4 Kelly was hitting the dog? Do you remember next?

5 A. I said, "I'm leaving," and I went to -- I went to leave  
6 and then -- uh, I went to leave, and then I saw -- the "click."

7 Q. Hold on, Mikey. You said you heard or saw a click?

8 A. Yeah.

9 Q. Did you pick up a gun at any point in Patrick Kelly's  
10 house?

11 A. No.

12 Q. Did you take a gun out of his holster?

13 A. No.

14 Q. Mikey, did you ever pick up a gun while you were inside  
15 Patrick Kelly's house and point it at your head?

16 A. No.

17 Q. Mikey, did you pick up a gun while you were at Patrick  
18 Kelly's house and wave it around and made the gun click and  
19 let -- and made the bullet discharge from the gun?

20 A. No.

21 Q. Did you ever point -- pick up a gun with your left hand?

22 A. No. I -- well, yeah, but not -- not today or not this  
23 day. I didn't even know he had a gun until, uh, he shot -- I  
24 didn't know he had a gun.

25 Q. Did you hear anything besides the click?

1 home.

2 Q. To Pat's house?

3 A. To Pat's. But Kyle didn't even stay. He was just --  
4 he -- he drove us home and then parked the car at his parents'  
5 house and took the -- and I don't know what he did after that.

6 Q. So did you go with Pat Kelly from McNally's to Brewbakers  
7 in your car?

8 A. Yeah.

9 Q. And then you went from Brewbakers to Pat Kelly's house  
10 with Kyle, with Kyle driving, is that what you said?

11 A. Yeah.

12 Q. Because Kyle wasn't drinking at all?

13 A. No.

14 Q. And then Kyle dropped you and Pat Kelly at Pat's house,  
15 right?

16 A. Yep.

17 Q. And your plan was to stay at Pat's house?

18 A. Yep. But, uh, I didn't like that he was yelling.

19 Q. At the dog?

20 A. Yeah.

21 Q. All right. We'll get to that in one second. When Kyle  
22 left, he took your car; is that right?

23 A. Yeah.

24 Q. And did you -- did he tell you where he was going with  
25 your car?

1 A. I don't know. I don't know because I -- I don't know.

2 Q. Okay. And then when you went to Brewbakers, did you  
3 drink?

4 A. I had a beer.

5 Q. And then when you went back to Pat's, did you have any  
6 beers?

7 A. Like, two minutes or, like, 20 minutes before, before  
8 the -- I was yelling -- or I was yelling at Pat to -- because  
9 he was yelling at the dog. He was hitting the dog. So I  
10 just -- I don't even know if I had a beer.

11 Q. Okay. When you were at Pat's, you never saw the gun,  
12 right?

13 A. No.

14 Q. You never saw Pat with the gun?

15 A. No.

16 Q. You never saw Pat shoot you?

17 A. No. I seen him -- or I heard him click, and then I  
18 remember -- because I was dead.

19 Q. You heard the click?

20 A. Yeah.

21 Q. Where were you standing when you heard the click?

22 A. Like, in the -- in, like, the, like, living room type,  
23 like -- like living room. Yeah, like the living room. It  
24 was, like --

25 Q. In the living room?



- 1 A. Yeah. Like living room, front room kind of.
- 2 Q. And you never saw Pat come up behind you or anything?
- 3 A. Uh...
- 4 Q. So he wasn't in front of you?
- 5 A. Uh-uh.
- 6 Q. He wasn't to the side of you?
- 7 A. Uh-uh.
- 8 Q. He wasn't to your right?
- 9 A. No.
- 10 Q. He wasn't to your left?
- 11 A. No, I don't think he was any -- I don't know.
- 12 Q. Okay. I just want to ask you a question -- some
- 13 questions, just a few more questions. You had some spine
- 14 surgery, right?
- 15 A. Yeah. I had C5 and 6.
- 16 Q. And you were in the hospital for that, right?
- 17 A. Uh-huh.
- 18 Q. And do you remember how you got hurt?
- 19 A. I -- I picked up a boulder that was -- but I picked up a
- 20 heavy thing with my -- my back.
- 21 Q. You hurt your back?
- 22 A. Uh-huh.
- 23 Q. And --
- 24 A. My neck.
- 25 Q. Your neck. That caused you a lot of pain, right?

1       done within CPD to adequately supervise and identify  
2       officers whose actions are falling short of expectations.  
3       There is a general absence of a culture of accountability  
4       within CPD, largely because no one in top leadership has  
5       taken ownership of how to identify and handle problem  
6       officers.

7               "CPD currently collects a variety of data on issues  
8       related to officer performance, including complaints and  
9       lawsuits, but does little to holistically analyze officer  
10      performance and intervene when troubling patterns emerge.  
11      Data collection is incomplete. Distribution, analysis,  
12      and follow-up is limited.

13              "In recent years, CPD's two formal early intervention  
14      programs, the Behavioral Intervention System, BIS, and  
15      Personnel Concerns, PC, have rarely been used. In 2007,  
16      276 officers were included in either BIS or PC.  
17      Participation quickly dropped off after FOP filed a  
18      grievance against CPD for certain officers' inclusion.  
19      CPD and FOP settled the grievance by agreeing to remove  
20      officers from the programs.

21              "By 2013, zero officers were being actively managed  
22      through either of these programs. In 2014, only seven  
23      officers were enrolled in the program. In 2015, 13  
24      officers were enrolled.

25              "There are many national models to design a more

1           "The fact of the matter is that there is a general  
2           absence of a culture of accountability within CPD,  
3           largely because no one in top leadership has taken  
4           ownership of the issue. Although so-called problem  
5           officers are either well-known to their supervisors and  
6           CPD's leadership or easily identified, few steps are  
7           being taken to proactively manage and redirect those  
8           officers' conduct. The effective tools for providing  
9           greater oversight and supervision to officers are  
10          well-known and widely used in other jurisdictions.

11          "CPD's efforts to actively monitor and improve  
12          officer behavior appear to be at a standstill, but the  
13          problem is not new. CPD's history is replete with  
14          examples of wayward officers whose bad behavior or  
15          propensity for bad behavior could have been identified  
16          much earlier if anyone had viewed managing this risk as a  
17          business imperative."

18          THE COURT: All right. That's it for today; is that  
19          right?

20          MR. ROMANUCCI: Yes, your Honor.

21          THE COURT: All right. Members of the jury, have a  
22          nice evening.

23          MS. ROSEN: Before you excuse the jury, can we just  
24          do one quick sidebar?

25          THE COURT: All right.

1 (Proceedings heard at sidebar:)

2 MS. ROSEN: If you could just admonish them not to  
3 pay attention to the media tonight. There were tons of media  
4 here in the courtroom.

5 (Proceedings heard in open court:)

6 THE COURT: Members of the jury, please -- I've told  
7 you before, and I haven't been keeping up with it, but please  
8 don't read newspapers or listen to television, any mention of  
9 this particular case. It's not -- as I've pointed out  
10 earlier, what you hear on television, what you read in the  
11 newspapers is hearsay. It's not admissible, and you should  
12 not consider it.

13 So have a nice evening. We'll see you tomorrow at  
14 10:00 o'clock.

15 (Proceedings adjourned from 4:52 p.m. to 10:00 a.m.)

16 \* \* \* \* \*

17 C E R T I F I C A T E

18 I, Judith A. Walsh, do hereby certify that the  
19 foregoing is a complete, true, and accurate transcript of the  
20 proceedings had in the above-entitled case before the  
21 Honorable HARRY D. LEINENWEBER, one of the judges of said  
22 Court, at Chicago, Illinois, on October 17, 2017.

23 /s/ Judith A. Walsh, CSR, RDR, F/CRR November 22, 2017  
24 Official Court Reporter  
25 United States District Court  
Northern District of Illinois  
Eastern Division

# Exhibit B

1 October 20, 2017

2 10:00 AM

3 (Proceedings heard in open court. Jury in.)

4 THE COURT: Good morning, members of the jury. We're  
5 ready for the next witness.

6 MR. NOVY: Thank you, your Honor. Barton Epstein.

7 THE COURT: Mr. Epstein, please come forward. Please  
8 raise your right hand.

9 (Witness sworn.)

10 THE WITNESS: I do.

11 THE COURT: Please be seated.

12 Mr. Novy, you may question the witness.

13 MR. NOVY: Thank you, your Honor.

14 DIRECT EXAMINATION

15 BY MR. NOVY:

16 Q. Good morning, Mr. Epstein. How are you today?

17 A. Good morning. Fine.

18 Q. Would you please introduce yourself?

19 A. Yes. My name is Bart Epstein, and I'm reside -- I live in  
20 Minnesota, have been married for over 40 years, have two adult  
21 children and two grandchildren that actually live here in  
22 Chicago. My profession is forensic science, criminalistics.

23 Q. Let me ask you about your educational background. Where  
24 did you go to college?

25 A. Yes. I went to college at the University of California at

1 Illinois University?

2 A. Not yet. We weren't friends yet.

3 Q. Did you know of him generally, it was a friend of your  
4 brother's?

5 A. Yes, I remember think so, yes.

6 Q. Was he one of your brother's close friends? How would you  
7 describe their relationship, high school and in college?

8 A. They were good friends in high school, and I think that's  
9 what their relationship blossomed, when they were both at  
10 Brother Rice.

11 Q. Okay. And then do you know if they lived together in  
12 college?

13 A. Yes, they did. They were roommates.

14 Q. All right. Did you at some point develop a better  
15 relationship with Michael LaPorta?

16 A. Yes.

17 Q. All right. Why don't you tell me about when that was.

18 A. It was my third year of college. I went away, and I came  
19 back. I enrolled at Eastern Illinois University in 2003. And  
20 during that time, I would come back to Chicago and stay at my  
21 parents' house during the holidays and summer vacation. So  
22 between, you know, 2003, 2004, I started to hang out and talk  
23 to Michael more, and that would be when we really started  
24 talking more frequently and hanging out and doing things  
25 together.

1           Have you talked to your brother at all about the fact  
2   that the police took screenshots of your text messages?

3   A.   No.

4   Q.   Okay.  And I just -- I think this is what you said, but I  
5   just want to be clear because there was some commotion.  Have  
6   you ever seen those screenshots, the photocopies of them?

7   A.   No.

8           MS. ROSEN:  Page 62.

9   BY MS. ROSEN (Reading):

10   Q.   Do you remember Julie being mad at you for talking to her  
11   sister at all about her use of sleeping pills the day before  
12   the incident?

13   A.   No.

14   Q.   No?  Okay.  Did you ever have any conversation in the days  
15   leading up to the incident that happened on your dad's  
16   birthday with any of Julie's family members about any concern  
17   you might have had about Julie and her use of sleeping pills?

18   A.   No.

19   Q.   Okay.  I want to talk to you a little bit about Pat Kelly.  
20   Okay?

21   A.   Yeah.

22   Q.   We talked a little bit about that you went to high school  
23   together and he was your roommate in college.  I've heard  
24   people describe your -- or read about people describing your  
25   relationship with Pat Kelly as being one of like brothers.



1 Would you agree with that?

2 A. Yeah.

3 Q. And in the months leading up to the incident that happened  
4 at Pat Kelly's house, would you have considered him to be,  
5 like, a brother to you?

6 A. Yeah.

7 Q. Were you guys very, very close?

8 A. Yeah.

9 Q. Okay.

10 A. We were, like, well, his dad and ma, they were like two  
11 blocks down from us -- well, they still are, like, 109th  
12 and -- 107th and -- or 109th and Fairfield.

13 Q. Okay.

14 A. We're 107th and Talman.

15 Q. Okay. So you had been to Pat Kelly's parents' home as you  
16 were growing up?

17 A. Oh, yeah.

18 Q. Okay. All right. And at any point in time up until the  
19 night that you were injured, did you and Pat Kelly ever have  
20 any kind of falling-out?

21 A. No.

22 Q. You were good friends?

23 A. Yeah. We were best friends.

24 Q. Did you know any of Pat Kelly's brothers and sisters?

25 A. Yeah. Jane, which -- Jane and John. I knew them both. I

1 learn and remember things. And if you break down at any one  
2 of those points, the ultimate end result is just not  
3 remembering it.

4 Q. Okay. So if you are not able to consolidate and store the  
5 memories into your memory bank, does that mean that the memory  
6 is not in your brain for you to recall it at any point in  
7 time?

8 A. Yes, that's exactly what it means.

9 Q. Okay. So with respect to this particular case and  
10 Mr. LaPorta's circumstance, you reviewed his medical records,  
11 correct?

12 A. Right.

13 Q. And can you describe the injury, the traumatic brain  
14 injury that he suffered during the early morning hours of  
15 January 12th, 2010, that impact your opinions in this case?

16 A. Sure. I mean, he suffered a very severe open traumatic  
17 brain injury as opposed to a closed head injury that you might  
18 see in a car accident or a concussion, very severe, some would  
19 say profound.

20 Q. Okay. And does the fact that he suffered that type of a  
21 brain injury, would that interfere with his ability to  
22 consolidate and store memory into his memory banks?

23 A. Yes.

24 Q. Is there anything else that contributed to your opinion  
25 that Mr. LaPorta would have been unable to consolidate and

1 MR. ROMANUCCI: Okay.

2 THE COURT: You can answer.

3 BY THE WITNESS:

4 A. Well, I think I can answer but it may be better repeated  
5 it or ask it again so I'm sure I know what you said.

6 BY MS. ROSEN:

7 Q. Sure. You did not have the benefit of sitting in the  
8 courtroom and listening to Mr. LaPorta testify; is that  
9 correct?

10 A. That's right.

11 Q. Okay. And so as you were doing the evaluation of  
12 Mr. LaPorta through his deposition testimony and the  
13 evaluation compared to what he said to other people, were the  
14 inconsistencies that you noted something that informed your  
15 opinions?

16 A. Yes.

17 MR. BLANDIN: Objection, your Honor. Still leading.

18 THE COURT: Overruled.

19 BY MS. ROSEN:

20 Q. To the extent that --

21 THE COURT: Wait a minute. I overruled. He can  
22 answer the question. What were the inconsistencies, if any.

23 BY MS. ROSEN:

24 Q. Did you pay attention to inconsistencies?

25 A. Yes, I did. And that's one of the things that sort of

1 strikes me as a red flag, if you will, that adds to my opinion  
2 that his memory for events from that evening and, more  
3 specifically, closer in time to which when he was shot, are  
4 really not reliable and accurate.

5 Q. Can you give us a time period where the memories that  
6 Mr. LaPorta -- Mr. LaPorta is currently reporting, a time  
7 where they're reliable and now all of a sudden they're  
8 unreliable?

9 A. You know, I wish I could, but I really can't. I'm not  
10 sure anybody would be able to do that. As I was reading it,  
11 you know, I know he remembered going to Palermo's with his  
12 family but I understand he did that every year, so I can't be  
13 sure that that was a real independent recollection of that  
14 evening. So it's really difficult to say with any certainty  
15 exactly when the memories are reliable and when they aren't.

16 Q. Is there any point in time that you can say, certainly  
17 after this point in time, any memories he's reporting are just  
18 not reliable because of the brain injury?

19 MR. BLANDIN: Objection, your Honor. I don't know --  
20 if that's not leading, I don't know what it.

21 MS. ROSEN: Is there any point in time?

22 THE COURT: That's not leading.

23 You can answer that question.

24 BY THE WITNESS:

25 A. Again, very difficult to do, but I guess my best answer

1 October 23, 2017

2 10:00 a.m.

3 (Proceedings heard in open court. Jury out.)

4 THE COURT: I have reviewed the Rosenzweig proposed  
5 testimony, and there's a portion of it, there's an objection  
6 to an incident that occurred at a bar --

7 MS. ROSEN: Jefferson Tap.

8 THE COURT: Yes, Jefferson Tap. I happen to know  
9 about it because it was tried in front of me. And the issue  
10 of *Mone11* was not raised. The question was whether or not the  
11 policemen were off duty or acting -- and I held that one of  
12 them was. I specifically remember that the police were called  
13 and the sergeant or an off -- I think he was an sergeant, went  
14 outside, I've got it under control, you can go.

15 And I ruled that that -- he was operating under color  
16 of law when he did that. And I -- but I dismissed the case  
17 against the others who were clearly just --

18 MR. ROMANUCCI: That was your case?

19 THE COURT: Yes.

20 MR. ROMANUCCI: Oh, Jefferson --

21 THE COURT: It was tried in front of me.

22 MR. ROMANUCCI: I didn't know that.

23 THE COURT: That's why I said, you're raising this  
24 case for the first time in the case. Clearly, I don't think  
25 it fits in, unless you can figure out, tell me why that that's

1 place early invention systems of some kind?

2 A. Yes, they do. They have BIS and Personal Concerns and  
3 fitness for duty programs.

4 Q. Okay. And can you tell us how those programs compare to  
5 programs around the -- similar programs around the country?

6 A. Well, first, very few other agencies around the country,  
7 probably about 10 percent or so agencies around the country,  
8 have any type of early intervention system in place. So, you  
9 know, they're among that small minority of agencies that are  
10 taking steps.

11 I find that their policies and procedures to be  
12 reasonable.

13 Q. Okay. Now, I want to talk just sort of generally, we've  
14 looked at all of these different issues that fit under the  
15 umbrella of police accountability. Through your review of the  
16 information in this case, through your review of information  
17 in other cases, do you have an opinion on whether or not a  
18 reasonable police officer who is a part of the Chicago Police  
19 Department and subject to all of these rules and regulations  
20 would have a reasonable belief that they could act with  
21 impunity?

22 A. No, I don't think a reasonable police officer could  
23 believe that they would have -- that they can act with  
24 impunity because there are policies and systems in place and  
25 because people are actually being disciplined.

1 Q. Okay. And what were those programs that the Department  
2 had?

3 A. They had behavioral intervention system and performance --  
4 I'm sorry. Behavioral -- personnel Concerns.

5 Q. You use acronyms, right, you use BIS, PCP?

6 A. Yes. And we also had fitness for duty evaluations.

7 Q. The witness -- before you talked a little bit about these  
8 programs, but I want to show you Defendant's Exhibit 31 and  
9 ask you what this document is.

10 A. Okay. This is an employee resource, E05-06, which is a  
11 general order. These are the documents that dictate how you  
12 do things in the police department.

13 Q. Okay.

14 A. And this is the one for Personnel Concerns Program.

15 Q. Okay. So does this order essentially lay out the entire  
16 program for all n persons in the department to know what it  
17 is?

18 A. Yes.

19 Q. Okay. And could you just read for us what the policy is  
20 behind this program?

21 A. The policy is, "The Chicago Police Department values its  
22 employees. It also recognizes that Department members are  
23 subject to the frailties of humankind and that sometimes, the  
24 problems of the human experience may negatively impact on work  
25 performance and expected conduct. Each member is responsible

1 for his or her performance and behavior. Any issues which  
2 affect a member's ability to perform at an acceptable level or  
3 impact the Department's ability to serve and protect must be  
4 recognized and confronted by management. Once recognized and  
5 confronted, it then becomes the individual member's  
6 responsibility to change the subject behavior and the  
7 Department's responsibility to assist in that change. If,  
8 after assistance is provided, the member chooses not to  
9 conform, then the member must realize a possible consequence  
10 of that choice may be termination of employment."

11 Q. Okay. So is the purpose of this program, the Personnel  
12 Concerns Program, disciplinary in nature, or is it something  
13 else?

14 A. It is not disciplinary in nature. It's to change  
15 behavior.

16 Q. Okay. There's another program you mentioned, the behavior  
17 intervention system, Defendant's Exhibit 30. I want to ask  
18 you a few -- how does this program correlate with the  
19 personnel concerns program?

20 A. It's -- behavioral intervention is usual lib the first  
21 step in identifying behavior. It again, it's an opportunity  
22 to support the member experiencing problem. If the member is  
23 not responsive under behavioral intervention system, they  
24 would go to personnel concerns program.

25 Q. And the policies and information behind it are similar to



1 the personnel concerns program?

2 A. Yes. It's about supporting their work performance and  
3 offering them counseling assistance and other resources to  
4 assist them in becoming a better employee.

5 Q. Okay. So in this case we've heard the terms early warning  
6 system, early intervention programs, those types of phrases.  
7 What types of programs are these from the police department's  
8 perspective?

9 A. These are early intervention systems, early warning  
10 programs. The Chicago Police Department was the first to  
11 actually get into this area in the '90s to identify the people  
12 that were having problems that could potentially become bigger  
13 problems, and they identified a list of incidents that were  
14 precursors to other employees getting fired and having  
15 problems and let's get to those problems before they become  
16 bigger problems.

17 Q. Okay. So let me ask you this. Is there any program that  
18 you in your time with the department has ever been aware of  
19 that can predict the way a police officer will act in the  
20 future? Do those kind of warning system the exist?

21 A. No. There's no crystal ball out there. I mean, this is  
22 an attempt to find -- you know, from past experience, if a  
23 person had trouble going to court who was repeatedly missing  
24 court, is that an indicator that there's other problems? And  
25 we think there is. And other early warning systems also

1 identified tardiness, absent without permission, excessive  
2 force complaints, general complaints from citizens.

3 Q. And then through this program, are those types of actions  
4 or activities looked at to see the source of the problem?

5 A. Yes, they are.

6 Q. Okay. And I'm going to -- you had mentioned that there  
7 were some criteria that were developed back in the '90s that  
8 probably have evolved over time to, I think this -- this  
9 particular order is dated 2005. Are there predecessors --

10 A. Yes, there are.

11 Q. -- to -- okay. So on Page 2 of this document, there are  
12 indicators listed under Section B. Do you see that?

13 A. Yes, I do.

14 Q. Okay. And does that identify the types of factors that  
15 might put somebody into this program?

16 A. These are indicators that should be looked at, yes.

17 Q. Okay. And describe for me how it is that -- so a police  
18 officer could be enrolled into behavioral intervention.

19 A. The process would be that a commander or chief  
20 administrator of IPRA, OPS, or the head of the Bureau of  
21 Internal Affairs would make a recommendation to the head of  
22 human resources, and the head of human resources acts as a  
23 gatekeeper to put people into the program.

24 Q. Okay. And I see at the bottom of this list, so there's  
25 nine different factors with some subfactors identified under

1 Section B, but there are reference to a certain number of  
2 either sustained complaint registers or, for instance, three  
3 not sustained excessive force complaints within 12 months.

4 How does that get communicated to the commanders or  
5 the various people you just mentioned?

6 A. The Bureau of Internal Affairs, they create a quarterly  
7 report to indicate how many people fall into this category of  
8 having two or more sustained complaint register investigations  
9 or three not sustained excessive force complaints in 12  
10 months.

11 Q. Okay. And what's the expectation of what they would do  
12 with that report once they receive it?

13 A. It goes to the commander of the unit who would review it,  
14 look at the factors that were involved. These will stay on a  
15 person's record for five years. So if you had two or more in  
16 a 12-month period, it could keep coming back up, but they  
17 should be -- the commander would look at it, should know the  
18 factors involved in the sustained or the allegations, what  
19 the -- and they would write a request to enroll the person in  
20 behavioral intervention to the head of HR.

21 Q. And are -- is somebody automatically enrolled, or is this  
22 something that the commander would look into?

23 A. This is something a commander would look into. These are  
24 indicators that a -- there could be something going on here.  
25 You're more familiar with the employee and his behavior

1 through your sergeants, lieutenants, captains; is there a  
2 negotiated for behavioral intervention --

3 Q. Okay.

4 A. -- or Personnel Concerns or fitness for duty evaluation,  
5 for that matter?

6 Q. Now, I want to ask you a couple of questions. We heard  
7 actually many moons ago now from Mr. Reiter about the fact  
8 that Patrick Kelly should have been enrolled in the behavioral  
9 invention program. And looking at these criteria, I want to  
10 ask you first about, he mentioned something about not  
11 sustained CRs. Do you see that?

12 A. Yes.

13 Q. In Paragraph -- or subsection 7, three not sustained  
14 excessive force complaints within a 12-month period?

15 A. I do see it.

16 Q. Okay. So how would that typically be determined? Would  
17 you look at a complaint history for an officer?

18 A. Yes. You would look at the individual officer's complaint  
19 history for a period of five years.

20 Q. Okay. This is your Exhibit 86-B.

21 MR. BLANDIN: Can I just see what it is?

22 MS. BENJAMIN: Sure.

23 BY MS. BENJAMIN:

24 Q. Plaintiff's Exhibit 86-B. All right. Let me make it  
25 bigger. It's awfully small print. Okay. So if we're looking

1 at this document in order to determine if Mr. Kelly fit within  
2 the criteria of three not sustained excessive force complaints  
3 within a 12-month period, that's something you can easily  
4 tell, correct, because what does the number 05?

5 A. 05 is the category for excessive force.

6 Q. Okay. And I see letterers after 05. I see an A, a K, a  
7 P, an H.

8 A. That -- that is a breakdown tracking system within.  
9 Bureau of Internal Affairs to see if different subcategories  
10 from applying handcuffs too tight, to punching somebody, to  
11 shooting somebody.

12 Q. Okay. So actually, do you know if it goes all the way, A  
13 through Z?

14 A. I think it does go all the way A through Z.

15 Q. Okay. So there's a wide range of force that would be  
16 encompassed by an 05 category?

17 A. Yes.

18 Q. Okay. And looking at this document, if we start with  
19 January 2, 2005, and go through the next date in April of  
20 2006, so we have to go back before that -- okay. So within  
21 that one-year period, how many not sustained force complaints  
22 does Mr. Kelly have?

23 A. During that period of time, he would have had two not  
24 sustained excessive force complaints.

25 Q. Okay. And then there is another one that is a

1 sustained -- or is an excessive force complaint, it's an 05  
2 category, but the finding is exonerated.

3 A. Correct.

4 Q. So that wouldn't fall within the BIS program, right?

5 A. Correct.

6 Q. Okay. And then looking at the rest of the document, I'll  
7 represent to you that the '033096 is the LaPorta incident. So  
8 putting that aside for the moment, were there any other "not  
9 sustained" force complaints?

10 A. No. There were no other "not sustained" force complaints.

11 Q. Okay. Now, we heard a little bit from the previous  
12 witness about fitness for duty. What is that in relation to  
13 Behavioral Interventions and Personnel Concerns?

14 A. A fitness for duty is a request to have a person  
15 evaluated, an employee evaluated medically including  
16 psychological examination to see if there's an underlying  
17 problem that needs to be addressed.

18 Q. Okay. And what sorts of things can prompt a fitness for  
19 duty evaluation.

20 A. We've had it where a person's work performance had changed  
21 drastically, their ability to track what was going on and  
22 respond to incidents. We sent the individual for a medical  
23 examination. He was in the early stages of Alzheimer's  
24 disease. Other people could come back with high blood  
25 pressure issues, narcolepsy, different medical conditions that

1 could be affecting their work perform behavior, but it's not a  
2 willful, malice, bad behavior. It's medical conditions that  
3 they might not have been aware of that need to be addressed?

4 Q. Okay. How about off-duty-related incidents? Can they  
5 prompt a fitness for duty evaluation?

6 A. Yes, they can.

7 Q. In what circumstances have you seen that happen?

8 A. Domestic violence issues, is there something going on with  
9 this individual that's changing their behavior, that a person  
10 that didn't have a propensity for violence now appears to be  
11 having a violent tendency; is there something that changed  
12 with him physically or psychologically that needs to  
13 addressed.

14 Q. Okay. And if -- in terms of psychologically, what does a  
15 fitness for duty look at in terms of psychologically?

16 A. We would refer the person or require the person to go to  
17 see Dr. Dawkins for the Center for Applied Psychology who  
18 would do a battery of tests and a personal interview and  
19 determine whether the individual was psychologically fit to be  
20 a Chicago police officer.

21 Q. Okay. And is that a licensed psychologist in the state of  
22 Illinois?

23 A. Yes, she is.

24 Q. Okay. She's not a police department employee?

25 A. No, she's not our employee. She's a well respected expert

1 in the field.

2 Q. Okay. Now, I want to ask you some questions specifically  
3 about some of what we heard earlier about Patrick Kelly going  
4 through fitness for duty. And the first one I want to ask you  
5 about is Defendant's Exhibit 43. This is a memo dated  
6 November 2009. Do you see that?

7 A. Yes, I do.

8 MR. ROMANUCCI: 2005.

9 MS. BENJAMIN: Pardon?

10 MS. ROSEN: It's 2005.

11 BY MS. BENJAMIN:

12 Q. I'm sorry. Thank you. November 9, 2005. Can you tell  
13 us, what does this document tell us?

14 A. This was a request from Tisa Morris who was the head of  
15 the Office of Professional Standards, the precursor to the  
16 Independent Police Review Authority, to the then commander of  
17 the personnel divisions which became human resources, Brad  
18 Woods, requesting a fitness for duty evaluation.

19 Q. And the incident date is close in time to the referral,  
20 correct?

21 A. Yes, it is.

22 Q. Okay. Do you know from your review of the file what, if  
23 anything, was done in relation to this request?

24 A. Yes. There was a sergeant, Mary Connelly, who contacted  
25 Tisa Morris and the investigator to find out -- to gather more



1 October 23, 2017

2 2:00 p.m.

3 (Proceedings heard in open court. Jury in.)

4 THE COURT: I always have to count because sometimes  
5 I miscount and then, wait a minute, they're not all here yet.

6 You may question the witness.

7 MS. BENJAMIN: Thank you, Judge.

8 DIRECT EXAMINATION (Resumed)

9 BY MS. BENJAMIN:

10 Q. I think before we broke for lunch, we were talking about  
11 the referral for fitness for duty for Patrick Kelly in June of  
12 2006, to get you back to where we were. The human resources  
13 department, would they receive all of the reports related to  
14 the various testing including psychological testing?

15 A. As far as what the tests were and how they were done, no.  
16 We get a summary of what it is and the conclusions of the  
17 doctors, but we don't get the individual tests.

18 Q. Okay. So you get the actual psychologist's interpretation  
19 of all of that data?

20 A. Correct.

21 Q. Okay. And in the materials that you reviewed in relation  
22 to this fitness for duty that took into account both of the  
23 off-duty incidents that Patrick Kelly was involved in in 2005  
24 and then in 2006, did you note that the psychological testing  
25 showed that he had -- there were no indications of any type of

1 serious mental problems or anger management problems in any of  
2 the testing that was conducted?

3 A. Correct.

4 Q. Okay. And he was receiving counseling, though, in  
5 relation to relationship issues with his girlfriend from  
6 Dr. Socol?

7 A. Yes.

8 Q. Okay. Now, the end result of that fitness for duty was  
9 what?

10 A. Of -- I'm sorry. Which fitness --

11 Q. The 2006 fitness for duty evaluation, how did that -- it  
12 went to a three-panel?

13 A. A three-panel -- yes. So if they want to challenge  
14 whether they should have been subject to a fitness for duty  
15 evaluation, they have the option of going to an outside  
16 medical professional to have a second opinion. If the second  
17 opinion doesn't concur with our doctor's evaluation, it goes  
18 to a panel of three medical professionals to make a  
19 determination if the person was fit for duty and at what point  
20 that individual became fit for duty.

21 Q. Okay. And in Mr. Kelly's situation, what was the result?

22 A. The result was that the doctors determined that he was  
23 never unfit for duty.

24 Q. Okay. And just so I understand, how does BIA work in  
25 relation to fitness for duty? Are there programs within the

1 BIS program that would -- might be taken into account with  
2 fitness for duty?

3 A. Part of behavioral intervention would normally include a  
4 fitness for duty evaluation, but it's a different part of it  
5 so...

6 Q. Okay. And the behavioral intervention program, is that  
7 just a set set of programs that are in place, or are they  
8 individualized?

9 A. They're individualized. If a person is having problems  
10 with tardiness, there's no reason to recommend he go have  
11 relationship counseling. That's not where the area of concern  
12 is. So we try to identify what the issue is, if the  
13 individual's behavioral problem is they don't attend court,  
14 maybe it's a point of getting them the right tools to track  
15 what their court schedule is. If the problem is relationship  
16 issues, then we should have them go see Dr. Socol or some  
17 other professional to address those concerns.

18 Q. Okay. So would you agree that every behavioral  
19 intervention is tailored to an officer's unique situation?

20 A. To correct those particular behavioral problems.

21 Q. Now, talking generally about the behavioral intervention  
22 and personnel concerns programs, we've seen a chart from the  
23 police accountability task force's report that lists -- or  
24 identifies enrollment in the program for a period of time kind  
25 of being stabilized in the 200 range and then there's a

1 violation of Rule 14 and disciplinary action up to and  
2 including separation. Do you understand?"

3 Answer, yes. And then it continues down, "This  
4 statement is not being given voluntarily but under due rest.  
5 I am only giving this statement at this time because I know I  
6 could lose my job if I refuse."

7 Is that something that is something you're familiar  
8 with in statements given by either department members, sworn  
9 or unsworn?

10 A. Yes.

11 Q. Okay.

12 A. It happens -- it happens all the time.

13 Q. Okay. And is that the acknowledgement by law enforcement  
14 who are being questioned or anyone else who's subject to  
15 compelled statements that they appreciate that this is a  
16 compelled statement and --

17 A. Correct, on the administrative side.

18 Q. Okay. All right. Now, in there, in her statement and in  
19 the rights, the list of rights that we saw, there's reference  
20 to Rule 14, also. That's unique to the Chicago Police  
21 Department, correct?

22 A. It is.

23 Q. Okay. And Rule 14 is what to you?

24 A. It's the prohibition or the prohibition of providing a  
25 false statement, whether oral or written.

1 Q. And that is -- was there a similar rule when you were with  
2 the FBI?

3 A. Yes, but it wasn't Rule 14, but we had a very similar --

4 Q. Okay.

5 A. -- rule.

6 Q. Now, we've heard a lot about in this trial a code of  
7 silence and whether or not what people define it as or what it  
8 means or whether you're trained on it. Is that something that  
9 you in law enforcement have ever utilized in either your  
10 training or your conversations with fellow officers?

11 A. I have never used the term, the code. It's not something  
12 we talk about in our vocabulary care layer that I we're using  
13 the term, code of silence?

14 Q. Okay. Are you saying you're ignoring that term, or are  
15 you just -- it's not part of your regular daily speech?

16 A. Yes, there is no official definition of the code of  
17 silence, whether it's in the FBI or in the Chicago Police  
18 Department. I understand what it is being referred to when  
19 people say that, but it's not a term that we use on a  
20 day-to-day basis.

21 Q. Okay. And what is your understanding?

22 A. My understanding is we have certain rules and regulations  
23 that would fall under the code of silence. There's the Rule  
24 14, rule 21, and Rule 22 for the Chicago Police Department.  
25 Rule 14, as I said, is the -- prohibits you from providing a

1 us reports that could identify when just those allegations  
2 were made that somebody made a false report?

3 A. Yes.

4 Q. Okay. And were you able to do both of those things for  
5 us?

6 A. Well, okay. A rule 14 or Rule 22 report is -- that occurs  
7 when there's a sustained finding. The -- if I understood your  
8 question right is, if someone calls in and said, this is a  
9 false report, that's a little bit harder to extract, okay,  
10 because at that point, there's not a rule violation. It's  
11 just an allegation.

12 Q. Okay. So earlier today, we heard about excessive force  
13 complaints get an 05 code and then there is a A through  
14 possibly Z of different scenarios under which the allegation  
15 might fall. Is that your understanding generally that there  
16 are multiple types of allegations that can be made but then  
17 they are then linked to a rule and regulation?

18 A. Yes. Once an investigation occurs and you have a  
19 sustained finding, then a rule violation has to be attached.  
20 Okay. That's when that occurs, after there's a finding that's  
21 sustained.

22 Q. Okay. So you could only pull reports that reflected  
23 sustained findings for us then?

24 A. Correct.

25 Q. Okay. I'm going to show you Defendant's Exhibit 67. At

1 the top of that, you see on the left-hand corner, "Internal  
2 affairs, analytical section," that's what you were just  
3 talking about. And could you just identify what this report  
4 is?

5 A. Yes. It says on the title, members with sustained  
6 violations of Rule 14 or 22. 14 is false report, 22 is a  
7 failure to report, from the time period of time of January 1,  
8 2004, to December 31st, 2011.

9 Q. Okay. And for this, it's a 35-page report, and on the  
10 final page, there's a total of employees with that sustained  
11 finding. Do you see that number?

12 A. Correct.

13 Q. Can you tell us what that is?

14 A. Yes. 2003.

15 Q. 203?

16 A. I mean, excuse me, 203.

17 Q. An extra zero.

18 A. 203 employees.

19 Q. And I'm just going to point out a couple of pages. For  
20 instance, on Page 26068, there's a -- originally coded as an  
21 05 K, a domestic altercation incident, off duty, and then --  
22 but it's -- let me slide that over a little. But it is a Rule  
23 14 rule violation once it's been sustained, and I see here  
24 this action taken, 700, court reinstated you had. What would  
25 something like that happen?

1 that point or has to bring it down the next day?

2 A. Yes. If he's arrested, he may have to go to court, so it  
3 depends on what they get out of court. They have to bring  
4 that bond slip to internal affairs. It depends on the  
5 seriousness of the matter. So that -- that day, like I said,  
6 they don't usually typically have all their equipment, so they  
7 have to come the next day to complete that process. We review  
8 the bond slip if there is one, and we -- we get the rest of  
9 the equipment. We send them down to human resources where  
10 they get a temporary ID. They lose their police powers. And  
11 then they're assigned administrative duties somewhere in the  
12 Department.

13 Q. Okay. And I'm going to show you FCRL 113. This is a  
14 equipment transaction receipt for January 12th, 2010. And  
15 just under the heading "Type much equipment returned," it  
16 appears he only had his identification card on him at that  
17 point?

18 A. Correct.

19 Q. Okay. Now, in the list of equipment, I don't see "gun"  
20 or "ammunition."

21 A. No. The Bureau of Internal Affairs does not take over a  
22 gun. That's theirs. If there's a duty restriction, they just  
23 can't carry it. We don't -- it's their gun. They purchased  
24 it.

25 Q. Now I want to ask you, you mentioned a bond slip they



1 A. Correct. And it's something that the supervisors have  
2 observed.

3 Q. Okay. And correct me if I'm wrong, it's the supervisors  
4 who have to make the report against the officer?

5 A. That's correct.

6 Q. Okay. And then looking to the last page of this report,  
7 how many SPARs were given out in that timeframe of 2004 to  
8 2011?

9 A. 30,705.

10 Q. I want to ask you a few questions about domestic battery  
11 complaints. That is not something necessarily IAD would  
12 investigate, correct?

13 A. Correct. By city ordinance, IPRA, slash, COPA  
14 investigates those.

15 Q. Okay. But because your -- you keep this data, you can  
16 produce these reports to people like myself, did I ask you to  
17 see if you could prepare a report relating to domestic battery  
18 or domestic violence complaints?

19 A. You did.

20 Q. Okay. And I'm going to show you Defendant's Exhibit 69.  
21 In looking at this, again, the same timeframe, 2004 to 2011.  
22 Do you see that?

23 A. Yes.

24 Q. Okay. And we've already gone, I think we know what some  
25 of these headings are, but do they reflect possible outcomes

1 of the CR?

2 A. Yes.

3 Q. Okay. So exonerated, not sustained, sustained, unfounded,  
4 I think maybe NA is the only one we might not no right now.

5 A. That's "no affidavit."

6 Q. So during this timeframe, this total 968, what does that  
7 number reflect?

8 A. That's the total of complaints that were fired against the  
9 department members for domestic battery during that time  
10 period.

11 Q. Okay. And of that, how many are sustained?

12 A. 169.

13 Q. Okay. And looking through this report, what's provided  
14 are things like the penalty that is assessed?

15 A. Correct.

16 Q. And for instance, for a sustained domestic altercation,  
17 here is one for one day's suspension?

18 A. Correct.

19 Q. Okay. And then here's another one a couple lines above  
20 that for resigned?

21 A. Correct.

22 Q. And then I think there's a suspension up top of that  
23 document?

24 A. That's a separation.

25 Q. Oh, I'm sorry. I didn't read it correctly. Thank you.

1 October 24, 2017

2 10:00 a.m.

3

4 (Proceedings heard in open court. Jury out.)

5 THE COURT: Go on the record for jury instruction  
6 conference. For the record, the Court met with the parties in  
7 chambers last evening for an hour or two, and the Court  
8 indicated, the Court received proposed instructions from both  
9 the plaintiff and the defendant.

10 And the Court and the parties went through them and  
11 the Court indicated how the Court would rule and said I would  
12 put it on the record what we've done and then we'll see where  
13 we are from then on.

14 The plaintiff submitted a total of 31 instructions.  
15 The instruction No. 1 was going to be given without -- with --  
16 without the modifications proposed by the plaintiff.

17 Instruction No. 2, 104; 3, 105; 4; 5, 107; 6, 111;  
18 and 7, 112, are given without objection as submitted.

19 Plaintiff's proposed instruction 8 is given as  
20 modified by eliminating in the second paragraph the, to reach  
21 a verdict, you may have to decide material, and also in the  
22 body, the phrase, the witness' manner while testifying, any  
23 interest the witness has in the outcome of the case, and any  
24 bias or prejudice the witness may have, strike any other  
25 evidence that contradicts the witness' testimony and the

1 remember, I can't say word for word, I leave that to your  
2 memory better than mine, but I asked Joseph Moore that isn't  
3 it true that the widespread custom and practice of violating  
4 constitutional CHECK rights leads to failures in discipline  
5 and termination, code of silence. Each and every one of those  
6 issues that I asked him, his answer was "yes." And those are  
7 the issues that belong in this case.

8           So there was intent and meaning when I asked those  
9 questions. They weren't random. I asked those specific  
10 questions specifically because they apply to the issues in  
11 which his Honor will instruct you on at a later time. He will  
12 read to you what your instructions are. Just like the police  
13 department has general orders or special orders or the police  
14 officers themselves have rules and regulations, his Honor will  
15 give you your rules and regulations, how you will decide this  
16 case.

17           So what are those five factors? As you've learned  
18 throughout this trial, code of silence is the detriment of  
19 all, whether it's police, whether it's citizens or police  
20 officers, especially those officers trying to do their job the  
21 right way. The City fails to investigate. It fails to  
22 discipline, fails to terminate, fails to maintain an early  
23 warning or intervention system.

24           Those are the five factors that his Honor will tell  
25 you that you have to decide if you answer other questions

1           Remember, in opening statement I told you that  
2 everything that Patrick Kelly did was predictable because it  
3 was foreseeable. It's a pattern. Once he got that badge and  
4 shield, he became a tough guy, and he became a tough guy to  
5 the detriment of people that he either knew or people that he  
6 policed. The City's policies and still the mindset and  
7 attitude of invincibility in Officer Kelly, one where he knew  
8 he would not be investigated, charged, disciplined, or  
9 suspended or even terminated in any way, shape, or form  
10 following his acts of misconduct. Patrick Kelly, the one  
11 thing I can't bring to you, as much as I would like to, who  
12 his guardian angel is. Somewhere -- someone out there was  
13 looking out for him. And it really wasn't just one person  
14 looking out for him. It may have been more than one person.  
15 And you know what? It may not even have been a person because  
16 it was the culture that was looking out for him, a  
17 decades-long culture. And that's -- those aren't my words.  
18 These are the words of informed people who investigated the  
19 City of Chicago for months, used CPD data, and they're the  
20 ones -- they're the ones who determined that there was a  
21 widespread culture of either hiding evidence, of violating the  
22 rights of citizens, and you heard it all from where you're  
23 sitting.

24           The City will argue that Officer Kelly either is an  
25 outlier or that it cannot be held responsible for private acts

1           Now, this is not to scale. It's not perfect. This  
2 is near the door because this is the holster over here. The  
3 holster is here.

4           Give me the holster, Bryce.

5           It's over here. But that's about the best I can do  
6 for you, ladies and gentlemen. Thank you.

7           So next we move on to the focus of the case. What  
8 the City did or failed to do which caused this constitutional  
9 violation. You're going to hear Judge Leinenweber instruct  
10 you in a few moments that the City's policies had to cause  
11 Michael LaPorta's injuries. I used a phrase in opening with  
12 what we described as moving force, and that's just going to  
13 make it confusing. You're going to be instructed on the  
14 word "cause" instead of "moving force." So simply put, it's  
15 causation. That's what it is. Were Michael LaPorta's  
16 injuries a foreseeable consequence of the City's actions, and  
17 the answer is, absolutely. Can we point to the City causing  
18 Michael LaPorta's injury on the morning in question. Is what  
19 you'll need to answer. And again, what you're asked that  
20 question when you're deliberating, you will see that the  
21 preponderance of the evidence is "yes." And that is in the  
22 instructions that his Honor will give you.

23           So let's walk through it. I showed you in opening  
24 this chart that's going to come up. These were the  
25 characteristics that Kelly had exhibited in his prior

1 to you in somewhat of a coherent manner, but if I'm not, I  
2 promise you the judge will and you're going to have them as  
3 words on paper and those instructions will be in front of you  
4 when you deliberate. But deliberate indifference is about  
5 officers acting with impunity because of the City's deliberate  
6 indifference, a conscious disregard, a blind eye. That's  
7 going to be the last instruction his Honor will read to you.  
8 He will tell you that the City had to know about these  
9 problems, did nothing about them, and that that's what  
10 happened, and what happened here was foreseeable.

11 The City knew. The City did nothing. And what  
12 happened to Michael LaPorta was the predictable outcome of  
13 decades of this mindset of apathy that has existed.  
14 That is what deliberate indifference is about, that they knew  
15 and they did nothing about it and, again, using the words of  
16 Joe Moore, remember, those intelligent, informed people that  
17 would testify before the city council and tell him that if you  
18 don't do what we're telling you when you create IPRA, that  
19 IPRA will be doomed to fail. And they were right because they  
20 did not implement those things that people who had the  
21 community in mind. And the community includes police  
22 officers. They didn't do it.

23 So once you've decided one of the five claims or all  
24 of the five claims apply, then you can move on to the verdict  
25 form which is -- oh, I think we need to switch over now.

# Exhibit C



- |           |   |                   |                  |
|-----------|---|-------------------|------------------|
| <b>A.</b> | <b>Code of Silence</b>                                      | <u>      </u> YES | <u>      </u> NO |
| <b>B.</b> | <b>Failure to Investigate</b>                               | <u>✓</u> YES      | <u>      </u> NO |
| <b>C.</b> | <b>Failure to Discipline</b>                                | <u>✓</u> YES      | <u>      </u> NO |
| <b>D.</b> | <b>Failure to Terminate</b>                                 | <u>      </u> YES | <u>      </u> NO |
| <b>E.</b> | <b>Failure to Maintain an Adequate Early Warning System</b> | <u>✓</u> YES      | <u>      </u> NO |

*If your answer is "Yes" to one or more of these policies, customs or practices, then proceed to Question #3. If your answer is "No" to all of these policies, customs or practices, then skip the remaining questions and Damages section and proceed directly to the Signatures page.*

**Question #3: Did one or more of these policies, practices or customs cause Patrick Kelly to intentionally or with reckless indifference shoot Michael D. LaPorta?**

<b>Code of Silence</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>Failure to Investigate</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>Failure to Discipline</b>	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
<b>Failure to Terminate</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>Failure to Maintain an Adequate Early Warning System</b>	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

*If your answer is "Yes" for one or more of these policies, customs or practices, proceed to the Damages section. If your answer is "No" for all of these policies, customs or practices then skip the Damages section and proceed directly to the Signatures page.*

## DAMAGES

### **Compensatory Damages:**

We find Plaintiff's compensatory damages to be:

Past/future Medical Expenses \$ 12 million

Past/future Lost Earnings \$ 1.5 million

Past/future Pain and Suffering \$ 12 million

Past/future Loss of Normal Life \$ 15 million

Disfigurement \$ 100,000

Shortened Life Expectancy \$ 4 million

Increased Risk of Harm \$ 100,000

**Total:** \$ 44,700,000

SIGNATURES

same

Michelle Fifer

Foreman

Andrea C. Diven

Maubel Cox

Joseph, Grone

Georgina

Nicole Guerrero

John H

Frank Briscoe

Mike

Michael S. Shaw

James H