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

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Master Docket Case No. 19-cv-01717
	)	Judge Franklin U. Valderrama
	)	Magistrate Judge Sheila M. Finnegan

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

PLAINTIFFS' DAUBERT MOTION TO EXCLUDE THE OPINIONS OF JEFFREY NOBLE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

INTRODUCTION

Plaintiffs Ben Baker and Clarissa Glenn allege that Defendant Sergeant Ronald Watts and members of the tactical narcotics enforcement squad he supervised framed them because Baker refused to pay a bribe to Watts. As a result, Baker lost more than ten years of his life in prison and Glenn pleaded guilty in exchange for a probation sentence so she would not lose her children. Today, Defendant Watts and his accomplice Defendant Kallatt Mohammed have been convicted of felonies for their corruption, and many of the other Defendant Officers have been placed on the State's Attorney's do-not-call *Brady* list, have resigned under investigation, or are facing termination as the result of (long-delayed) disciplinary proceedings. Plaintiffs allege that Defendant City of Chicago enabled and caused Plaintiffs' wrongful convictions by allowing a code of silence to fester within the Department; by maintaining a dysfunctional disciplinary system in which civilian complaints were routinely ignored and the City failed to properly respond to hundreds of complaints against the Defendant Officers; and by allowing an on and off criminal investigation against Defendants Watts and Mohammad to go on for nearly eight years without intervening to prevent further damage to innocent people framed by Watts's crew. Dkt. 238 (Pls.' Second Am. Compl.) ¶¶ 99-106; 115-139.

Plaintiff retained Dr. Jon M. Shane to review evidence from this litigation and evaluate the quality of the City's disciplinary system from 1999-2011 and the City's actions relative to Defendant Watts and his squad. Dr. Shane described generally accepted standards in police discipline and supervision of narcotics enforcement police and provided an opinion on the practices of the Chicago Police Department—and its failure to respond to repeated notice of a need to monitor officers involved in drug enforcement—during the time periods at issue. Ex. A (Shane Report). Using his training as a Ph.D. in Criminal Justice and his experience conducting statistical analysis, he also identified a statistically significant sample of police misconduct

investigations from the 1999-2011 time period; wrote a codebook and trained data coders to identify and record factual information about those investigations; and conducted statistical analysis regarding Chicago's police disciplinary practices from 1999-2011. *Id.*

In response, the City of Chicago has again retained its long-time expert witness, Jeffrey Noble, to defend the integrity of its police misconduct investigations. Mr. Noble is a former chief of an 87-officer police department in California and has been a professional expert witness since 2005. Ex. B (Noble C.V.) at 1. He opines that the City's investigations of police misconduct from 1999 to 2011 were "reasonable." But despite his long tenure as the City's discipline expert, he cannot identify a single source—other than his own writings—supporting the standard and methodology he claims to employ. He admits he has no basis to think the disciplinary files he looked at (about a dozen per year) were representative of the 1999-2011 time period. And although he criticizes Plaintiff's expert, Dr. Jon Shane, for using an inappropriate methodology, Mr. Noble has no social science background or training to evaluate and criticize Dr. Shane's work.

"Because I said so" is not an adequate or reliable methodology for expert opinion, and courts in this District have correctly barred Mr. Noble's opinions due to his methodological shortcomings. The Court should follow and find that Defendants have not met their burden to establish that Mr. Noble's testimony is admissible under Federal Rule of Evidence 702.

SUMMARY OF MR. NOBLE'S OPINIONS

Given the length of Mr. Noble's report and the large number of opinions disclosed, Plaintiffs provide a brief overview of his opinions below, along with the reasons for excluding those opinions. Plaintiffs then analyze the opinions in more detail in the following sections of this brief:

1. The Chicago Police Department (CPD) had "reasonable" policies regarding ethics and untruthfulness. Ex. C (Noble Report) ¶¶16-18. This opinion should be barred because Mr. Noble provides no generally accepted standard to judge the policies against. And contrary to his implied suggestion otherwise, "reasonableness" is not a generally accepted standard.

2. CPD took "reasonable and appropriate" disciplinary steps "during at least the period of 1999-2011; its criminal and administrative investigations in this case, and every other case Noble has reviewed, were "reasonable"; and its investigation of Defendants Wats, Mohammed, and the other Defendant Officers was "reasonable." *Id.* ¶¶ 19-24; 86-100. This opinion should be barred because "reasonableness" is not the standard for investigations of police misconduct and Mr. Noble has not identified any authority, other than his own word, to suggest that "reasonableness" is the standard. Further, Mr. Noble admitted at his deposition that he was not giving any opinions on the quality of the criminal investigation into Watts and Mohammed's corruption.

3. There is "no evidence" of systemic failures to discipline misconduct. *Id.* ¶¶ 25-27. This opinion should be barred because Mr. Noble provides no generally accepted standard to judge the policies against and admits he has no basis to conclude that he reviewed a representative sample of misconduct investigations. Thus, Mr. Noble lacks foundation to say that there is "no evidence" of systemic failures.

4. Chicago "further enhanced" its ability to conduct investigations of police misconduct when it formed the Independent Police Review Authority (IPRA) in 2007, and independent review is the exception, not the rule among police agencies. *Id.* ¶¶ 28-36; 65-66. This opinion should be barred because Mr. Noble admitted he did not evaluate whether the outcomes of investigations changed or improved after IPRA was formed and his opinion on independent review is irrelevant.

5. The statistical analysis and social science methodology employed by Dr. Jon Shane are "inconsistent with generally accepted police practices." *Id.* ¶¶ 37-47. This opinion should be barred because Mr. Noble has no basis to evaluate Dr. Shane's methodology.

6. CPD has no ability to investigate complaints without an affidavit from the complainant, and did its best to bargain with the union regarding discipline. *Id.* ¶¶ 48-57; 67-71. This opinion should be barred because it offers inadmissible legal conclusions and Mr. Noble admits he knows no specific details about the union negotiations.

7. CPD has a "reasonable" early identification system. *Id.* ¶¶ 58-61. This opinion should be barred because Mr. Noble provides no generally accepted standard to judge the policies against.

8. It is useless to evaluate how often police departments sustain complaints of misconduct. *Id.* ¶¶ 62-64. Plaintiff does not contest that Mr. Noble may offer this opinion.

9. Some of the materials Dr. Shane relied on—specifically, an article by Professor Craig Futterman and a report by the United States Department of Justice's Civil Rights Division—are unreliable. *Id.* ¶¶ 72-82. Plaintiff does not contest that Mr. Noble may offer these opinions.

10. CPD took "reasonable steps" to implement the recommendations of the Webb Commission (which was formed in 1997 following the revelation of corruption in one of CPD's narcotics policing units—the same context in which Defendants Watts, Mohammed, and others committed their corrupt acts). *Id.* ¶¶ 83-85. This opinion should be barred because Mr. Noble provides no generally accepted standard against which to judge the policies and because it directly contradicts his prior opinions.

11. CPD was right to not take administrative action against Defendants Watts, Mohammed, or the other Defendant Officers during the on and off 8-year criminal investigation into their corruption. *Id.* ¶¶ 101-106. This opinion should be barred because Mr. Noble provides no generally accepted standard to judge the policies against.

12. The City of Chicago did not cause Plaintiffs' wrongful convictions and there is no evidence that their practices did so. *Id.* ¶¶ 107-111. This opinion should be barred because it invades the province of the jury.

Although Defendants caused nearly 200 Chicagoans to be wrongfully convicted (their convictions have since been vacated), Mr. Noble did not review any evidence or information regarding those exonerations and, according to him, they do not matter for his opinions. Ex. D (Noble Dep.) at 49:7-13 ("I am aware that . . . approximately 200 people's convictions were vacated, yes."); 49:15-50:20 (Noble reviewed no materials regarding findings of innocence or vacated convictions regarding those approximately 200 people); 296:22-297:10 (Noble admitting that whether plaintiffs were wrongfully convicted does not matter to his opinion).

LEGAL STANDARD

Federal Rules of Evidence 702 and 703 govern the admissibility of expert witness testimony. Fed. R. Evid. 702 & 703. Opinion testimony is admissible only if the expert's "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," and then only if the testimony is "based on sufficient facts or data" and "the product of reliable principles and methods," which the expert has "reliably applied." Fed. R.

Evid. 702. The expert's opinion must be based on "knowledge," not merely "subjective belief or unsupported speculation." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993); *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014).

The trial judge occupies a "gatekeeping role" and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*, 509 U.S. at 592-93, 597. The proponent of the expert evidence bears the burden of establishing, by a preponderance of the evidence, that the requirements set forth in Rule 702 and Daubert have been satisfied. *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009). This rule applies not only to scientific testimony but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). A *Daubert* inquiry ultimately requires a two-step analysis: first, a determination of the expert's reliability, and second, whether the proposed expert testimony is relevant and aids the trier-of-fact. *Cummins v. Lyle Industries*, 93 F.2d 362, 367-68 (7th Cir. 1996). A trial court should exclude expert testimony that is not pertinent to a disputed issue in the case even if the methodology underlying the testimony is sound. *Smith v. Ford Motor Co.*, 215 F.3d 713, 719 (7th Cir. 2000). In civil rights cases such as this one, "[e]xpert testimony regarding relevant professional standards can give a jury a baseline to help evaluate whether a defendant's deviations from those standards were merely negligent or were so severe or persistent as to support an inference of intentional or reckless conduct that violated a plaintiff's constitutional rights." *Jimenez v. City of Chicago*, 732 F.3d 710, 721–22 (7th Cir. 2013). An expert's testimony about professional standards should nonetheless be excluded if the expert "fails to provide any authority or a reliable basis" for the purported standards. *Est. of Loury by Hudson v. City of Chicago*, No. 16-CV-4452, 2021 WL 1020990, at *1 (N.D. Ill. Mar. 17, 2021) (excluding Mr.

Noble from testifying that a "reasonableness" standard governs investigation of alleged police misconduct).

ARGUMENT

Mr. Noble's methodology has not been accepted—he relies on a "reasonableness" standard not applied by any other expert or law enforcement agency.

Mr. Noble says that "[t]he appropriate standard of review when assessing the quality of an internal affairs investigation is one of reasonableness." Ex. C (Noble Report) ¶ 43. Mr. Noble does not cite a single source for that proposition. There is none, because "reasonableness" is a standard Mr. Noble invented during his career as a police practices consultant, not a professional standard recognized by any authority or, indeed, any other expert. Mr. Noble admitted as much at his deposition. Noble does not know who first came up with the standard and admitted he might have been the first one to come up with it. Ex. D (Noble Dep.) at 142:7-22. The only people he could identify who have identified the standard as "reasonableness" for internal affairs investigations are Jeffrey Noble and his co-author. *Id.* at 142:23-143:2**.**

Noble's proposed "reasonableness" standard is ill-defined and has not been accepted.

Noble started working as a police practices expert in 2005. Seven years later, he appears to have invented the standard of "reasonableness" in his (non-peer-reviewed) article "Evaluating the Quality of Law Enforcement Investigations: Standards for Differentiating the Excellent, Good and Reasonable, From the Unacceptable." Ex. B, Noble C.V. at 1, 3. The publication where that article (and much of Mr. Noble's written work) appears, the "Journal of California Law Enforcement," is not an academic journal. Instead, it is a police officer membership group that "welcomes articles relevant to the area of law enforcement from its readers." Those articles are not peer-reviewed, but are instead read by an unidentified "communications committee". Ex.

E (Journal of Cal. Law Enforcement Vol. 46) at 2. There is no indication that Mr. Noble's proposed standard has been accepted anywhere.

Mr. Noble's proposed standard is vaguely defined and hard to parse. His report describes several things he believes that the Chicago Police Department does, like "conduct[ing] interviews and interrogations" and "conduct[ing]" area canvasses. Ex. C (Noble Report) ¶ 22. But he never explains why those steps are enough to make CPD's investigations "reasonable," either individually or in aggregate. Ultimately, Mr. Noble says a "reasonable" investigation is one where the allegations are documented; a number of steps "may" be taken; a written report is taken; "reasonable" conclusions are made; and "reasonable" disciplinary measures are taken. Ex. D (Noble Dep.) at 195:1-196:1. Other than writing down the complaint, there is no other step that must happen, but "most of the time" there should be a "statement" from the accused officer, the victim, and the complainant. *Id.* at 197:7-198:17. And "statement," as defined by Mr. Noble, includes even just talking to someone and not writing it down. *Id.* at 160:20-161:3. As discussed further below, Mr. Noble deploys highly irregular and non-standard definitions of police terminology, further undermining the reliability of the asserted standard.

In sum, Mr. Noble's "reasonableness" standard fails several factors that are considered in determining whether an expert's methodology is reliable: the standard hasn't been subjected to peer review; it is not accepted in the relevant community; and it was developed expressly for purposes of testifying. *Fuesting v. Zimmer, Inc.*, 421 F.3d 528, 534–35 (7th Cir. 2005), *vacated in part on other grounds*, 448 F.3d 936 (7th Cir. 2006) (discussing factors established by the Supreme Court in *Daubert* and the 2000 Advisory Committee's Notes to Rule 702).

"Thorough and complete" is the accepted standard for police misconduct investigations.

The actual standard recognized by police departments, the Department of Justice, and the International Association of Chiefs of Police is that investigations of police misconduct must be thorough and complete. "A 'complete investigation' is one which includes all relevant information required to achieve the purpose of the inquiry" and "[t]he rules and procedures for an investigation must be framed to ensure its **integrity, thoroughness, and fairness.**" Ex. F (Department of Justice: Standards and Guidelines for Internal Affairs - Recommendations from a Community of Practice) at 27 (emphasis added). The State of New Jersey agrees in its report cited by Mr. Noble: "Each agency must **thoroughly, objectively, and promptly** investigate all allegations against its officers." Ex. G (New Jersey Office of the Attorney General: Internal Affairs Policy & Procedures) at 3 (emphasis added). Reports from the International Association of Chiefs of Police (IACP) cited by both Dr. Shane and Mr. Noble say the same. One such paper says, "Police agencies have a duty to **investigate fully and completely** accusations of officer misconduct to protect the department's integrity and its credibility in the community, not to mention clearing the names of officers who have done no wrong." Ex. H (IACP Concepts and Issues) at 2 (emphasis added). The IACP Training Keys specify that an internal affairs investigation should not be reviewed until "the investigation is deemed to be complete" and that investigations that were incomplete should be designated as "[i]ncomplete investigations." Ex. I (IACP Training Key III) at 3. On paper, the Chicago Police Department also set a standard of conducting "**complete and thorough** investigations." Ex. J (Bureau of Internal Affairs Standard Operating Procedures) at 13 (emphasis added). Mr. Noble has no basis to replace the broadly established "thorough and complete" standard with a "reasonableness" standard of his own making, and this Court should follow Judge Coleman in rejecting it.

This Court should follow others in rejecting Mr. Noble's novel standard.

This Court should not accept Mr. Noble's novel standard of "reasonableness," and should instead follow Judge Coleman's decision to bar Mr. Noble from presenting his novel and unsupported standard for investigations of police misconduct. In *Estate of Loury v. City of Chicago*, Mr. Noble attempted to present a near-identical opinion that the "administrative investigations into allegations of officer misconduct conducted by the City of Chicago's Office of Professional Standards ("OPS"), Independent Police Review Authority ("IPRA"), and the Bureau of Internal Affairs ("BIA") were reasonable." *Est. of Loury*, 2021 WL 1020990, at *1. As Judge Coleman noted, "[Noble] sets forth what OPS, IPRA, and BIA did in their investigations, but generally states these investigations were "reasonable" without specifically setting forth why they were reasonable and what standards he used in coming to this conclusion." *Id.* at *3. Ultimately, the Court "grant[ed] [the plaintiff's] motion to bar Noble's opinion that the standard for investigating police misconduct is 'reasonableness' because Noble fail[ed] to provide any authority or a reliable basis for this bare-boned conclusion." *Id.* at *4.

Mr. Noble's opinions in this case suffer the same lack of foundation and explanation that Judge Coleman criticized in *Hudson*, and they should be excluded as unreliable and lacking methodology. The opinions that Noble tried to offer in the *Loury* case, and Judge Coleman rejected, are the same as those offered here. *Compare* Ex. C (Noble Report) ¶¶ 20-24 *with* Ex. K (Noble Loury Report) ¶¶ 14-18 (presenting an identical analysis, largely word-for-word).

Mr. Noble has no basis to apply his "reasonableness" standard to the CPD disciplinary system as a whole or to the CPD's policies.

Mr. Noble asserts that the entire CPD disciplinary system was "reasonable" according to his standards. Ex. C (Noble Report) ¶¶ 19-25. He described the bottom-line test for whether the system was "reasonable" as evaluating whether "they're turning a blind eye -- that they're taking

steps to ignore misconduct that would lead an unprincipled officer to believe that they could engage in constitutional violations with impunity." Ex. D (Noble Dep.) at 116:8-117:1. Again, Mr. Noble never explained where that standard came from or why he uses it, or identified any agency or authority that sets such a low bar for police departments. Nor does he offer any basis to think that such a standard could be reliably applied.

In addition to failing to establish that the "reasonableness" standard is useful or applicable, Mr. Noble has no basis to assert that the disciplinary files he reviewed are representative of the City's police disciplinary system as a whole. Dr. Shane, in his report, took a random sample of disciplinary files from the City of Chicago and detailed how his sample was statistically significant and allowed him to draw conclusions about the City's practices as a whole, from 1999-2011 and from sub-periods during that timeframe. Ex. A (Shane Report) at 12-20. Mr. Noble did not. He admits he doesn't know what an appropriate sampling is among the more than 100,000 CRs issued by the Chicago Police Department from 1999-2011, and he hasn't made any determination that the CRs he reviewed are representative of the CRs during that time period. Ex. D, Noble Dep. at 138:19-139:6. In other words, he has no basis to claim that the City engaged in reasonable disciplinary practices, because he does not know whether he reviewed enough disciplinary investigations to form that conclusion. His report addresses just 145 disciplinary files relating to a 13-year period – 1999-2011 – averaging slightly more than 11 files per year. Ex. L Ex. 1 of Noble's report. The City has given the Court no reason to conclude that Mr. Noble can find such a small sample to be representative.

Similarly, Mr. Noble claims the City's policies were "reasonable" without reference to a model policy or national standard against which they could be compared or explaining how he compared them. Ex. C (Noble Report) ¶¶ 16-27; 50; 83-85. Judge Coleman barred identical

opinions from Mr. Noble because he "fail[ed] to make a connection between the applicable professional standards and the CPD's policies and investigations." *Est. of Loury*, 2021 WL 1020990 at *3. Mr. Noble's opinion is equally flawed here and should meet the same result.

Mr. Noble has likewise failed to establish that "reasonableness" is the standard for early identification and intervention systems, and those opinions (Paragraphs 58-61 of his report) must be barred, too. Notably, even though Mr. Noble faults Dr. Shane for failing to sufficiently examine how the CPD's early intervention systems worked, Mr. Noble has no information about how many officers were flagged by the system or how widely the systems were used. Ex. D (Noble Dep.) at 320:11-321:12.

Thus, as explained above, Mr. Noble has no basis to say that the generally accepted standard for investigations of police misconduct is "reasonableness." His opinion that the City of Chicago conducted "reasonable" police misconduct investigations "in this matter and every matter I have reviewed for the City of Chicago" must be barred. Ex. C (Noble Report) ¶¶ 20-24. Likewise, any opinions by Mr. Noble that CPD's investigations were "reasonable," including investigations regarding Defendants Watts, Mohammed, and other members of their tactical team (Paragraphs 19-24; 86-100) should be barred.

Mr. Noble is not qualified to challenge Dr. Shane's methodology and parroted criticisms written and provided for him by the City instead of independently analyzing the disciplinary investigations in this case.

Mr. Noble purports to criticize the methodology that Dr. Jon Shane used to analyze the quality of Chicago's police misconduct investigations from 1999-2011. Ex. C (Noble Report) ¶¶ 37-47. But Mr. Noble failed to analyze those investigations, and instead merely took analysis of those investigations provided to him in summary form and adopted them wholesale without conducting analysis of his own. Defendants will be unable to establish a methodology or reliable foundation for his opinion. The Court, as gatekeeper, should exclude it.

Mr. Noble is not qualified to challenge Dr. Shane's methodology.

Plaintiff's police practices expert Dr. Jon Shane is both a former police captain and a social scientist with a PhD in Criminal Justice. Ex. A (Shane Report) at 1, 3. A major portion of his analysis involved reviewing more than 1200 police misconduct investigations (known as Complaint Register files, or "CRs"), conducting statistical analysis to identify trends within those files, and reviewing them to determine whether the City of Chicago ensured thorough and complete investigations of police misconduct. *Id.* at 12-21. He wrote a codebook that defined various steps in a police misconduct investigation so that the coders reviewing the CRs could summarize the information contained therein and to ensure transparency of the data and definitions. Ex. M (Codebook). Using that codebook, coders trained by Dr. Shane created a spreadsheet identifying various data points related to each of the 1,200+ CRs reviewed, which Dr. Shane relied on to analyze the data. Ex. A (Shane Report) at 29-63. Dr. Shane concluded that the City almost never sustained complaints from civilians, failed to complete critical investigative steps across its investigations, and allowed unnecessary and prejudicial delays to occur in those investigations. *Id.*

Mr. Noble's report asserts that the tables in Dr. Shane's report (his analysis of data from the 1200+ CRs) "contain[ed] many errors and [were] inaccurate." Ex. C (Noble Report) ¶ 45. But at his deposition, Mr. Noble said that he didn't criticize how the tables added up data from Dr. Shane's spreadsheet and didn't criticize whether those tables were "accurate," stating, "I have no idea whether it's accurate or not." Ex. D (Noble Dep.) at 77:15-25. Likewise, Mr. Noble did not disagree with any of the math or statistical analysis conducted by Dr. Shane. *Id.* at 78:2-22; 80:4-20. Mr. Noble is not an expert in statistics, he admits he has no foundation to opine on how social scientists make comparisons using data, and the largest "dataset" he can remember

analyzing is a handwritten eight-by-eight table he made to count disciplinary actions from 2004 to 2010, in this litigation. *Id.* at 59:13-19; 61:4-62:13; Ex. N (Noble Notes) at CITY-BG-063966.

At his deposition, Mr. Noble revealed that he "wasn't looking for" whether the spreadsheet (the data Dr. Shane relied on) was faithful to the codebook's definitions. Ex. D (Noble Dep.) at 203:14-204:8. Mr. Noble further clarified that he was not faulting Dr. Shane for failing to collect more kinds of data and, indeed, he could not name a single data point that he believed Dr. Shane should have added to his data set. Ex. D (Noble Dep.) at 214:2-6. In sum, Mr. Noble is not qualified to challenge Dr. Shane's methodology (and has disclaimed any statistical or social science basis for doing so).

Mr. Noble improperly uses unreliable definitions of police terminology to attack Dr. Shane's opinions.

Mr. Noble deployed contorted definitions of police terminology to accuse Dr. Shane of trying to "mislead" the court and the jury. For example, Mr. Noble defines an "interview" as "developing some type of question, whether it's orally or written, and gaining a response of some issue that's relevant to the investigation." Ex. D (Noble Dep.) at 158:7-12. He then faulted Dr. Shane for failing to acknowledge "interviews"—which, as defined by Mr. Noble, include written responses to written questions—in Dr. Shane's analysis of the quality of CPD's investigations. Ex. C (Noble Report) ¶ 45(d). However, Mr. Noble could not name **a single police agency or other police practices expert** who used that definition of interview. Ex. D (Noble Dep.) at 159:4-16. Mr. Noble also defined "taking a statement" as "interviewing somebody and recording their statement, recording what they say" or even "talk[ing] to someone but [not] writ[ing] it down." *Id.* at 160:20-161:3. Not only is that not how any police agency or expert uses the term, but it is not even how the City of Chicago defined taking a statement during this time period. The City of Chicago defined "statements" as question and answer interviews in

which the respondent's answers are recorded verbatim and everything is "on the record," and explicitly distinguished formal statements from "report[s] from the accused." Ex. J (Bureau of Internal Affairs Standard Operating Procedure) at 23-24. In fact, the City's own 30(b)(6) representative on discipline issues in this case explained that "Q and A statements" were "typically" taken in "the more serious cases that result in separation of the member," and contrasted those statements to "just having the member respond to questions in a to/from report." Ex. O (Moore 30(b)(6) Dep.) at 115:18-116:1; *see also id.* at 57:8-16 (distinguishing a "to/from report" from a "formal Q and A statement"). Nevertheless, Mr. Noble went on to fault Dr. Shane for "incorrectly claim[ing] complainant/victim/witness . . . did not provide a statement," using Mr. Noble's singular definition of "statement." Ex. C (Noble Report) ¶ 45(h).

Mr. Noble has not demonstrated any reliable basis to state that Dr. Shane in any way deviated from accepted terminology and definitions in policing. It is Mr. Noble who failed to establish that the definitions he used were reliable, and he will be unable to do so because he could not identify a single source or authority who used his terminology the same way he did.

Mr. Noble parroted the criticisms written by defense counsel instead of conducting his own analysis.

More fundamentally, Mr. Noble did not employ any independent analysis or methodology, but instead just repeated a summary that was provided to him. Mr. Noble was given as a "summary" a document that purported to summarize all of the information about 145 different CR files. But this "summary," as Mr. Noble testified, did not just include factual information like the date of the incident or the witnesses; it also included a summary of the allegations; a summary of the investigation and its outcome; **and it included the section titled "review of Loevy/Shane spreadsheet," i.e., Mr. Noble's purported opinions about the "errors" in Shane's analysis**. Ex. D (Noble Dep.) at 100:1-102:16.

Mr. Noble has no basis to assume the reliability of the factual summary of the CR's he reviewed or the criticisms that the City's attorneys wrote for him. He does not know how many people wrote the summaries provided to him, whether they were lawyers, whether they received any training, or whether any guidebook or manual was used to guide the summaries. Ex. D (Noble Dep.) at 102:21-103:12. He did testify that he reviewed the CR's against some of the information in the summaries, but he clarified that he did not check each fact or review each line of the summaries against the CRs. *Id.* at 105:15-106:21 (explaining he did not spot check each fact in the summaries "because, you know, that would've been an overwhelming task.").

Courts routinely reject the City's maneuver of writing its own criticisms of the type of spreadsheet Shane relied on, and then hiring an expert to serve as their mouthpiece. *See Sommerfield v. City of Chicago*, 254 F.R.D. 317, 323 (N.D. Ill. 2008) (rejecting expert's reliance on lawyer's summarization of evidence on reliability grounds); *Obrycka v. City of Chicago*, 792 F. Supp. 2d 1013, 1026 (N.D. Ill. 2011) (holding that "uncritical reliance" on lawyers' summaries is "not 'good science' or sound methodology and required exclusion of opinion). Ultimately, "[a]n expert who parrots [ ] out-of-court statement[s] is not giving expert testimony; he is a ventriloquist's dummy." *U.S. v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014); *see also Higgins v. Koch Development Corp.*, 2013 WL 6238650 (S.D. Ind. Dec. 3, 2013) ("[T]he court must be wary that experts are not simply parroting the opinions of counsel."). Because Mr. Noble applied no reliable methodology in criticizing Dr. Shane's analysis or spreadsheet and merely parrots what the City's attorneys provided to him, the City cannot meet its burden of establishing that those opinions were reliably formed.

The City moved to bar Plaintiff's FBI expert Jeffrey Danik on similar grounds, accusing him of offering an "argumentative parroting" of Plaintiffs' factual evidence and "adopt[ing]"

Plaintiff's arguments. Dkt. 305-1 and 307 (Defs.' Motion to Bar Opinions of Jeffrey Danik) at 2, 6. The difference is that Danik applied his experience as an FBI public corruption investigator to identify and name flaws with the Chicago Police Department's investigation into Defendant Watts's corruption, whereas Mr. Noble adopted the criticisms written by the City's lawyers wholesale as his own. Courts rightly reject such attempts by attorneys to step into their experts' shoes.

"Exhibit 3" to Mr. Noble's report, which is a state-court disclosure from another case and which was written by lawyers, is not a valid disclosure of opinions.

For the same reason, Mr. Noble's disclosure of opinions contained in "Exhibit 3" is deficient under the Rules of Federal Procedure. Exhibit 3 is a disclosure of the City of Chicago in a state-court case. Ex. P (Ex. 3 to Mr. Noble's *Baker* disclosure). It is signed by one of the attorneys for the City of Chicago, not by Mr. Noble. Rule 26(a)(2)(B) requires the witness's written report disclosing his opinions to be "prepared and signed by the witness." A disclosure written by a lawyer and signed by a lawyer in a state-court case does not qualify. That case involves different plaintiffs, includes different claims (and has no federal claims), is governed by different disclosure rules, and is subject to a different legal standard for the admissibility of expert testimony. And in any case, Mr. Noble never claimed to adopt those opinions as his own in his report; it was merely listed as a material consulted.

Mr. Noble may not rely on undisclosed materials.

Mr. Noble's opinion also falters because he relied on undisclosed materials that Plaintiff was not able to question him about. *See Musser v. Gentiva Health Servs.*, 356 F.3d 751, 758 (7th Cir. 2004) ("The exclusion of non-disclosed evidence is automatic and mandatory under Rule 37(c)(1) unless non-disclosure was justified or harmless."). Further, Mr. Noble did not recall

those undisclosed materials well enough for Plaintiff to meaningfully examine him about their contents.

Mr. Noble purports to rely on more than 2,000 CRs he reviewed in previous cases. However, he testified that he could not remember anything about his work on those cases. Ex. D (Noble Dep.) at 97:10-24; Ex. Q (Noble Waddy Dep.) at 19:20-21:21. He provided no detail about those CRs and they have not been produced in discovery.

Similarly, Mr. Noble quoted someone in his report—it is unclear who—discussing bargaining related to the 2003 contract with the Fraternal Order of Police. Ex. C (Noble Report) ¶ 51. Even when the source document was eventually produced, that document made it unclear who was responsible for the quote and why the said it. Ex. R (City-BG-06399). And Mr. Noble disclaimed any knowledge about the specifics of any negotiations of any of the Fraternal Order of Police contracts he reviewed in this case. Ex. D (Noble Dep.) at 188:23-189:4.

Finally, although Mr. Noble says that CPD only used the designation "resigned under investigation" when officers were likely to be terminated or face other serious discipline, his only source for that assumption is that he "had information in another case where I gleaned that information" but "I can't think of where that was from." Ex. D (Noble Dep. at 310:1-6).

The Advisory Committee Notes on Rule 26 establish that such materials are discoverable. "Given [the] obligation of disclosure, litigants should no longer be able to argue that materials furnished to their experts to be used in forming their opinions--whether or not ultimately relied upon by the expert--are privileged or otherwise protected from disclosure when such persons are testifying or being deposed." Fed. R. Civ. P. 26 advisory committee's note. Defendants cannot have it both ways by inviting their expert to opine on these materials while not meeting their basic obligation of disclosure under Rule 26. Likewise, Mr. Noble cannot rely vaguely on having

"gleaned information" from other cases, but must identify sources to provide a foundation for his opinions, as he frequently failed to do.

Mr. Noble's contradictions demonstrate the lack of foundation for his opinion.

An expert is barred from providing opinions where he contradicts himself and lacks factual support for his conclusions. *Guile v. United States*, 422 F.3d 221, 227 (5th Cir. 2005). This is particularly true where an expert "takes a position in this litigation which is contrary to the opinion she has expressed to her peers in the past." *In re Zoloft (Sertraline Hydrochloride) Prod. Liab. Litig.*, 26 F. Supp. 3d 449, 465 (E.D. Pa. 2014); *see also United States v. 4.620 Acres of Land*, 576 F. Supp. 3d 467, 475 (S.D. Tex. 2021) ("Expert opinions that are unsupported, self-contradicted, or assumptive are to be excluded."); *Avendt v. Covidien Inc.*, 262 F. Supp. 3d 493, 524 (E.D. Mich. 2017) (barring opinion that "blatantly contradict[ed] expert's previous opinions").

At his deposition, Mr. Noble opined that "the criminal investigation outweighed the administrative investigation," so it was appropriate not to pursue administrative allegations against Defendant Watts. Ex. D (Noble Dep.) at 280:6-23; 292:25-293:13. Mr. Noble even accused Dr. Shane of giving an opinion "contrary to generally accepted standards" by saying that a concurrent administrative investigation should have been pursued because "[a]n administrative charge, which may or may not succeed, is secondary in this instance." Ex. C (Noble Report) ¶¶ 101-02. This is a key issue in Plaintiff's case because of the devastating consequences of the Chicago Police Department failing to act during the eight-year period while the FBI slow-pedaled a criminal investigation against Watts; as a result, nearly 200 people, including Plaintiffs Baker and Glenn, were framed and wrongfully convicted by Defendants.

In other cases where he was hired by the plaintiff, Mr. Noble offered the exact opposite standard he has stated in this case. He previously opined that the generally accepted standard in

policing for investigating claims of police misconduct **is to conduct concurrent criminal and internal affairs investigations**. Ex. S (Noble Transcript from *Curtin v. Cnty. Of Orange*) at 47:23-48:7; *see Curtin v. Cnty. of Orange*, No. SACV16-00591-SVW-PLA, 2018 WL 10320668, at *9 (C.D. Cal. Jan. 31, 2018). In that case, Mr. Noble went so far as to say that he has "never seen" a department that "actually stops the Internal Affairs investigations pending a criminal investigation," including in any of the research he's done, literature he's read, or conferences he's attended; instead, "all the information is just the opposite." Ex. S (Noble Transcript from *Curtin v. Cnty. Of Orange*) at 48:9-49:5; 80:3-20. Mr. Noble explained that it was good policy and common sense to take swift administrative action:

> [B]ecause if you have an officer who is engaging in serious misconduct, um, particularly a case where the officer has used his position of authority by wearing a uniform, and there's a likelihood that they could do that again, you want to conduct a concurrent investigation to remove that person from the field to protect the community . . . whether you send the person home or you put 'em on some kind of desk duty, **their overarching goal is to get this person out of the field**.

Id. at 52:17-53:7. (emphasis added). Mr. Noble has thus previously acknowledged that it is standard to conduct administrative investigations concurrently with criminal investigations and that the overarching goal of such investigations is to limit the harm to the community that the officer may cause. Mr. Noble lacks foundation for his now-contrary opinion that administrative action is "secondary" or somehow not standard among law enforcement agencies.

Likewise, in this case, Mr. Noble opined that it was okay to close police misconduct investigations where the complainant did not provide an affidavit, even though there were other steps that could be taken to pursue the investigation, like seeking affidavits from other sources, seeking an "override" (permission from a disciplinary agency head to continue the investigation), or gathering additional evidence. Ex. D (Noble Dep.) at 164:11-168:2. Again, this is the exact opposite of what Mr. Noble said in the past, when he opined that it would be "absolutely wrong"

to have a policy not to take administrative action against an officer unless and until the victim gives a statement "because, again, you need to if the allegations are founded or there's evidence that makes them appear to be founded, you need to remove this person who has a badge and a gun and a uniform from the field." Ex. S (Noble Transcript from *Curtin v. Cnty. Of Orange*) at 83:5-19.

Finally, Mr. Noble opined in this case that it was "absurd" to define "meaningful discipline" as a suspension of seven days or more (Ex. C (Noble Report) ¶ 72(b)) and that it was a "reasonable practice to take . . . written statements [instead of interviewing accused officers." Ex. D (Noble Dep.) at 95:12-96:2. Here again, in a previous case where he was hired by a plaintiff, Mr. Noble gave the opposite testimony. Then, he opined that the only "serious consequence" for substantial misconduct and dishonesty by police officers was termination. Ex. T (Noble Dep. from *Elison v. Lesher*) at 125:23-128:2 ("And should the Department discover that indeed they did indeed engage in that misconduct and that they lied, that there would be no serious consequences. They wouldn't lose their jobs.").

The Rules and applicable case law appropriately prohibit experts from speaking out of both sides of their mouths, and Mr. Noble's unexplained about-face on these topics central to his opinion demonstrate the lack of reliability or methodology behind his opinions. The corresponding sections of his opinion lack reliability, do not demonstrate a proper methodology, and should be barred. Ex. C (Noble Report) ¶¶ 48-57; 62; 72-73; 101-106.

Mr. Noble may not offer opinions he disclaimed.

Mr. Noble's report claims he will offer numerous opinions that he disclaimed at his deposition. Having disclaimed those opinions, he may not offer them at trial. *See Cooper v. Meritor, Inc.*, No. 4:16-CV-52-DMB-JMV, 2019 WL 545187, at *35 (N.D. Miss. Feb. 11, 2019) ("An opinion which has been disclaimed or abandoned by an expert is, of course, unreliable.");

Monje v. Spin Master Inc., No. CV-09-01713-PHX-JJT, 2015 WL 11117070, at *1 (D. Ariz. May 6, 2015), *aff'd*, 679 F. App'x 535 (9th Cir. 2017); *Est. of DiPiazza v. City of Madison*, No. 16-CV-60-WMC, 2017 WL 1910055, at *7 (W.D. Wis. May 8, 2017) (noting that expert opinion may be procedurally barred where the expert disavows having such an opinion at his deposition).

To start, Mr. Noble disclaimed providing an analysis or opinions about the "criminal investigation" into Watts—i.e., the eight-year investigation into Watts's corruption from 2004-2012, as described more fully in Dr. Shane, Mr. Danik, and Mr. Brown's expert reports. Ex. D (Noble Dep.) at 25:7-25. He clarified that the "criminal investigation" referred to the "task force that was being led by the FBI." *Id.* at 86:9-16. He testified that from 2004-2012 there were no active investigations of misconduct, meaning administrative investigations, against Defendant Watts. *Id.* at 56:13-22. Thus, although Mr. Noble describes several steps taken during the 2004-2012 criminal investigation into Watts and Mohammed (as he characterizes it), he may not opine that any of those steps indicate that the investigation was "reasonable," because Mr. Noble disclaimed any opinions regarding the quality of the criminal investigation and he testified that there were no other active investigations of Defendant Watts's misconduct. And because he has no opinion to offer, the discussion of the criminal investigation in his report (Paragraphs 86-106) will not help the jury and should be barred.

Another topic regards the leaking of sensitive information to Defendant Watts. On June 28, 2005, CPD Internal Affairs police agent Calvin Holliday wrote in a memo that "an officer who worked for Sergeant Watts on his tactical team" had "told Sergeant Watts of [confidential informant] Moore's cooperation." Ex. U (6.28.05 Holliday memo). In a sworn interrogatory response, the City of Chicago admitted that it had no information regarding who leaked Moore's identity or whether the City ever did anything to find out who did so, despite the leak of highly

confidential information (and its danger to the informant). Ex. V (Watts Coordinated Pretrial Proceedings Interrogatory Responses Dated May 21, 2024). Mr. Noble testified that he would not provide any opinion about whether the Chicago Police Department did enough to investigate the potential leak of an informant in an investigation against Defendant Watts; he knows the leak occurred, but won't opine about whether the CPD adequately responded to it. *Id.* at 279:17-280:5.

Similarly, Mr. Noble offers no opinions on whether there was a code of silence within CPD during the 1999-2011 timeframe. *Id.* at 48:9-49:6.

Having disclaimed these opinions, Mr. Noble should be precluded from offering any opinions about (1) the 2004-2012 joint criminal investigation by the FBI and CPD into the corruption of Watts, Mohammed, and other CPD officers; (2) whether CPD adequately investigated the leak of one of its cooperating witness's identity to Defendant Watts; and (3) the existence of a code of silence within CPD from 1999 to 2011.

Mr. Noble's "no evidence" opinions should be barred.

Noble offered several opinions that "no evidence" of bias, insufficient investigations, or other flaws exist regarding the Chicago Police Department. Specifically, he says there is "no evidence" that the City's policies "are just a façade"; that the City failed to accept or document complaints of officer misconduct; that there was bias, collusion, or any improper motive by **any** police misconduct investigator, supervisor, or manager; that CPD systemically failed to discipline officers who committed misconduct; that BIA or IPRA refused override requests (to investigate misconduct complaints without affidavits); that "any CPD officer would believe he could violate the constitutional rights of others with impunity"; or that "the Chicago Police Department failed to conduct reasonable investigations of allegations of officer misconduct, or that they failed to impose adequate, reasonable, and documented discipline designed to correct behavior, prevent future misconduct, and to serve as an example to other employees." Ex. C

(Noble Report) ¶¶ 17(g); 21(a); 22(o); 25-27; 50(d); 54; 107. These "no evidence" opinions are fundamentally flawed because (1) Noble has failed to review meaningful swaths of discovery relevant to that opinion and (2) Noble has not discussed the reasoning behind those "no evidence" findings or grappled with the evidence against them and thus has no foundation to so conclude. As Judge Coleman held regarding identical opinions from Noble, this sort of opinion not only invades the province of the jury but also fails to display a reliable methodology. *Est. of Loury*, 2021 WL 1020990 at *5 ("Not only did Noble invade the role of the jury by weighing evidence, he failed to connect the dots between the evidence he analyzed and the opinion that no evidence exists. To say that 'no evidence' exists also has the strong possibility of creating juror confusion.").

Mr. Noble offers several other opinions that lack foundation, are irrelevant, or make improper legal conclusions that must also be barred.

Mr. Noble's opinions on the Independent Police Review Authority ("IPRA") are irrelevant, lack methodology, and should not be allowed. Ex. C (Noble Report) ¶¶ 28-31; 65-66. Mr. Noble claims that IPRA strengthened Chicago's disciplinary system, but admits that he cannot say whether the outcomes of police misconduct investigations changed or improved after IPRA was created. Ex. D (Noble Dep.) at 125:5-13; 131:11-132:2; 136:5-10. Mr. Noble's analysis is incomplete and irrelevant to the jury because he did not analyze whether IPRA's creation in 2007 made Chicago's police disciplinary system, in practice, more or less effective.

Likewise, in his report, Mr. Noble appears to give the City of Chicago credit for having "independent," i.e., civilian-led, oversight of some complaints of police misconduct via IPRA. Ex C (Noble Report) ¶¶ 32-36. However, he clarified that he is not saying that independent oversight is better than police investigating police misconduct. Ex. D (Noble Dep.) at 123:10-124:6. Noble's opinion that independent oversight is rare—but not any better or worse than other

forms of oversight—is not relevant to the jury in deciding whether Chicago had a deficient disciplinary system that empowered Defendants to plant evidence on Plaintiffs as part of their corrupt scheme. Thus, allowing Mr. Noble to testify that CPD's disciplinary system had independent oversight would be misleading and confusing because it strongly suggests that he believes independent oversight is better. Mr. Noble should therefore be barred from testifying that CPD had independent oversight for its disciplinary system. *See Estate of Loury*, 2021 WL 1020990 at *4 (excluding Mr. Noble's opinions on IPRA's independence).

Mr. Noble also has no basis to provide a legal opinion and tell the jury what the law says about the affidavit requirement related to police misconduct investigations; any instruction on the law should come from the Court. Ex. C (Noble Report) ¶¶ 48-57; *see Simmons v. City of Chicago*, No. 14 C 9042, 2017 WL 3704844, at *11 (N.D. Ill. Aug. 28, 2017) (excluding Mr. Noble's legal opinions on the nature and effect of the affidavit requirement).

Mr. Noble likewise lacks foundation to opine on how the City of Chicago bargained union contracts with the Fraternal Order of Police. Ex. C (Noble Report) ¶¶ 67-71. As he admitted, he does not know any specifics about how those contracts were negotiated. Ex. D (Noble Dep.) at 188:23-189:4.

Finally, Mr. Noble's testimony that "no reasonable CPD officer could believe they could act inappropriately with impunity and that nothing would happen" invades the province of the jury and states an inappropriate opinion on the states-of-mind of CPD officers. It is for the jury to decide whether the City's disciplinary policies and practices caused Plaintiffs' wrongful convictions, and Mr. Noble has no foundation to opine on the mental state of the CPD's officers. *See Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003)

("[E]xpert testimony as to legal conclusions that will determine the outcome of the case is inadmissible.").

CONCLUSION

For the above reasons, Mr. Noble's opinions are based on unreliable premises, lack foundation, do not apply a reliable methodology, and do not reflect the reliable application of any methodology. His opinions should be barred.

Respectfully submitted,

/s/ Wallace Hilke
One of the attorneys for the Plaintiffs

Jon Loevy
Arthur Loevy
Scott Rauscher
Josh Tepfer
Theresa Kleinhaus
Sean Starr
Gianna Gizzi
Wally Hilke
LOEVY & LOEVY
311 North Aberdeen Street,
Chicago, IL 60607
(312) 243-5900
hilke@loevy.com