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

BEN BAKER and CLARISSA GLENN,	)	
	)	
Plaintiff,	)	
	)	Case No. 16 C 8940
v.	)	
	)	Judge Franklin U. Valderrama
CITY OF CHICAGO, et al.,	)	
	)	Magistrate Judge Sheila M. Finnegan
Defendants.	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' DAUBERT MOTION TO EXCLUDE THE OPINIONS OF JEFFREY NOBLE

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Defendants Alvin Jones, Miguel Cabrales, Douglas Nichols, Jr., Manuel Leano, Brian Bolton, Kenneth Young, Jr., Elsworth Smith, Jr., Robert Gonzalez, by their counsel, Hale & Monico, LLC, Defendants City of Chicago, Philip Cline, Debra Kirby, and Karen Rowan by and through their counsel Burns Noland, LLP, hereby respond in opposition to Plaintiffs' Daubert Motion to Exclude the Opinions of Jeffrey Noble. In support, Defendants state as follows:

INTRODUCTION

Plaintiffs disclosed a purported police practices expert Dr. Jon Shane to opine with respect to internal affairs matters and the CPD's disciplinary system. The problem for plaintiffs is that Dr. Shane has zero relevant internal affairs experience, and his report lacks any reliable methodology supported by generally accepted police practices. Instead, Dr. Shane invented a "codebook" for purposes of this litigation to create a misleading spreadsheet identifying whether certain tasks were or were not done in a particular Complaint Register ("CR") investigation. In addition to the fact the "codebook" has never been used or tested on any other police department, Dr. Shane failed to actually evaluate the merits of the CR investigations themselves by looking at their substance. By way of example, in Case Log #1022370, the complainant alleged that the police had "implanted a device inside [the complainant's] body and are stalking [him]," yet Dr. Shane's spreadsheet created by the codebook suggests the CPD should have conducted an investigation and certain tasks in response to this complaint despite the absurd and impossible nature of the allegation. Ex. 1, Case Log #1022370; Ex. 2, Excerpt of Shane Spreadsheet.

The City retained Jeffrey Noble to evaluate Dr. Shane's report, codebook, and CR data. Contrary to Dr. Shane, Mr. Noble is a leading expert in the country relative to internal affairs, has published books and articles on the subject, and has actual internal affairs experience while a police officer for several decades. Mr. Noble's opinion is devastating to Plaintiffs' reliance on Dr. Shane

and reveals his codebook and the data derived therefrom to be severely misleading to such an extent that the report as a whole is a mischaracterization of the CRs at issue and the CPD's disciplinary system in general. Mr. Noble actually read the 127 CRs Dr. Shane himself claims he "audited" (whatever that means) to evaluate their substance. Mr. Noble opines that the investigations were overwhelmingly reasonable, and provides a detailed analysis of each of the 127 CRs and the basis of his opinions in Exhibit 1 of his report. Mr. Noble's opinions are not simply conclusions: Exhibit 1 is a 127-page single spaced document summarizing the content of each of the 127 CRs, which provides a robust evaluation of each allegation and the CPD's investigation into the allegation, and points out innumerable areas where Dr. Shane's spreadsheet based on his codebook is misleading.

Plaintiffs' *Daubert* Motion to Exclude the Opinions of Jeffrey Noble ("Motion") is a desperate attempt at salvaging Dr. Shane's faulty opinions that are based on a manufactured codebook designed to reach a predetermined result: *i.e.*, the CPD's disciplinary systems were defective. Dr. Shane should be barred for all the reasons stated by Defendants in their motion to bar. And if Dr. Shane is somehow allowed to present his misleading data and baseless conclusions to the jury, Mr. Noble must be permitted to explain to the jury why Dr. Shane's opinions are a misrepresentation of the actual CR investigations and why the CPD's disciplinary systems meet generally accepted police practices.

In sum, Plaintiffs' Motion fails to establish that Mr. Noble's opinions are inadmissible under *Daubert* and Rule 702. Plaintiffs' wide-ranging, "kitchen sink" Motion fails to show Mr. Noble's opinions should be barred. Worse, Plaintiffs' 25-page Motion contains conclusory and underdeveloped challenges to Mr. Noble's opinions and mischaracterizes the record. Plaintiffs either misunderstand the purpose of a *Daubert* motion or seek to exhaust the Court's resources in

analyzing arguments that do not affect the admissibility of Mr. Noble's opinions. This Court should deny Plaintiffs' Motion in its entirety.

BACKGROUND

I. Mr. Noble's Experience and Qualifications

Mr. Noble was a police officer for 28 years, rising to the rank of Deputy Chief of Police with the Irvine (CA) Police Department. As a police officer, Mr. Noble held various assignments, including patrol, SWAT, narcotics, training, and internal affairs. Mr. Noble has a juris doctor degree and has published two textbooks on policing. In addition, Mr. Noble has presented before the International Association of Chiefs of Police and the Academy of Criminal Justice Sciences. Mr. Noble has been retained as police practice consultant in over 150 cases within the last 5 years alone, for both plaintiffs and defendants in both state and federal courts. Mr. Noble is a published and well-recognized national expert relative to, among other things, internal affairs. Indeed, he is a leading expert in the field who has written a book and articles on the subject and participated in multiple symposiums. See dkt. 325-2, at 2–21. Mr. Noble was also a contributor to the Department of Justice's report titled "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice" Relied on by Plaintiffs in their motion and discussed later in this response. Plaintiffs' challenges to the admissibility of Mr. Noble's opinions are baseless, especially when compared to those of the expert Plaintiffs proffered to discuss internal affairs in this case – Dr. Jon Shane – who never worked in internal affairs, is not published with respect to internal affairs, and has zero relevant experience in internal affairs.

II. Mr. Noble's Opinions

As explained in detail in his report, Mr. Noble reached opinions based on his review of the record in this case, as well as on his education, training, and experience. See Ex. 3, Expert Report of Jeffrey J. Noble (hereinafter "Noble Report"). These opinions include the following[1]:

- The Chicago Police Department Has Reasonable Policies Consistent with Generally Accepted Police Practices Regarding Police Officer Ethics, Untruthfulness, and Mandatory Reporting of Allegations of Fellow Officer Misconduct Between 1999-2011
- The Chicago Police Department Has Taken Reasonable and Appropriate Steps to Identify, Investigate and Discipline Officers Who Engage in Misconduct During At Least the Period of 1999-2011
- The Criminal and Administrative Investigations into Allegations of Officer Misconduct Conducted by the City of Chicago's Office of Professional Standards, IPRA, and the Chicago Police Department Internal Affairs Division were Reasonable
- There is No Evidence That the Chicago Police Department in Some Systemic Way Has Failed to Discipline Officers Who Engage in Misconduct
- Dr. Shane's "Code Book" and Analysis (Including the Tables in his Report) are Inconsistent with Generally Accepted Police Practices, Thus His Conclusions are Flawed
- Dr. Shane's Opinions Regarding the Affidavit Requirement is Without Merit
- The CPD Maintains a Reasonable Early Identification and Intervention System
- Any Basis That Dr. Shane Offers Regarding a Sustained Rate for Administrative Investigations to Support His Conclusions is Without Merit
- The City Council Has Not Ignored or Turned a Blind Eye to Allegations of Police Misconduct
- Any Reliance That Dr. Shane Places on an Article by Craig Futterman Titled "The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System" is Without Merit
- The Chicago Police Department Did Make Reasonable Efforts to Investigate Allegations of Misconduct Involving Watts and Mohammed, and other Members of the Tactical Team
- The CPD Appropriately Did Not Compromise the Joint FBI/IAD Watts Investigation By Administratively Moving to Discipline Watts or Mohammed before November 21, 2011, or by Transferring Them or Disbanding the Team
- No Reasonable CPD Officer Could Believe They Could Act Inappropriately with Impunity and That Nothing Would Happen
- The Chicago Police Department Took Reasonable Steps to Implement the Recommendations Made by the Webb Commission

[1] Plaintiffs purport to summarize Mr. Noble's opinions on pages 3–4 of their Motion, along with a cursory and undeveloped one-sentence argument after each opinion contending that these opinions should be barred. To the extent Plaintiffs fail to expand on these arguments later in their Motion, this Court should consider them waived. *Shipley v. Chi. Bd. Election Comm'rs*, 947 F.3d 1056, 1062-63 (7th Cir. 2020) ("Arguments that are underdeveloped, cursory, and lack supporting authority are waived"). For example, Plaintiffs provide no further discussion in their Motion of opinions Plaintiffs identify as Numbers 10 and 12. *See* Motion at 4.

- The City of Chicago and the Chicago Police Department Enhanced Its Abilities to Conduct Investigations of Officer Misconduct through Negotiated Changes in the Contract with Its Officers

Mr. Noble's report supports in detail each of these opinions. *See generally* Noble Report.

LEGAL STANDARD

Under Federal Rule of Evidence 702, proffered expert testimony is admissible if it is more likely than not that "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702; see also *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993). So long as "the proposed expert testimony meets the *Daubert* threshold of relevance and reliability, the accuracy of the actual evidence is to be tested before the jury with the familiar tools of 'vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof.'" *Lapsley v. Xtek, Inc.*, 689 F.3d 802, 805 (7th Cir. 2012) (quoting *Daubert*, 509 U.S. at 596).

Under *Daubert*, "the district court's role as gatekeeper does not render the district court the trier of all facts relating to expert testimony." *Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 765 (7th Cir. 2013). "The soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions based on that analysis are factual matters to be determined by the trier of fact." *Smith v. Ford Motor Co.,* 215 F.3d 713, 718 (7th Cir. 2000). Criticisms regarding the quality of expert testimony "do not go to admissibility but to the appropriate weight that should be accorded to the evidence." *Metavante Corp. Emigrant Sav. Bank*, 619 F.3d 748, 762 (7th Cir. 2010); see also *Gayton v. McCoy*, 593 F.3d 610, 616 (7th Cir. 2010).

ARGUMENT

Plaintiffs' scattershot Motion fails to rebut the admissibility of Mr. Noble's expert opinions. In fact, it is unclear to Defendants why Plaintiffs raised many of the arguments contained in their Motion as they either rely on a mischaracterization of the record or otherwise fail to approach the prerequisites for exclusion under *Daubert*. Nevertheless, Defendants must respond to each of Plaintiffs' wide-ranging assertions.

III. Mr. Noble Utilized A Proper Methodology

A. Mr. Noble Properly Opined Regarding the CPD's Police Misconduct Investigations

Plaintiffs first assert (at 6) that Mr. Noble's methodology regarding the appropriate standard to analyze the quality of internal affairs investigations "has not been accepted" and the use of a reasonableness standard is "invented." Plaintiffs are mistaken. Mr. Noble explained his methodology in detail in his report. Mr. Noble explains that the CPD has an open complaint process, all complaints are accepted, all complaints are investigated, and all complaints are given tracking numbers to ensure they are investigated and attributed to the officer against whom the complaint was made. Noble Report, at 14. Moreover, Mr. Noble opined, in part:

a. BIA, OPS and IPRA conduct interviews and interrogations of witnesses and subject officers.
b. BIA, OPS and IPRA conduct area canvasses in an attempt to locate additional witnesses.
c. BIA, OPS and IPRA take photographic evidence when appropriate, particularly to document the injuries of a complainant.
d. BIA, OPS and IPRA collect department reports regarding an incident including: crime reports; dispatch records; and staffing reports. These reports are included with the OPS investigative report. The inclusion of this material allows BIA, OPS, and IPRA and department supervision to review the reports as they are reviewing the BIA, OPS, and IPRA report and allows a level of oversight in that the reports are available for later review for matters like this.
e. BIA, OPS and IPRA seize evidence when appropriate.
f. BIA, OPS and IPRA direct evidence to be examined by experts when appropriate. For example, the submissions of weapons for potential trace evidence that would tend to support or discredit an officer's testimony.
g. BIA, OPS and IPRA collect and transcribe dispatch communication tapes when appropriate.

h. BIA, OPS and IPRA collect medical records of complainants and subject officers when appropriate.
i. BIA, OPS and IPRA document their investigative steps through written memorandums that are submitted to their supervisor as the investigation proceeds and through the investigators' case notes that are retained as part of the official record.
j. BIA, OPS and IPRA prepare reports that document their investigative efforts and their findings.

Noble Report, at 15–16, ¶ 22. Considering all of these circumstances, including the procedures utilized by the CPD's investigatory agencies, Mr. Noble concludes that the CPD's processes for investigations of police misconduct are reasonable. Plaintiffs acknowledge (at 7) Mr. Noble's opinions regarding these investigatory procedures but still incorrectly contend Mr. Noble does not "explain" why they are reasonable. Moreover, Plaintiffs assert that Mr. Noble "deploys highly irregular and non-standard definitions of police terminology." But from these arguments it becomes clear that Plaintiffs simply do not like Mr. Noble's opinions, not that they lack reliability or are otherwise inadmissible. While these arguments may be a matter for cross examination, they do not belong in a *Daubert* motion.

Plaintiffs also contend the reasonableness standard is "vaguely defined" and "novel." Plaintiffs are wrong; the Seventh Circuit approved of the reasonableness standard in *Jimenez v. City of Chicago*, 732 F.3d 710 (7th Cir. 2013), which Plaintiffs do not cite, even though it was Plaintiffs' counsel herein who proffered the expert approved by the Seventh Circuit in that case. In *Jimenez*, the Seventh Circuit recognized that, for a police practices expert, testimony regarding "reasonable investigative procedures" including whether the evidence did or did not deviate "from those reasonable procedures" was proper and admissible. *Jimenez*, 732 F.3d at 721. The Seventh Circuit continued, "McCrary testified about the steps a reasonable police investigator would have taken to solve the Morro murder, as well as the information that a reasonable police investigator would have taken into account as the investigation progressed." *Id.* at 722. Just like the plaintiff's

expert in *Jimenez*, Mr. Noble is offering expert testimony as to the reasonableness of certain police investigatory practices. Accordingly, Mr. Noble's testimony is admissible. *Id.*; see also *Abdullahi v. City of Madison*, 423 F.3d 763, 772 (7th Cir. 2005) (commenting that expert's testimony could be relevant to jury in determining whether officers deviated from reasonable police practices); *Sanders v. City of Chicago*, 2016 WL 1730608, at *10 (N.D. Ill. May 2, 2016) ("Dr. Gaut's opinions … go to the issue of whether Defendant Officers' investigative conduct departed from reasonable police practices, which is relevant to Sanders' theory of the case") (emphasis added) (citing *Jimenez*, 732 F.3d at 721-22); *Hopkins v. City of Huntsville, Ala.*, 2014 WL 5488403, at *5 (N.D. Ala. Oct. 29, 2014) ("The expert opinion of Dr. Gaut on the issue of whether defendants' actions and policies were consistent with reasonable, typical police practices and procedures is admissible, however, and will be considered by this court.") (citing *Jimenez*, 732 F.3d at 721-22).

Citing to Mr. Noble's deposition transcript, Plaintiffs contend (at 6) Mr. Noble "admitted he might have been the first one to come up with" the reasonableness standard. Plaintiffs' citation to Mr. Noble's deposition transcript does not support that contention. Mr. Noble testified that he was unaware of who first used the reasonableness standard and responded to Plaintiffs' counsel's compound question of "did you come up with it or did you get it from someone else?" with "I don't know." Ex. 4, Deposition of Jeffrey Noble (hereinafter "Noble Dep."), at 142:7–22. As set forth in Mr. Noble's deposition's errata sheet, one of the bases of Mr. Noble's reference to the reasonableness standard is the Seventh Circuit's decision in *Jimenez*. Ex. 5, Noble Errata Sheet. Plaintiffs' arguments (at 6–7) that the reasonableness standard only appears in non-peer-reviewed literature are incorrect and should be rejected.

Plaintiffs next argue (at 8) that the appropriate standard to utilize is "thorough and complete" and Mr. Noble "has no basis to replace the broadly established 'thorough and complete'

standard." Plaintiffs purport to support this "thorough and complete" standard by referencing, *inter alia*, a report titled "Department of Justice: Standards and Guidelines for Internal Affairs – Recommendations from a Community of Practice" ("DOJ document")[2]. Mr. Noble is aware of this document. In fact, Mr. Noble was a contributor to the development of this document (DOJ document, at 8), and the document strongly supports the use of a "reasonableness" standard that was approved by the Seventh Circuit in *Jimenez* and its progeny, and used by Mr. Noble. Specifically, the DOJ document explains:

> The guiding principle informing this section of the report is that all complaints made by members of the public and all internal complaints of a serious nature, as determined by the agency, must be investigated. ***The extensiveness of the investigation may vary from complaint to complaint commensurate with the seriousness and complexity of the case. Some small number may be capable of resolution after a cursory or truncated investigation***.

DOJ document, dkt. 325-6 (Exhibit F), at 27 (emphasis added). The DOJ document further states:

> A "complete investigation" is one which includes all relevant information required to achieve the purpose of the inquiry. *A complete investigation is not necessarily exhaustive. There are many inquiries where a good faith professional judgment determines that sufficient relevant evidence of all points of view has been acquired, and where collecting more information merely would be cumulative.*
>
> Commentary
> *Rules for complaint processing vary dramatically and for many reasons. Arriving at exactly one process applicable to all agencies in all cases appears to be impracticable. In general, agencies have to consider how much decision authority they are willing to repose in each part of the process, how much oversight they want to create to monitor the results of the exercise of that authority, and what counts as a complete investigation given at least the factors described above.*

[2] Plaintiffs further cite a State of New Jersey report and an International Association of Chiefs of Police report, for the proposition that the standard for an investigation is "thorough and complete." But these reports fail to define what is meant by a thorough and complete investigation and, in any event, they otherwise to do not support a "broadly established" national standard.

Id. at 28 (emphasis added). The DOJ document also states "[t]he documentation of investigations must be thorough, complete, and as *comprehensive as reasonably necessary*." *Id.* at 36 (emphasis added).

Far from suggesting "thorough and complete" as the "broadly established" national standard, the Department of Justice ("DOJ") explicitly allows for varying extensiveness of investigations based on the particular case. The DOJ recognizes "[a] complete investigation is not necessarily exhaustive. There are many inquiries where a good faith professional judgment determines that sufficient relevant evidence of all points of view has been acquired, and where collecting more information merely would be cumulative." Simply put, the DOJ embraces a reasonableness standard for investigations, which is in accord with Mr. Noble's opinions herein. Plaintiffs did not provide this Court with the complete DOJ position, perhaps because the complete position refutes Plaintiffs' argument and undermines Plaintiffs' Motion.

Furthermore, Plaintiffs' own expert, Dr. Shane, likewise embraced a reasonableness standard. In his deposition, Dr. Shane was asked regarding the joint FBI/IAD investigation, as follows:

> 15 Q. So your determination that the length
> 16 of time was too long, is that based on your
> 17 subjective belief that it took a long period of
> 18 time?
> 19 A. It's based on my understanding of how
> 20 internal affairs investigations are carried out
> 21 *and the reasonableness of those kinds of*
> 22 *investigations*.

Shane Dep. 212:15–22 (emphasis added). While Defendants disagree with Dr. Shane's ultimate conclusions regarding the Joint FBI/IAD Investigation, they agree with Dr. Shane that the standard is one of reasonableness. Plaintiffs are wasting this Court's time by raising this contradictory and facile argument.

Separately, even though "thorough and complete" is not the standard in which to analyze police misconduct allegations, Plaintiffs fail to explain how this "standard" is not incorporated into the reasonableness standard used by Mr. Noble. "Reasonable" in the context of Mr. Noble's opinions and a "thorough and complete" standard that Plaintiffs advance here do not appear to be contradictory standards. In fact, Mr. Noble opined as follows:

> To determine the quality of an investigation ***a reviewer should look at the totality of circumstances to assess if the investigation was reasonably thorough, fair and timely.*** The reviewer must recognize that investigators, who while appropriately trained, are not attorneys or experts, nor should they be held to such a high standard.

Noble Report, at 28, ¶ 44. Mr. Noble discusses a "thorough" investigation based on a "totality of the circumstances," and he recognized the CPD's investigatory agencies undertook "full, fair, thorough, and detached administrative investigations." *Id.* at 22, ¶30. And, Mr. Noble properly described the reasonableness standard when asked at his deposition. Specifically, he stated:

> A reasonable investigation is one where you accept allegations of misconduct, that you document the -- the allegation, that you conduct a investigation that may include, depending on the case, the interview of a complainant, a witness, a victim, that may include interviews of witness officers or -- and -- and subject officers, that may include the collection of different types of evidence, depending on the allegations and this type of investigation that's going to be conducted, that you document your investigation in a written report, that you make reasonable conclusions based on the evidence, that -- that you -- you arrive at a reasonable conclusions, and that -- that if a case is sustained, that you impose or you recommend reasonable disciplinary sanctions to change the employee's behavior.

Noble Dep., at 195:10–196:1. Mr. Noble's use of the term "reasonable" to describe the investigations—a standard approved by the Seventh Circuit in *Jimenez*—is not inconsistent with the concept of "thorough and complete."

Plaintiffs argue (at 9) Mr. Noble's opinions regarding reasonable police practices should be barred because the court in *Estate of Loury by Hudson v. City of Chicago*, 2021 WL 1020990 (N.D. Ill. Mar. 17, 2021), previously rejected them. In that case, the court barred certain opinions

of Mr. Noble because he merely "jump[ed] to the conclusion that [the CPD's policies] are reasonable." As explained, Mr. Noble sets forth in great detail how he reaches his conclusion that the CPD policies and investigations are reasonable—a standard approved by the Seventh Circuit in *Jimenez*. But it appears the *Loury* court did not analyze the *Jimenez* decision, including the reasonableness standard for police practices experts, beyond the inclusion of the quote "expert testimony regarding sound professional standards governing a defendant's actions can be relevant and helpful." 2021 WL 1020990, at *3.[3] Whether and to what extent the reasonableness standard approved in *Jimenez*, and Mr. Noble's support for concluding the CPD's policies were reasonable, were not adequately presented to the *Loury* court, Defendants provide this Court with the reasons why Mr. Noble's opinions are proper and admissible.

As set forth above, Mr. Noble provided a lengthy description of why the policies are reasonable in his report. Moreover, he studied over 150 CRs in this case, and over 2,000 CRs in other CPD cases, supporting his opinion that the CPD's disciplinary process and investigations are reasonable. Mr. Noble attached to his report as Exhibit 1 a 127-page detailed evaluation of 127 CRs "audited" by Plaintiffs' expert Dr. Shane outlining the CR investigations. He explained why Dr. Shane's "audit" and spreadsheet criticizing the CR investigations was unsupported, and detailed, based on that analysis, that the overwhelming majority of the CR investigations were reasonable based on the investigation conducted. Noble Report, Exhibit 1, at CITY-BG-062990–063116. Accordingly, this Court should analyze the admissibility of Mr. Noble's opinions based on his detailed report and exhibits in *this* case, the Seventh Circuit's decision in *Jimenez,* and the briefing in *this* case. Whatever was presented to the court in *Loury*, the exclusion of Mr. Noble's opinions is not supported or warranted in this case.

[3] Of course, to the extent *Loury* is inconsistent with *Jimenez*, this Court should follow the Seventh Circuit decision in *Jimenez*.

What's more, if Dr. Shane—with zero internal affairs experience—is allowed to testify as an expert that the CPD's disciplinary system is defective based on raw data without even analyzing the actual content of any of the CRs (beyond identifying whether a particular task was completed in the CR, irrespective of whether the task would have been helpful to the investigation), Mr. Noble must certainly be allowed to discuss what actually transpired in the specific CR investigations. Any other result would be fundamentally unfair, contradict the Seventh Circuit's holding in *Jimenez*, turn Rule 702 and *Daubert* on their head, and ultimately present a half-truth to the jury, thus depriving Defendants of a fair trial.

B. Mr. Noble's Opinions Regarding Other CPD Policies are Proper

Relatedly, Plaintiffs argue (at 9–11) that 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 opined, in part, as follows:

> In my opinion, between 1999-2011, the Chicago Police Department took reasonable and appropriate steps to identify, investigate and discipline officers who engaged in misconduct. Specifically:
>
> a. The Chicago Police Department accepted community member complaints, issued CR numbers, tracked complaints and investigations, maintained records, maintained statistics on its administrative investigations and disciplinary actions and made this statistical information available to the public through its annual reports.
> b. As more fully described below, the criminal and administrative investigations conducted by the Chicago Police Department's Internal Affairs Division, the chain-of-command, the Office of Professional Standards (OPS), and the Independent Police Review Authority (IPRA) into allegations that members of the Chicago Police Department engaged in misconduct, met with reasonably objective standards for the conduct of such investigations.
> c. The records of the CPD disciplinary actions as provided in their annual reports confirm that the CPD took action against its employees who engage in misconduct.
> d. The CPD did not turn a blind eye, or acted with deliberate indifference, toward accepting complaints of officer misconduct, conducting reasonable criminal and administrative investigations or imposing reasonable disciplinary actions when warranted, that would cause a reasonable police officer to believe that he could violate the constitutional rights of another with impunity.

Noble Report, at 13–14, at ¶ 19. Mr. Noble further opined:

> The Chicago Police Department accepted complaints of allegations of officer misconduct and those complaints were investigated by the chain-of-command, BIA, OPS and IPRA.
>
> a. There is no evidence that the Chicago Police Department failed to accept or document complaints of officer misconduct. Indeed, the evidence is that the Chicago Police Department has an open complaint process and that all complaints are accepted.
> b. The Chicago Police Department assigned tracking numbers to all complaints to ensure that all complaints are investigated and that the allegations may be attributed to the officer whom the complaint was made against.

Id. at 14–15, ¶ 21.

Plaintiffs contend "Mr. Noble never explained where that standard came from or why he uses it," and they further argue this standard is a "low bar for police departments." Initially, as explained, the reasonable standard was embraced by the Seventh Circuit in *Jimenez*. Citing no support, Plaintiffs do not explain how or why they have reached the conclusion that reasonableness is a "low bar for police departments." In fact, as explained, Mr. Noble's use of "reasonableness" follows the DOJ's guidance and is not inconsistent with Plaintiffs' preferred "thorough and complete" standard. Finally, Plaintiffs incorrectly assert (Motion, at 9) that Mr. Noble "described the bottom-line test for whether the system was 'reasonable' as evaluating whether" the system is turning a blind-eye to misconduct thereby leading an officer to believe he "could engage in constitutional violations with impunity." Consistent with Plaintiffs' approach throughout the Motion, Plaintiffs fail to include the entirety of Mr. Noble's testimony in order to mischaracterize and challenge his opinions. Mr. Noble's actual testimony is that he considered "a number of factors" (*i.e.*, the totality of the circumstances) in evaluating the reasonableness of a disciplinary system, including the underlying policies and rules, whether there was a widespread and pervasive belief among officers that they could engage in misconduct, whether there was a widespread pervasive practice of failing to accept complaints, whether administrative charges or criminal

charges result from allegations, and whether civil litigation is initiated. Noble Dep., at 112:14–121:5.

Next, relying on their own retained expert, Dr. Shane[4], Plaintiffs argue (at 10) 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." But as explained above, Mr. Noble did not merely look at CR files in reaching his conclusion that the CPD's disciplinary system was reasonable. More importantly, the CRs Mr. Noble reviewed and identified in Exhibit 1 to his report were the CR files identified and "audited" *by Dr. Shane*. Therefore, Plaintiffs' assertion that Mr. Noble "does not know whether he reviewed enough disciplinary investigations" to opine that the disciplinary system is reasonable has no bearing on Mr. Noble's opinion and is complete misdirection. Mr. Noble's opinion was based on the totality of the circumstances identified above, and the CR files he reviewed were those that Dr. Shane "audited."

Plaintiffs next argue (at 10) that Mr. Noble's opinions regarding the reasonableness of "the City's policies," contained at paragraphs 16–27, 50, and 83–85 of his report, should be barred because they are "without reference to a model policy or national standard against which they could be compared or explaining how he compared them." This cursory and undeveloped argument, comprising three sentences, is waived. *Shipley v. Chi. Bd. Election Comm'rs*, 947 F.3d 1056, 1062-63 (7th Cir. 2020). If Plaintiffs believe these opinions are inadmissible, they should be required to properly argue why each should be excluded. Instead, without any developed argument, Plaintiffs simply seek to have the Court scour Mr. Noble's expert report and determine whether Mr. Noble's opinions are "equally flawed" based on a comparison to *Estate of Loury*. The Court

[4] Defendants have moved to bar the opinions of Dr. Shane based on, *inter alia*, his flawed methodology. See dkt. 326. Moreover, as explained, unlike Mr. Noble, Dr. Shane does not have any relevant internal affairs experience or background.

should decline the invitation to do Plaintiffs' work. *See Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011) (the court is not "obliged to research and construct legal arguments for parties, especially when they are represented by counsel"). Even if not waived, the argument fails. Mr. Noble properly opined to the reasonableness of the policies, *Jimenez*, 732 F.3d 721-22, and explained in great detail the facts and data supporting his opinions.

Finally, Plaintiffs suggest (at 11) that Mr. Noble's opinions regarding the early identification and intervention systems should be barred because "Mr. Noble has no information about how many officers were flagged by the system." This argument, like the others, is without merit. Mr. Noble properly opined, in part:

> The Chicago Police Department has developed and implemented reasonable policies to control the conduct of their officers and for the intervention of officers who may be displaying problematic behavior that does not reach the level of disciplinary action.

Noble Report, at 36, ¶ 59. As explained, Mr. Noble may permissibly opine that the CPD's policies were reasonable. See *Jimenez*, 732 F.3d at 721-22. To the extent Plaintiffs believe that the exact number of officers flagged is important or somehow undermines Mr. Noble's opinions, they are free to explore it on cross-examination as it goes to the weight, not admissibility, of Mr. Noble's testimony.

IV. Mr. Noble Permissibly Opined Regarding the Flaws in Dr. Shane's Methodology

Plaintiffs next contend (at 11–13) that Mr. Noble's opinions critical of Dr. Shane's flawed methodology should be excluded. Regarding Dr. Shane's unsound methodology, Mr. Noble opined as follows:

> Dr. Shane created a "code book" and provided a 90-minute training session to 12 unidentified attorneys working for plaintiff's counsel to review a sampling of 1,270 administrative investigations. Dr. Shane said he then reviewed 10% of the investigations (127) to inspect the coders' accuracy. However, while Dr. Shane wrote in his report and testified that he reviewed 127 of the CRs to determine the reviewers' accuracy, he also testified that he read every CR that was produced in

> this matter that he estimated that to be over 1,000. Based on Dr. Shane's testimony that he reviewed every CR, it is unclear why he would use 12 coders working for the plaintiffs' lawyers who he had to train and who apparently lack the expertise to review the CRs without instruction instead of simply relying on his own analysis of the CRs that he claims he read.

Noble at 24, ¶ 37. Noble further opined as to the flaws inherent in Dr. Shane's methodology, specifically with respect to the gathering and reporting of data. For example, Mr. Noble opined that "Dr. Shane's code book directs the coders to identify the complaint as not being investigated if the complaint was closed due to lack of cooperation of the complainant or if there was no affidavit." *Id.* at ¶39(a). Mr. Noble continued as follows:

> Indeed, the spreadsheet (and corresponding tables in Dr. Shane's report) is fatally flawed in that it not only applies a standard that is inconsistent with generally accepted police practices, but it contains many errors and is inaccurate. For example, the spreadsheet:
>
> a. Incorrectly claimed that complainant was not contacted, but the complainant was contacted, or reasonable efforts were made to contact the complainant.
> b. Incorrectly claimed that witnesses were not contacted.
> c. Incorrectly claimed that a victim was not contacted.
> d. Incorrectly claimed there were no interviews where the subject and witness officers submitted written statements or where subject or witness officers were not identified.
> e. Incorrectly claimed that subject officer was not identified.
> f. Incorrectly claimed there were no reasonable efforts made to contact the victim.
> g. Claimed the investigation was not completed even though a declination form was signed by the complainant, or the complainant failed to cooperate with the investigation.
> h. Incorrectly claimed complainant/victim/witness not interviewed or did not provide a statement.

Noble Report at 29, ¶ 45. These flaws identified by Mr. Noble provide the basis for his opinion that Dr. Shane's methodology is unsound. Mr. Noble properly opined as to the correct methodology, noting:

> To determine the quality of an investigation a reviewer should look at the totality of circumstances to assess if the investigation was reasonably thorough, fair and timely. The reviewer must recognize that investigators, who while appropriately trained, are not attorneys or experts, nor should they be held to such a high standard.

Noble, at 28, ¶ 44.

Plaintiffs mischaracterize Mr. Noble's criticisms, suggesting that Mr. Noble was not critical of how Dr. Shane's tables "added up data" or whether these tables were "accurate." (Motion, at 12). This argument distorts Mr. Noble's observations. Mr. Noble opined that the data Dr. Shane entered into his tables was flawed based on the improper, invented, and never before used "codebook" utilized by Dr. Shane to create that data, such that whatever conclusion or opinion based on the flawed data is likewise unsound.[5] Moreover, Plaintiffs' argument that Mr. Noble "did not disagree with any of the math or statistical analysis conducted by Dr. Shane," or that Mr. Noble did not criticize the "kinds of data used," also misses the point. That Dr. Shane entered flawed data into his tables and then tried to divine from this flawed data some conclusion about the CPD's policies is the issue. Flawed data correctly added with other flawed data may provide a mathematically accurate result, but the conclusions will still be flawed. Dr. Shane's "garbage in, garbage out" approach, which Mr. Noble properly identified, serves as the basis for Mr. Noble's criticisms. Plaintiffs fail to establish that Mr. Noble's opinions regarding Dr. Shane's flawed methodology should be barred.

Plaintiffs next contend Mr. Noble "parroted criticisms written by defense counsel instead of conducting his own analysis." This argument is particularly ironic given that Dr. Shane used 12 unidentified attorneys working for Plaintiffs' counsel to perform his review and spreadsheet. Noble Rep. at 24, ¶37; Shane Report at 17. In any event, Plaintiffs contend (at 15) Mr. Noble "does not

[5] As explained in Defendants' motion to bar Dr. Shane, Dr. Shane developed this "codebook" specifically for purposes of this litigation, it has never been utilized by any police department or purported expert, and it was "designed for a result," Noble Dep. 212:1–8, not to conduct a fair analysis of the CRs and the CPD's disciplinary system. As a result, the data included in the Loevy firm's spreadsheet relied on by Dr. Shane is misleading and misrepresentative of the actual CR investigations. It cannot be overstated how the introduction of Dr. Shane's data based on his flawed "codebook" would be violative of Rule 702 and Daubert. Indeed, the data derived by Dr. Shane based on his flawed codebook was specifically designed to mislead the jury.

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." Plaintiffs' arguments are irrelevant. Those things do not matter as to whether the criticisms of Dr. Shane's methodology, as identified by Mr. Noble, were valid. For example, the amount of people who wrote the summaries or whether those people were lawyers do not affect the reliability of Mr. Noble's opinion. Indeed, Plaintiffs identify no flaws in Mr. Noble's analysis, which is why they seek to misdirect the Court with irrelevant arguments. As even Plaintiffs recognize, Mr. Noble reviewed both the CRs and the summaries, and the fact that he did not "check each fact or review each line of the summaries against the CRs" is immaterial. As Mr. Noble testified, he reviewed the CRs to compare them to the summaries provided to him and confirmed they are accurate, and Plaintiffs do not identify a single inaccuracy in any of them. Plaintiffs' desperate attempt to undermine Mr. Noble, likely in an attempt to cover the flaws inherent in their own expert's methodology, does not require Mr. Noble's opinions to be barred.[6]

Finally, Plaintiffs assert (at 16) that Exhibit 3 to Noble's Report is "a state-court disclosure from another case" and is not a valid disclosure. Plaintiffs' reference to Exhibit 3 as a mere "state-court disclosure from another case" is highly misleading, as Mr. Noble properly adopted these opinions contained in Exhibit 3. That "state-court case" is *Waddy v. City of Chicago*, 2019-L-010035 (Cir. Ct. Cook, Cnty, Ill.) a "Watts case" in which Plaintiffs' counsel here is also counsel for plaintiff Waddy. Indeed, Plaintiffs' counsel asked Mr. Noble questions about the *Waddy* case in his deposition in this case. Moreover, Plaintiffs' Motion (at 17) references Mr. Noble's deposition testimony from the *Waddy* case for one of their assertions. In his deposition in this case

[6] Plaintiffs argue (at 15–16) that Defendants moved to bar Plaintiffs expert Danik "on similar grounds," then purport to distinguish Danik's methodology. To the extent Defendants understand the import of this argument in this Motion, it is more properly raised in the briefing pertaining to Defendants' motion to bar Danik. See dkt. 307.

and in the *Waddy* case, Mr. Noble confirmed that Exhibit 3 contains his opinions. Noble Dep. 73:20–25; Noble Dep. (Waddy) 40:15–41:19. Plaintiffs' counsel is intimately familiar with Mr. Noble's *Waddy* disclosure, and any suggestion otherwise is disingenuous.

V. Plaintiffs' Contention That Mr. Noble Impermissibly Relied on Undisclosed Materials is Without Merit

Plaintiffs argue (at 16–17) that Mr. Noble relied on various materials that were not disclosed and, therefore, certain opinions should be barred. Plaintiffs are incorrect. Moreover, these are matters that should be raised on cross-examination, not addressed through a *Daubert* motion. First, Plaintiffs point out that Mr. Noble referenced 2,000 CRs that he reviewed in other cases and "he could not remember anything about his work in those cases." Plaintiffs do not state what relief they are seeking with this argument, or what opinion they are seeking to have barred. If Plaintiffs believe this undermines Mr. Noble's testimony, they are free to explore it at trial. It also would appear to contradict Plaintiffs' prior argument that Mr. Noble did not provide a sufficient basis and explanation of his conclusion that the CPD's disciplinary policies are reasonable.

Plaintiffs also argue that Mr. Noble "quoted someone in his report" regarding the bargaining of the 2003 FOP contract, and because he now does not recall this person or the context of the quote, his opinion should be barred. But Defendants provided Plaintiffs' counsel with documents relating to this issue which fully support Mr. Noble's opinions and the quotation he relied on. Ex. 6, CITY-BG-063999–064003. Plaintiffs also complain that Mr. Noble could not recall a source of his understanding of the term "resigned under investigation," only that it came from another case. Again, this criticism is a matter for cross-examination, not admissibility.

VI. Plaintiffs' Assertions that Mr. Noble Contradicted Himself Are Without Merit

Plaintiffs next contend (at 18) that Mr. Noble's opinions should be barred because he "contradict[ed] himself" based on testimony/opinions given in separate cases, each with different facts.[7] Assuming Plaintiffs can actually establish Mr. Noble has contradicted himself, it at most goes to the weight of his testimony and can be fodder for cross-examination. It does not go to admissibility. Therefore, this Court need not consider Plaintiffs' arguments on this issue.

Nevertheless, to the extent this Court wishes to consider Plaintiffs' arguments, a fair-minded analysis reveals Mr. Noble did not contradict himself. Plaintiffs assert that, in his deposition in this case, Mr. Noble "opined that 'the criminal investigation outweighed the administrative investigation,' so it was appropriate not to pursue administrative allegations against Defendant Watts," but in a case filed in the Central District of California, Mr. Noble opined that "the generally accepted standard in policing for investigating claims of police misconduct is to conduct concurrent criminal and internal affairs investigations." (Motion, at 18-19). Mr. Noble's testimony from a different case, based on the specific facts of that other case, does not show Mr. Noble "contradicted" himself in this case. The case on which Plaintiffs rely, *Curtin v. County of*

[7] Plaintiffs cite several out-of-circuit cases for the proposition that an expert who contradicts himself must be barred. However, a closer look at Plaintiffs' cited cases do not support Plaintiffs' sweeping proposition. For example, in *In re Zoloft (Setraline Hydrochloride) Prod. Liab. Litig.*, 26 F. Supp. 3d 449 (E.D. Pa. 2014), the expert was barred for *several reasons*, including that the expert previously released a study that "examined whether the duration of antidepressant use during the first trimester of pregnancy was associated with the occurrence of birth defects, and found that it was not" but then opined that "SSRIs [a type of antidepressant], in general, and Zoloft, in particular cause a wide range of birth defects when used during pregnancy." 26 F. Supp. 3d at 464, 465 ("In summary, Dr. Bérard takes a position in this litigation which is contrary to the opinion she has expressed to her peers in the past, relies upon research which her peers do not recognize as supportive of her litigation opinion, and uses principles and methods which are not recognized by the relevant scientific community and are not subject to scientific verification). In *Guile v. United State*s, 422 F.3d 221, 227 (5th Cir. 2005), the expert's opinion was "unsupported by any data (such as studies evaluating treatment techniques), in addition to later being contradicted by him, or to be nothing but his incorrect factual assumptions based on examination of incomplete records." In *Avendt v. Covidien Inc.*, the expert's opinion that "Permacol was unsafe for use in [plaintiff's] Class I wound" was barred because the expert's "own research and publications, discussed at length *supra*, support the conclusion that Permacol is appropriate for use in a Class I wound" 262 F. Supp. 3d 493, 524 (E.D. Mich. 2017) (barring opinion because it "is not the product of generally accepted (or even personally accepted) reliable scientific principles or methods").

Orange, involved an investigator that "followed the County's policy and did not begin his investigation of the alleged misconduct or take any investigative steps whatsoever because of the pending criminal investigation." 2018 WL 10320668, at *4 (C.D. Cal. Jan. 31, 2018). Here, Mr. Noble opined:

> The CPD appropriately did not compromise the integrity of the Joint FBI/IAD Watts Investigation before the USAO indicted Watts and Mohammed. Dr. Shane admitted that had the CPD moved administratively, it necessarily would have had to reveal the evidence developed with and controlled by the federal government, and had it done so, Watts may never have been indicted.
>
> It is also important to send a message to all police officers that corruption will not be tolerated, and if an officer engages in corruption, they will be criminally investigated, prosecuted, and, if convicted, go to prison. An administrative charge, which may or may not succeed, is secondary in this instance.

Noble Rep., at 57-58, at ¶¶ 101–102.

In this case, the CPD's Internal Affairs Division participated with federal authorities in a joint, federally-led investigation of alleged police misconduct. In *Curtin*, there was no ongoing federal criminal investigation, particularly one where the federal government determined it would be and was in charge of the FBI/IAD Investigation, and where the United States Attorney's Office stated it would control and did control the results of everything that resulted from the joint FBI/IAD investigation. More importantly, IAD *was* involved in the joint investigation of Watts and Mohammed. It cannot be said, as it was in *Curtin*, that IAD did not "begin an investigation" or did not "take any investigative steps whatsoever." Mr. Noble's testimony in *Curtin* thus does not contradict his testimony with respect to the facts of this case. And again, to the extent Plaintiffs believe this testimony is contradictory, they can explore it on cross-examination (so long as they do not mislead the jury as to the details of the *Curtin* case).

Next, Plaintiffs assert (at 19-20) that Mr. Noble opined here that "it was okay to close police misconduct investigations where the *complainant* did not provide *an affidavit*," while he

opined the "exact opposite" in *Curtin* when he said "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*…." (emphasis added).[8] For starters, Plaintiffs conflate a complainant providing an affidavit with a victim providing a statement and then reach the conclusion that Mr. Noble contradicted himself. These terms are not the same, and therefore Mr. Noble's testimony is not contradictory. To the extent Plaintiffs believe otherwise, they are free to address on cross-examination.

Moreover, Mr. Noble's opinion that an affidavit is required is based on Illinois state law. That Plaintiffs believe Mr. Noble's testimony is contradictory here because of his testimony in *Curtin*, which was based on the laws and facts of that case, is not a reason to bar his opinions with respect to this case. Specifically, in this case, Mr. Noble opined as follows:

> However, I disagree with Dr. Shane's opinion that the CPD has the ability to investigate complaints without an affidavit. In fact, the CPD is constrained in investigating these complaints not due to some internal decision to shelter officers from allegations of misconduct, but because they were prohibited from investigating these complaints due to state law.

Noble Report, at 30. Mr. Noble continued:

> It is inappropriate to criticize the CPD for following Illinois state law that requires an affidavit be signed by a complainant. For CPD to do otherwise would be unlawful. Moreover, the City made efforts through contract negotiations to conduct investigations absent an affidavit in certain circumstances.

[8] Plaintiffs fail to provide the entirety of the transcript of Mr. Noble's testimony in *Curtin*. See Ex. S. at dkt. 320-19. This alone should be a basis to reject Plaintiffs' assertion that Mr. Noble contradicted himself. Plaintiffs cite page 83, lines 5 through 19 for support, but the transcript Plaintiffs provide cuts off after page 83, with a question pending for Mr. Noble. Plaintiffs' failure to provide a complete transcript aside, any contradictions they believe exists are more properly addressed on cross-examination, rather than through a *Daubert* motion.

Mr. Noble's opinion in this case was formed based on Illinois' requirement, during the relevant time period at issue, that a signed affidavit is necessary to pursue allegations of misconduct. There is no "contradiction" as imagined by Plaintiffs.

Finally, Plaintiffs contend (at 20), Mr. Noble's opinion regarding "meaningful discipline" is contradictory and should be barred in light of his testimony in the case of *Elison v. Lesher*, No. 11-CV-00752 (E.D. Ark.). Here, Mr. Noble opined, with respect to Craig Futterman's baseless assertion that "meaningful discipline" amounts to a suspension of seven or more days, as follows:

> 1.) A seven-day suspension is nothing more than an arbitrary number designed to create the appearance of a low complaint sustained rate.
> 2.) The purpose of discipline is to alter the offending behavior of an employee. The idea that a suspension of seven days or longer is meaningful to change behavior, while disregarding other forms of disciplinary actions designed to correct and modify employee knowledge, attitudes, skills, behavior, and performance so that the employee will recognize deficiencies and change their objectionable conduct, is absurd. The standard to judge discipline is not whether or not the disciplinary action amounted to a suspension of seven days or greater, but if the disciplinary action was a reasonable and appropriate corrective action.

Noble Report, at 46. Plaintiffs then point to Mr. Noble's testimony in *Lesher* wherein he opined that "there would be no serious consequences … [t]hey wouldn't lose their jobs" for members of the Little Rock Police Department if they lied about their misconduct. It is unclear how Plaintiffs equate these assertions and conclude they are contradictory. Mr. Noble was specifically testifying in *Lesher* that "there would be no serious consequences" for members of the Little Rock Police Department if they lied about misconduct, based on the facts of that particular case, including the disciplinary policies of the Little Rock Police Department. In order to conclude Mr. Noble is contradicting himself, Plaintiffs necessarily equate "meaningful discipline" with "serious consequence" and assume the facts of *Lesher* and this case are the same. Of course, these terms are *not* the same, and they were used in separate cases with different facts and circumstances. To the extent Plaintiffs believe these different terms *are* the same (and the facts of *Lesher* and this

case are the same), and Mr. Noble is somehow inconsistent, Plaintiffs can attempt to explore it on cross-examination at trial. In sum, because these instances identified by Plaintiffs are not contradictory, Plaintiffs assertion that Mr. Noble's opinions "lack reliability [and] do not demonstrate a proper methodology" should be rejected.

VII. Mr. Noble Did Not "Disclaim" Opinions Identified by Plaintiffs

Plaintiffs' contention that Mr. Noble disclaimed a number of his opinions at his deposition does not stand up to modest scrutiny. Plaintiffs assert (at 20-21) "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," citing to page 25, lines 7 through 25 of Mr. Noble's deposition transcript. However, Mr. Noble opined extensively in his report on the joint FBI/IAD investigation, *see* Noble Report, at 51–60, ¶¶ 86–106, and he specifically confirmed these opinions at his deposition. Noble Dep. 336:7–338:17. While it was Plaintiffs' attorney's prerogative not to ask any questions regarding those specific and detailed portions of Mr. Noble's report during the deposition, or direct Mr. Noble to his report in that regard, it does not mean that those opinions have been disclaimed and are somehow inadmissible under *Daubert*.

It strains credulity to conclude Mr. Noble "disclaimed" these opinions, which he did not, when the opinions are set forth in detail in his report. To raise this argument, Plaintiffs necessarily mischaracterize Mr. Noble's deposition testimony. At his deposition, without directing Mr. Noble to his report, Mr. Noble was asked "Do you have any opinion on whether eight years was too long for the investigation of Ronald Watts' corruption to take place?" to which Mr. Noble responded, "I don't have an opinion." It is unclear how Plaintiffs can conclude Mr. Noble's testimony that he has no opinion regarding the *length* of the FBI/IAD investigation somehow means he has disclaimed his opinions regarding all aspects of the joint FBI/IAD investigation as detailed in his report.

More troubling, Plaintiffs contend Mr. Noble [redacted] Again, the transcript reveals Plaintiffs are misconstruing the record. Mr. Noble was asked the following: [redacted]

[redacted]

Finally, Plaintiffs contend Mr. Noble "disclaimed" opinions regarding a code of silence in the CPD during the 1999-2011 timeframe. In his report, Mr. Noble opined as follows:

> Moreover, and perhaps most significantly, there is strong evidence that the supervisors and managers of the Chicago Police Department have taken their roles seriously and it is directly through their day-to-day efforts that most disciplinary actions are imposed. CPD supervisors and managers, without the aid of BIA or IPRA conducted between 1999 and 2010, 48,284 Summary Punishment Action Requests (SPARs) ranging from a letter of reprimand to a three-day suspension were issued by the department. ***This level of disciplinary actions reveals that misconduct has not been tolerated within the Chicago Police Department, that the department's supervision and management has been actively engaged in their responsibilities, that they have been willing and able to take affirmative steps to correct poor or improper behavior and their actions have sent a clear message to all employees that misconduct is not tolerated.***
>
> SPARs are disciplinary actions that do not require a CR and do not involve a citizen complaint. ***These disciplinary actions are the easiest for supervisors and managers to ignore if there were a code of silence because there is no public***

> ***outcry and no formal complaint that may be tracked or questioned by other supervisors or managers. Instead, these are violations that are all identified by supervisors and managers and it is the supervisors and managers who mete out these disciplinary actions that are up to a three-day suspension.*** Supervisors and managers have issued on average over 4,000 SPARs every year. If there were a widespread or pervasive code of silence or if supervisors turned a blind eye to the misconduct of their officers, one would expect that almost no SPARs would be issued.

Noble Report, at 18-19 (emphasis added). He further opined:

[redacted]

Contrary to Plaintiffs' assertion, Mr. Noble has opined that there was no widespread code of silence in the CPD during the relevant timeframe. This opinion is clearly baked into the above-quoted sections of Mr. Noble's report. In addition, his opinions forcefully establish *why* there was no widespread code of silence, *e.g.*, the SPAR procedure, including the amount of SPARs issued, as well as the information obtained by Holliday.

Plaintiffs nevertheless point to the deposition testimony of Mr. Noble to argue that these code of silence opinions were "disclaimed." Plaintiffs are incorrect and Mr. Noble did not disclaim

anything. Plaintiffs' counsel did not show Mr. Noble the above portions of his report when they raised the "code of silence" topic. The fact that Mr. Noble forgot at that moment that he included the above sections in his report does not mean they are barred, especially because Plaintiffs did not show him those sections. Had Plaintiffs asked Mr. Noble if he was withdrawing those sections of his report and had Mr. Noble said he was, it would be a different analysis. But that is not what occurred here.

VIII. Mr. Noble Properly Opined Regarding The Lack of Evidence Showing the CPD's Disciplinary System Was Deficient

Plaintiffs (at 22-23) reference opinions of Mr. Noble that "no evidence" exists of "bias, insufficient investigations, or other flaws exist regarding the Chicago Police Department" and request that they be barred. Plaintiffs provide no meaningful discussion of these challenged opinions, and they ignore the context in which they were made. Rather, in conclusory fashion, Plaintiffs assert they should be barred because Mr. Noble failed to review discovery related to these opinions, or failed to discuss the reasoning behind these opinions or "grapple with the evidence against them." This challenge is without merit; Plaintiffs are willfully ignoring the context in which Mr. Noble reaches these opinions.[9]

For example, citing to paragraph 17(g) of Mr. Noble's report, Plaintiffs state Mr. Noble's opinion that there is no evidence that the CPD's policies "are just a façade" should be barred. In doing so, Plaintiffs ignore paragraphs 17(a)–(f), which set forth the bases for Mr. Noble's opinion that the CPD's policies are not "a façade." Specifically, Mr. Noble explains, among other things, that General Order 93-03, Administrative Special Order 05-02 and 05-04, and Special Order S08-01-08; the rules and regulations of the CPD (such as Rule 14 and Rule 22); and other policies show

[9] Dr. Shane stated several times in his report that there was "no evidence," in order to support his opinions. *See* Shane Report, at 64, 71, 76, 83, 89, 115.

the CPD was committed to "to control[ling] the conduct of their officers and for the intervention of officers who may be displaying problematic behavior that does not reach the level of disciplinary action." Noble Report, at 12–13, ¶¶17(a)-(f).

As another example, Plaintiffs seek to bar Mr. Noble's opinion that there is no evidence "that the City failed to accept or document complaints of officer misconduct," citing to paragraph 21(a) of Mr. Noble's report. In doing so, Plaintiffs again ignore the basis for that opinion, which is found in paragraphs 21(b)–(g) of Mr. Noble's report. Specifically, Mr. Noble explains that the CPD assigned tracking numbers to all complaints to ensure that all complaints are investigated, the CPD mandated OPS (and then IPRA) receive notification of all complaints of officer use of force, and OPS and IPRA were comprised of civilian investigators tasked with investigating all allegations of excessive force, among other things. Noble report, at 14–15, ¶¶ 21(b)–(g).

Defendants could continue, but the result is the same: Plaintiffs willfully ignore the bases for Mr. Noble's opinions, which are set forth in his report. And Plaintiffs' single sentence challenge to these opinions results in waiver. *Shipley*, 947 F.3d at 1062-63. If Plaintiffs believe Mr. Noble did not perform a thorough analysis, they are free to explore that issue at trial, which goes to the weight, not admissibility, of Mr. Noble's opinions. But by willfully ignoring the context in which these opinions arise, Plaintiffs are simply wasting the Court's time by challenging them in a *Daubert* motion.

Nor does Plaintiffs' reliance on *Estate of Loury* affect the Court's analysis. First, the barred opinions in *Estate of Loury* were not "identical opinions" to Mr. Noble's opinions here. Second, in that case, certain opinions were barred because "he failed to connect the dots between the evidence he analyzed and the opinion no evidence exists" and "rejected evidence in the record supporting [the plaintiff's] *Monell* claim." Whether or not those criticisms in *Loury* were valid,

Mr. Noble certainly "connected the dots" in this case. Plaintiffs here fail to identify what evidence Mr. Noble "rejected," and they otherwise ignore the evidence, set forth above, that formed the bases for Mr. Noble's opinions.

IX. Plaintiffs' Remaining Miscellaneous and Cursory Challenges to Mr. Noble's Opinions Are Without Merit

Finally, Plaintiffs raise (at 23-25) yet more cursory and underdeveloped arguments seeking to bar Mr. Noble's opinions. This Court should consider these challenges waived. See *Shipley*, 947 F.3d at 1062-63. Nevertheless, Defendants address them in turn.

First up is Plaintiffs challenge to Mr. Noble's opinion regarding IPRA as irrelevant and lacking methodology. With respect to IPRA, Mr. Noble opined, in part, as follows:

> IPRA represents a building on the successes of OPS and provides additional community safeguards. Unlike OPS, the chief administrator of IPRA may issue subpoenas to compel witnesses to testify. If IPRA makes a recommendation of discipline, the superintendent must respond to the recommendation within 90 days and include a description of any disciplinary action that he or she has taken and their reasoning. If the chief administrator does not agree, the matter will be referred to a committee of the Police Board for a determination. The chief administrator does not report to the superintendent, as was the case under OPS but directly to the mayor. IPRA is required to produce final summary reports and quarterly reports with the specific information listed in the statute that created IPRA and those reports must be made available to the public on the City's website.

Noble Report, at 44, ¶ 66. Plaintiffs argue (at 23) that Mr. Noble "admits that he cannot say whether the outcomes of police misconduct investigations changed or improved after IPRA was created" so therefore, his "analysis is incomplete and irrelevant" because he did not analyze whether IPRA was "more or less effective."[10] Plaintiffs' challenge is once again meritless, and they fail to advise

[10] Plaintiffs' relevancy argument is especially perplexing since Mr. Noble's opinions are in direct response to Dr. Shane's opinions related to the CPD's move from OPS to IPRA. *See e.g.*, Dkt. 304-2 (Shane Report), at p. 93 ("Other than changing its name, the discovery materials that I reviewed do not suggest that IPRA was substantively different from OPS") and 74 ("Whether OPS, and IPRA, the institutional responses have been lackluster, nothing more than current practices repackaged under a new name, with reform recommendations going unanswered"). If the Court finds Mr. Noble's opinions on this subject irrelevant, so too are Dr. Shane's.

this Court of Mr. Noble's testimony regarding the change to IPRA. Mr. Noble's opinion explains how IPRA improved the disciplinary system by allowing the chief administrator to issue subpoenas, referral of matters to the Police Board, and reporting directly to the Mayor, rather than the Superintendent of the CPD, among other improvements.

As to Plaintiffs' vague "effectiveness" standard, Mr. Noble testified at his deposition that one could not simply look at raw numbers regarding sustained rates before and after the creation of IPRA because "a lower sustained rate may mean that officers are behaving better," "that they have a very strong oversight agency and strong disciplinary system that [officers are] not as likely to engage in misconduct because they know that they're going to be held accountable," and lower sustained rates "may mean they have strong supervision." Noble Dep. 133:2–134:4. And case law supports Mr. Noble on this issue. Mere statistics of the rates at which complaints of police officer misconduct are sustained, without more, "fail to prove anything." *Bryant v. Whalen*, 759 F. Supp. 410, 423-24 (N.D. Ill. 1991), citing *Strauss v. City of Chicago*, 760 F.2d 765, 768-69 (7th Cir. 1985). This is because "People may file a complaint for many reasons, or for no reason at all." *Strauss*, 760 F.2d at 769. Again, any challenge Plaintiffs believe they possess on this issue is a matter for cross-examination, not a *Daubert* motion.

Plaintiffs next assert (at 23-24) that Mr. Noble should not be able to testify as to IPRA's independent oversight because it "would be misleading and confusing." Regarding IPRA, Mr. Noble opines as follows:

> IPRA represents a more robust form of Class I independent oversight in that IPRA accepts complaints, conducts independent investigations, makes recommendations as to findings and disciplinary actions, makes policy recommendations, is completely independent of the police department and maintains a website where it publishes reports, statistics, and information regarding its investigations to the public.

> Of the largest police agencies in the nation, the City of Chicago is one of the very few that maintain a Class I independent investigatory agency for allegations of police misconduct, and one of the very few that not only accepts citizen complaints but also conducts investigations based on subject matter alone like officer-involved shootings, death or injury while in-custody, and taser activations, without an allegation of misconduct.

Noble Report, at 24, at ¶¶ 35–36. Here, Mr. Noble explains the benefits inherent in IPRA's "robust" independent form of police oversight. Again, Plaintiffs seek to prohibit Mr. Noble from testifying in direct rebuttal to a criticism raised by their expert. Specifically, IPRA "conducts independent investigations, makes recommendations as to findings and disciplinary actions, makes policy recommendations, is completely independent of the police department." Mr. Noble was asked at his deposition, generally, if "independent oversight [is] better than having the police department conduct Internal Affairs investigations." He was not asked how IPRA's independent oversight compared to alternatives. Finally, *Estate of Loury* does not affect this Court's *Daubert* determination, as it barred Mr. Noble from opining, "that independent civilian oversight is not the rule of American policing, but rather the exception." Here, Mr. Noble explains the benefits of IPRA, discussed above, which form the basis for his opinion. Moreover, Mr. Noble explains in detail the basis for his opinion in this case that independent civilian oversight is the exception in his report. Noble Report, at 23–24, ¶¶ 32–36. Indeed, Mr. Noble's opinions in this regard are based on facts that Plaintiffs do not even challenge and barring them would prevent the jury from understanding the important comparison of the CPD's disciplinary systems to the nation as a whole.

Citing *Simmons v. City of Chicago*, No. 14-CV-9042 (N.D. Ill.), Plaintiffs (at 24) argue that Mr. Noble should not be permitted to inform the jury that Illinois state law requires an affidavit to pursue police misconduct investigations. *Simmons* excluded this opinion as unnecessary because that court noted "there will be a stipulation, judicial notice, and/or an instruction regarding the

state of the law (statutory and decisional) regarding the ability of police departments to investigate complaints not supported by an affidavit." 2017 WL 3704844, at *11. In the absence of a similar procedure, Defendants should be allowed to explain, through Mr. Noble, that state law requires an affidavit in order to pursue police misconduct investigations, because it goes directly to Plaintiffs' allegations that the CPD's disciplinary system was deficient. Once again, it would be misleading to the jury to allow Dr. Shane to opine that the CPD did not conduct a CR investigation where the complainant refused to sign the affidavit required by state law (which Shane improperly claims) (*see* Noble Report, at 30–35, ¶¶ 48–57), and then disallow Mr. Noble from explaining the actual circumstances to the jury.

Plaintiffs next contend that Mr. Noble "lacks foundation to opine how the City of Chicago bargained union contracts with the Fraternal Order of Police." But Mr. Noble is not opining *how* the City bargained; rather, he explained what new provisions became a part of the contract from July 1, 1999 through June 30, 2003 and the contract effective July 1, 2003 through June 30, 2007, as well as the procedure for including these provisions. At his deposition, Mr. Noble was asked if he had "any knowledge about the specifics *of the negotiations*" regarding the formation of the contracts, to which he responded "no." That Mr. Noble was not privy to the "specifics" of contract negotiations does not render inadmissible his opinions regarding the procedures (*i.e.*, entering arbitration) and the new provisions contained in the final contract.

Plaintiffs' final challenge[11] to Mr. Noble's opinions concerns their contention that it is impermissible for Mr. Noble to testify "that 'no reasonable CPD officer could believe they could

[11] Plaintiffs' argument is surprising because their own expert, Dr. Shane, opines, "[t]he failure to supervise the defendants in the instant case would lead a reasonable officer to conclude that the Chicago Police Department accepted the defendants' conduct." Shane Report, at 11. Based on Plaintiffs' logic, their own expert is impermissibly opining on the "states-of-mind of CPD officers" and therefore "invad[ing] the province of the jury." To the extent Dr. Shane's opinion is not barred, Defendants should be allowed to rebut Dr. Shane's opinion through Mr. Noble.

act inappropriately with impunity and that nothing would happen.'" (Motion, at 24). According to Plaintiffs, this testimony "invades the province of the jury and states an inappropriate opinion on the states-of-mind of CPD officers." Not only do Plaintiffs fail to explain how this opinion "invades the province of the jury," it directly rebuts one of the opinions offered by their expert, Dr. Shane. Moreover, Mr. Noble is not opining on the mental state of any specific individual in this case, he is providing an opinion based on the totality of the evidence he reviewed to conclude that a "reasonable CPD officer" would not believe he or she could act with impunity. Plaintiffs argue that the jury will need to determine "whether the City's disciplinary policies and practices caused Plaintiffs' wrongful convictions," but that is merely the standard under *Monell*; Plaintiffs do not explain how Mr. Noble's challenged opinion specifically and impermissibly usurps the jury's role. In any event, "[a]n opinion is not objectionable just because it embraces an ultimate issue." Fed. R. Evid. 704(a); *Pittman by & through Hamilton v. Cnty. of Madison, Illinois*, 970 F.3d 823, 829 (7th Cir. 2020). And here, "[t]here is a difference between stating a legal conclusion and providing concrete information against which to measure abstract legal concepts." *United States v. Blount*, 502 F.3d 674, 680 (7th Cir. 2007).

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion should be denied in its entirety.

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Respectfully submitted,

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