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

Lionetta White, Special Administrator of the Estate of LIONEL WHITE, SR,	)	Case No. 17 C 2877
Plaintiff,	)	Judge Sara L. Ellis
v.	)	
CITY OF CHICAGO, *et al.*,	)	
Defendants.	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S *DAUBERT* MOTION TO EXCLUDE THE OPINIONS OF JEFFREY NOBLE

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Defendants, City of Chicago, Alvin Jones, Elsworth Smith Jr., Douglas Nichols Jr., Brian Bolton, Manuel Leano, and Robert Gonzalez, by their attorneys, hereby respond in opposition to Plaintiff's *Daubert* Motion to Exclude the Opinions of Jeffrey Noble. In support, Defendants state as follows:

INTRODUCTION

Plaintiff 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 Plaintiff is that Shane has zero relevant internal affairs experience, and his report lacks any reliable methodology supported by generally accepted police practices. Instead, 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, Shane failed to actually evaluate the merits of the CR investigations themselves by looking at their substance. By way of example, in Case Log No. 1022370, the complainant alleged that the police had "implanted a device inside [the complainant's] body and are stalking [him]," yet Shane's spreadsheet created by the codebook suggests the CPD should have investigated and conducted certain tasks in response to this complaint despite the absurd and impossible nature of the allegation. Ex. 1, Case Log No. 1022370; Ex. 2, Excerpt of Shane Spreadsheet.

The City retained Jeffrey Noble to evaluate Shane's report, codebook, and CR data. Contrary to Shane, 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. Noble's opinion is devastating to Plaintiff's reliance on Shane and reveals Shane's 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. Noble actually

read the 127 CRs Shane himself claims he "audited" (whatever that means) to evaluate their substance. 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. Noble's opinions are not simply conclusions: Exhibit 1 of Noble's Report 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 Shane's spreadsheet based on his codebook is misleading.

Plaintiff's *Daubert* Motion to Exclude the Opinions of Jeffrey Noble ("Motion") is a desperate attempt at salvaging 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. Shane should be barred for all the reasons stated by Defendants in their motion to bar. And if Shane is somehow allowed to present his misleading data and baseless conclusions to the jury, Noble must be permitted to explain to the jury why 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, Plaintiff's Motion fails to establish that Noble's opinions are inadmissible under *Daubert* and Rule 702. Plaintiff's wide-ranging, "kitchen sink" Motion fails to show Noble's opinions should be barred. Worse, Plaintiff's 25-page Motion contains conclusory and underdeveloped challenges to Noble's opinions and mischaracterizes the record. Plaintiff either misunderstands the purpose of a *Daubert* motion or seeks to exhaust the Court's resources in analyzing arguments that do not affect the admissibility of Noble's opinions. This Court should deny Plaintiff's Motion in its entirety.

BACKGROUND

I. Noble's Experience and Qualifications

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, Noble held various assignments, including patrol, SWAT, narcotics, training, and internal affairs. Noble has a juris doctor degree and has published two textbooks on policing. In addition, Noble has presented before the International Association of Chiefs of Police and the Academy of Criminal Justice Sciences. Noble has been retained as a police practices consultant in over 150 cases within the last 5 years alone, for both plaintiffs and defendants in both state and federal courts. 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. 227-2, at 2–21. Noble was also a contributor to the U.S. Department of Justice, Office of Community Oriented Policing Services report titled, "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice" ("DOJ document") relied upon by Plaintiff in his motion and discussed later in this response. *See*, Dkt. 227-6. Plaintiff's challenges to the admissibility of Noble's opinions are baseless, especially when compared to those of the expert Plaintiff proffers 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. Noble's Opinions

As explained in detail in his report, Noble reached opinions based on his review of the record in this case, as well as his education, training, and experience. *See* Dkt. 229, Expert Report of Jeffrey J. Noble (hereinafter "Noble Report"). These opinions include the following[1]:

- The Chicago Police Department ("CPD") 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.

[1] Plaintiff purports to summarize Noble's opinions (at 3-4), along with a cursory and undeveloped one-sentence argument after each opinion contending that these opinions should be barred. To the extent Plaintiff fails to expand on these arguments later in his Motion, this Court should consider the arguments 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, Plaintiff provides no further discussion in his Motion (at 4) of opinions Plaintiff identifies in ¶¶ 10 and 12.

- The CPD 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 CPD's Internal Affairs Division were reasonable.
- The CPD did not fail to discipline officers who engage in misconduct in a systematic way.
- Shane's "code book" and analysis (including the tables in his report) are inconsistent with generally accepted police practices, thus his conclusions are flawed.
- Shane's opinion regarding the affidavit requirement is without merit.
- The CPD maintains a reasonable early identification and intervention system.
- Any basis that 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.
- The City of Chicago and the CPD enhanced its abilities to conduct investigations of officer misconduct through negotiated changes in the contract with its officers.
- Any reliance that 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 CPD took reasonable steps to implement the recommendations made by the Webb Commission.
- The CPD 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.
- The CPD did not have a widespread, pervasive, pattern, practice, or custom of members of the CPD engaging in a Code of Silence to protect fellow officers from allegations of wrongdoing.
- No reasonable CPD officer could believe they could act inappropriately with impunity and that nothing would happen.

Noble's report supports in detail each of these opinions. *See generally*, Dkt. 229, 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

Plaintiff's scattershot Motion fails to rebut the admissibility of Noble's expert opinions. In fact, it is unclear to Defendants why Plaintiff raised many of the arguments contained in his 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 Plaintiff's wide-ranging assertions.

I. Noble Utilized A Proper Methodology and Applied Generally Accepted Standards of Review in Policing to Render His Opinions.

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

Plaintiff first asserts (at 6) that 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." Plaintiff is mistaken. Noble explained his methodology in detail

in his Report (at ¶¶ 11-15). Based on his review of CPD's policies and practices during the relevant time period, 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. Dkt. 229, Noble Report, ¶ 21. Moreover, 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.

Dkt. 229, Noble Report, ¶ 22. Considering all of these circumstances, including the procedures utilized by the CPD's investigatory agencies, Noble concludes that the CPD's processes for investigations of police misconduct are reasonable. Plaintiff acknowledges (at 7) Noble's opinions regarding these investigatory procedures but still incorrectly contends Noble does not "explain" why they are reasonable. Moreover, Plaintiff asserts that Noble "deploys highly irregular and non-standard definitions of police terminology." But from these arguments it becomes clear that Plaintiff simply

does not like 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.

Plaintiff also contends (at 7) the reasonableness standard is "vaguely defined" and "novel." Plaintiff is wrong; the Seventh Circuit approved of the reasonableness standard in *Jimenez v. City of Chicago*, 732 F.3d 710 (7th Cir. 2013), which Plaintiff cites (at 5), in the "legal standard" section of his Motion. 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*, Noble is offering expert testimony as to the reasonableness of certain police investigatory practices. Accordingly, 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.*, 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).

Just two weeks ago, Judge Valderrama confirmed that reasonableness is the appropriate standard to apply for a police practices expert. *Mendez v. City of Chicago*, 18-CV-5560, dkt. 720, at 4-5

(N.D. Ill. Apr. 18, 2025), attached hereto as Exhibit 5. In denying the plaintiff's motion to bar Noble's opinions, the court in *Mendez* rejected the plaintiffs' assertion that reasonableness is not recognized by any authority. Pointing to the decisions in *Jimenez*, *Abdullahi*, and *Sanders*, Judge Valderrama held that "Noble's reliance on a reasonableness standard is consistent with accepted practices in the field." *Id.* at 4.

Moreover, Judge Valderrama rejected the plaintiffs' reliance on *Estate of Loury by Hudson v. City of Chicago*, 2021 WL 1020990 (N.D. Ill. Mar. 17, 2021) as "misplaced," and recognized that "*Hudson* is not tantamount to a categorical rejection of Noble's opinions anchored in a 'reasonable' standard." Specifically, Judge Valderrama held in *Mendez* that "'the determination of whether an expert's testimony is to be allowed is made on a case-by-case basis'… Noble's approach in this case provides a sufficient foundation for his opinions." *Mendez*, Ex. 5, at 4-5. As in *Mendez*, Noble explains the foundation for his opinions and the use of a reasonableness standard, which is explicitly endorsed by the Seventh Circuit in *Jimenez*. *Id.* at 4.

Citing to Noble's deposition transcript, Plaintiff contends (at 6) Noble "admitted he might have been the first one to come up with" the reasonableness standard. Plaintiff's citation to Noble's deposition transcript does not support that contention. Noble testified that he was unaware of who first used the reasonableness standard and responded to Plaintiff's counsel's compound question of "did you come up with it or did you get it from someone else?" with "I don't know." Dkt. 227-4, Deposition of Jeffrey Noble dated June 14, 2024 (hereinafter "Noble *Baker* Dep."), at 142:7–22. As set forth in Noble's deposition's errata sheet, one of the bases of Noble's reference to the reasonableness standard is the Seventh Circuit's decision in *Jimenez*. Ex. 3, Noble Errata Sheet from *Baker* Dep. Plaintiff's arguments (at 6–7) that the reasonableness standard only appears in non-peer-reviewed literature are incorrect and should be rejected.

Plaintiff next argues (at 8-9) that the appropriate standard to utilize is "thorough and

complete" and Noble "has no basis to replace the broadly established 'thorough and complete' standard." Plaintiff purports to support this "thorough and complete" standard by referencing, *inter alia*, the DOJ document[2]. Noble is aware of this document. In fact, 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 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. 227-6, 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.*

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

[2] Plaintiff further cites 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, do not otherwise support a "broadly established" national standard.

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 Noble's opinions herein. Plaintiff did not provide this Court with the complete DOJ position, perhaps because the complete position refutes Plaintiff's argument and undermines Plaintiff's Motion.

Furthermore, Plaintiff's own expert, Shane, likewise embraces a reasonableness standard. In his deposition, 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*.

Dkt. 255-4, Shane *Baker* Dep., at 212:15–22 (emphasis added). While Defendants disagree with Shane's ultimate conclusions regarding the Joint FBI/IAD Investigation, they agree with Shane that the standard is one of reasonableness. Plaintiff is 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, Plaintiff fails to explain how this "standard" is not incorporated into the reasonableness standard used by Noble. "Reasonable" in the context of Noble's opinions and a "thorough and complete" standard that Plaintiff advances here do not appear to be contradictory standards. In fact, Noble opined:

> 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.

Dkt. 229, Noble Report, ¶ 44. Noble discusses a "thorough" investigation based on a "totality of the circumstances," and he recognizes the CPD's investigatory agencies undertook "full, fair, thorough, and detached administrative investigations." *Id.*, ¶ 30. And, 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.

Dkt. 227-4, Noble *Baker* Dep., at 195:10–196:1. 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."

Plaintiff argues (at 9-10) Noble's opinions regarding reasonable police practices should be barred because the court in *Estate of Loury*, previously rejected them. In that case, the court barred certain opinions of Noble because he merely "jump[ed] to the conclusion that [the CPD's policies] are reasonable." However, as Judge Valderrama recognized in *Mendez*, "'the determination of whether an expert's testimony is to be allowed is made on a case-by-case basis'… Noble's approach in this case provides a sufficient foundation for his opinions." *Mendez*, Ex. 5, at 4-5. Like in *Mendez* and as explained herein, 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 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 Noble's opinions are proper and admissible. See *Mendez*, Ex. 5, at 4-5.

As set forth above, 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. Noble attached to his report as Exhibit 1 a 127-page detailed evaluation of 127 CRs "audited" by Plaintiff's expert Shane outlining the CR investigations. He explained why Shane's "audit" and spreadsheet criticizing the CR investigations were unsupported, and detailed, based on that analysis, that the overwhelming majority of the CR investigations were reasonable based on the investigation conducted. Ex. 1 to Noble's Report, Dkt. 229, at CITY-BG-062990–063116. Accordingly, this Court should analyze the admissibility of 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 Noble's opinions is not supported or warranted in this case. See *Mendez*, Ex. 5, at 4-5.

What's more, if 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), 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*

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

on their head, and ultimately present a half-truth to the jury, thus depriving Defendants of a fair trial.

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

Relatedly, Plaintiff argues (at 10–12) that Noble "has no basis to apply his 'reasonableness' standard to the CPD disciplinary system as a whole or to the CPD's policies." Noble opined, in part:

> 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.

Dkt. 229, Noble Report, ¶ 19. 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., ¶ 21.

Plaintiff contends (at 10) "Mr. Noble never explained where that standard came from or why he uses it," and argues this standard is a "low bar for police departments." Initially, as explained, the reasonable standard was embraced by the Seventh Circuit in *Jimenez*. See M*endez*, Ex. 5, at 4. Citing no support, Plaintiff does not explain how or why he reached the conclusion that reasonableness is a "low bar for police departments." In fact, as explained, Noble's use of "reasonableness" follows the DOJ's guidance and is not inconsistent with Plaintiff's preferred "thorough and complete" standard. Noble's 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. Dkt. 227-4, Noble *Baker* Dep., at 112:14–121:5.

Next, relying on his own retained expert, Shane[4], Plaintiff argues (at 10-11) 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, Noble did not merely look at CR files in reaching his conclusion that the CPD's disciplinary system was reasonable. More importantly, the CRs Noble reviewed and identified in Exhibit 1 to his report were the CR files identified and "audited" *by Shane*. Therefore, Plaintiff's assertion that Noble "does not know whether he reviewed enough disciplinary investigations" to opine that the disciplinary system is reasonable has no bearing on Noble's opinion and is complete misdirection. Noble's opinion was based on the totality of the circumstances identified above, and the CR files he reviewed were those that Shane "audited."

Plaintiff next argues (at 11) that Noble's opinions regarding the reasonableness of "the City's

[4] Defendants have moved to bar Shane's opinions based on, *inter alia*, his flawed methodology. *See* Dkt. 255. Moreover, as explained, unlike Noble, Shane does not have any relevant internal affairs experience or background.

policies," contained at paragraphs 16–27, 50, and 83–86 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." Plaintiff's argument ignores Noble's analysis,

> The CPD Rules and Regulations define the standards of conduct that are expected for a CPD member. Those standards of conduct include the Law Enforcement Code of Ethics which is cited by police departments across the country as guiding principles for officer ethics and behavior.

Dkt. 228, Shane Report, ¶ 17(a). It also disregards the IACP Model policies referenced in Noble's Report, at fn1-6. 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, Plaintiff suggests (at 12) that 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. 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.

Dkt. 229, Noble Report, ¶ 59. As explained, Noble may permissibly opine that the CPD's policies were reasonable. *See*, *Jimenez*, 732 F.3d at 721-22. To the extent Plaintiff believes that the exact number of officers flagged is important or somehow undermines Noble's opinions, he is free to explore it on cross-examination as it goes to the weight, not admissibility, of Noble's testimony.

II. Noble Permissibly Opined Regarding the Flaws in Shane's Methodology.

Plaintiff next contends (at 12–16) that Noble's opinions critical of Shane's flawed methodology should be excluded. Regarding Shane's unsound methodology, Noble opined:

> 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 plaintiff[s'] 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.

Dkt. 229, Noble Report, ¶ 37. Noble further opined as to the flaws inherent in Shane's methodology, specifically with respect to the gathering and reporting of data. For example, 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.*, ¶ 39(a). Noble continued:

> 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.

Id., ¶ 45. These flaws identified by Noble provide the basis for his opinion that Shane's methodology is unsound. 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.

Id., ¶ 44.

Plaintiff mischaracterizes (at 13) Noble's criticisms, suggesting that Noble was not critical of how Shane's tables "added up data" or whether these tables were "accurate". This argument distorts Noble's observations. Noble opined that the data Shane entered into his tables was flawed based on the improper, invented, and never before used "codebook" utilized by Shane to create that data, such that whatever conclusion or opinion based on the flawed data is likewise unsound.[5] Moreover, Plaintiff's argument that Noble "did not disagree with any of the math or statistical analysis conducted by Dr. Shane," or that Noble did not criticize the "kinds of data used," also misses the point. That 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. Shane's "garbage in, garbage out" approach, which Noble properly identified, serves as the basis for Noble's criticisms. Plaintiff fails to establish that Noble's opinions regarding Shane's flawed methodology should be barred.

Plaintiff next contends (at 15) Noble "has no basis to adopt the summaries given to him by defense counsel." This argument is particularly ironic given that Shane used 12 unidentified attorneys working for Plaintiff's counsel to perform his review and spreadsheet. Dkt. 229, Noble Report, ¶ 37; Dkt. 228, Shane Report, at 17. In any event, Plaintiff contends (at 15-16) Noble "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." Plaintiff's

[5] As explained in Defendants' motion to bar Shane (Dkt. 255, at 11-14), 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," Dkt. 227-4, Noble *Baker* Dep., at 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 Shane is misleading and misrepresentative of the actual CR investigations. It cannot be overstated how the introduction of Shane's data based on his flawed "codebook" would be violative of Rule 702 and *Daubert*. Indeed, the data derived by Shane based on his flawed codebook was specifically designed to mislead the jury.

arguments are irrelevant. Those things do not matter to whether Noble's criticisms of Shane's methodology are valid. For example, the amount of people who wrote the summaries or whether those people were lawyers do not affect the reliability of Noble's opinion. Indeed, Plaintiff identifies no flaws in Noble's analysis, which is why he seeks to misdirect the Court with irrelevant arguments. As even Plaintiff recognizes, 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 Noble testified, he reviewed the CRs to compare them to the summaries provided to him and confirmed they are accurate, and Plaintiff does not identify a single inaccuracy in any of them. Dkt. 227-4, at 100:17-101:6, 102:6-11, 103:13-17, 104:24-105:14 ("I would read what was written here. And then I would read the CR. Then if I found errors, I would correct them. And then I would draw conclusions."). Plaintiff's desperate attempt to undermine Noble, likely in an attempt to cover the flaws inherent in his own expert's methodology, does not require Noble's opinions to be barred.

III. Plaintiff's Contention That Noble Impermissibly Relied on Undisclosed Materials is Without Merit.

Plaintiff argues (at 17–18) that Noble relied on various materials that were not disclosed and, therefore, certain opinions should be barred. Plaintiff is incorrect. Moreover, these are matters that should be raised on cross-examination, not addressed through a *Daubert* motion. First, Plaintiff points out that Noble referenced 2,000 CRs that he reviewed in other cases and "he could not remember anything about his work in those cases." Plaintiff does not state what relief he is seeking with this argument, or what opinion he is seeking to have barred. If Plaintiff believes this undermines Noble's testimony, he is free to explore it at trial. It also would appear to contradict Plaintiff's prior argument that Noble did not provide a sufficient basis and explanation of his conclusion that the CPD's disciplinary policies are reasonable.

Plaintiff also argues (at 17) that Noble "quoted someone in his report" regarding the bargaining of the 2003 FOP contract and because, at the time of his deposition, he did not recall this

person or the context of the quote, his opinion should be barred. But Defendants provided Plaintiff's counsel with documents relating to this issue which fully support Noble's opinions and the quotation he relies on. Ex. 4, CITY-BG-063999–064003. Plaintiff also complains that, at his deposition, 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.

IV. Plaintiff's Assertions that Noble Contradicted Himself Are Without Merit.

Plaintiff next contends (at 18-20) that Noble's opinions should be barred because he "contradict[ed] himself" based on testimony/opinions given in separate cases, each with different facts.[6] Assuming Plaintiff can actually establish Noble contradicted himself, it at mostly 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 Plaintiff's arguments on this issue.

Nevertheless, to the extent this Court wishes to consider Plaintiff's arguments, a fair-minded analysis reveals Noble did not contradict himself. Plaintiff asserts (at 18) that in his deposition in the *Baker* case, 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

[6] Plaintiff cites several out-of-circuit cases for the proposition that an expert who contradicts himself must be barred. However, a closer look at Plaintiff's cited cases does not support Plaintiff's 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").

filed in the Central District of California, 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). Noble's testimony from a different case, based on the specific facts of that other case, does not show Noble "contradicted" himself in this case. The case on which Plaintiff relies, *Curtin v. County of 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, 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.

Dkt. 229, Noble Report, ¶¶ 102–103.

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." Noble's testimony in *Curtin* thus does not contradict his testimony with respect to the facts of this case. And again, to the extent Plaintiff believes 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, Plaintiff asserts (at 19) that 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).[7] For starters, Plaintiff conflates a complainant providing an affidavit with a victim providing a statement and then reaches the conclusion that Noble contradicted himself. These terms are not the same, and therefore Noble's testimony is not contradictory. To the extent Plaintiff believes otherwise, he is free to address it on cross-examination.

Moreover, Noble's opinion that an affidavit is required is based on Illinois state law. That Plaintiff believes 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, Noble opined:

> 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.

Dkt. 229, Noble Report, ¶ 49. 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.

Id., ¶ 50(g). Noble's opinion in this case was formed based on Illinois' requirement, during the relevant

[7] Plaintiff fails to provide the entirety of the transcript of Noble's testimony in *Curtin*. *See* Dkt. 227-18, Pl.'s Ex. S. This alone should be a basis to reject Plaintiff's assertion that Noble contradicted himself. Plaintiff cites page 83, lines 5 through 19 for support, but the transcript Plaintiff provides cuts off after page 83, with a question pending for Noble. Plaintiff's failure to provide a complete transcript aside, any contradictions he believes exists are more properly addressed on cross-examination, rather than through a *Daubert* motion.

time period at issue, that a signed affidavit is necessary to pursue allegations of misconduct. There is no "contradiction" as imagined by Plaintiff.

Finally, Plaintiff contends (at 20), 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, with respect to Craig Futterman's baseless assertion that "meaningful discipline" amounts to a suspension of seven or more days, Noble opines:

> 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.

Dkt. 229, Noble Report, ¶ 72(b). Plaintiff points to 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 Plaintiff equates these assertions and concludes they are contradictory. 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 Noble is contradicting himself, Plaintiff necessarily equates "meaningful discipline" with "serious consequence" and assumes 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 Plaintiff believes these different terms *are* the same (and the facts of *Lesher* and this case are the same), and Noble is somehow inconsistent, Plaintiff can attempt to explore it on cross-examination at trial. In sum, because the

instances identified by Plaintiff are not contradictory, Plaintiff's assertion that Noble's opinions "lack reliability [and] do not demonstrate a proper methodology" should be rejected.

V. Noble Did Not "Disclaim" Opinions Identified by Plaintiff.

Plaintiff's contention that Noble disclaimed a number of his opinions at his deposition does not stand up to modest scrutiny. Plaintiff asserts (at 21-22) "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 Dkt. 227-4, Noble *Baker* Dep., at 24:23-25) and that when asked whether there were allegations against Watts separate and apart from the criminal investigation, Noble answered, "I don't know. I don't – I don't recall that." (citing *id.*, at 57:9-14). However, these snippets of testimony disregard that Noble opined extensively in his report on the joint FBI/IAD investigation, *see* Dkt. 229, Noble Report, ¶¶ 87–107. Noble also specifically confirmed his opinions about the investigation at his deposition. Dkt. 227-4, Noble *Baker* Dep., at 336:7–338:17. It strains credulity to conclude Noble "disclaimed" all of his opinions regarding the joint FBI/IAD Watts Investigation based on his inability to recall allegations "separate and apart from the criminal investigation." While it was Plaintiff's attorney's prerogative not to ask any questions regarding the specific and detailed portions of Noble's report during the deposition, or to direct Noble to his report in that regard, it does not mean those opinions have been disclaimed and are somehow inadmissible under *Daubert*.

More troubling, Plaintiff contends Noble "testified there were no active investigations of misconduct, meaning administrative investigations, against Defendant Watts," citing to Noble *Baker* Dep., 56:13-22. Again, the transcript reveals Plaintiff is misconstruing the record. Noble was asked the following: "Now, were there parallel investigations against Ronald Watts, meaning administrative investigations, *for other allegations of misconduct* during the 2004-2012 time frame." (emphasis added). In fact, Noble's answer to the previous question explained that the CPD was aware of allegations against

Watts and it made some efforts regarding them. Dkt. 227-4, Noble *Baker* Dep., 56:1-11. Noble stated in his report and at deposition that the joint FBI/IAD confidential criminal investigation was controlled by the FBI and, as a result, the IAD could not pursue administrative disciplinary cases against the accused officers until the FBI/IAD criminal investigation was concluded. Dkt. 229, Noble Report, ¶¶ 101–106; Dkt. 227-4, Noble *Baker* Dep., at 56:1–9, 280:6–23. Otherwise, as Noble explained, if IAD moved administratively before the criminal investigation was complete, IAD would have compromised the criminal investigation by alerting the accused officers of the confidential investigation. Neither Plaintiff nor his experts contest this obvious principle. Nonetheless, from his mischaracterization of the record, Plaintiff makes the sweeping conclusion that Noble may not opine whether the investigative steps were reasonable, or otherwise discuss the joint FBI/IAD investigation. This wild, unsupported assertion should be rejected. Noble permissibly opined about the joint FBI/IAD investigation in his report, and Plaintiff may explore Noble's opinions at trial.

Next, Plaintiff asserts (at 21) "[t]he second topic regards the leaking of sensitive information to Defendant Watts" concerning the leaking of informant Moore's cooperation with the criminal investigation. Plaintiff contends 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...." It is unclear to Defendants what sort of argument Plaintiff is raising or what sort of relief Plaintiff is seeking on this point. Noble opined in his report:

> Dr. Shane's suggestion at pages 83-84 of his report that this was not investigated is incorrect. It should also be noted that the FBI, ATF, and DEA document productions are heavily redacted, and to my knowledge the FBI has not produced any unredacted document drafted by [the FBI Agent] regarding his discovery "that a task force officer assigned to ATF revealed the cooperation of Moore to an individual later believed to be associated with Watts."

Dkt. 229, Noble Report, ¶ 93. Noble states that the leak was investigated and points to the documents produced by federal agencies that were heavily redacted. This is a permissible, supported, opinion by Noble, and Plaintiff's reference to Noble's deposition testimony does not establish otherwise. Again,

Plaintiff's counsel did not even direct Noble to this opinion in his report when asking his questions. What's more, Plaintiff's counsel's vague deposition question regarding whether CPD did "enough" was properly met with a form objection. Dkt. 227-4, Noble *Baker* Dep., at 279:17–21. To the extent he disagrees, Plaintiff is free to explore this issue at trial by way of a proper question.

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

Plaintiff (at 22-23) references Noble's opinions that "no evidence" exists of "bias, insufficient investigations, or other flaws exist regarding the Chicago Police Department" and requests that they be barred. Plaintiff provides no meaningful discussion of these challenged opinions, and they ignore the context in which they were made. Rather, in conclusory fashion, Plaintiff asserts they should be barred because 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; Plaintiff is willfully ignoring the context in which Noble reaches his opinions.[8]

For example, citing to paragraph 17(g) of Noble's report, Plaintiff argues (at 22) that Noble's opinion that there is no evidence that the CPD's policies "are just a façade" should be barred. In doing so, Plaintiff ignores paragraphs 17(a)–(f), which set forth the bases for Noble's opinion that the CPD's policies are not "a façade." Dkt. 229, Noble Report, ¶ 17. Specifically, 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 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." *Id.*

As another example, Plaintiff seeks (at 22) to bar Noble's opinion that there is no evidence

[8] Shane stated several times in his report that there was "no evidence," in order to support his opinions. *See* Dkt. 228, Shane Report, at 33, 64, 71, 76, 78, 79, 83, 86, 89, 110, 115, 116.

"that the City failed to accept or document complaints of officer misconduct," citing to paragraph 21(a) of Noble's report. In doing so, Plaintiff again ignores the basis for that opinion, which is found in paragraphs 21(b)–(g) of Noble's report. Specifically, 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. *Id.*, ¶¶ 21(b)–(g).

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

Plaintiff's reliance (at 22-23) on *Estate of Loury* does not affect the Court's analysis. First, the barred opinions in *Estate of Loury* were not "identical opinions" to Noble's opinions here. See *Mendez*, Ex. 5, at 4-5. 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, Noble certainly "connected the dots" in this case. See *Mendez*, Ex. 5, at 4-5 ("'the determination of whether an expert's testimony is to be allowed is made on a case-by-case basis'… Noble's approach in this case provides a sufficient foundation for his opinions."). Plaintiff here fails to identify what evidence Noble "rejected," and they otherwise ignore the evidence, set forth above, that formed the bases for Noble's opinions.

VII. Plaintiff's Remaining Miscellaneous and Cursory Challenges to Noble's Opinions Are Without Merit.

Plaintiff raises (at 23-24) yet more cursory and underdeveloped arguments seeking to bar 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, Plaintiff (at 23) challenges the relevancy of Noble's opinions regarding IPRA. He asserts that, "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." This criticism is a thinly veiled attempt to prohibit Noble from testifying in rebuttal to a criticism raised by Shane. Noble explained that, "Dr. Shane claims that the city disclaimed knowledge of any operational change in terms of how IPRA conducted investigations as compared to OPS." *See,* Dkt. 229, Noble Report, ¶ 31. Noble then explained:

> 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.

Id., at ¶¶ 35–36. At his deposition, Noble was asked, 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 Noble from opining, "that independent civilian oversight is not the rule of American policing, but rather the exception." Here, Noble explains the benefits of IPRA, discussed above, which form the basis for his opinion. Moreover, Noble explains in detail the

basis for his opinion in this case that independent civilian oversight is the exception in his report. Dkt. 229, Noble Report, ¶¶ 32–36. Indeed, Noble's opinions in this regard are based on facts that Plaintiff does 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.), Plaintiff argues (at 24) that 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 Noble, that state law requires an affidavit in order to pursue police misconduct investigations, because it goes directly to Plaintiff's allegations that the CPD's disciplinary system was deficient. Once again, it would be misleading to the jury to allow 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* Dkt. 229, Noble Report, ¶¶ 48–57), and then disallow Noble from explaining the actual circumstances to the jury.

Plaintiff's final challenge (at 24) to Noble's opinions concerns his contention that it is impermissible for Noble to testify "that 'no reasonable CPD officer could believe they could act inappropriately with impunity and that nothing would happen.'"[9] According to Plaintiff, this testimony "invades the province of the jury and states an inappropriate opinion on the states-of-mind of CPD officers." Not only does Plaintiff fail to explain how this opinion "invades the province of the jury,"

[9] Plaintiff's argument is surprising because his own expert, Jon Shane, opines, "[t]he failure to supervise the defendants in the instant case would lead a reasonable officer to conclude that the [CPD] accepted the defendants' conduct." Dkt. 228, Shane Report, at 11. Based on Plaintiff's logic, his 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 Shane's opinions are not barred, Defendants should be allowed to rebut Shane's opinions through Noble.

it directly rebuts one of the opinions offered by his expert, Shane. Moreover, 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. Plaintiff argues (at 24) that the jury will need to determine "whether the City's disciplinary policies and practices caused Plaintiff's wrongful convictions," but that is merely the standard under *Monell*; Plaintiff does not explain how 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*, 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, Plaintiff's Motion should be denied in its entirety.

May 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **May 1, 2025**, I electronically filed the foregoing **Defendants' Response in Opposition to Plaintiff's Daubert Motion to Exclude the Opinions of Jeffrey Noble** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

s/ *Daniel M. Noland*