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

BEN BAKER and CLARISSA GLENN, Plaintiff, v. CITY OF CHICAGO, Former CHICAGO POLICE SERGEANT RONALD WATTS, OFFICER KALLATT MOHAMMED, SERGEANT ALVIN JONES, OFFICER ROBERT GONZALEZ, OFFICER CABRALES, OFFICER DOUGLAS NICHOLS, JR., OFFICER MANUEL S. LEANO, OFFICER BRIAN BOLTON, OFFICER KENNETH YOUNG, JR., OFFICER ELSWORTH J. SMITH, JR., PHILIP J. CLINE, KAREN ROWAN, DEBRA KIRBY, and as-yet-unidentified officers of the Chicago Police Department., Defendants.	)	Case No. 16 C 8940 Judge Franklin U. Valderrama Magistrate Judge Sheila M. Finnegan (This case is part of *In re: Watts Coordinated Pretrial Proceedings*, Master Docket Case No. 19 C 1717)

DEFENDANTS' JOINT MOTION *IN LIMINE* TO BAR JEFFREY DANIK

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Jeffrey Danik's report (Ex. 1) violates every basic tenet of expert testimony admissibility. Experts must be qualified and apply a methodology. Danik is not qualified and employs no methodology. While Danik is a former FBI agent with experience working on public corruption cases according to his CV, he has employed no methodology to even remotely be able to test his opinions other than his own say-so. Danik is not at all qualified to opine on what administrative action CPD should have employed, or when, in relation to either Watts or Mohammed and, more fundamentally, does not employ any cognizable methodology. Danik resolves factual disputes in Plaintiffs' favor anchored by his own credibility assessments and speculation throughout his report. Rather than a legitimate effort at applying sound methodology to a set of facts, Danik offers argument mirroring Plaintiffs' counsel's anticipated closing argument were Plaintiffs even allowed to admit most of the information Danik cites in his report. His testimony is inadmissible, in total.

Lest plaintiffs accuse Defendants of exaggerating, the following excerpt is taken from the introduction of his report wherein Danik summarizes his "opinions":

As his introduction demonstrates, Danik's opinions suffer from numerous deficiencies and are beyond salvage. The courts routinely excoriate experts for proffering similar reports, yet Danik failed to comply with the basic rules of expert testimony. (Ex. 2, *Patrick v. City*, 14 C 3658, 2/21/17 Tr. at 133 excluding larges sections of a similar expert report: "the majority of his report is just a horrible mushing together of facts, opinions, and some statements about his experience."). It is not a Court's job to blue-pencil an expert report; it is a Court's job to gatekeep. Danik should be barred for this fundamental reason, and for several others as outlined below.

I. Danik's Opinions Lack any Methodology and are Unreliable; Further, His Opinions Will Confuse and Not Be Helpful to the Jury as He Merely Parrots Plaintiffs' Anticipated Closing Argument and Often Speculates.

The lack of any asserted bases for Danik's opinions renders them inadmissible under Rules 702 and 703 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). The overwhelming majority of Danik's report consists of an argumentative parroting of the factual evidence plaintiffs seek to admit followed by bald conclusions that the Joint FBI/IAD Investigation did not live up to his personal beliefs about the way an investigation should be conducted or how quickly. Other than referencing his own personal experience (which does not include a single comparable investigation or any real experience in Internal Affairs), Danik fails to provide any explanation or application of the actual professional standards he is applying to reach his argumentative "opinions" in this case.

Instead, Danik identifies a single publication that discusses whether a parallel administrative proceeding can proceed during a pending criminal investigation. (Ex. 1 at 6, citing Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, attached hereto Ex. 3), but fails to otherwise meaningfully discuss or apply it. To the contrary, Danik simply implies the document (apparently based on its title and general yet inapplicable descriptions of inapposite parallel investigations) supports his opinion that the CPD should have moved administratively to discipline Watts and/or members of his team before the conclusion of the Joint FBI/IAD Criminal

Investigation. However, the publication actually supports the opposite conclusion. Specifically, the commentary to section 2.4 states that "[i]t is common practice to hold an administrative investigation in abeyance during the pendency of a criminal investigation based on the same facts." (Ex. 3 at section 2.4, commentary). There is nothing in this publication that supports Danik's opinions; to the contrary, it clearly supports Defendants' position here that the CPD had to wait until the conclusion of this criminal investigation to proceed administratively.

Tellingly, Danik never specifically cites or relies upon this publication again in his report. (Ex. 1). Danik also does not explain how any of the alleged deficiencies in this case violate anything in this publication and he does not actually quote anything substantive from the publication. *Id.* at 6. Indeed, Danik makes no attempt to apply any actual standards at all. *Id.* Instead, Danik attempts to cloak himself in his "professional experience" to conclude that the Joint FBI/IAD Investigation did not do various things (or did not do them quickly enough) that measure up to his own personal views on corruption investigations. *Id.* These conclusions are then lumped into conduct Danik labels with various pejorative descriptions, such as [redacted]. *Id.* at 2, 12-13, 15-16, 23, 24, 28.

This Court should bar these opinions pursuant to the recently revised Fed. R. Evid. 702 and *Daubert*. Effective December 1, 2023, Rule 702 now states that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise **if the proponent demonstrates to the court that 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 (Emphasis added as to the new language of the rule).

The December 2023 committee comments explain that Rule 702 was amended "to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." Rule 702, 2023 Amendments, December Committee Notes. Per the committee comments, "many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a)." *Id.* The committee comments further state that the amendments to the rule were "made necessary by the courts that have failed to apply correctly the reliability requirements of that rule." *Id.* As clarified by the committee comments, "arguments about the sufficiency of an expert's basis [do not] always go to weight and not admissibility." *Id.* The committee comments also emphasized the important gatekeeping function of the courts:

> (2) Rule 702(d) has also been amended to emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology. Judicial gatekeeping is essential because just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, jurors may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support. *Id.*

In addition to the recently revised Rule 702, the case law also makes clear that the trial court must ensure that "any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert*, 509 U.S. at 589; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147-49 (1999) ("Kumho Tire") (extending *Daubert* principles to all areas of expert testimony). The Seventh Circuit has stressed that "the key to the gate is not the ultimate correctness of the expert's conclusions.

Instead, it is the soundness and care with which the expert arrived at her opinion[.]" *Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 431 (7th Cir. 2013).

To satisfy *Daubert*, the proffered testimony must have a reliable basis in the knowledge and experience of the relevant discipline, consisting of more than subjective belief or unsupported speculation. *Chapman v. Maytag Corp.*, 297 F.3d 682, 686-87 (7th Cir. 2002); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."). By assessing reliability, the court ensures the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire*, 526 U.S. at 152. An expert "cannot simply assert a 'bottom line.'" *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010).

In this regard, "[a] witness who invokes 'my expertise' rather than analytic strategies widely used by specialists is not an expert as Rule 702 defines that term." *Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416, 419 (7th Cir. 2005); *Cummins v. Lyle Indus.*, 93 F.3d 362, 369 (7th Cir. 1996) (refusing to "'relax[ ] the usual first-hand knowledge requirement of the Federal Rules of Evidence on the ground that the expert's opinion has a reliable basis in knowledge and experience of his discipline'" *quoting Deimer v. Cincinnati Sub-Zero Prods., Inc.*, 58 F.3d 341, 345 (7th Cir. 1995)). An expert who bases his opinions on his experience "must nevertheless explain how the application of his prior experience to the facts of the case compels his conclusion." *Jordan v. City Chicago*, 2012 WL 254243, at *6 (N.D. Ill. Jan. 27, 2012) (excluding opinion entirely based on "30+ years of experience as a firearms expert"); *see also* Fed. R. Evid. 702 advisory committee's note ("If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the

facts. The trial court's gatekeeping function requires more than simply 'taking the expert's word for it.'"). This analysis is particularly critical here as Danik failed to identify even one specific investigation in which he was involved comparable to the present Joint FBI/IAD Criminal Investigation, let alone a "reliable basis" in his experience, that would suffice to support his criticisms. (Ex. 1).

In addition to this fatal deficiency, Danik's opinions regarding this case are inadmissible pursuant to amended Rule 702 and prior case law because they are devoid of any basis by which this Court can evaluate their reliability. His opinions are almost exclusively comprised of summarizing and repeating arguments and/or evidence he has construed to be favorable to Plaintiff. (See bullet points at pages 9-10 below). For example, Danik opines that [redacted]

However, "[a]n expert who parrots [ ] out-of-court statement[s] is not giving expert testimony; he is a ventriloquist's dummy." *U.S. v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014); *Goldberg v. 401 North Wabash Venture LLC*, 755 F.3d 456, 461 (7th Cir. 2014) ("An expert witness is not permitted to parrot what some lay person has told him."); *Higgins v. Koch Development Corp.*, 2013 WL 6238650 (S.D. Ind. Dec. 3, 2013) ("[T]he court must be wary that experts are not simply parroting the opinions of counsel.")

"I]t is well-settled that determining the weight and credibility of witness testimony is the exclusive province of the jury and that experts are not permitted to offer opinions as to the believability or truthfulness of that testimony." *Jordan v. City Chicago*, 2012 WL 254243, at *4 (N.D. Ill. Jan. 27,

2012) (barring expert who came to conclusions about facts of case and based his opinions on such conclusions). "An expert witness may not usurp the jury's function to weigh evidence and make credibility determinations...[E]xpert witnesses are not allowed to sort out possible conflicting testimony or to argue the implication of those consistencies. That is the role of the lawyer, and it [is] for the jury to draw its own conclusions from the testimony it hears." *Davis v. Duran*, 2011 WL 2277645, at *7 (N.D. Ill. 2011). "[T]he credibility of eyewitness testimony is generally not an appropriate subject matter for expert testimony because it influences a critical function of the jury-determining the credibility of witnesses." *United States v. Hall*, 165 F.3d 1095, 1107 (7th Cir. 1999). "[T]he prejudicial effect of [testimony about the defendant's state of mind] would far outweigh its probative value, given its highly speculative nature." *Krik v. Crane Co.*, 71 F. Supp. 3d 784, 788 (N.D. Ill. 2014). "Expert testimony as to legal conclusions that will determine the outcome of the case is inadmissible." *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003).

In violation of these principles and the amended Rule 702, Danik repeatedly parrots plaintiffs' anticipated closing argument under the guise of "opinion" testimony. Danik's "opinions" necessarily rely on his conclusions about disputed underlying facts (including whether there was evidence of falsely arresting innocent people), the mental state of the Defendants, the credibility of witnesses, and ultimate legal matters. As such, they are not based on any reliable principles or appropriate methodology that can be objectively measured. The following is a representative sample of Danik's inadmissible opinions from his report:

[redacted]

[redacted]

[redacted]

These so-called opinions are inadmissible under the amended Rule 702 and Daubert because they are unreliable, unsupported, and/or lack a basis in acceptable methodology or standards. For example, Danik says that the CPD should have moved administratively to protect innocent civilians from false arrests, but he does not identify the innocent people who were falsely arrested, or how he determined that said unidentified individuals were "innocent" or "false[ly] arrested" (again Danik's opinion is entirely silent as to any specifics). Danik says the investigation should have been quicker, but he does not say when it should have ended and why, or what standard supports this bald conclusion. Danik improperly opines about the mental state of CPD personnel who participated in the Joint FBI/IAD Investigation and what they allegedly knew and when, but his opinions are conclusions about underlying disputed facts and credibility determinations (*e.g.*, that innocent people were being falsely arrested which the criminal investigation did not establish). Far from reliable opinions, they are argumentative conclusions parroting plaintiffs' allegations, which is prohibited by Rule 702 and the case law.

Moreover, as explained above, Danik fails to define the standards by which he judges Defendants' actions, offering no "concrete information against which to measure abstract legal concepts." *U.S. v. Blount*, 502 F.3d 674, 680 (7th Cir. 2007). Without a sound framework, his opinions

are tantamount to bald legal conclusions, which are unhelpful and inadmissible. *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003).

The absence of identifiable, reliable standards also creates the very real possibility of confusion of the issues for the jury. This case involves alleged violations of the Constitution and state law for which the jury will be instructed by this Court. By argumentatively labeling Defendants' alleged actions as [redacted] Danik impermissibly "induce[s] the jurors to substitute their own independent conclusions for that of the experts." *See Thompson v. City of Chicago*, 472 F.3d 444, 458 (7th Cir. 2006). But whether Defendants acted in the manner argued by Danik "is rather vague and is at variance from what the finder of fact is called upon to decide" and would thus completely confuse the issues to be determined at trial. *Empress Casino Joliet Corp. v. Johnston*, 2014 WL 6735529, at *11 (N.D. Ill. 2014). These opinions "would confuse the jury and unfairly prejudice [Defendants] by implying scienter or at least allowing the jury to infer it." *Am. Family Mut. Ins. Co. v. Electrolux Home Prods., Inc.*, 2014 WL 2893179, at *8 (W.D. Wis. 2014) (refusing to admit proffered expert opinion that Defendant behaved "unethically"); *Sanders v. City of Chi. Heights*, 2016 WL 1730608, at *8 (N.D. Ill. 2016) ("Because [the expert's] definition of deliberate indifference is not necessarily the same as the Court's instruction on the legal definition of deliberate indifference, his testimony on this issue will only confuse the jury.").

Danik's regurgitation of Plaintiff's views on the evidence is also not helpful to the jury for another reason. "An expert's opinion is helpful only to the extent the expert draws on some special skill, knowledge, or experience to formulate that opinion; the opinion must be an expert opinion (that is, an opinion informed by the witness' expertise) rather than simply an opinion broached by a purported expert." *United States v. Benson*, 941 F.2d 598, 604 (7th Cir. 1991). Danik does not draw on any specialized knowledge or opine about anything "peculiar about law enforcement[.]" *Florek v. Vill. of Mundelein, Ill.*, 649 F.3d 594, 602-03 (7th Cir. 2011). To the contrary, Danik "'does little more than

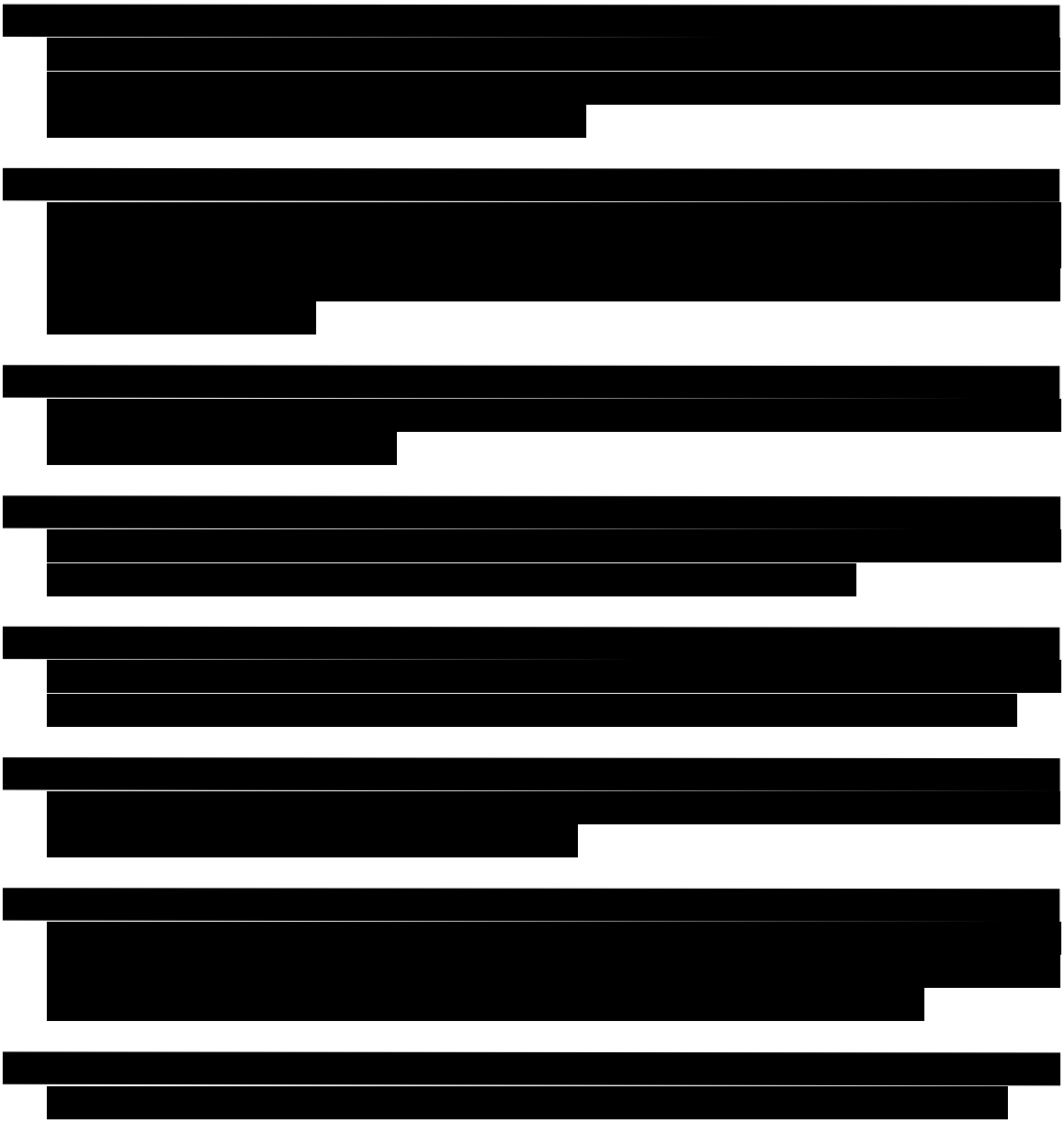
tell the jury what result to reach[,]'" which is categorically unhelpful. *U.S. Gypsum Co. v. Lafarge N. Am. Inc.*, 670 F. Supp. 2d 768, 775 (N.D. Ill. 2009). For these reasons, the basis of these opinions is not "beyond the ken of the average layperson[,]" and the opinions should be barred. *Florek*, 649 F.3d at 602-03 (barring opinion primarily based on "[the expert's] belief, that, given the late hour, it would have been unreasonable to expect voluntary compliance with a knock at the door in 15 seconds").

The bullet points listed above are only representative of some of the more obvious improprieties and unreliable "opinions" in Danik's report. A close review of Danik's report reveals a near constant stream of conclusions about what the evidence is and biased and exaggerated opinions often involving the resolution of factual disputes. (Ex. 1). It is nearly impossible to sort out Danik's "opinions" from his improper views on the facts of this case. Neither this Court nor Defendants' counsel should be forced to perform the invasive surgery needed to extract a proper opinion out of a completely flawed report. The deficiencies of the report and the purported opinions are so numerous and so permeate this witness' opinions that it is impossible to glean any admissible testimony from this witness. He should be barred in total.

II. Danik's Speculative Opinions Should be Barred.

It is well settled that speculation by an expert is improper. *DePaepe v. General Motors Corp.*, 141 F.3d 715, 720 (7th Cir. 1998) ("the whole point of *Daubert* is that experts can't 'speculate.' They need analytically sound bases for their opinions. District courts must be careful to keep experts within their proper scope, lest apparently scientific testimony carry more weight with the jury than it deserves."); see also *Chapman*, 297 F.3d at 686-87. Danik speculates throughout his report, as the following representative examples (some of which are duplicative of the bullet points in section I and include our emphasis added) demonstrate:

[redacted]



All of these statements are not valid opinions but are inadmissible conjecture of the type routinely barred by the courts. A review of Danik's report reveals many other examples, including his various assertions about what would be "expected" in this kind of investigation without reference to any standard or specific experience. (Ex. 1 at 11-14, 17-20). All of these statements should be barred because they are improper speculation. *DePaepe*, 141 F.3d at 720.

Danik's deposition admissions establish his opinion that the CPD should have taken administrative action against Watts and Mohammed before the conclusion of the Joint FBI/IAD

Criminal Investigation is inadmissible speculation. As to whether the CPD should have moved administratively to discipline Watts and Mohammed before Baker and Glenn's 2005 arrests and 2006 prosecution, Danik admitted at deposition that he does not know if the FBI had direct evidence of wrongdoing against Watts as of late 2007 and early 2008. (Ex. 4, Danik dep at 278). [redacted] Danik also acknowledged that revealing the confidential criminal investigation at an administrative proceeding would have undermined the ability to prove any case against Watts. (Ex.4, Danik dep at 30-31, 45, 181, 256-57). Danik's speculative opinion on this issue should be barred.

III. Danik Offers Other Opinions Regarding Police Department and Internal Affairs Matters For Which He Isn't Qualified.

Danik was never a police officer and does not have any applicable internal affairs experience. Though he purports to base his opinions on how CPD should have handled this matter from an internal affairs perspective, he never had the experience of working in the job on which he now proffers opinions. Danik opines that [redacted] (Ex. 1 at 5). Not only is this "opinion" speculative and argumentative, Danik was never a police officer, let alone a police department commander, that would provide him with a reliable basis to assert a statement on what a commander should do.

As another example, Danik argumentatively asserts that, [redacted]

[redacted] (Ex 1 at 21). In addition to the previously discussed deficiencies with this opinion, Danik is a non-police officer who never worked internal affairs in any capacity, and is therefore not qualified to offer these opinions. *See Catlin v. DuPage Cty Major Crimes Task Force*, 2007 WL 1772175, at *1 (N.D.Ill.2007) (finding 18 years of experience working for the Cook County Department of Corrections to be "irrelevant" qualifications for determining proper amount of force during arrest)

IV. Opinions Against Non-Parties Should be Barred.

Danik opines on topics directed to parties against whom there are no pending claims. For instance, Danik included opinions that [redacted]

[redacted]

Neither [redacted] are parties to this case. The fact that an expert may not testify to opinions that relate to claims that are not at issue or relate to non-parties is axiomatic. *See* Fed. R. Evid. 702 (expert testimony is admissible if it "will help the trier of fact to understand the evidence or to determine a fact *in issue*.") (emphasis added). Thus, Danik's opinions relating to the [redacted] should be excluded under Rule 702(a). This should include Danik's opinion that operations were [redacted] (Ex. 1 at 28), because Danik admitted that was [redacted] (Ex. 4, Danik dep at 281).

In his report, Danik includes an irrelevant opinion that a non-defendant police officer filed a false police report. Danik states:

[redacted]

As Danik describes in this paragraph, the alleged misconduct he identifies was committed by an unnamed non-defendant police officer who s[redacted] The remaining discussion in this paragraph is that Watts [redacted] Since the misconduct Danik identifies in this paragraph is against a non-defendant police officer, it is irrelevant and should be barred under Rule 702(a).

V. Opinions Based on Facts Not Found in the Record and Contradicted by the Record Should be Barred.

As outlined above, expert testimony must be based on sufficient facts or data and be the product of reliable principles and methods. Fed. R. Evid. 702. As the Advisory Committee Notes to the amended Rule 702 recently emphasize, the gatekeeping function of the court requires an evaluation "about the sufficiency of an expert's basis." Moreover, experts may not offer opinions that are not supported or are contradicted by unrebutted evidence in the record. *Queen v. W.I.C., Inc.*, No. 2017 WL 3872180, at *5 (S.D. Ill. Sept. 5, 2017) (excluding expert report and testimony of otherwise qualified Doctor and life care planner because his opinions on plaintiff's future medical treatment had

"no foundation in the record" and his cost valuation based on those recommendations likewise "lack[ed] a proper foundation"); *Martinez v. Sakurai Graphic Sys.*, 2007 WL 2570362, at *5 (N.D. Ill. Aug. 30, 2007) (where "no facts in the record support[ed] [expert's] theory" that Plaintiff's accident was "possibly" caused by something in Plaintiff's pocket, the court stated "Because this testimony lacks evidentiary support, [expert's] opinion is speculative and it must be barred.") Danik runs afoul of these proscriptions on multiple occasions.

For example, Danik states [redacted] (Ex. 1 at 10). However, Danik does not cite anything in the record to support this naked assertion or explain what evidence he is referring to. *Id.* Rule 26(a)(2)(B) requires experts to identify the factual basis of their opinions. This statement should be barred because Danik did not comply with the rule by providing the factual basis for it.

In an attempt to contradict clearly established facts, Danik also attempts to rewrite important documents from the investigation. Former IAD Agent Calvin Holliday wrote a memorandum dated September 21, 2004 summarizing the initial meeting between IAD and the United States Attorney's Office (and other federal agencies) regarding the Joint FBI/IAD Investigation. Holliday's memo states in part as follows: "The Cooperating Individual is to be prosecuted in federal court and the United States Attorneys office believe they should be in **control of everything that results from his cooperation**." (See Holliday's 9/21/04 memo attached as Ex. 6) (Emphasis added). By its plain language, this memo references USAO's directive to CPD that they should be in "control of everything" in the investigation that results from this source. But contrary to the written record, Danik opines, without any support whatsoever, that "[redacted] (Ex. 1 at 14). This opinion

should be barred; it is unreliable because it is improperly speculative and necessarily based on Danik's rewriting of the plain language of a memorandum from the investigation.

Danik simply ignores aspects of the record when inconsistent with his conclusions. For instance, [redacted] (Ex. 1 at 17). However, the record shows that the FBI was fully aware of [redacted] indeed, [redacted] was the subject of IAD's initial meeting with the FBI on this investigation outlined in Holliday's September 21, 2004 memo discussed above. (Group Ex. 7, PL JOINT 018627, 010947-48). There is also FBI documentation, ignored by Danik, reflecting that the FBI found that [redacted] (FBI000451, attached as Ex. 8). Danik's opinion/observation that IAD [redacted] is factually incorrect. As such, it is not based on sufficient data and should be excluded.

In his report, Danik also tries to interject a sensational allegation into the case that Watts is a murderer. Specifically, Danik opines that [redacted] (Ex. 1 at 17). While headline grabbing, Danik's opinion is unsupported by evidence, which Danik admitted at his deposition. (Ex. 4, Danik depo at 272-73). The murder victim he referred to – Wilber "Big Shorty" Moore – was murdered by the Hobos street gang, as established by a racketeering jury trial in this building that was affirmed by the Seventh Circuit. *U.S. v. Brown, et al.*, 973 F.3d 667 (7th Cir. 2020). The Seventh Circuit explained as follows:

> Moore dealt drugs in the Ida B. Wells housing projects. In 2004, he started cooperating with the Chicago Police Department (CPD). Information he provided led to the search of an apartment from which Council supplied crack cocaine. During the search, CPD officers seized

> cocaine, crack cocaine, heroin, cannabis, and firearms from the apartment. Council figured out that Moore was the informant.
>
> In January 2006 Council and Poe, with Bush's assistance, killed Moore. Bush spotted Moore's car parked outside of a barbershop and made a phone call. Council and Poe quickly arrived on the scene. As Moore left the barbershop, Poe fired at him from Council's car. Moore attempted to flee, but he tripped in a nearby vacant 680 lot, allowing Council and Poe to catch up to him. Poe immediately shot him in the face. *Id.* at 679.

There is no actual evidence that Watts had anything to do with Moore's murder, Danik cites none, and Danik admits there is none. Refuting his own report, Danik admitted at deposition that he is not contending Watts had anything to do with Moore's murder. (Ex. 4 at 272-73). Danik should not be permitted to inject pure conjecture into this case with this unsupported allegation, especially in light of his admission at deposition.

Moreover, any attempt to raise Moore's murder before the jury would be unduly prejudicial to Defendants. The danger of unfair prejudice of admitting this allegation far outweighs any potential relevance it could have, especially because the allegation is not based on actual evidence and is contradicted by the federal prosecution of the Hobos street gang for Moore's murder. *Id.* Any suggestion by Danik or anyone else that Watts (or any member of his tactical team) had anything to do with Moore's murder should also be barred under Rule 403.

VI. Danik's Opinions Regarding [redacted] Should be Barred because They Will Not Assist the Jury.

To be admissible, Rule 702(a) requires that expert testimony help the trier of fact to understand the evidence or to determine a fact in issue. Danik's opinions relating to [redacted] will not help the jury. A representative sample of his opinions regarding [redacted] are as follows:

[redacted]

[redacted]

[redacted]

Because Danik readily admits that he is simply relying upon [redacted] Danik's opinions regarding [redacted] will not help the jury understand the evidence or determine a fact at issue. Indeed, Danik's opinions about [redacted] in this regard are not expert testimony at all, as a layperson can read [redacted]. *United States v. Gan,* 54 F.4th 467, 474–75 (7th Cir. 2022) ("Expert testimony ordinarily is not needed, though, to provide an 'interpretation' of an unambiguous term or phrase that jurors can understand without expert help. Such testimony is not, in terms of Rule 702, helpful to a jury")

Moreover, to the extent Danik is attempting to interpret [redacted], any such opinion is an inadmissible legal conclusion. In *Envy Branding, LLC v. William Gerard Grp., LLC*, No. 20-CV-03182 (JLR), 2024 WL 869156, at *8 (S.D.N.Y. Feb. 29, 2024), the defense proffered an expert to opine on the interpretation of an MOU in a contract dispute. The court excluded that opinion because at least one basis for the expert's opinion was his "review of the plain language" of the MOU and "textual analysis of these agreements plainly amounts to a legal opinion." *Id.* Here, Danik repeatedly relies on the [redacted] in rendering his opinions, which amounts to an inadmissible legal conclusion. *Id.* Accordingly, Danik's opinions regarding [redacted] should be barred because they constitute an inadmissible legal conclusion that will not help the jury.

WHEREFORE, Defendants request that this Court enter an order *in limine* barring Jeffrey Danik as a witness, and for whatever other relief this Court deems fit.

Respectfully submitted,

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