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

William Carter,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 C 7241
	)	
City of Chicago, Ronald Watts, Darryl Edwards, Alvin Jones, Kallatt Mohammed, John Rodriguez, Calvin Ridgell, Jr., Elsworth J. Smith, Jr., Gerome Summers, Jr., and Kenneth Young, Jr.	)	Judge LaShonda A. Hunt
	)	
Defendants.	)	

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s):**

Statutes:

Defendants, Alvin Jones, Elsworth Smith Jr., Kenneth Young Jr., Darryl Edwards, Gerome Summers Jr., John Rodriguez, and Calvin Ridgell,[1] by their attorneys, for their motion *in limine* to bar plaintiff's expert Jeffrey Danik, state as follows:

This case arises from plaintiff's claim that he was falsely arrested for drug crimes by former Sgt. Ronald Watts and members of his tactical team in 2004 and 2006. According to plaintiff, even though he pled guilty to two of these three arrests and was found guilty for the third arrest, and even though he admits to being a daily drug user during this time period, on these three particular occasions he was not committing a drug crime. Ironically, in addition to the defendant officers, plaintiff also filed a *Monell* claim against the City of Chicago, even though it was the Chicago Police Department's ("CPD") Internal Affairs Division ("IAD") whose efforts paved the way for plaintiff's convictions to be overturned. Specifically, IAD brought the allegations of criminal misconduct against Watts to the attention of the FBI in September 2004, which led to the Joint FBI/IAD Investigation of Watts and other members of his team, which joint investigation ultimately caught Watts and Mohammed accepting bribes and/or stealing Government money from a drug courier resulting in their federal convictions, which convictions led to the Cook County State's Attorney's Office's ("CCSAO") decision to agree to plaintiff's request to vacate his convictions, which led to this lawsuit.

So what did the City do wrong when IAD participated with the FBI in its investigation of Watts and Mohammed's corruption? Plaintiff disclosed former FBI agent Jeffrey Danik to opine that the City should have breached the confidentiality of the federally led joint investigation before the United States Attorney's Office ("USAO") and FBI concluded the investigation to move administratively to fire Watts and Mohammed from the CPD. According to Danik, IAD should have taken this action even though it would have ruined the FBI's investigation and prevented the criminal

[1] Defendants Ronald Watts and Kallatt Mohammed join in the relief requested in this motion.

prosecution of Watts, and even though the USAO and FBI controlled the confidential informants, confidential overhears, and other secret information that would have been necessary to prove-up the administrative charges before the Police Board of the City.

To offer this bold opinion that a municipal police department should have interfered with a confidential FBI criminal investigation to take an employment action, one would expect Danik: (1) to have a plethora of experience working on these types of joint federal/local investigations into municipal corruption; (2) be able to identify examples where a local municipality successfully followed Danik's type of advice; (3) have extensive municipal internal affairs experience; and (4) be able to point to generally accepted law enforcement standards to support his opinion. Danik, however, has none of these things. He never worked on an investigation like this. He can't identify a single investigation where a local municipality broke the cover of a confidential FBI criminal investigation to move administratively against a corrupt officer/official. He never worked for a City's police department and has no applicable internal affairs experience. And he can't cite a single professional standard that supports his opinion. In fact, the only professional standard he cites supports the City's view, teaching 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 Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, at section 2.4, commentary). The 2011 Memorandum of Understanding ("MOU") between the FBI and CPD also does not support Danik's assertions. To be sure, Danik has experience working for the FBI, but Rules 702, 703, and *Daubert* require more. He is not qualified and does not have a foundation to offer this opinion.

As we discuss below, there are many other reasons why Danik should be barred. His report (Ex. 1) and supplement (Ex. 2) violate every basic tenet of expert testimony admissibility. Danik resolves factual disputes in plaintiff's 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 plaintiff's counsel's anticipated closing argument (were plaintiff even allowed to admit most of the information Danik cites in his report). His testimony is inadmissible, in total. Lest plaintiff accuse defendants of exaggerating, the following excerpt is taken from the introduction of his report wherein Danik summarizes his "opinions":

> I would be remiss if I did not begin by stating I was shocked and saddened by what I read in the record. The extreme recklessness of leaving demonstrably corrupt officers loose in a particularly vulnerable segment of the community is so far removed from anything I've ever experienced in my law enforcement career; its negative impact cannot be overstated. The worst possible allegations that can be made against police officers were being corroborated in part for several years. The CPD received accusations of selling drugs into the community and dealing in firearms by multiple separate people telling near identical stories and who do not appear to have known the others were cooperating. An officer was accused of shooting at persons as part of their bribe and extortion payment racket and suspicion even arose about one officer's involvement in a homicide of a drug dealer who might cooperate against him. The officers received cash bribes or stole funds and falsified police evidence records eight times over the course of years, much of it documented via audio or video recordings. Instead of removing them administratively, the CPD command staff claims to have instead outsourced the entire matter for several years to an often-bungling group of officials outside their department. Inexplicably, CPD took no ownership of the matter and allowed the targets to remain as officers in the very community they were known to be victimizing. Perhaps the most egregious thing is CPD then did nothing to identify and attempt to correct possible false arrests of the people the target officers had victimized during those previous years. (Ex. 1, Report at 2-3).

As his introduction demonstrates, Danik's opinions suffer from numerous deficiencies and are beyond salvage. The courts routinely discourage experts from proffering similar reports, yet Danik failed to comply with the basic rules of expert testimony. *Kraft Foods Global, Inc. v. United Egg Producers, Inc.*, 2023 WL 6248473, *2 (N.D. Ill. September 19, 2023)(Seeger, J.)("An expert witness cannot turn into a mouthpiece for the lawyer, giving a closing argument in the middle of the case. An expert is not a narrator of the evidence, offering a running commentary on what the jury has already heard.")[2] It is

[2] Defendants have sought leave to file a nearly identical motion to bar Danik which is currently pending before Judge Seeger in *Gipson v. City, et al.*, 18 C 5120, Dkt.173 (The City's motion for leave to file brief in excess has not yet been ruled upon by Judge Seeger).

not a Court's job to blue-pencil an expert report; it is a Court's job to gatekeep. Danik should be barred for these reasons, and for several others as outlined below.

I. Danik Is Not Qualified and Proffers An Unreliable Opinion Without Methodology that the CPD Should Have Moved Administratively to Separate Watts and Mohammed from Their Employment Before the Conclusion of the Joint FBI/IAD Criminal Investigation.

In essence, and after one wades through Danik's argumentative report, his main opinion is that the CPD should have brought administrative charges against Watts and Mohammed before the conclusion of the federally led Joint FBI/IAD Investigation into their criminal misconduct. (Ex. 1, Report at 2-4). In this section I, we demonstrate that (A) Danik is not qualified to offer that opinion and (B) Danik's opinion is unreliable and lacks any methodology.

A. Danik is Not Qualified.

According to Danik's report (Ex. 1 at 4-5), he primarily bases his opinions on his experiences with the FBI from 2002 through 2015. 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"); 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.'"); see also *see also Sanchez v. City of Chi.*, No. 18 C 8281, 2024 WL 4346381, at *7 (N.D. Ill. Sept. 20, 2024) (Hunt, J.)("While Janota undisputably has extensive experience in law enforcement, that does not mean that he is qualified to opine on all law enforcement subjects.")

This analysis is particularly critical here as Danik failed to identify even one specific investigation in which he was involved that is comparable to the Joint FBI/IAD Investigation at issue,

let alone provide a "reliable basis" in his experiences that would suffice to support his criticisms. While Danik might be qualified to critique an FBI investigation, he lacks sufficient experience to offer criticisms of the specific type of joint investigation at issue in this case. This case does not simply involve an FBI investigation. Rather, this case involves a joint investigation conducted between the FBI and IAD concerning allegations of corruption against CPD officers Watts and Mohammed that was controlled by the USAO. There is a critical difference between the Joint FBI/IAD Investigation here and the types of investigations with which Danik had experience. The joint investigation at issue here involved the FBI and a law enforcement agency (CPD) jointly investigating allegations of criminal conduct by the agency's own members. Danik points to no similar experience with such an investigation.

At deposition, Danik discussed two investigations in which he was involved which plaintiff's counsel has previously asserted supports his opinions. A review of that cited testimony establishes it does not. The first is Operation Farmhouse Cantina (Ex. 4, Danik dep. at 65:8 – 72:11), an FBI investigation targeting human trafficking in Palm Beach County. However, that case did not involve a joint investigation between the FBI and a law enforcement agency that investigated alleged criminal conduct by the agency's members. The only "involvement" by a law enforcement agency other than the FBI was that Danik "talked to the cops" and "injected police officers and undercover agents" in the investigation. (*Id.* at 66:1; 67:17-18). Operation Farmhouse Cantina involved an FBI investigation into human traffickers. It was not an FBI investigation conducted jointly with a local law enforcement agency to investigate members of that law enforcement agency. The second investigation posited by plaintiff to establish Danik's experience fares no better. Operation Blind Justice (Ex. 4, Danik dep at 79:13 – 82:6) was an FBI investigation into allegations of drug smuggling by Florida Bureau of Prison ("BOP") jail guards. According to Danik, the FBI worked with a Sheriff's Office and police department in that investigation. However, and critically here, the FBI did *not* involve the Florida BOP

in that investigation. Not only was the Florida BOP not involved, it was not even notified of the investigation until the end in the interests of "operational security." (*Id.* at 82:2 – 10). In contrast to the investigation at issue in this case, Operation Blind Justice clearly was not a joint FBI/Florida BOP investigation of the BOP's prison guards, and nobody was saying the Florida BOP should have (or could have) broken the confidentiality of that investigation before it was concluded to fire the involved officers.

Neither FBI investigation involved the complexities, challenges, and confidentiality concerns presented by jointly conducting with a law enforcement agency a criminal investigation of that agency's members. Like Operation Farmhouse Cantina, Operation Blind Justice underscores the critical absence of Danik's relevant experience to support his specific opinions regarding the joint FBI/IAD investigation of Watts and Mohammed. In particular, neither case supports his opinion that the CPD should have taken an employment action against Watts and Mohammed that would have necessarily revealed the ongoing confidential joint criminal investigation and precluded criminal prosecution.

Danik further offers opinions concerning police department and internal affairs matters for which he is not qualified as Danik was never a police officer and does not have any applicable internal affairs experience. For instance, Danik opines that "the acts alleged to have been perpetrated were of such grave public safety concern, it is nearly incomprehensible any police department commander would not take immediate steps to intervene and protect the public but instead allow the activity to continue for several years." (Ex. 1 at 5). As another example, Danik argumentatively asserts that, "Having delayed another incredible four-years and despite documenting an extraordinary number of specific corrupt acts (discussed below), CPD again failed to take action to protect the public, attempt to redress past arrests or attempt to mitigate the reasonable conclusion that innocent persons were either incarcerated or facing serious drug allegations which may have been fabricated." (Ex 1 at 21).

Danik, a non-police officer who never worked in a police department's internal affairs section, lacks the requisite experience to offer criticisms directed to IAD's actions as part of the Joint FBI/IAD criminal investigation of Watts and Mohammed. As such, Danik fails to meet the Rule 702 criteria. *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). He does not sufficiently explain how his actual experience leads to the conclusion reached, why that experience is a sufficient basis for his opinions, and how his experience is reliably applied to the specific facts of this case as required by Rule 702. This Court should not simply "take the expert's word for it" and should bar Danik's testimony and opinions that the CPD should have moved to discipline Watts and Mohammed before the conclusion of the federally led investigation.

B. Danik's Opinions Lack Methodology and Are Unreliable.

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). Other than referencing his own personal experience (which, as set forth above, does not include a single comparable investigation or any real experience in Internal Affairs), Danik fails to provide any explanation or application of actual professional standards to reach his argumentative "opinions" in this case. As a result, this Court should bar these opinions pursuant to the recently revised Fed. R. Evid. 702 (effective December 1, 2023) and *Daubert*. 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.* As explained directly below, Danik's opinions run afoul of Rule 702 because there is no basis by which this Court can evaluate the reliability of his opinions.

Danik's report references a single publication that discusses whether a parallel administrative proceeding can be conducted during a pending criminal investigation. (Ex. 3, DOJ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice). Danik's report refers to certain pages of the document concerning parallel criminal and administrative investigations but fails to meaningfully discuss or apply the referenced sections. He simply cites to page ranges. (Ex. 1 at 6). He does not explain how anything in the DOJ publication supports his criticisms and he does not quote anything substantive from the document. Without explanation, Danik simply offers the document as somehow supporting 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. But the DOJ publication says the opposite, finding 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). In terms relevant to Rule 702, Danik's report does not set forth or identify specific standards or generally accepted standards concerning parallel investigations on which he is relying that actually support his opinion.

Similarly, the 2011 MOU between the FBI and CPD does not support Danik's opinion. (Ex. 1 at 4). [redacted]

[redacted]

Again, while Danik may have worked with MOUs in his career in general, because he was never involved with an investigation like the Joint FBI/IAD Investigation here, he never worked with the specific provisions of the MOU at issue in this case. He is therefore not qualified to suggest these provisions of the 2011 MOU support his opinion, and indeed they do not as a plain reading of them demonstrate. Moreover, as set forth in the City's motion for summary judgment, the FBI file produced in this case demonstrates that as late as July 2011 (long after Carter's arrests at issue) the FBI and IAD continued to evaluate whether the investigation could be closed, but the USAO decided it could not. Specifically, FBI Special Agent [redacted] reported on July 13, 2011 that while the USAO supports an extortion charge against Mohammed, it had "elected to delay filing the complaint until further evidence could be obtained implicating Watts." (Ex. 6 at 2). Any suggestion that the investigators were not trying to close the investigation is therefore inconsistent with the record. And obviously, the CPD could not publicly move to fire Watts and Mohammed at that time because the USAO required the investigators to continue to work secretly to develop evidence against Watts.

Moreover, as to whether the CPD should have moved administratively to discipline Watts and Mohammed before Carters 2006 arrest,[3] 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). In late 2007 and into 2008, Mohammed accepted FBI-controlled payments from two cooperators, ostensibly to allow those individuals to continue to sell narcotics at IBW. (See CITY-BG-023858, attached as Ex. 7). Danik further admitted that he does not know if the FBI would have given the CPD access to and the ability to use the bribe payments for use at an administrative proceeding against Mohammed as late as June 2008. (Ex. 4, Danik dep at 281). Danik also acknowledged that revealing the confidential criminal investigation at an administrative proceeding would have undermined the ability to prove any case against Watts until the end of the investigation. (Ex.4, Danik dep at 30-31, 45, 181, 256-57).

In sum, Danik does not offer any professional standard supporting his opinion that IAD should have filed administrative charges against Watts and Mohammed before the Joint FBI/IAD Investigation concluded. He does not have FBI or IAD experience to offer that opinion, and neither the DOJ publication nor the MOU support his opinion. Danik's opinion is therefore inadmissible pursuant to amended Rule 702 because it is unsupported and lacks a reliable methodology.[4]

II. In Addition to Lacking any Methodology and their Unreliability, Danik's Opinions Will Confuse and Not Be Helpful to the Jury as He Merely Parrots Plaintiff's Anticipated Closing Argument.

[3] Since the Joint FBI/IAD Investigation did not start until IAD brought the allegations against Watts to the FBI in September 2004, it is clear that CPD could not have moved administratively against Watts before Carter's March 3, 2004 and June 18, 2004 arrests at issue in this case.

[4] Through no fault of his own, Judge Valderrama mistakenly denied this aspect of defendants' motion to bar Danik in *Baker/Glenn v. City*, 16 C 8940, Dkt. 385 (N.D. Ill. August 22, 2024), attached as Exhibit 8. The City did not appropriately flesh this argument out in its original motion, and Judge Valderrama found Danik's lack of experience and foundation went to the weight, not the admissibility, of Danik's opinion. Respectfully, Judge Valderrama is incorrect for the reasons set forth above. Id. at 10-11.

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 plaintiff seeks 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. (Ex. 1). As explained above, 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.

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).

As we pointed out in *Gipson*, Judge Seeger has recently addressed an expert's report that crossed the boundaries of Rule 702 and *Daubert* in *Kraft Foods Global, Inc. v. United Egg Producers, Inc.*, 2023 WL 6248473, *2 (N.D. Ill. September 19, 2023). As Judge Seeger explained:

> But an expert witness cannot merely read the evidence, and offer his own gloss on the facts of the case. An expert is not a color commentator on the evidence. An expert cannot merely argue the facts, or say what he would do if he sat on the jury. It is the lawyer's job, not an expert's job, to make arguments about the meaning of the exhibits. And it is the jury's job, not an expert's job, to weigh the evidence and draw reasonable inferences.

> An expert witness must offer "specialized knowledge" that will "help the trier of fact to understand the evidence or to determine a fact in issue." *See* Fed. R. 702. If it isn't "specialized knowledge," it isn't helpful. And if it isn't helpful, it isn't admissible.
>
> An expert must offer a value-add, meaning some "specialized knowledge" that would help the jury. *Id.* If an expert merely reads the evidence, and offers his spin on the facts, that expert isn't telling the jury more than it already knows. The expert must bring something to the table that the jury doesn't already have.
>
> An expert must testify to something more than what is 'obvious to the layperson' in order to be of any particular assistance to the jury." (Citations omitted).
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> An expert witness cannot turn into a mouthpiece for the lawyer, giving a closing argument in the middle of the case. An expert is not a narrator of the evidence, offering a running commentary on what the jury has already heard. See *LQD Business Finance, Inc. v. Rose*, 2023 WL 2306854, at *2 (N.D. Ill. 2023) ("An expert cannot be presented to the jury solely for the purpose of constructing a factual narrative based upon record evidence.") (citations omitted). An expert is not a lawyer's sock puppet. *Id.* at *1-2.

As another court has colorfully said, "[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.")

Moreover, "[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 plaintiff's 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 are representative samples of Danik's inadmissible opinions from his report:

- [T]he acts alleged to have been perpetrated were of such grave public safety concern, it is nearly incomprehensible any police department commander would not take immediate steps to intervene and protect the public but instead allow the activity to continue for several years. (Ex. 1 at 5).

- Clear evidence of corruption by Watts and Mohammed was collected and known to agents/officers and command staff of CPD beginning in 2003. (Ex. 1 at 10).

- Stunning statement detailing long-term corruption and violent acts by Watts. (Ex. 1 at 15).

- It is extraordinary that the CPD did not locate the girlfriend or document numerous subsequent efforts to do so when taken against the high probability she could have very relevant information related to identifying the source of the cash. (Ex. 1 at 19).

- This leaves CPD IAD as the only law enforcement agency remaining between Watts, Mohammed, and citizens they were entrusted to protect but instead were victimizing. (Ex. 1 at 20).

- Yet, despite this overwhelming evidence of corruption, they failed to track any of Watts cases for possible civil rights violations (false arrests). (Ex. 1 at 20).

- Having delayed another incredible four-years and despite documenting an extraordinary number of specific corrupt acts (discussed below), CPD again failed to take action to protect the public, attempt to redress past by arrests or attempt to mitigate the reasonable conclusion that innocent persons were either incarcerated or facing serious drug allegations which may have been fabricated. (Ex. 1 at 21).

- This incident adds to an alarming and growing number of complete investigative missteps that should have sparked any responsible command staff officer to intervene and take action to improve quality or to use the evidence in an administrative proceeding instead because the extreme seriousness of the crimes being perpetrated by Watts and Mohammed. (Ex. 1 at 22).

- A spectacularly failed operation-CPD appears unconcerned. The investigation goes dark and CPD does nothing to protect the public. (Ex. 1 at 23).

- CPD command staff seems to have no reaction to this incredible operational failure... (Ex. 1 at 24).

- CPD did nothing to protest the lack of operational action, that no lead FBI agent was assigned nor move to mitigate the clear immediate public safety threat Watts posed to the public. (Ex. 1 at 25).

- … but included all innocent citizens potentially victimized and incarcerated by Watts and Mohammed during the pendency of the 2004-2011, long bungled investigation. The citizens of Chicago deserved nothing less. (Ex. 1 at 27-28).

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. They were barred by Judge Valderrama in *Baker/Glenn* for the reasons outlined above and Defendants submit they should be barred here too. (Ex. 8 *Baker/Glenn* at 16-24).

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 "stunning," a "spectacular[] failure," "long bungled," and that he was "shocked and saddened by the investigation," 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.

III. Danik Should be Barred From Opining that Anyone Was Falsely Arrested, Innocent, or Wrongfully Convicted Because Those Are Improper Credibility Assessments.

"[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).

Danik's report is replete with assertions that the Watts team was falsely arresting innocent people. (Ex. 1, Report at 1: "Inexplicably, CPD took no ownership of the matter and allowed the targets to remain as officers in the very community they were known to be victimizing."; Report at 12: "Special mention must be made of the failure by IAD to recognize or acknowledge … planting narcotics on citizens then falsely arresting them." Report at 15: "CPD should have planned for similar interventions during the next six years where the falsely arrested victims could be citizens." Report at 20: "This leaves CPD IAD as the only law enforcement agency remaining between Watts, Mohammed, and citizens they were entrusted to protect but instead were victimizing.") The above case law instructs that these types of opinions are improper and inadmissible. Far from reliable opinions, they are argumentative conclusions parroting plaintiff's allegations, which is prohibited by Rule 702 and the case law.

IV. 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 v. Maytag Corp.*, 297 F.3d 682, 686-87 (7th Cir. 2002). Danik speculates throughout his report, as the following representative examples (some of which are duplicative of the bullet points in section II and include our emphasis added) demonstrate:

- **A federal cooperator has almost no motivation to lie** during the investigative phase because they know law enforcement is usually actively following up on their information and confronting them with the results. (Ex. 1 at 14).

- No FBI presence is documented during the lengthy meeting during which Moore provides a sweeping, detailed account of the massive illicit drug market operated unfettered in the IBW's housing complex **mostly because Watts is paid with cash and guns by dealers like him to allow it to thrive**. (Ex. 1 at 15-16).

- [redacted] was interviewed without notice to or participation by the FBI public corruption squad. [redacted] interview held **great potential** to be a critical break in the Watts case and is concerning a dangerous incident that **might have immediate impact** on CPD, such as [redacted] knowing of physical evidence corroborating his allegations or have an incriminating recording. (Ex. 1 at 16).

- Incredibly, CPD IAD does not pursue using [redacted] further because he was cooperating with another investigation and **Holliday apparently never escalates this important issue** to the FBI. (Ex. 1 at 17).

- Instead, CPD IAD and Holliday **appeared to unilaterally allow the potential significant benefit** [redacted] **represented** to the Watts investigation to slip away without asking the FBI (who they claimed was in charge) to assist. (Ex. 1 at 17).

- It is extraordinary that the CPD did not locate the girlfriend or document numerous subsequent efforts to do so when taken against **the high probability she could have very relevant information** related to identifying the source of the cash. (Ex. 1 at 19).

- April 18, 2008 CPD and FBI botch an attempt to record conversations with drug dealers after **a CPD informant apparently absconds and either sells or discards the recording devices** (FBI000460). (Ex. 1 at 22).

- **CPD command staff seems to have no reaction to this incredible operational failure**, and it is inescapable that CPD now, on top of all the previous documented payments to Mohammed, have direct evidence via audio and possibly video, which could easily be utilized in an administrative proceeding take no action. (Ex. 1 at 24).

- **CPD appears to take no action** during this time either to protect the public from Watts and Mohammed's predatory behavior throughout the summer of 2011. (Ex. 1 at 25).

All of these statements are not valid opinions but are inadmissible conjectures. 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.

Judge Valderrama largely denied this aspect of defendants' motion to bar Danik in his ruling in *Baker/Glenn*. (Ex. 8 at 26). One of the reasons is that he agreed with plaintiffs' attorneys that *DePaepe* was distinguishable because defendants had not pointed to opinions about a person's state of mind in Danik's report. *Id.* But a review of the bullet points above show they include speculation about a

person's state of mind, such as that "A federal cooperator has almost no motivation to lie" (Report at 14), the drug trade thrived at the Ida B. Wells "mostly because Watts is paid with cash and guns by dealers like [Moore] to allow it to thrive" (Report at 15-16), and the "CPD command staff seems to have no reaction to this incredible operational failure." (Report at 24).

As for the remaining speculative opinions bullet pointed above, plaintiffs argued, and Judge Valderrama denied our motion, because "Defendants cite nothing requiring exclusion of opinions simply because the expert is less than certain about some facts." (Ex. 8 at 26). While it is true defendants did not cite a case specifically stating the law in that exact way, it is black letter law that speculation is inadmissible. Respectfully, this is not an issue of cross-examination, this is an issue of gatekeeping and precluding unreliable opinions based on nothing more than conjecture.

V. 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 an FBI agent engaged in improper conduct in his report:

> Shannon Spalding … appears to obtain stunning information from the informant that the lead FBI agent has been overtly disclosing his official position to people in the housing projects while attempting to locate the informant. The FBI agent has also been using the informant to illegally purchase prescription drugs from drug dealers in the projects reportedly for use by a family member. Spalding reports this to both the FBI and the CPD command staff. On November 19, 2010, the FBI agent is removed from the investigation (FBI000883). If accurate, this might partially explain why the investigation had not been concluded by the FBI by that point. Regardless, it provides no reason and no excuse for CPD not taking administrative action against the officers. (Ex. 1 at 24).

Neither the FBI nor this agent 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 FBI's alleged misconduct should be excluded under Rule 702(a). This should include Danik's opinion that

operations were "bungled" (Ex. 1 at 28), because Danik admitted that was "mainly the bureau's bungling." (Ex. 4, Danik dep at 281).

Judge Valderrama denied defendants' motion on this point in *Baker/Glenn*, finding that Danik could opine on the topic of FBI misconduct. (Ex. 8 at 28-29). However, shortly after his ruling, Magistrate Judge Finnegan denied Certain Defendants' Motion to Depose FBI Agents regarding Allegations of Agent Misconduct Proffered by Plaintiffs' Disclosed Witnesses (Dkt. 688/689), wherein defendants had requested to depose the accused FBI agents about whether they committed the misconduct plaintiffs alleged. (*In re Watts Coordinated Pretrial Proceedings*, 19 C 1717, Dkt. 805, attached as Ex. 9 along with the tr. of pro. attached as Ex. 10). Thus, defendants have been barred from obtaining discovery from the accused FBI agents themselves if they committed the misconduct Danik relies upon. Obviously, plaintiff cannot have it both ways. Defendants planned to re-raise the issue with Judge Valderrama by filing a motion *in limine* in *Baker/Glenn*, but the case settled prior to the deadline for filing such pretrial motions. Defendants submit that this Court should grant defendants' motion to exclude opinions against non-party FBI as their motion is well-taken, and because it would be fundamentally unfair to allow Danik to opine on these issues while at the same time preclude defendants from obtaining discovery from the FBI about whether it committed the misconduct Danik relies upon.

VI. 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.

First, Danik states "Clear evidence of corruption by Watts and Mohammed was collected and known to agents/officers and command staff of CPD beginning in 2003." (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. Of note, Judge Valderrama barred this opinion because he found it to be an inadmissible mere summary of the facts. (Ex. 8 at 19, 29).

Second, 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 USAO (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. 11) (Emphasis added). By its plain language, this memo references USAO's directive to CPD that the USAO 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 "it was more likely that the USAO would need to agree to be in control

of any sentencing credit resulting from the cooperation." (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.

Judge Valderrama denied this aspect of defendants' motion in *Baker/Glenn*, finding that "Danik has experience with investigations where the USAO is involved, so the Court finds that he may offer his opinion as to his interpretation of the 2004 Memorandum based on that experience." (Ex. 8 at 31). Defendants respectfully disagree for the reasons set forth above. Indeed, defendants are not aware of any law (and neither plaintiffs nor Judge Valderrama cited any) that allows an expert to offer an interpretation of a document that is inconsistent with the actual content of the document.

Third, Danik ignores aspects of the record when inconsistent with his conclusions. For instance, as to a potential informant named [redacted], Danik states that: "Incredibly, CPD IAD does not pursue using [redacted] further because he was cooperating with another investigation and Holliday apparently never escalates this important issue to the FBI." (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. 12, PL JOINT 018627, 010947-48). There is also FBI documentation, ignored by Danik, reflecting that the FBI found that an informant (likely [redacted] though the name is redacted) could not be utilized because he provided inconsistent statements. (FBI000451, attached as Ex. 13). Danik's opinion/observation that IAD "never escalates this important issue to the FBI" is factually incorrect. As such, it is not based on sufficient data and should be excluded. Judge Valderrama granted this portion of defendants' motion in *Baker/Glenn* based on waiver. (Ex. 8 at 31).

Fourth, in his report, Danik also tries to interject a sensational allegation into the case that Watts is a murderer. Specifically, Danik opines that "Perhaps the most astounding allegation that was known by CPD, FBI and ATF about Watts was that he may have been involved in the targeted killing

of an ATF informant to stop the informant from cooperating against Watts and other drug dealers." (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 – Wilbert "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.

In his ruling, Judge Valderrama deferred ruling on this issue until the motion *in limine* stage on the prejudice issue, but agreed "with Plaintiffs that there is evidentiary support for Danik's opinion."

(Ex. 8 at 32). Defendants maintain their position that there is no evidentiary support for this opinion as it is factually incorrect, and also that Rule 403 strongly supports barring it as well.

VII. Danik's June 3, 2024, Supplemental Report Should be Barred.

Danik submitted a supplemental report dated June 3, 2024 (attached as Ex. 2), which should be barred for multiple reasons. The first section of the short report is entitled "Reaction to Craig Henderson's Declaration" (Ex. 2 at 1). Henderson is the FBI agent who was instrumental in closing the criminal case against Watts and Mohammed. In connection with a discovery matter during this litigation, the Government filed a Declaration from Henderson dated March 15, 2023 wherein he stated that "During my review of the items of electronic material collected by the FBI in its investigation of Mr. Watts and Mr. Mohammed, I did not perceive anything that indicated that the subjects of the investigation were engaged in falsification of criminal charges against any individual." (Ex. 14, Henderson declaration at para. 14).

In his supplemental report, Danik asserts that "Henderson's declaration is wrong" and "it is not useful to evaluating the evidence." (Ex. 2 at 2). Based on the case law set forth above, these opinions are inadmissible as credibility assessments and parroting plaintiff's counsel's argument. As Judge Seeger stated, "An expert is not a color commentator on the evidence. An expert cannot merely argue the facts, or say what he would do if he sat on the jury." *Kraft Foods,*, 2023 WL 6248473, *2.

Danik also asserts that contrary to Henderson's declaration, FBI recording 1D-30 indicates that an informant named [redacted] told the investigators that he witnessed Watts plant drugs on innocent people "forty-to-fifty times with his own eyes." (Ex. 2 at 2). However, a transcript of that recording shows Danik's report does not accurately record what was said. [redacted] does not say that he witnessed Watts plant drugs on innocent persons forty-to-fifty times with his own eyes. Rather, [redacted] says that on approximately 40-50 times he witnessed Watts give drugs to people in exchange

for information. (Ex. 15, Tr. of 1D-30 at 13-15). Based on the case law set forth in section VI above, Danik's opinions should be barred because it is contradicted by the factual record.

And finally, Danik asserts at pages 1-2 of his supplement that "the written FBI file and other documents is replete with evidence and allegations regarding the planting of drugs on innocent citizens and then arresting them by Watts and Mohammed." (Ex. 2 at 1-2). This section of his report should be barred for various reasons, including because it does not comply with Rule 26(a)(2)(B) by disclosing "the basis and reasons for" his opinion. Danik does not say what in any of the cited items of evidence supports his opinion, he does not say how or why any of the items support his opinion, and he does not explain whether the cited item is actual "evidence" or a mere "allegation," as he combines the two words together. *Id.* This is not a mere technicality, as it is defendants' contention that none of the items listed by Danik contain actual evidence of "planting of drugs on innocent citizens and then arresting them." Finally, this opinion should be barred to the extent it constitutes a credibility assessment and is a mere commentary on the evidence summarizing plaintiff's attorney's view of the evidence.

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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