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

BEN BAKER and CLARISSA GLENN,

Plaintiffs,

v.

CITY OF CHICAGO, *et al.*,

Defendants.

Master Docket No. 19-cv-1717
16-cv-8940
Judge Franklin U. Valderrama

SEALED ORDER[1]

Plaintiffs Ben Baker and Clarissa Glenn allege that they were falsely arrested by current and former Chicago Police Department (CPD) officers, including former Sergeant Ronald Watts (Watts), Officer Kallat Mohammed (Mohammed), among others (collectively, the Defendant Officers) as part of a shakedown scheme. R. 238, SAC.[2] Baker was convicted of one offense and pled guilty to a second and served a total of ten years in prison for a crime he alleges he did not commit. *Id.* ¶ 4. Glenn pled guilty and was sentenced to one year of probation. *Id.* Plaintiffs subsequently

[1]Portions of the parties' briefs were filed under seal, as were many exhibits. Because this Order may contain privileged information that was submitted to the Court under seal, the Court will issue its Order under seal so the parties may meet and confer with one another about proposed redactions. The parties are to file a joint position statement by September 12, 2024, explaining what (if any) redactions are needed in the text of the Order, and why (bearing in mind the strict standard against secret filings, *see generally Mitze v. Saul*, 968 F.3d 689 (7th Cir. 2020)). That position statement may be filed under seal. After considering the proposed redactions, the Court will issue a public version of the Order.

[2]Citations to the docket are indicated by "R." followed by the docket number or filing name, and, where necessary, a page or paragraph citation.

received Certificates of Innocence. Baker and Glenn sued the numerous current and former Defendant Officers, several CPD supervisors,[3] and the City of Chicago (the City) (collectively, Defendants) under 42 U.S.C. § 1983 for wrongful arrests and convictions and analogous state law claims. The parties have disclosed numerous expert witnesses and filed motions to bar or limit the testimony of said expert witnesses. In this Order, the Court addresses Defendants' motion to bar Jeffrey Danik and Plaintiffs' motion to bar Michael Brown. The Court will address the remaining motions to bar in separate orders.[4]

Background

Plaintiffs Ben Baker and Clarissa Glenn allege that Defendant Officers, led by Watts, fabricated drug or gun charges against Plaintiffs as part of a shakedown scheme. SAC. The Defendant Officers allegedly planted drugs in Baker's mailbox and subsequently on his person, and falsely arrested him on July 11, 2004 and March 23, 2005, respectively. *Id.* ¶¶ 24–29, 46–57. Baker went to trial on both cases—the first was dismissed on a motion to suppress but Baker was convicted for the second and sentenced to fourteen years in prison. *Id.* ¶¶ 41, 66. Subsequently, the Defendant Officers allegedly planted drugs in Baker and Glenn's car, and Baker and Glenn both

[3]Supervisory Defendants Philip Cline, Debra Kirby, and Karen Rowan, as well as Defendant Officers Miguel Cabrales and Kenneth Young Jr. were dismissed from the lawsuit with prejudice pursuant to a stipulation of dismissal on August 14, 2024. R. 377.

[4]The Court previously entered orders in which it: granted Defendants' motion to bar Shairee Lacky, R. 380; granted Plaintiffs' motion to bar Celeste Stack, R. 381; granted in part and denied in part Defendants' motion to bar Dr. Allison Redlich, and granted Plaintiffs' motion to bar Dr. Alexander Obolsky, R. 382; and denied as moot Plaintiffs' motion to bar Michael Fitzgerald John Heneghan, R. 384.

pled guilty to possession of a controlled substance in connection with their arrest on December 11, 2005. *Id.* ¶¶ 77, 90, 95–96. Baker received a four-year sentence and Glenn received one year of probation. *Id.* ¶ 4. Baker served almost ten years for a crime he alleges he did not commit. *Id.* ¶ 1.

Plaintiffs subsequently applied for, and the Circuit Court of Cook County granted, Plaintiffs Certificates of Innocence (COI) pursuant to the Illinois Petition for Certificate of Innocence statute, 735 ILCS 5/2-702. SAC ¶ 146; *see also* R. 295, Pls.' Mot. Bar Obolsky at 1. Plaintiffs then sued Watts and other Defendants. SAC.

The Federal Bureau of Investigation (FBI) and the Chicago Police Department (CPD) began investigating allegations that Watts and Mohammed were extorting drug dealers in the Ida B. Wells housing project in 2004. SAC ¶ 101. As part of that joint investigation, the CPD's Internal Affairs Division (IAD) was kept informed of the FBI investigation, and accordingly, City of Chicago officials were aware of allegations about the Defendant Officers' wrongdoing. *Id.* ¶ 102. The City nonetheless allowed Watts and Mohammed to remain in their roles as tactical officers until federal law enforcement arrested them both in 2012. *Id.* ¶¶ 105–08, 137–38.

Plaintiffs and Defendants have both retained numerous experts. Plaintiffs have filed six motions to bar Defendants' experts' testimony, and Defendants have filed five[5] motions to bar Plaintiffs' experts' testimony, all brought pursuant to Federal Rules of Evidence 702 and 703 and the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As stated above, this Order

[5]Two of Defendants' motions attack the same expert witness, Dr. Shane, based on two different categories of opinions.

addresses Defendants' motion to bar Jeffrey Danik (Danik) and Plaintiffs' motion to bar Michael Brown. Plaintiffs retained Jeffrey Danik, a retired FBI agent, as one of their experts to opine on the City's alleged inaction regarding complaints against the Defendant Officers. Defendants retained former FBI agent Michael Brown to rebut Danik's opinions, as well as Plaintiffs' allegations about the joint FBI/IAD investigation of the Defendant Officers. Defendants have moved to bar Danik's opinions, R. 307, Defs.' Mot. Bar Danik,[6] and Plaintiffs have moved to bar Brown's opinions, R. 301, Pls.' Mot. Bar Brown.[7]

Legal Standard

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony. Fed. R. Evid. 702[8]; *Artis v. Santos*, 95 F. 4th 518, 525 (7th Cir. 2024). Rule 702 allows the admission of testimony by an expert—that is, someone with the

[6]Defendants filed both a sealed version of its motion, R. 307, and a public, redacted version, R. 305-1. Similarly, Plaintiffs filed a sealed and redacted version of their response, R. 337, R. 342, and Defendants filed a sealed and redacted version of their reply, R. 350, R. 349.

[7]Plaintiffs filed a sealed and redacted version of their motion, R. 301, R. 300; Defendants filed a sealed and redacted version of their response, R. 339, R. 340, and Plaintiffs filed a sealed and redacted version of their reply, R. 354, R. 353.

[8]The operative version of Rule 702 came into effect on December 1, 2023. The Rule 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." Fed. R. Evid. 702 Advisory Committee Notes to 2023 Amendments. The Seventh Circuit has applied the preponderance standard for many years prior to the amendment, however. *See*, *e.g.*, *Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 782 (7th Cir. 2017). The Advisory Committee explained that the amendment was necessary in part because "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," which is an "incorrect application" of the Rule. Fed. R. Evid. 702 Advisory Committee Notes to 2023 Amendments. However, noted the Committee "[n]othing in the amendment imposes any new, specific procedures." *Id*.

requisite "knowledge, skill, experience, training, or education"— to help the trier of fact "understand the evidence or [ ] determine a fact in issue." Fed. R. Evid. 702. An expert witness is permitted to testify when (1) "the testimony is based on sufficient facts or data," (2) "the testimony is the product of reliable principles and methods," and (3) the expert has reliably applied "the principles and methods to the facts of the case." *Id.*

The district court serves as the gate-keeper who determines whether proffered expert testimony is reliable and relevant before accepting a witness as an expert. *Daubert*, 509 U.S. 579. "[T]he key to the gate is not the ultimate correctness of the expert's conclusions," rather, "it is the soundness and care with which the expert arrived at her opinion[.]" *C.W. ex rel. Wood v. Textron, Inc.,* 807 F.3d 827, 834 (7th Cir. 2015) (cleaned up).[9] Under Rule 702 and *Daubert*, the district court must "engage in a three-step analysis before admitting expert testimony. The court must determine (1) whether the witness is qualified; (2) whether the expert's methodology is scientifically reliable; and (3) whether the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." *EEOC v. AutoZone, Inc.*, 2022 WL 4596755, *13 (N.D. Ill. Sept. 30, 2022) (cleaned up). The focus of the district court's *Daubert* inquiry "must be solely on principles and methodology, not on the conclusions they generate." *Daubert*, 509 U.S. at 595. The expert's proponent bears the burden of proving by a preponderance of the evidence the expert's testimony

[9]This Order uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See* Jack Metzler, *Cleaning Up Quotations*, 18 Journal of Appellate Practice and Process 143 (2017).

satisfies Rule 702. *See United States v. Saunders*, 826 F.3d. 363, 368 (7th Cir. 2016). District courts have broad discretion in determining the admissibility of expert testimony. *Lapsley v. Xtek, Inc.*, 689 F. 3d 802, 810 (7th Cir. 2012).

Analysis

I. Defendants' Motion to Bar Jeffrey Danik

Plaintiffs have disclosed Jeffrey Danik, a retired FBI agent, as one of their experts to opine on the FBI and CPD's joint investigation into the Defendant Officers, and specifically as to the City's inaction relating to the Defendant Officers during the pendency of the joint investigation. *See* R. 337, Pls.' Danik Resp. at 2. Defendants have moved to bar Danik's testimony in total. R. 307, Defs.' Mot. Bar Danik. Defendants raise numerous reasons to bar Danik's testimony: (1) he is not qualified; (2) he employs no methodology (let alone reliable methodology); (3) his opinions are impermissibly speculative; (4) his opinions will confuse and be unhelpful to the jury; (5) he offers opinions against non-parties; and (6) his opinions are based on facts not in the record or that are contradicted by facts in the record. The Court addresses each argument in turn.

A. Sufficiency of Report

As an initial matter, and before turning to the substantive bases for exclusion identified above, the Court must address Defendants' issues with the structure of Danik's report. From Defendants' perspective, "[i]t is nearly impossible to sort out Danik's 'opinions' from his improper views on the facts of this case." Defs.' Mot. Bar Danik at 11. It should not be up to Defendants or the Court, posit Defendants, "to

perform the invasive surgery needed to extract a proper opinion out of a completely flawed report." *Id.* The Court agrees with Defendants that at times it is hard to parse out the opinions in Danik's report. To the extent that Danik simply summarizes the evidence or repeats Defendants' version of the facts, such testimony is inadmissible. *See, e.g.*, *Pursley v. City of Rockford*, 2024 WL 1050242, at *5 n.4 (N.D. Ill. Mar. 11, 2024), *reconsideration denied*, 2024 WL 1521451 (N.D. Ill. Apr. 8, 2024) (citing Fed. R. Evid. 702); *Wells v. City of Chicago*, 2012 WL 116040, at *12 (N.D. Ill. Jan. 16, 2012) (where expert merely summarized the evidence, the court found that he was "no better placed to review these facts than the jury; his opinion is not an expert opinion"). However, the Court disagrees with Defendants that the somewhat scattershot nature of Danik's report warrants a wholesale barring of the report. Defs.' Mot. Bar Danik at 2. Indeed, if Defendants could not discern Danik's opinions from his report, they should have moved to strike his report for failure to comply with Federal Rule of Civil Procedure 26. *See, e.g.*, *Steffy v. Cole Vision Corp.*, 2006 WL 8445128, at *3 (E.D. Wis. Aug. 16, 2006) (requiring expert to provide an amended report because original report was inadequate under Rule 26(a)(2)(B)).

Plaintiffs counter that Danik's report contains three primary opinions: (1) "The City of Chicago was not prohibited from taking administrative action against Watts, Mohammed, or others during the eight-year FBI investigation," Pls.' Danik Resp. at 4 (citing Danik Report at 5–6, 9–12, 14–15); (2) "It would not be standard or typical for the FBI to prevent the City from taking any administrative action during that eight-year period, and the record does not indicate that the FBI imposed such a

prohibition," *id.* (citing Danik Report at 5–6, 9–12); and (3) "It was not consistent with generally accepted practices in public corruption investigations for the Chicago Police Department to take no action to discipline, suspend, or transfer Watts and Mohammed during the 8-year FBI investigation," *id.* at 5 (citing Danik Report at 17–20, 24). While this provides a helpful framing for the report, as Defendants point out, the report itself is interwoven with facts, opinions, and statements about Danik's experience. Defs.' Mot. Bar Danik at 2. The Court agrees with Defendants that it is not the Court's job to "blue-pencil an expert report," so it goes through only the opinions identified by the parties in their memoranda, and expects the parties to apply the Court's holdings to any other similar opinions that may be present in Danik's report.

The Court addresses one other preliminary, overarching matter before turning to the more substantive arguments Defendants raise: Danik's tone and emphatic language. Defendants point out that Danik's report is laden with "various pejorative descriptions," such as the investigation "spectacularly failed," that it was a "long bungled investigation," that he was "shocked and saddened" by the investigation, and that there were at least six aspects of the investigation that were "stunning" to him. Defs.' Mot. Bar Danik at 3 (citing Danik Report at 2, 12–13, 15–16, 23, 24, 28); *see also* Defs.' Danik Reply at 7 n.3 (collecting examples of "inflammatory language more indicative of a closing argument"). Although the Court agrees with Defendants that such language is inappropriate in an expert report, it also agrees with Plaintiffs that such argumentative language is not a basis, in itself, to bar Danik's opinions if they

otherwise satisfy Rule 702 and *Daubert*.[10] Pls.' Danik Resp. at 22. The Court now turns to Defendants' arguments about Danik's qualifications (or lack thereof) to offer his opinions.

B. Qualifications

Defendants do not question Danik's experience with the FBI, but rather argue that he is unqualified to opine on how CPD should have handled this matter from a local police or internal affairs perspective. Defs.' Mot. Bar Danik at 13. Danik, argue Defendants, never worked as a police officer or in an internal affairs capacity. *Id.* at 14 (citing *Catlin v. DuPage Cnty. Major Crimes Task Force*, 2007 WL 1772175, at *1 (N.D. Ill. June 19, 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)). Plaintiffs respond that Danik has experience with police agencies through his work at the FBI, as he was the primary evaluator of public corruption cases, including cases referred to internal affairs processes by local police agencies. Pls.' Danik Resp. at 7 (citing R. 307-4, Danik Dep. at 18:21–20:7). Additionally, point out Plaintiffs, Danik investigated internal affairs complaints and took statements from FBI special agents during the course of his career. *Id.* (citing Danik Dep. at 38:9–39:10). Plaintiffs cite to Danik's experience working together with local and state law enforcement agencies on major joint investigations. *Id.* (citing

[10]Defendants can move *in limine* to prevent Danik (or any other expert witness) from using such language at trial. To the extent the Court finds other testimony or opinions (of Danik or Brown) admissible in that they survive either side's *Daubert* challenge, such a finding does not preclude other potential barriers to admissibility (such as unfair prejudice). *See Pursley*, 2024 WL 1050242, at *9 n.8.

Danik Dep. at 65:8–72:11; 79:13–82:6). Indeed, Danik testified that in his experience in investigating corruption within law enforcement agencies, once the FBI would tell the head of the agency that it was investigating an officer, the criminal investigation would need to conclude quickly so that the administrative process could proceed. *Id.* (citing Danik Dep. at 34:20–36:6; 181:8–182:8). Finally, Danik used, drafted, and supervised the execution of memorandums of understanding (MOUs) like the one at issue in this case. *Id.* (citing R. 307-1, Danik Report at 4).

The Court agrees with Plaintiffs that Danik has sufficient experience to render him qualified to opine on generally accepted law enforcement standards in public corruption investigations, FBI practices and procedures, MOUs, and internal investigations practices. *See* Pls.' Danik Resp. at 7 (citing *Jimenez v. City of Chicago*, 732 F.3d 710, 719 (7th Cir. 2013); *id.*, Def. Appellant's Br. 25 (2012 WL 7004409) (noting that expert in *Jimenez* was former FBI agent)). True, as Defendants point out in reply, the two investigations cited by Plaintiffs in support of Danik's experience working with local law enforcement did not involve investigations into officers of the partner agency. Defs.' Danik Reply at 3–4. However, the Court finds that Danik's experience investigating public corruption, including police corruption, and attendant experience with balancing the criminal investigation with administrative processes, render him qualified. *See Chicago Painters & Decorators Pension, Health & Welfare, & Deferred Sav. Plan Tr. Funds v. Royal Int'l Drywall & Decorating, Inc.*, 493 F.3d 782, 787 (7th Cir. 2007) ("This court has recognized that while extensive academic and practical expertise in an area is certainly sufficient to qualify a potential witness

as an expert, Rule 702 specifically contemplates the admission of testimony by experts whose knowledge is based on experience.") (cleaned up).

To the extent Defendants want to highlight Danik's lack of experience investigating corrupt police officers jointly with the target officers' agency, they may do so through cross-examination. *See Andersen v. City of Chicago*, 454 F. Supp. 3d 808, 813 (N.D. Ill. 2020) (citing *Sheldon v. Munford, Inc.*, 950 F.2d 403, 410 (7th Cir. 1991) ("Once the district court has found a sufficient foundation for an expert's testimony, it properly leaves questions concerning his methodology, findings, and expertise to cross-examination.")).

Qualification, however, is only the first step of the inquiry. The Court next turns to whether Danik's methodology is reliable. *See Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000) (even a "supremely qualified expert cannot waltz into the courtroom and render opinions unless those opinions are based upon some recognized scientific method").

C. Methodology, Helpfulness to the Jury, and Credibility Determinations

Defendants move to bar most, if not all, of Danik's opinions because they: (1) are not based on a reliable methodology, (2) are unhelpful to the jury because they parrot counsel's arguments or the facts, and (3) improperly make credibility determinations and weigh the evidence. Defs.' Mot. Bar Danik at 2–13. After articulating the legal standards and pointing out generally how, from Defendants' perspective, Danik's report fails to satisfy those standards, Defendants then include a list of opinions that they posit are a "representative sample of Danik's inadmissible

opinions from his report" because "they are unreliable, unsupported, and/or lack a basis in acceptable methodology or standard." *Id.* at 2–9.

Plaintiffs contend that "Defendants' discussion of that list is so cursory as to be waived; Defendants cannot expect Plaintiffs (or the Court) to sort out which opinions contain which supposed flaws with so little discussion." Pls.' Danik Resp. at 12 (citing *Wegbreit v. Comm'r of Internal Revenue*, 21 F.4th 959, 964 (7th Cir. 2021) ("unsupported, cursory argument is waived")). Although the Court's task would have been made easier had Defendants been more specific as to which of their arguments for exclusion applied to which listed opinion, the Court agrees with Defendants that they did enough to set forth the bases of their objections such that they did not waive the argument. R. 350, Defs.' Danik Reply at 7–8. However, to the extent the Court disagrees with Defendants that any of the enumerated opinions are inadmissible, Defendants cannot later complain if the Court did not address the basis on which Defendants find the opinion objectionable, where they failed to identify said basis.

1. Methodology

First, as to methodology, Defendants contend that Danik fails to provide any explanation or application of professional standards that he applied to reach his opinions. Defs.' Mot. Bar Danik at 2–10. In the context of experts in police practices and procedures, an expert should describe reasonable investigative procedures and departures from them. *See Jimenez*, 732 F.3d at 721; *Andersen*, 454 F. Supp. 3d at 814. Put another way, a police practices expert must "explain how he reaches his conclusions—either by linking them to generally accepted standards in the field or by

citing information within his own practical experience." *Anderson*, 454 F. Supp. 3d at 814. Rule 702 requires a connection between the data employed and the opinion offered; it is the opinion connected to existing data "only by the *ipse dixit* of the expert, that is properly excluded under Rule 702." *Manpower, Inc. v. Ins. Co. of Pennsylvania*, 732 F.3d 796, 806 (7th Cir. 2013) (cleaned up); *see also Potts v. Manos*, 2017 WL 4365948, at *5 (N.D. Ill. Sept. 29, 2017) ("A witness who offers expert testimony based on his experience must connect his experience to the facts of the case in order to meet the standard for reliability under *Daubert* and the Federal Rules of Evidence."); *see also* Fed. R. Evid. 702 Advisory Committee Notes to 2000 Amendments ("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.'").

Plaintiffs retort that Danik's methodology is reliable because he compared the facts from the record he reviewed "to law enforcement standards gleaned from his experience and general guidelines, and describe[ed] the differences between the two." Pls.' Danik Resp. at 8 (citing Danik Report at 4–6, 12, 18; Danik Dep. at 105:16–106:18).

Plaintiffs argue that, in addition to applying his experience and the "documents providing standards that he cited," Danik also pointed to published standards, including the Department of Justice's "Standards and Guidelines for

Internal Affairs: Recommendations From a Community of Practice" (DOJ SGIA); the FBI's Domestic Investigations and Operations Guidelines 2011 Version (DIOG); and the FBI's Manual of Investigative Operations and Guidelines Part II; Section 18 (MIOG). Pls.' Danik Resp. at 9 (citing Danik Report at 5–6, 85–86; Danik Dep. at 148:16–150:2; 152:7–153:15). Defendants insist Danik did not, in fact, rely on all three of those guides. Defs.' Danik Reply at 5–6. Defendants cite to Danik's testimony that, although his report cited the DIOG, he answered that he did "[n]ot really" rely on it in formulating his opinion. *Id.* at 6 (citing Danik Dep. at 149:21–23). Accordingly, since Danik admitted did not rely on the DIOG in forming his opinions, the Court does not consider it as a basis for those opinions. On the other hand, Danik testified that he relied on the MIOG in forming his opinions regarding the use of MOUs, as it had "most of the important [MOUs] with other federal agencies" during the relevant time period, and demonstrated how routine the MOUs were. Danik Dep. at 152:7–153:15. And, despite Defendants' arguments to the contrary, Danik cites to the DOJ SGIA in his report and explains that the MOU is consistent with the DOJ SGIA's standards "regarding conducting parallel or consecutive criminal and administrative inquiries." Danik Report at 5–6. The Court will consider how Danik relied on the MIOG and the DOJ SGIA to form his opinions. The Court analyzes the opinions identified by the parties to determine whether Danik sufficiently explained how he reached each opinion.

2. Unhelpful to Jury

Second, Defendants argue that Danik simply "parrots Plaintiffs' anticipated closing argument under the guise of 'opinion' testimony," which is impermissible. Defs.' Mot. Bar Danik at 6–7 (citing, *inter alia*, *United States v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014)). Along the same lines, Defendants contend that Danik's statements about the evidence are unhelpful because he does "not draw on any specialized knowledge or opine about anything 'peculiar about law enforcement[.]'" *Id.* at 10 (quoting *Florek v. Vill. of Mundelein, Ill.*, 649 F.3d 594, 602–03 (7th Cir. 2011)). Such opinions are not beyond a layperson's understanding and therefore should be barred, argue Defendants. *Id.* at 10–11. Predictably, Plaintiffs disagree on both points, arguing that Danik conducted his own analysis and investigations into the facts in dispute to form his own conclusions. Pls.' Danik Resp. at 5 (citing, *inter alia*, *U.S. Gypsum Co. v. Lafarge N. Am. Inc.*, 670 F. Supp. 2d 748, 759 (N.D. Ill. 2009)). As stated above, any summary of evidence that does not rely on Danik's expertise is inadmissible, and the same goes for repeating argumentative statements that are more properly included in counsel's closing arguments.

3. Credibility Determinations

Third, Defendants maintain that Danik improperly makes credibility determinations and weighs the evidence, which is properly the province of the jury. Defs.' Mot. Bar Danik at 6–7 (citing, *inter alia*, *Jordan v. City Chicago*, 2012 WL 254243, at *4 (N.D. Ill. Jan. 27, 2012); *Davis v. Duran*, 2011 WL 2277645, at *7 (N.D. Ill. 2011)). Specifically, according to Defendants, Danik impermissibly relies on

conclusions about disputed underlying facts, such as whether there was evidence of falsely arresting innocent people. *Id.* at 7. Plaintiffs retort that Danik will not testify that Plaintiffs were innocent, as that is a question for the jury, but rather that, based on his experience, high-tempo and thorough investigations of alleged police corruption are necessary to mitigate the risk of innocent people being falsely arrested. Pls.' Danik Resp. at 13. The Court will address the specific opinions identified by the parties to determine whether Danik impermissibly weighs evidence or makes credibility determinations.

4. Specific Opinions

The Court now addresses the opinions with which Defendants take issue, both included in the bulleted list, and those interspersed within the first section of their motion to bar. The Court labels each opinion so that it can cross-reference them where helpful.

a. Opinion A: "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." Defs.' Mot. Bar Danik at 6 (quoting Danik Report at 3).

These statements are pulled from the introduction of Danik's report. Accordingly, it is not completely clear if these are opinions that Danik intends to offer at trial. If so, the Court agrees with Defendants that they are inadmissible because they are summaries of the evidence and not supported by reliable methodology. Defs.' Mot. Bar Danik at 6. As for the first sentence, Danik merely summarizes the evidence indicating that CPD allowed the Defendant Officers to remain in the community. He

is no better situated to review these facts than the jury, and as stated above, "opinions" that are merely factual summaries are inadmissible. *See Wells*, 2012 WL 116040, at *12 (citing *United States v. Hall*, 93 F.3d 1337, 1343 (7th Cir. 1996)). As to the second statement, Plaintiffs do not point to anywhere in Danik's report or deposition testimony where he connects the need to correct possible false arrests to a standard for doing so (either in his experience of investigating police corruption or in any published standards). Accordingly, the Court finds that Plaintiffs have not met their burden of demonstrating that Danik's opinion is based on reliable methodology. *See, e.g.*, *Pursley*, 2024 WL 1050242, at *6 (plaintiff did not meet his burden of establishing reliability of police practices expert's opinion where expert failed to explain "how" or "why" he reached conclusions). Therefore, the Court need not address Defendants' alternative argument that Danik improperly concludes that, based on the evidence, innocent people were falsely arrested. Defs.' Mot. Bar Danik at 9.

b. Opinion B: "CPD IAD [was] the only law enforcement agency remaining between Watts, Mohammed, and citizens they were entrusted to protect but instead were victimizing." Defs.' Mot. Bar Danik at 6, 8 (quoting Danik Report at 20).

As with the first sentence of Opinion A, this opinion is merely a recitation of the facts and therefore does not employ Danik's expertise. It is therefore inadmissible. *See, e.g.*, *Wells*, 2012 WL 116040, at *13.

c. Opinion C: "[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." Defs.' Mot. Bar Danik at 7 (quoting Danik Report at 5).

Although a closer call, the Court find this opinion to be inadmissible, as well. In support of this opinion, Danik fails to identify which alleged acts should have caused the police commander to intervene immediately. As a result, he fails to explain how the CPD commander departed from a professional standard by failing to immediately intervene. *See Jimenez*, 732 F.3d at 721. Moreover, this opinion reads as if it is Danik's own personal opinion, which is also inadmissible under Rule 702. *See Vargas v. United States*, 2019 WL 10894119, at *5 (N.D. Ill. Jan. 15, 2019) ("Rule 702 requires that an expert witness provide testimony based on more than just 'personal beliefs.'") (citing *Dhillon v. Crown Controls Corp.*, 269 F.3d 865, 870 (7th Cir. 2001)). This argument is more appropriately made during counsel's closing arguments.

> d. Opinion D: "Special mention must be made of the failure by IAD to recognize or acknowledge three extreme alleged acts being perpetrated by Watts and Mohammed: a) stealing and then selling narcotics; b) planting narcotics on citizens then falsely arresting them, and c) Watts' use of firearms to commit violent acts (shooting at citizens, evidence that he may have been involved in one or more murders and statements that drug dealers would drop gun deliveries to him as part of their business arrangement). Any one of these three circumstances should have triggered an immediate "all-hands on deck" response reflex from CPD to ensure the safety of the public. Instead, evidence of these extreme acts surfaced time and again over several years without eliciting any sense that the public was potentially in imminent danger from Watts and Mohammed." Defs.' Mot. Bar Danik at 7–8 (quoting Danik Report at 12).

Unlike Opinion C, here Danik identifies specific acts that he contends should have elicited a response from CPD. The Court agrees with Plaintiffs that Danik has done enough, if barely, to explain that the failure to timely act when presented with certain "extreme alleged acts" violates generally accepted standards for conducting

an internal investigation, based on his experience in internal affairs and investigating public corruption. *See* Danik Dep. at 105:16–106:18; *see also* Danik Report at 6 (discussing his experience and how the MOU and DOJ SGIA do not displace a law enforcement agency's determination in the face of serious allegations with an impact on public safety).

e. Opinion E: "The key hallmark of any police corruption case is the timely, high-tempo resolution of allegations." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 9).

Similarly to Opinion D, the Court agrees with Plaintiffs that Danik has sufficiently connected this opinion to his experience investigating police corruption cases, as well as the DOJ SGIA. Pls.' Resp. at 13.

f. Opinion F: "Clear evidence of corruption by Watts and Mohammed was collected and known to agents/officers and command staff of CPD beginning in 2003." Defs.' Mot. Bar Danik at 8, 16 (quoting Danik Report at 10).

As with several of the above opinions, the Court finds that this statement is inadmissible as it is merely a summary of the facts, and "there is no indication that his assessment of that evidence involves application of his expertise." *See, e.g.*, *Wells*, 2012 WL 116040, at *13. The Court therefore need not engage with Defendants' alternative argument that this opinion is not based on facts in the record. Defs.' Mot. Bar Danik at 15–16.

g. Opinion G: "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." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 14).

The Court finds this statement admissible, as it is based on Danik's own experience working with informants and DOJ policy in general as to the consequences for a cooperator who lies. Danik Report at 14; Danik Dep. at 337:6–22.

h. Opinion H: "Stunning statement detailing long-term corruption and violent acts by Watts." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 15).

This statement is a heading in Danik's report, so the Court is not sure it is even meant to be offered as an "opinion." Danik Report at 15. To the extent it is, it is merely a summary of the facts that does not employ Danik's expertise. And therefore, it is inadmissible.

i. Opinion I: "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." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 15–16).

In context, the Court finds that this statement is admissible in support of Danik's opinion that "Moore was a crucial interview for the FBI to attend if CPD considered the FBI the lead agency and decision maker in the Watts corruption probe." Danik Report at 16. Defendants make no argument about the admissibility of that opinion, so the Court does not address it at this time.

j. Opinion J: "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." Defs.' Mot. Bar Danik at 8, 12 (quoting Danik Report at 19).

Although the Court does not question that Danik has experience in following up with corroborating witnesses in corruption investigations, as explained above, for

a law enforcement expert's opinion like the above to admissible, the expert must describe the professional standard and identify the departure from them. *See Jimenez*, 732 F.3d at 721. Here, Danik does not provide the professional standard regarding following up with corroborating witnesses nor the basis for it. *See* Danik Report at 19. Contrary to Plaintiffs' argument in response that Danik's opinion is admissible because he analyzed the facts of the joint CPD/FBI investigation using his extensive experience investigating corruption of this type, simply stating that an expert relied on his experience generally is insufficient to satisfy Rule 702. *See Pursley*, 2024 WL 1050242, at *6 (citing Fed. R. Evid. 702(d)). Accordingly, this opinion is inadmissible.

k. Opinion K: "Yet, despite this overwhelming evidence of corruption, they failed to track any of Watts['] cases for possible civil rights violations (false arrests)." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 20).

This opinion reads more like a summary of the evidence (that is, it simply lists certain things that CPD failed to do). Danik Report at 20. On that basis, it is unhelpful to the jury, as it does not employ Danik's expertise, as discussed in relation to Opinions A, B, F, and H. To the extent this is an opinion that CPD departed from generally acceptable standards by failing to do those things in the face of "overwhelming evidence of corruption," Danik does not identify the generally accepted standard that CPD departed from, and as such the opinion must be barred as unreliable. *See, e.g.*, *Andersen v. City of Chicago*, 454 F. Supp. 3d 740, 744 (N.D. Ill. 2020). As with Opinion A, the Court does not address Defendants' alternative

argument regarding Danik's determination that individuals were falsely arrested. Defs.' Mot. Bar Danik at 9.

l. Opinion L: "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." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 21).

Similar to Opinion K, this statement again appears to merely be a summary of the evidence, which is inadmissible. And similar to Opinions A and K, to the extent Danik opines that CPD departed from generally acceptable standards by failing to take action to protect the public or to redress harm to potentially innocent people, Danik fails to identify the generally accepted standard regarding what action CPD should have taken to protect the public or redress harms. *See, e.g.*, *Pursley*, 2024 WL 1050242, at *6. Again, as with Opinions A and K, the Court need not address Defendants' alternative argument regarding Danik's conclusion that innocent people were being falsely arrested. Defs.' Mot. Bar Danik at 9.

m. Opinion M: "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." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 22).

For the same reasons discussed above, the Court finds that Danik offers no explanation regarding the professional standard he contends CPD failed to satisfy (that is, what is the generally accepted practice for when there is a misstep in an

internal investigation, and how did CPD fail to meet the standard?). The Court acknowledges that, at first glance, this opinion is similar to Opinion D, which the Court finds to be based on sufficiently reliable methodology. However, Opinion D pertains to actions CPD should have taken *based on evidence of corruption*, the standards for which are based on Danik's experience and the DOJ SGIA. Without an articulated standard regarding actions to be taken *based on investigative missteps*, the Court finds that Plaintiffs have failed to show that Danik's opinion is based on reliable methodology. *See, e.g.*, *Pursley*, 2024 WL 1050242, at *6.

n. Opinion N: "A spectacularly failed operation-CPD appears unconcerned. The investigation goes dark and CPD does nothing to protect the public." Defs.' Mot. Bar Danik at 9 (quoting Danik Report at 22).

As with Opinion H, this statement is a heading in Danik's report, so the Court is not sure it is even meant to be offered as an "opinion." Danik Report at 15. And again, if it is offered as an opinion, the Court finds it to be merely a recitation of the facts employing emphatic language and as such, inadmissible.

o. Opinion O: "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." Defs.' Mot. Bar Danik at 9 (quoting Danik Report at 24).

As to the first part of the opinion, that CPD command staff has no reaction to an operational failure, the Court finds that to be merely a recitation of the evidence. However, the second part of the opinion, which essentially is an opinion that CPD should have taken administrative action based on direct evidence in their possession, is based on sufficient methodology for the reasons discussed above as to Opinion D.

p. Opinion P: "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." Defs.' Mot. Bar Danik at 8 (quoting Danik Report at 25).

Like many of the above opinions, the Court finds this statement to simply be an inadmissible summary of the evidence.

q. Opinion Q: "'False arrest' sensitivities . . . should have been the cornerstone and hallmark in every aspect of this police corruption investigation since its inception . . . and applied not only to police officers, 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." Defs.' Mot. Bar Danik at 9 (quoting Danik Report at 27).

For the same reasons discussed above in relation to Opinion A, K, and L, Danik does not point to any professional standard—whether it be his experience or DOJ or FBI literature—regarding how a police department should have handled the risk of false arrests during an internal investigation. Moreover, the opinion that the citizens of Chicago "deserved nothing less" does not employ Danik's expertise and will not be helpful to the jury. *See, e.g.*, *Florek*, 649 F.3d at 602–03 ("[W]hen the testimony is about a matter of everyday experience, expert testimony is less likely to be admissible."). Accordingly, this opinion is inadmissible.

D. Speculation

Next, Defendants argue that Danik impermissibly speculates throughout his report. Defs.' Mot. Bar Danik at 11–13. It goes without saying that expert testimony cannot "be based on subjective belief or speculation." *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010); *DePaepe v. General Motors Corp.*, 141 F.3d 715, 720 (7th Cir. 1998) ("[T]he whole point of *Daubert* is that experts can't

'speculate.' They need analytically sound bases for their opinions."). Defendants list nine opinions and statements from Danik's report that they contend, without citing to any cases, are "inadmissible conjecture of the type routinely barred by the courts." Defs.' Mot. Bar Danik at 11–13. For example, Defendants point to Danik's statement that an "interview held great potential to be a critical break in the Watts case," and in relation to a later time period, "CPD appears to take no action during this time."[11] *Id.* at 12 (citing Danik Report at 16, 25).

Plaintiffs counter that the opinions cited by Defendants are not the type of speculation prohibited under *Daubert*. Pls.' Danik Resp. at 14. In fact, argue

[11]The full list of opinions Defendants contend are speculative (with the alleged speculation bolded) is: (1) "**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." (2) "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**." (3) "Gaddy was interviewed without notice to or participation by the FBI public corruption squad. Gaddy's 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 Gaddy knowing of physical evidence corroborating his allegations or have an incriminating recording." (4) "Incredibly, CPD IAD does not pursue using Gaddy further because he was cooperating with another investigation and **Holliday apparently never escalates this important issue** to the FBI." (5) "Instead, CPD IAD and Holliday **appeared to unilaterally allow the potential significant benefit Gaddy represented** to the Watts investigation to slip away without asking the FBI (who they claimed was in charge) to assist." (6) "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." (7) "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)." (8) "**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." (9) "**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." Defs.' Mot. Bar Danik at 11–12 (citing Danik Report, *passim*).

Plaintiffs, the only case barring an expert opinion as speculative cited by Defendants, *DePaepe*, is inapposite. *Id.* The court in *DePaepe* barred an expert from opining that a company took an action to save money because the expert was not qualified to speculate that the company "had a particular motive." 141 F.3d at 720. The Court agrees with Plaintiffs that Danik does not opine as to any motive or state of mind in any of the opinions listed by Defendants, which would certainly be inadmissible. *See DePaepe*, 141 F.3d at 720; *Lurry v. City of Joliet*, 2023 WL 2138763, at *16 (N.D. Ill. Feb. 21, 2023) (barring opinion that "Sgt. May was more concerned about preserving evidence in his criminal case than he was about Lurry's safety" as speculation as to motive).

Instead, the listed opinions are based on Danik's review of the investigative files and based on his experience investigating public corruption. True, Danik couches many of the listed opinions in language such as "apparently," "appeared," "seems," and "high probability," to name a few, but Defendants cite nothing requiring exclusion of opinions simply because the expert is less than certain about some facts. Indeed, the Seventh Circuit has stated that, "[o]ur system relies on cross-examination to alert the jury to the difference between good data and speculation." *Manpower*, 732 F.3d at 809 (cleaned up). The Court finds that the opinions listed by Defendants are sufficiently grounded in the factual record and in Danik's own experience such that they are not impermissibly speculative. *See Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 768 (7th Cir. 2013) ("The fact that an expert's testimony contains some vulnerable assumptions does not make the testimony irrelevant or inadmissible.");

see also Jordan, 2012 WL 254243, at *9 (defense expert's opinion should not be barred simply because it does not mirror defendant officer's version of events so long as the opinion is "factually linked" to the case) (citing *United States v. Gallardo*, 497 F.3d 727, 733 (7th Cir. 2007)).

This goes for Danik's opinion that CPD should have taken administrative action against Watts and Mohammed before the end of the joint FBI/IAD criminal investigation, as well. Defendants contend that Danik admitted at his deposition that he did not know certain facts about the evidence the FBI had in 2007 and 2008, nor whether the FBI would have given the CPD access to use bribe payments at an administrative proceeding. Defs.' Mot. Bar Danik at 13 (citing Danik Dep. at 278, 281). As Plaintiffs argue in response, Danik did not base his opinions solely on whether he knew whether the FBI gave CPD access to evidence about Mohammed accepting bribe payments in 2007 and 2008, but rather based on the entirety of the facts he reviewed. Pls.' Resp. at 16. Simply because Danik did not know several facts related to the investigation in 2007 and 2008 does not make his entire opinion speculative. *See Manpower*, 732 F.3d at 809. As to Defendants' argument that Danik acknowledged that revealing the confidential criminal investigation at an administrative proceeding would have undermined the ability to prove any case against Watts, Defs.' Mot. Bar Danik at 13 (citing Danik Dep. at 30–31, 45, 181, 256–57), such an admission is certainly good fodder for Defendants on cross-examination, but it does not render his entire opinion speculative.

E. Opinions Against Non-Parties

Next, Defendants move to bar two opinion against non-parties, arguing that they do not relate to facts at issue in the case. Defs.' Mot. Bar Danik at 14–15 (citing 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")). Specifically, Defendants first move to bar Danik's opinion that misconduct by an FBI agent working on the joint investigation "might partially explain why the investigation had not been concluded by the FBI by that point" but "provides no reason and no excuse for CPD not taking administrative action against the officers." *Id.* at 14 (citing Danik Report at 24, 28; Danik Dep. at 281 (testifying that it was "mainly the bureau's bungling" of the operation)). Second, Defendants move to bar Danik's opinion regarding a CPD officer's falsification of a report related to a traffic accident involving a police car, in which Watts intervened and ultimately had a known heroin dealer pay for the damage to a citizen's car caused by the police car. *Id.* at 15 (citing Danik Report at 13). Danik opined that the "incident contains two serious red-flags of corruption: 1) filing of false police reports and 2) that Watts had such a close familiarization with a known heroin dealer." *Id.*

The Court agrees with Plaintiffs that, although Danik's opinions include mention of third parties, they relate at bottom to the CPD investigation (or failure to investigate further). Pls.' Resp. at 16–17. True, the opinion regarding the FBI agent's misconduct and the FBI's resulting "bungling" of the investigation relates more to the FBI's investigation than the CPD's; however, Danik does opine that the delay caused

by the FBI is not a basis or excuse for CPB not taking administrative action against the officers, which is certainly a fact at issue. As to the opinion relating to the traffic stop involving Watts, that even more clearly relates to a fact at issue, since it pertains to Watts' misconduct and CPD's failure to investigate further. They therefore are not inadmissible under Rule 702.

F. Opinions Without Factual Basis

Defendants also contend that Danik offers four opinions based on facts not found in the record or contradicted by the record. Defs.' Mot. Bar Danik at 15–18. Rule 702 requires expert testimony to be based on sufficient facts or data. Fed. R. Evid. 702. Experts may not offer opinions that are not supported or are contradicted by unrebutted evidence in the record. *See Queen v. W.I.C., Inc.*, 2017 WL 3872180, at *5 (S.D. Ill. Sept. 5, 2017).

The Court already addressed the first opinion with which Defendants take issue: that CPD command staff had clear evidence of Watts and Mohammed's corruption in 2003. *See supra* Section I.C.4.f. Accordingly, the Court need not address it here.

Turning to the second opinion, Defendants argue that Danik attempts to rewrite a 2004 memorandum written by former IAD Agent Calvin Holliday (the 2004 Memorandum) in which he summarized the initial meeting between IAD and the United States Attorney's Office (USAO) and other federal agencies. Defs.' Memo. Bar Danik at 16. The 2004 Memorandum states in relevant part, "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." R. 307-6, 2004 Memo. Danik opines that "[m]y experience is that it was more likely that the USAO would need to agree to be in control of any sentencing credit resulting from the cooperation." Danik Report at 14. Defendants maintain that Danik's opinion is contrary to the plain language of the 2004 Memorandum that the USAO should be in "control of everything" and therefore should be barred. Defs.' Memo. Bar Danik at 16–17.

Plaintiffs respond that Danik relies on his experience to opine that the USAO likely wants to be in charge of sentencing benefits to the cooperator, not the entirety of the investigation. Pls.' Danik Resp. at 17 (citing Danik Report at 14–15 ("My experience is that U.S Attorneys and Assistant U.S. Attorneys explicitly in written agreements (limited Use Immunity letters) with cooperators caution them that the particular office in fact does not have authority to control the use of the source's information by other offices.")). Plaintiffs insist that, simply because Defendants' interpretation is different, that does not mean that Danik's opinion is conclusively refuted by the record. *Id.* The Court agrees.

True, Danik is not, and has never been, a federal prosecutor, and experts are limited to testifying as to the area of their expertise. *See, e.g.*, *Blackmon v. City of Chicago*, 2022 WL 21296465, at *5 (N.D. Ill. Aug. 30, 2022) (barring police practices expert's commentary on the implications of defense and government counsel's trial methods and choices, as well as his opinion that he "concur[red] with the judge" to be "too far afield from any discrete police practice or investigatory technique to be

admissible"). Here, however, 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. Of course, Defendants may vigorously cross-examine Danik on this point. *See Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 432 (7th Cir. 2013).

Third, Defendants argue that Danik ignores evidence in the record that the FBI was aware of potential informant Willie Gaddy when he opines, "[i]ncredibly, CPD IAD does not pursue using Gaddy further because he was cooperating with another investigation and Holliday apparently never escalates this important issue to the FBI." Defs.' Mot. Bar Danik at 17 (citing Danik Report at 17; R. 307-7, 2004 Report; R. 307-8, 2008 FBI Report). Plaintiffs do not respond to this argument, and as such have waived a response. *See, e.g.*, *Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011) (failure to address an argument resulted in "waiver"). Based on the information before the Court, and Plaintiffs' failure to respond, the Court finds that Danik's opinion ignores significant evidence that the FBI was already aware of Gaddy (*see* 2004 Report), and as such, is inadmissible. *See Empress Casino Joliet Corp. v. Johnston*, 2014 WL 6735529, at *11 (N.D. Ill. Nov. 28, 2014) (barring opinion where expert ignored significant relevant evidence).

Last, Defendants unsurprisingly take issue with Danik's opinion, "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." Defs.' Mot.

Bar Danik at 17 (citing Danik Report at 17). Defendants contend that this opinion is unsupported by the evidence, and Danik even admitted during his deposition that Watts did not have anything to do with the murder. *Id.* (citing Danik Dep. at 272–273 (Q. "It seems to me that you're suggesting that Watts had something to do with Moore's subsequent murder. Is that what you're trying to say here? A. Absolutely not.")). Indeed, argue Defendants, the victim, Moore, was murdered by the Hobos street gang, as established by a racketeering jury trial, which was affirmed by the Seventh Circuit. *Id.* at 17–18 (citing *United States v. Brown*, 973 F.3d 667 (7th Cir. 2020)). Moreover, Defendants argue that any reference to Moore's murder would be unduly prejudicial. *Id.* at 18.

Plaintiffs argue that there is evidence in the record that CPD knew that Moore informed on Watts in April 2005, this information was leaked to Watts before Moore's death in December 2005, and the City did nothing to investigate Watts' involvement in Moore's murder. Pls.' Danik Resp. at 19; *see* Danik Report at 17–18. Although Danik admitted during his deposition that he knows *now* that Watts had nothing to do with Moore's murder, he testified that, back at the time of the murder investigation, he would have expected CPD to investigate Watts' potential involvement, whether as a suspect or a witness. Danik Dep. at 272–276. Whether the unfair prejudice outweighs any probative value, contend Plaintiffs, is more appropriate for a motion *in limine* than a *Daubert* motion. Pls.' Danik Resp. at 19.

The Court agrees with Plaintiffs that there is evidentiary support for Danik's opinion, and while sensational and, as Plaintiffs admit, prejudicial to Defendants,

such potential prejudice is better resolved on a motion *in limine* than the instant *Daubert* motion. *See supra* Section I.B. n.10.

G. MOUs

Finally, Defendants contend that Danik's opinions relating to the MOU will not help the jury and as such must be barred. Defs.' Mot. Bar Danik at 18–19. Citing to four opinions relating to the MOU, Defendants point out that Danik bases his opinions on the "plain language" of the MOUs and therefore his opinions will not help the jury understand the evidence, and indeed are not even expert testimony since any person can read plain language. *Id.* at 19 (citing Danik Report at 5–6, 11; *United States v. Gan*, 54 F.4th 467, 474–75 (7th Cir. 2022)). Additionally, argue Defendants, to the extent that Danik attempts to interpret the MOU, it is an impermissible legal conclusion. *Id.* (citing *Envy Branding, LLC v. William Gerard Grp., LLC*, 2024 WL 869156, at *8 (S.D.N.Y. Feb. 29, 2024)).

Plaintiffs counter that as an initial matter, Defendants have put the MOU at issue through their expert Michael Brown (Brown), who opines that the MOU indirectly prevented CPD from moving administratively against Watts or Mohammed, and also prevented CPD from conducting independent investigations into Watts or Mohammed. Pls.' Danik Resp. at 20 (citing R. 342-2, Brown Report at 21; R. 342-8, Brown Dep. at 16:4–19:20). Brown also testified that the MOU reflected a mutual understanding between the CPD and FBI between 2004 and 2012. *Id.* (citing Brown Dep. at 91:25–97:23). The way Plaintiffs see it, Defendants put the interpretation of the MOU at issue but then argue that Danik's experience with FBI

MOUs is irrelevant because he relies on the MOU's "plain language." *Id.* The Court agrees, and finds that Defendants are trying to have their cake and eat it too.

Moreover, as Plaintiffs argue, Danik does not simply parrot the plain language of the MOU, but interprets it in the context of his experience drafting and using MOUs in federal investigations, which is appropriate, especially where the MOU is a specialized document relating to FBI inter-agency investigations. Pls.' Danik Resp. at 20–21 (citing, *inter alia*, *Gan*, 54 F.4th at 476 (the "helpful decoding of jargon" by law enforcement experts is admissible); *WH Smith Hotel Servs., Inc. v. Wendy's Int'l, Inc.*, 25 F.3d 422, 429 (7th Cir. 1994) ("Evidence of custom and usage is relevant to the interpretation of ambiguous language in a contract.")). And unlike in *Envy Branding*, cited by Defendants, where the expert's testimony on the meaning of an MOU was barred because it would have resolved an ultimate issue (whether the contract was breached), here the interpretation of the MOU does not lead to a legal conclusion or resolution of an ultimate issue. *Id.* at 21–22 (citing *Envy Branding*, 2024 WL 869156, at *8). Finally, for the reasons discussed above, the Court finds Danik qualified to opine on MOUs based on his experience drafting and using MOUs in federal investigations. *See supra* Section I.B. Defendants are free to cross-examine him about his experience (or lack thereof) interpreting MOUs pertaining to joint investigations. *See* Defs.' Danik Reply at 13; *Andersen*, 454 F. Supp. 3d at 813 (citing *Sheldon*, 950 F.2d at 410).

II. Plaintiffs' Motion to Bar Michael Brown

Defendants have disclosed Michael Brown, a retired FBI agent to rebut Danik's opinions, as well as Plaintiffs' allegations about the joint FBI/IAD investigation of the Defendant Officers. R. 339, Defs.' Brown Resp. at 2. Plaintiffs' move to bar certain of Brown's opinions because: (1) they discuss witness credibility; (2) are speculative; and (3) exceed his expertise. The Court addresses each argument in turn. R. 301, Pls.' Mot. Bar Brown at 4.

A. Witness Credibility

Plaintiffs first take issue with certain statements Brown made during his deposition about Baker and other witnesses'—specifically Willie Gaddy and Wilbert Moore's—"credibility issues." Pls.' Mot. Bar Brown at 4 (citing R. 301-3, Brown Dep. at 136:1–3, 155:2–8, 161:1–16). As stated above, an expert witness may not opine on the credibility of witnesses, as those are within the province of the trier of fact. *See Goodwin v. MTD Prod., Inc.*, 232 F.3d 600, 609 (7th Cir. 2000); *United States v. Hall*, 165 F.3d 1095, 1107 (7th Cir. 1999).

Defendants contend, however, that Brown is not making credibility determinations with respect to the allegations in *this case*; rather, he was commenting on Brown and other witnesses' credibility *for purposes of how to proceed in a corruption investigation*, as made clear by his report. Defs.' Brown Resp. at 3 (citing R. 301-2, Brown Report at 18). The way Defendants see it, Brown opines on the necessity for FBI or IAD investigators in the underlying investigation to "verify[ ] and corroborat[e] information from drug dealer informants with credibility issues

before it is used in a criminal or administrative proceeding." *Id.* at 4. Plaintiffs retort that "[t]his is a distinction without a difference," and that when Brown opines on Baker and other witnesses' credibility during the relevant time period, that is "tantamount to him doing so in the present case because Baker's core allegations against Watts and his team are the same now as they were approximately 20 years ago." R. 354, Pls.' Baker Reply at 2.

Although Plaintiffs are correct that Defendants failed to cite any authority in their response in support of the proposition that Brown may opine on witnesses' credibility as it relates to an underlying investigation, Pls.' Baker Reply at 2, the Court finds a Seventh Circuit case cited by Plaintiffs in response to Defendants' motion to bar Danik to be instructive. In *Jimenez v. City of Chicago*, the court found admissible a police practices expert's testimony regarding "what a reasonable police investigator should have done when presented with these conflicting and/or inculpatory statements during the murder investigation" where the expert "did not tell the jury whether to believe what any witnesses had said during the civil trial." 732 F.3d at 723. Recently, another court in this District, relying on *Jimenez*, allowed a police practices expert's testimony that a witness was unreliable where he did so "from the perspective of a reasonable detective deciding how to handle that part of the investigation, not from the perspective of a factfinder." *Pursley*, 2024 WL 1050242, at *7.

The Court finds that Brown's opinions doing the same—that is, opining on how the credibility of informants like Gaddy and Moore, and those, like Baker, who

accused Watts of being "dirty" after being arrested by Watts, may be factored into the FBI or IAD's investigation into the Defendant Officers. However, it goes without saying that Brown may *not* testify as to his opinions on any witness's credibility as it relates to this case, which the Court find that he was doing in the testimony cited by Plaintiffs about Baker's credibility. Pls.' Mot. Bar Brown at 4; Brown Dep. at 135:22–136:3 ("Q. That extends to his specific allegations of planting evidence on him. Your opinion is what Baker says about it, drugs being planted on him, that's not true, correct? A. I would say that Baker has credibility issues because of his denial about being involved in drug activity when the facts show otherwise."). *See Davis v. Duran*, 277 F.R.D. 362, 370 (N.D. Ill. 2011) ("It is a fundamental premise of our trial system that determining the weight and credibility of witness testimony . . . belongs to the jury who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.") (cleaned up). Nor may Brown testify as to which version of events should be believed, although, as discussed above, he of course may make factual assumptions in the face of conflicting testimony for the purpose of forming his opinions. *See Davis*, 277 F.R.D. at 370; *Richman v. Sheahan*, 415 F. Supp. 2d 929, 942 (N.D. Ill. 2006); *Andersen v. City of Chicago*, 2020 WL 1848081, at *4 (N.D. Ill. Apr. 13, 2020).

To the extent that Plaintiffs believe that Brown's testimony regarding any witness's credibility as it relates to the underlying investigation should be barred for

another reason, such as under Rule 403, they may raise those arguments in a motion *in limine*.

B. Speculation

Next, Plaintiffs take issue with three of Brown's opinions as unsupported speculation. Pls.' Mot. Bar Brown at 4–6. As stated above, expert testimony cannot "be based on subjective belief or speculation." *Metavante Corp.*, 619 F.3d at 761; *DePaepe*, 141 F.3d at 720. Although an expert may offer a "hypothetical explanation of the possible or probable causes of an event," the Seventh Circuit has cautioned that "these hypothetical alternatives must themselves have analytically sound bases so that they are more than mere speculation by the expert." *Smith*, 215 F.3d at 718–19 (cleaned up).

First, Plaintiffs take issue with Brown's opinion on collateral damages to a CPD administrative proceeding occurring before the end of the criminal investigation, specifically that, if Watts was not successfully prosecuted, "[t]he public and the media could likely characterize the failure of Watts being criminally charged as an example of a police cover-up." Pls.' Mot. Bar Brown at 5 (citing Brown Report at 14). From Plaintiffs' perspective, there is nothing in Brown's background or in his report suggesting that he is an expert in public relations, media relations, or in the way that the public reacts to decisions to prosecute (or not to prosecute) individuals, so his opinion about the public reaction to a hypothetical situation that never happened is "pure speculation." *Id.* Defendants counter that Brown further supported this opinion during his deposition, testifying that if Watts was disciplined in a form

less than what could have resulted from a criminal investigation, the public could have concluded that CPD "was just trying to take care of their own," that "[t]hey swept it under a rug," or that "[t]hey had moved on" thereby creating an "image problem." Defs.' Brown Resp. at 8 (citing Brown Dep. at 233:23–234:13). Defendants also maintain that Brown's opinion about the public and media's likely characterization is based on his "training, experience, and background" in sensitive investigations, which is sufficient. *Id.* at 8–9.

The Court agrees with Plaintiffs that this opinion is speculative. Brown's report does not explain how his experience in sensitive investigations provides him the expertise to opine about how the public or media would react to a failure to prosecute Watts (for example, by stating that, in his experience, IADs or police chiefs consider potential public backlash when determining whether to proceed administratively versus criminally against a corrupt officer). Defendants, as the proponent of the witness, fail to establish his qualifications to opine on this topic. That is, Defendants fail to establish that Brown has any expertise in public relations or with the media. Therefore, the Court finds this opinion to be speculative and unhelpful to the jury. *See Smith*, 215 F.3d at 719.

Second, Plaintiffs contend that Brown should be prohibited from testifying that the absence of documentation that internal affairs was involved in Wilbert Moore's murder investigation means that Watts was excluded as a suspect in Moore's murder. Pls.' Mot. Bar Brown at 6 (citing Brown Dep. at 161:18–163:7). As discussed above, Moore was a cooperator in the Watts investigation who was later murdered;

Plaintiffs' expert Danik offers an opinion that Watts should have been investigated in Moore's murder. *See supra* Section I.F. Defendants disagree, noting that Brown did not testify that "a lack of documentation" excluded Watts as a suspect in Moore's murder, but rather opined that, based on his review of the police file of the investigation into Moore's murder, there's no information that Watts had any involvement. Defs.' Brown Resp. at 9 (citing Brown Dep. at 162:6–163:7); *see also* Brown Dep. at 163:22–25. The Court agrees with Defendants that Brown did not offer the opinion with which Plaintiffs take issue, so this is a non-issue.

Third, Plaintiffs argue that during his deposition, Brown offered various potential reasons for why there is no report or documentation of a meeting between Moore and law enforcement agencies, which Plaintiffs contend are speculative. Pls.' Mot. Bar Brown at 6 (citing Brown Dep. at 206:23–211:5). Not so, counter Defendants, pointing out that Brown was responding to Danik's incorrect assertion that the FBI did not meet with Moore, despite records showing that ATF and the FBI met with Moore. Defs.' Brown Resp. at 10 (citing R. 339-1, Apr. 2005 ATF Report; R. 339-2, 2005 ATF Log). The records demonstrate that Moore's April 2005 interview with ATF and CPD was memorialized in a detailed report, Apr. 2005 ATF Report, whereas there is no report beyond a log notification that Moore met with the FBI in May 2005, 2005 ATF Log. Brown testified, in response to Plaintiffs' counsel's question, that "you wouldn't write a report repeating what was already in the original report, because there's a possibility that something could be taken out of context or by slightly—differ slightly. And you open yourself up to problems." Brown Dep. at 210:2–6. He explained

that it was up to the "discretion of the agent to note Moore was a previous interview" and the absence of such notation was not an indication of "malfeasance." *Id.* at 211:12–19.

Importantly, he also stated that because he was not present at either meeting, he does not—and indeed cannot—opine on why a report was not written for the second meeting. *See id.* at 209:3–10. *That* would be speculation. However, the Court agrees with Defendants that, based on Brown's experience, knowledge, and training, his hypothetical explanation as to why a report wasn't authored as to the second meeting is not speculative. *See Smith*, 15 F.3d at 718–19 (experts can offer hypotheticals when they have a reliable basis); *Metavante Corp*, 619 F.3d at 761 (expert testimony can be founded on experience).

C. Opinions Beyond Expertise

Plaintiffs generally do not dispute that Brown is qualified to testify as an expert; however, they argue that he offers several opinions beyond the scope of his expertise. Pls.' Mot. Bar Danik at 7–10. Specifically, Plaintiffs take issue with Brown's opinions on IAD and Union contract issues. *Id.* Even if an expert "is qualified in general" he or she must still have expertise in the specific area about which they seek to offer testimony. *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010) ("[S]imply because a doctor has a medical degree does not make him qualified to opine on all medical subjects."); *see also* Fed. R. Civ. P. 702; *Fisher v. Ethicon, Inc.*, 624 F. Supp.

3d 972, 981 (C.D. Ill. 2022) (barring a pathologist from opining on specific risks of surgical tool and whether those risks appeared on instructions).

1. CPD's Internal Affairs

The way Plaintiffs see it, Brown is not qualified "to testify or comment about the policies, practices, and procedures of the CPD's Internal Affairs Department or CPD's internal investigation of Watts and his team." Pls.' Mot. Bar Brown at 7. Indeed, point out Plaintiffs, Brown specifically testified that he was not offering opinions about how CPD's internal affairs systems works or doesn't work, and that he is "not an expert on . . . how CPD conducts their internal affairs investigations." *Id.* at 7–8 & n.1 (citing Brown Dep. at 74:9–17, 257–63). Despite this lack of expertise, Plaintiffs argue that Brown still improperly offers several opinions relating to police internal affairs operations, including those of CPD, in his report and during his deposition. *Id.* at 8. Defendants contend that "the context in which Mr. Brown's opinions arise show that they are proper." Defs.' Brown Resp. at 11. The Court addresses each opinion in turn.

a. Opinion A: "As to officers other than Watts and Mohammed, there was insufficient evidence to bring criminal or *administrative* charges." Pls.' Mot. Bar Brown at 8 (quoting Brown Report at 16 (emphasis in Plaintiffs' motion); citing Brown Report at 28 (Brown similarly opining about the insufficient evidence to bring administrative charges)).

Plaintiffs contend that, without the requisite background in internal affairs, Brown has no basis to opine that there was insufficient evidence to bring administrative charges. Pls.' Mot. Bar Brown at 8. According to Defendants, Brown based his opinion that no other officers were involved on the testimony of high-

ranking members of a police force and documents from the investigation from Superintendent McCarthy, IAD Chief Juan Rivera. Defs.' Brown Resp. at 12 (citing Brown Report at 16). Notably, Defendants do not explain why this information allows Brown to testify about *administrative* charges, which he admits he has no experience in. He may testify as to the sufficiency of the evidence to bring *criminal* charges, but, without more from Defendants, the Court finds that they have failed to meet their burden of showing that Brown's testimony regarding administrative charges is allowable under Rule 702.

b. Opinion B: "CPD must include an analysis as to the sufficiency of any evidence when it decides to initiate an administrative action against its officers." Pls.' Mot. Bar Brown at 8 (quoting Brown Report at 19).

Similarly to the above, Plaintiffs argue that, without the requisite background in internal affairs (and especially CPD's internal affairs), Brown has no basis to opine on what CPD had to do to initiate an administrative action against Watts or Mohammed. Pls.' Mot. Bar Brown at 8. Defendants, on the other hand, point to Brown's testimony that, in the context of an administrative proceeding, "[o]ther than my general knowledge that if some – from work experience and – and as a supervisor, that an accusation was being made against somebody, you would have to have some sort of basis for it rather than, you know, take action against someone just an accusation. So that, you know, I'm not an expert on human resources at all, but it's – they're afforded that." Defs.' Brown Resp. at 12 (quoting Brown Dep. at 171:15–22). The Court fails to see how this addresses Brown's qualifications to opine on what CPD must include when initiating an administrative action, where Brown specifically

testified that he is "not an expert on . . . how CPD conducts their internal affairs investigations." Brown Dep. at 258:17–20. And, even assuming Brown's expertise in law enforcement, including as a supervisor, allows him to testify as to the need for evidentiary analysis before instigating any sort of proceeding, the Court find this to be the sort of opinion that a jury does not need expert testimony on to understand. *See, e.g.*, *Florek*, 649 F.3d at 602–03.

> c. Opinion C: "These same risks are also present when conducting an administrative action against the targeted officers. Although the evidentiary burden is lower in such an action, certain portions of evidence will still have to be revealed. This revelation could cause irrevocable damage to the ongoing investigation or cause it to be shut down. Danik's opinion that 'nothing precludes the use of that evidence . . . in an administrative action,' is far from reality. As outlined above, numerous reasons exist for not using this evidence in a premature administrative action against either Watts or Mohammed. Finally, since the evidence of the controlled bribe payments was not available for CPD IAD to use until the conclusion of the criminal investigation, it is likely that any such administrative proceeding would be unsuccessful, leaving those officers on the street and obstructing the criminal investigation at the same time." Pls.' Mot. Bar Brown at 8–9 (quoting Brown Report at 31).

Plaintiffs contend that again, with no internal affairs background, Brown has no basis to offer an opinion on the probability of success of an administrative proceeding against Watts or Mohammed. Pls.' Mot. Bar Brown at 8–9. Defendants again point to Brown's testimony about his work experience and experience as a supervisor that they insist qualifies him to opine on the need for competent evidence in an administrative disciplinary proceeding involving officers. Defs.' Brown Resp. at 12 (citing Brown Dep. at 171:15–22). Defendants also argue that it is unclear what portion of Brown's opinion Plaintiffs take issue with, and it is not up the Court or

Defendants to infer what they contest. *Id.* at 12–13 (citing, *inter alia*, *Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011)). The Court understands Plaintiffs' argument to be that they take issue only with the portion of Brown's opinion regarding the probability of success of the administrative proceeding without the evidence of the controlled bribe payment. Pls.' Mot. Bar Brown at 9. The Court agrees with Plaintiffs that, without experience with "lower . . . evidentiary burden" in administrative proceedings, Brown cannot testify about the probability of success of such a proceeding; moreover, such an opinion strikes the Court as speculative. To the extent Brown intends to testify that a failed administrative proceeding would leave officers on the street and obstruct the criminal investigation, that relates to his expertise in criminal investigations and thus is admissible.

d. "Q. If it is your opinion that what the [CPD] did in 2006 when the FBI investigation was suspended that the [CPD's] actions during that time were consistent with generally accepted standards, what's the basis for that opinion? A. From the review of the record, it shows that CPD was in communication with the Cook County State's Attorney's Office. It should be noted that that was one of the reasons if not the main reason that the U.S. Attorney's Office declined prosecution and therefore the FBI shut down the investigation, because of the parallel investigation that was being conducted by local authorities. The record showed that CPD was in communication with that office, and I also noted that the CPD IAD had reopened some of the CR complaints that formed the foundation. And also at the end of 2006, one of the CPD investigators was able to cultivate another -- another informant that was able to – I'll just use the term go direct drag with the accused, and that information was then brought to the FBI and was the basis for the FBI reopening the investigation. So based upon those things that I just enumerated, it's certainly demonstrated that CPD did not just sit on their hands, but

> they were actively involved in the investigation." Pls.' Mot. Bar Brown at 9 (quoting Brown Dep. at 36:2–37:6).

Plaintiffs argue that Brown offers no basis for opining on what CPD did when the FBI's joint investigation was suspended in 2006. Pls.' Mot. Bar Brown at 10. Moreover, assert Plaintiffs, Brown was only disclosed to opine on the joint investigation, not any investigative steps CPD took independent of the FBI. *Id.* Defendants point to Brown's report—which Plaintiffs do not challenge—where he states that Danik fails to acknowledge the steps taken by IAD when the joint investigation was suspended, and highlights the continued steps taken by IAD while the joint investigation was suspended, such as reopening Plaintiffs' allegations. Defs.' Brown Resp. at 13 (citing Brown Report at 28). Moreover, point out Defendants, Plaintiffs' counsel explicitly asked for Brown's opinion at his deposition, and Brown responded, so Plaintiffs cannot now complain about that responsive testimony. *Id.* at 14 (citing *Ezell*, 2023 WL 5287919, at *11 ("Plaintiffs cannot cry foul when an expert renders an opinion after being asked for one.")). The Court agrees with Defendants that not only can Plaintiffs not complain about Brown's responsive testimony, but also that Brown's testimony is consistent with his disclosure and his report. Defs.' Brown Resp. at 13–14.

2. Union/FOP Contract Issues

Finally, Plaintiffs argue that Brown has no experience with police union contracts, nor did he review the operative Fraternal Order of Police (FOP) contract between CPD and its officers. Pls.' Mot. Bar Brown at 10 (citing Brown Dep. at 83:13–23, 171:2–172:20). Therefore, reason Plaintiffs, Brown is not qualified to opine on

whether a quicker investigation would violate labor contracts, and specifically cannot offer the following opinion: "Amongst the potential areas of concern for CPD could be possible due process claims and potential violations of labor contracts should CPD use information that was not reliable or validated. Just as in a criminal investigation, the administrative process requires an investment of time and resources, an investment that would most likely not take place in the expedited manner that is suggested by plaintiff's expert." *Id.* (quoting Brown Report at 28).

Defendants disagree, noting that Brown's opinion is based on his experience in law enforcement and in internal investigations of employees, including his experience as a supervisory special agent in the FBI in charge of Office of Professional Responsibility Investigations. Defs.' Brown Resp. at 15 (citing Brown Report at CITY-BG-062921). Indeed, point out Defendants, Brown testified that, based on his "work experience" including "as a supervisor," that "you have some sort of basis" beyond "just an accusation" because "there's a lot of things in place with the labor contracts with the police department, and that the officers are afforded some sort of protections from accusations." *Id.* (quoting Brown Dep. at 171:15–172:4). The Court agrees with Defendants that Brown is qualified to testify that moving administratively on an expedited basis without competent evidence would likely violate union contracts, and that such an opinion is not speculative. *Id.*

Conclusion

For the foregoing reasons, the Court grants in part and denies in part Defendants' Motion to Bar Jeffrey Danik [305-1], [307] and grants in part and denies in part Plaintiffs' Motion to Bar Michael Brown [300], [301].

Dated: August 22, 2024

United States District Judge
Franklin U. Valderrama