

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL McCLAIN,
ANNE PRAMAGGIORE,
JOHN HOOKER, and
JAY DOHERTY

No. 20 CR 812

Hon. Harry D. Leinenweber

**GOVERNMENT’S MOTION TO EXCLUDE OR LIMIT
PROPOSED EXPERT TESTIMONY OF LEE DRUTMAN**

The United States of America, by its attorney, MORRIS PASQUAL, Acting United States Attorney for the Northern District of Illinois, respectfully moves this court to exclude or limit the proposed testimony of Defendant Doherty’s expert on lobbying practices, Lee Drutman. The proposed expert testimony is unreliable, irrelevant, and will not aid the jury in its fact-finding mission.

RELEVANT BACKGROUND

On January 30, 2023, Defendant Doherty tendered a disclosure pursuant to Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure that Defendant Doherty intended to call an expert witness, think-tank scholar Lee Drutman, to testify about the business of lobbying. Ex. A. On February 2, 2023, in response to an objection from the government that the notice failed to provide a “complete statement of all opinions that the defendant will elicit from the witness in the defendant’s case-in-chief” and the bases or reason for them, Defendant Doherty tendered a supplemental disclosure. Ex. B. This disclosure included a summary of Drutman’s proffered testimony. *Id.* at

2-3. This summary identified basic concepts about the lobbying industry that Drutman intends to elucidate at trial, including, for example, the purpose of lobbyists, the different types of lobbyists (such as an in-house versus contract lobbyist), and the ways in which lobbyists influence politicians. *Id.* Doherty further intends to elicit from Drutman that lobbyists are hired for multiple purposes, including “building relationships to gain access to politicians and their staff, providing education and information regarding the political process, providing education and information with respect to political decision makers, and attempting to influence political decision makers.” *Id.* at 2.

LEGAL STANDARD

The admission of expert testimony is governed by Federal Rule of Evidence 702 and the framework established by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See United States v. Pansier*, 576 F.3d 726, 737 (7th Cir. 2009). This Court acts as a gatekeeper and has a special obligation to ensure that all expert evidence is both relevant and reliable. *Daubert*, 509 U.S. at 589; *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). Federal Rule of Evidence 702 “requires a valid connection to the pertinent inquiry as a precondition to admissibility,” and “where such testimony’s factual basis, data, principles, methods, or their application are called sufficiently into question, the trial court must determine whether the testimony has a reliable basis in the knowledge and experience of [the relevant] discipline.” *Daubert*, 509 U.S. at 592. If the proffered

testimony fails the general test of relevance, meaning that it does not assist the trier of fact in understanding a fact in issue, then the district court should exclude the testimony. *United States v. Hall*, 93 F.3d 1337, 1342 (7th Cir. 1996).

Even where the proffered testimony appears relevant, Rule 702 requires that expert testimony be based on sufficient facts or data and that it be the product of reliable principles and methods. Fed. R. Evid. 702(b)-(c). “[E]xperts’ opinions are worthless without data and reasons” and “[t]he court is not obligated to admit testimony just because it is given by an expert.” *United States v. Mamah*, 332 F.3d 475, 478 (7th Cir. 2003); *see also United States v. Lundy*, 809 F.2d 392, 396 (7th Cir. 1987) (“District courts must ensure that expert opinion testimony is in fact expert opinion, not merely an opinion given by an expert.”). The Seventh Circuit has emphasized many times “that experts’ work is admissible only to the extent it is reasoned, uses the methods of the discipline, and is founded on the data.” *Higgins v. Koch Devel. Corp.*, 794 F.3d 697, 705 (7th Cir. 2015) (quoting *Lang v. Kohl’s Food Stores*, 217 F.3d 919, 924 (7th Cir. 2000)). Non-scientific expert testimony is not treated more permissively “simply because it is outside the realm of science.” Fed. R. Evid. 702 Advisory Comm. Notes (2000 Amendment).

Defendant Doherty has the burden of establishing that his proposed expert evidence is admissible. *Daubert*, 509 U.S. at 592 n.10; *Bourjaily v. United States*, 483 U.S. 171, 175-76 (1987). A district court’s decision to bar expert testimony is reviewed for abuse of discretion. *Kumho Tire Co.*, 526 U.S. at 158.

ARGUMENT

I. Mr. Drutman’s Proffered Testimony Fails Rule 702’s Reliability Standard.

Doherty fails to identify *any* methodology that Drutman used in forming his opinions. In his supplement to his expert disclosure, Doherty points to the list of Drutman’s articles and books, explaining in one line, “Mr. Drutman’s testimony will be consistent with his published work.” Ex. B at 2. But “even a supremely qualified expert cannot waltz into the courtroom and render opinions unless those opinions are based upon some recognized scientific method.” *Kirk v. Clark Equipment Co.*, 991 F.3d 865, 873–74 (7th Cir. 2021) (cleaned up) (quoting *Clark v. Takata Corp.*, 192 F.3d 750, 759 n.5 (7th Cir. 1999)). As this Court has noted, when considering whether a proffered expert’s testimony is the product of reliable principles or methods, “[an] extensive publishing record is not enough.” Dkt. 159 at 4.¹

The only other purported principle or method that Doherty cites is the data of other researchers. Ex. B at 2. Although the notes to Rule 702 state that “data’ relied upon is intended to encompass the reliable opinions of other experts,” an expert witness may not “merely parrot[]” another expert. *See In re Yasmin and*

¹ In addition to a written scholarship spanning a fifty-year career in academia, the government’s proposed expert Professor Dick W. Simpson served as an Alderman in the City of Chicago, which gave him first-hand knowledge of Chicago government and politics. Dkt. 144 at 2. This Court nevertheless excluded Professor Simpson’s testimony at trial and noted that a lengthy history of publications is insufficient to establish reliability under Rule 702. *See* Dkt. 159 at 4. Here, Drutman relies solely on a list of publications: he does not have personal experience in the industry to support his testimony like Professor Simpson does, nor is he a Professor Emeritus who has studied the industry as an academic for decades.

(Drospirenone) Marketing Practices and Products Liability Litig., MDL No. 2100, 2011 WL 6302889, at *17 (S. D. Ill. Dec. 16, 2011) (expert properly relied on the opinions after conducting an independent analysis of the literature). Rather, to rely on another expert, that expert's opinions must be reliable; indeed, one "must evaluate the methods used by the earlier expert and demonstrate familiarity with the methods and reasoning used by the earlier expert." *Estate of Cape v. United States*, 11-c-0357, 2013 WL 4522933, at *3 (E.D. Wis. Aug. 27, 2013) (citing *TK-7 Corp. v. Estate of Barbouti*, 993 F.2d 722, 732 (10th Cir. 1993)). Like his discussion of Drutman's own scholarship, Doherty does not provide any detail about the methods or reasoning used by the experts upon which Drutman relies, nor Drutman's evaluation of those methods and reasoning. *See* Ex. A; Ex. B.

Because Defendant Doherty fails to provide any methodology upon which Drutman will rely, the Court should exclude Drutman's testimony.

II. Mr. Drutman's Proffered Testimony Will Not Help the Trier of Fact to Understand the Evidence or Determine a Fact in Issue.

The Court should also exclude Drutman's testimony for the independent reason that it will not aid the jury in resolving a question at issue. *See Hall*, 93 F.3d at 1342 (for expert testimony to be relevant, it must aid the trier of fact). Expert testimony helps the trier of fact if it is not within the jury's common knowledge and experience. *Lundy*, 809 F.2d at 395 (7th Cir. 1987) ("Courts agree that it is improper to permit an expert to testify regarding facts that people of common understanding can easily comprehend.").

The focus of Drutman’s proposed testimony—the basics of lobbying—resembles the principles taught in a high school civics class. The jury will be familiar with the general notion of how a bill becomes a law and how various political and non-political actors influence that process based on the government’s fact witnesses, which will include current and former legislators and lobbyists. Defendants will have the opportunity to cross-examine these witnesses about standard lobbying practices, and of course are permitted to present their own fact witnesses on these topics. The Court excluded Professor Dick Simpson’s proffered testimony on Chicago ward politics and the political machine because the concepts are not “so enigmatic to require expert testimony.” *See* Dkt. 159 at 4. This same rationale requires the exclusion of Drutman’s general testimony about typical lobbying. When cross examination, argument, and jury instructions are sufficient to allow the jury to assess the evidence, expert evidence is unhelpful and improper. *Daubert*, 509 U.S. at 591-92; *see also United States v. Hall*, 165 F.3d 1095, 1107 (7th Cir. 1999); *United States v. Frazier*, 387 F.3d 1244, 1262-63 (11th Cir. 2004).

“Unless the expertise adds something, the expert at best is offering a gratuitous opinion, and at worst is exerting undue influence on the jury that would be subject to control under Fed. R. Evid. 403.” *Hall*, 93 F.3d at 1343. Here Doherty presumably seeks to elicit Drutman’s testimony to support an argument that payments he made to Madigan allies were “bona fide” and in the usual course of business. 18 U.S.C. § 666(c). But Drutman has no knowledge of the underlying

payments. His explanation of what lobbyists normally do would not aid the jury, and if anything would confuse and mislead them by suggesting that it is somehow appropriate to pay political actors to do little or no work in order to corruptly influence or reward a politician. Because Drutman's proffered dissertation on the principles of lobbying will not add anything, beyond the common knowledge of the jury and testimony defendants will be able to elicit through fact witnesses, the Court should exclude his testimony.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court exclude or limit the testimony of Defendant Doherty's proffered expert Lee Drutman.

Respectfully submitted.

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