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October 13, 2003

Michael Kanovitz
LOEVY & LOEVY
312 North May St.
Suite 100
Chicago, Illinois, 60607

Re: Opinion Testimony relative to Lopez v. City of Chicago, et al., Case # 01C1823

Sent Via Facsimile 312-243-6453 and hand-delivery

Dear Mr. Kanovitz,

This letter is to confirm my retention for the purpose of rendering an opinion in the above case, relative to the role of the Cook County State's Attorney's Office (CCSAO) and its Felony Review Unit. This letter will further confirm that the agreed upon compensation for these services is as follows: \$185.00 per hour for non-court-related services, and \$225.00 per hour for court-related services.

Both my educational and my professional background support my ability to render this opinion. Educationally, I received a Bachelor of Arts in English Literature from the University of Illinois in Urbana/Champaign in 1987. I further received a Juris Doctorate from DePaul University in 1990. Professionally, I am currently a licensed attorney in the State of Illinois in good standing, and have been so since November of 1990. The majority of my legal career has been as an employee of the Cook County State's Attorney's Office, even preceding my graduation from law school.

Beginning with two clerkships in 1988 and 1989, as well as continued employment from the summer of 1990 through September of 1998, I have been an employee of the Cook County State's Attorney's Office. My assignments have ranged from the Appellate Division, the Municipal Division, the Felony Review Division, the Preliminary Hearings Division, the Night Narcotics Division, and the Felony Trial Division.

As an Assistant State's Attorney, I litigated in excess of two hundred and fifty trials, and an equal number of substantive pre-trial motions. Of the trials, approximately thirty were jury trials and approximately one hundred were felonies. Additionally, I authored approximately twenty-five briefs on behalf of the People of the State of Illinois, and argued orally three such briefs in front of the Illinois Appellate Court. As a felony review assistant, I participated in the review of approximately three hundred cases, involving persons under police investigation.

In September of 1998, until July of 2001, I was an associate attorney in the law firm of Serpico, Novelle and Navigato, Ltd., working exclusive for the defense of individuals charged with criminal offenses. My

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responsibilities included the maintenance of a voluminous criminal docket, the litigation of both pretrial motions, hearings and trial, as well as the drafting of appellate briefs on behalf of the defendants.

In September of 2001, I left the employ of Serpico, Novelle and Navigato, Ltd. to become a sole practitioner of law. My responsibilities continue to focus on criminal defense, and have expanded to encompass both residential and commercial real estate transactional work.

Since September of 1998, I have litigated several trials and pretrial motions combined. Additionally, I have authored approximately four appellate briefs on behalf of criminal defendants, and have argued twice in front of the Appellate Court for the Seventh Circuit Court of Appeals.

As I have been enlisted to render an opinion relative to the Felony Review Unit, I feel it would be helpful to present a brief overview of the responsibilities of that division of the CCSAO. With some exceptions, determinations of whether felony charges shall lie against any individual under investigation by any local law enforcement agency within Cook County lie within the discretion of the Felony Review Unit of the CCSAO. Upon reviewing all the evidence presented to the ASA, that person will then make a determination to either approve, disapprove, or C/I (designate the case as a continuing investigation) the case.

All of this evidence is reviewed with the assistance of the law enforcement authorities. As the ASA and the detective may differ as to the proper quality of evidence necessary in each case, the ASA will often require additional evidence than is provided by the law enforcement authorities. As such, the relationship between the ASA and law enforcement, usually the detectives, can be strained.

This relationship can be further strained when the ASA designates the case as a Continuing Investigation. This designation does not allow the detective to clear and close the case, and mandates that additional work be done on the case. It also often suggests to the police that they have not adequately investigated the case, affronting the detective. It also often requires them to do additional work, such as locating additional witnesses, transport them back to the station for interview by the ASA. Absent a confession by a suspect, this additional evidence can become integral to an ASA before charges will be approved. As such, greater importance is attributed to these confessions.

Whereas determinations of the propriety of felony charges lie with the Assistant State's Attorney, determinations of custody are within the sole discretion of law enforcement. Therefore, it lies within the sole discretion of law enforcement how long a person is held before contacting Felony Review, and the conditions of how that person is held. Additionally, it lies within law enforcement's sole discretion a suspect's custodial status after the Felony Review Unit has approved, rejected or designated the case as a continuing investigation.

As my experience with the Felony Review Unit occurred in the First District of Cook County, the large majority of my contact with law enforcement occurred with the Chicago Police Department. Personal reviews of cases occurred at any and all of the Chicago Police District Area Headquarters and Chicago Police District Police Stations.

In reviewing a case, one of the initial inquiries I would make would be to determine the condition of the suspect, where he was being detained, how long has he been detained, and whether he had received food and/or beverages. As to the issue of the detainee's location within a police facility, most often the detainee would be held in an interrogation room by himself. Although these rooms differ slightly from station to station, I would describe these rooms as generally small, devoid of furniture, with the possible exception of a metal or wood bench, and maybe a folding chair. Often the detainees would be handcuffed to the wall via a metal pole designed for that purpose, and always would the outer door of the room be locked from the outside. Additionally, no bathroom facilities were provided within the room, and the doors provided no view out. The choice of whether the detainee was provided food or the use of the

bathroom remained with the law enforcement authorities. It was not uncommon to smell urine in these rooms. Additionally, the suspects most often remain in these rooms, which in the Area Headquarters are found within the Detective's Division, during the entire pendency of the investigation, until charges are determined. On rare occasions, when all of the interview rooms are filled, a detainee may remain handcuffed to a chair or desk out in the detective's division general area. Moreover, it was not uncommon that a detainee had not been fed. I can recall on several occasions, leaving the station myself and securing a meal at a local fast food establishment, or requesting that the detectives secure a meal before I speak to a defendant regarding the incident.

As to the issue of the length of detention, it would not be uncommon to see an individual detained for periods greater than forty-eight hours. Additionally, the more serious allegations tended to correlate with longer detentions. Moreover, it would not be uncommon for a suspect to suggest that he had been interrogated multiple times by extended detentions and prior to my access to the suspect that he had been interrogated multiple times by several detectives. The length of detention would often be extended further if the Assistant State's Attorney designated the case as a Continuing Investigation, requiring the detectives to do additional work. It would not be uncommon under those circumstances for detentions to exceed seventy-two hours.

In my opinion, the conditions mentioned above are unreasonable, and provide an environment conducive to securing involuntary, and/or false confessions. The repeated interviews of the suspect prior to the CCSAO involvement may color a confession as suggestive, or contaminate any statement by the suspect with facts introduced to the suspect during the interviews.

The foregoing opinions are held to a reasonable degree of certainty. I thank you for the opportunity to assist you in this matter, and for the opportunity to comment on these issues. I welcome any further requests to provide commentary on these and related issues.

Very Truly Yours,


Peter J. Faraci