

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ACLU OF TENNESSEE, Inc.)	
)	
Intervening Plaintiff,)	
v.)	No. 2:17-cv-02120-jpm-DKV
)	
THE CITY OF MEMPHIS,)	
)	
Defendant.)	

**SEALED REPLY IN SUPPORT OF MOTION FOR IMMEDIATE MODIFICATION OF
THE KENDRICK CONSENT DECREE**

The Defendant, the City of Memphis (“the City”), submits this Reply in Support of its Motion for Immediate Modification (ECF No. 227) of Section I of the September 14, 1978 Order, Judgment and Decree entered in the case of *Kendrick, et al v. Chandler, et al*, No. 2:76-cv-00449 (W.D. Tenn. 1978) (the “Consent Decree”) (*See* Consent Decree, ECF 9-1).

I. The Court’s Interpretation of Section I differs from that of the ACLU-TN.

The Intervening Plaintiff ACLU of Tennessee, Inc. (“ACLU-TN”) states in its brief that modification of Section I is not warranted because “[t]he obvious purpose of § I was to close any loophole whereby the City might farm out the gathering of political intelligence or other conduct prohibited by the Consent Decree.” (ECF No. 231, PageID 7966). The Monitor and the Court, however, interpret Section I much differently than the ACLU-TN.

Section I of the Consent Decree states:

Restrictions on Joint Operations

The defendants and the City of Memphis shall not encourage, cooperate with, delegate, employ or contract with, or act at the behest of, any local, state, federal or private agency, or any person, to plan or conduct any investigation, activity or conduct prohibited by this Decree.

Consent Decree, § I (ECF No. 151, PageID 6284).

In a series of communications in August 2019, the Monitor interpreted Section I as prohibiting the City from receiving any intelligence from another law enforcement agency, entity, or person unless the City is somehow able to vet that the information was gathered in a way that does not violate the Consent Decree.¹ The Monitor explained that Section I does more than just prevent the City from “farming out” the gathering of political intelligence or other conduct prohibited by the Consent Decree — it prevents the City from receiving *any* information without first vetting that the intelligence was gathered in violation of the Decree.

Second, the City may not “benefit from the Intel” acquired by the FBI, the Secret Service, or any other law enforcement agencies unless the City first verifies that the information was not acquired in any way that the consent decree prohibits the City from using. Section I of the *Kendrick* Consent Decree forbids the City to “encourage, cooperate with, delegate, employ or contract with, or act at the behest of, any local, state, federal or private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree.” **I read this restriction to place the onus on the City to verify that any information it receives from governmental law enforcement agencies, non-law enforcement agencies, public and private entities, and individuals satisfies the same standards as information lawfully collected by the City itself.**

(August 21, 2019 Letter from Monitor to the City, attached as Exhibit A, at pp. 1-3) (emphasis added).

In a second communication, the Monitor explained as follows:

The only way to ensure that the City does not offend the consent decree in working with private individuals or organizations is to require the same verification process for information received from private individuals and organizations as I understand the consent decree to impose for receiving information from the FBI, the Secret Service, or any other law enforcement agencies. (See generally August 21, 2019, Coordination Opinion.) **The City’s ability to receive information from private citizens, either through Crime Stoppers or directly, is thus subject to verification that the information**

¹ The Monitor granted the City permission to continue participating in the Multi-Agency Gang Unit and CrimeStoppers pending the Court’s ruling on the City’s Motion for Immediate Modification.

satisfies the same standards as information lawfully collected by the City itself.

(August 26, 2019 Letter, attached as Exhibit B, pp. 10-11) (emphasis added).

The Court then acknowledged the Monitor's interpretation of Section I during an *in camera* conference held on August 27, 2019.

The Monitor did look at this issue and is -- is correct that we, under the Kendricks [sic] decree, did not receive information that was gathered without, essentially, a reasonable suspicion or probable cause-type determination. There are both different standards but some type of determination. In other words, broad gathering of information simply to gather information is problematic.

(ECF No. 232, PageID 7978).

The Court further explained that the City could not receive or act on information obtained by a federal agency in a manner that violates the Decree.

Now, the interesting question is: Can you act on it? Can you act on it, not can the Secret Service act on it? They can. That's not precluded. Can the FBI act on it? They can. That's not precluded. But can the City of Memphis act on that? And the answer typically would be no because it's simply information that you would not receive.

(ECF No. 232, PageID 7981).

Moreover, the Court apparently acknowledged, in interaction with counsel for the City, that even if the intelligence gathered by the federal agency was related to a lawful criminal investigation, the City's receipt of that information would violate the Consent Decree because the federal criminal investigation was not approved by the Director under Section G of the Consent Decree.

MR. GLOVER: -- so I'm not complaining about it. Is that -- it would be, as it stands now, without some relief from the Court or nuanced reading of it that you're giving us here that we would be in technical violation for receiving the information from the FBI or the Secret Service if we couldn't assure ourselves, through vetting, that it had not been obtained in a manner that would be consistent for us --

THE COURT: And the problem is --

MR. GLOVER: -- to be able to do it.

THE COURT: -- that they can't assure us that they've had a impartial -- it's impartial -- individual --

MR. STANTON: Mm-hmm.

THE COURT: -- who has reviewed and made a determination. And that is a problem.

MR. GLOVER: With the four elements --

THE COURT: That is a problem.

(ECF No. 232, PageID 7983).

Thus, the ACLU-TN's interpretation of Section I conflicts with that of the Monitor and this Honorable Court. The City agrees with the ACLU-TN that the "obvious purpose" of Section I was to prevent the City from "farm[ing] out the gathering of political intelligence or other conduct prohibited by the Decree," (ECF No. 231, PageID 7966), but it is nonetheless constrained by the Court's and the Monitor's current interpretation of Section I. In view of ACLU-TN's clarified position on its view of the purpose of Section I, the City respectfully requests that the Court reconsider its interpretation of Section I; and if the Court's interpretation of Section I remains unchanged in light of the ACLU-TN's interpretation of it, the City respectfully requests that Section I be modified as outlined *infra*. The ACLU-TN asserts that the City has presented no evidence "that there has been a change in circumstances that makes compliance with Section I substantially more onerous than what was originally contemplated." (ECF 231, PageId 7967). The Monitor's and the Court's interpretation of Section I, however, in light of a national law enforcement environment that encourages the sharing of intelligence, constitute changed circumstances and warrant modification of Section I.

Accordingly, the City proposes that Section I be modified as follows:

~~Restrictions on Joint Operations~~ Restrictions on the Use of Third Parties As

Surrogates

The defendants and the City of Memphis shall not encourage, ~~cooperate with,~~ delegate, or employ ~~or contract with,~~ or ~~act at the behest of,~~ any local, state, federal or private agency, or any person, to plan or conduct any investigation, activity or conduct prohibited by this Decree. The City may receive information from local, state, federal, and private agencies, or from any person, as long as the City of Memphis does not initiate the conduct giving rise to the gathering of the intelligence.

II. The *Kendrick* Complaint does not even allege a subjective chilling effect.

ACLU-TN argues that there has been no change in law since the time of the *Kendrick* litigation. A closer look at the *Kendrick* Complaint is warranted. The *Kendrick* Complaint was filed on September 14, 1976 in response to the City's operation of its Domestic Intelligence Unit.

The plaintiffs alleged:

...the Memphis Police Department in or about 1965 established a Domestic Intelligence Unit whose purpose was to investigate and maintain files upon citizens engaged in non-criminal, constitutionally protected activities which were thought to be "subversive" and/or advocating unpopular or controversial political issues.

Kendrick Complaint, ¶ 6, attached as Exhibit C.

Upon information and belief the defendants gathered, maintained and held in their possession, custody and control, files, records and reports that contained unverified information and gossip which related exclusively to the exercise of lawful and peaceful activities.

Id. at ¶ 7.

Now, following *Gordon v. Warren Consol. Bd. of Educ.*, the activities of the Memphis Police Department alleged to have violated the First Amendment would not even give the *Kendrick* plaintiffs standing to bring their original claim. 706 F.2d 778, 780 (6th Cir. 1983), quoting *Laird v. Tatum*, 408 U.S. 1 (1972) ("Allegations of subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm"); *see*

also *Am. Civil Liberties Union v. Nat'l Sec. Agency*, 493 F.3d 644, 661 (6th Cir. 2007). The *Kendrick* plaintiffs failed to allege *any chilling* of their speech, much less an objective chilling.

In short, if the *Kendrick* plaintiffs brought the same First Amendment claims that they brought in 1976 in 1984 (post-*Gordon*), they would not have standing to do so because they did not even allege that their speech was subjectively chilled, much less objectively. In short, because the *Kendrick* plaintiffs would not be able to bring their claim, there would be no Consent Decree.

III. Conclusion

In view of the Parties' apparent understanding, if not agreement, on the purpose and intent of Section I, the City respectfully requests that the Court modify Section I accordingly.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Mark Glover

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*Attorneys for Defendant, The City of
Memphis*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October 2019, a copy of the attached pleading was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to all counsel of record.

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s/ Mark Glover

Mark Glover

EXHIBIT A



Confidential Attorney Work Product

MEMORANDUM

To: The City of Memphis
From: Independent Monitor Edward L. Stanton III
Date: August 21, 2019

THE INDEPENDENT MONITOR'S RESPONSES TO QUESTIONS REGARDING POTENTIAL COORDINATION BETWEEN THE MEMPHIS POLICE DEPARTMENT, OTHER LAW ENFORCEMENT AGENCIES, AND NON-LAW ENFORCEMENT ENTITIES AND INDIVIDUALS

This memorandum addresses three questions concerning the City of Memphis (City) and the Memphis Police Department (MPD)'s ability to share with and receive information from other law enforcement agencies.

- (1) On September 9-11, 2019, the City will host the PSP Symposium on Violent Crime. U.S. Attorney General William Barr and executives from various federal agencies—DOJ, FBI, DEA, ATF, and USMS—plan to attend. On July 16, 2019, the City asked whether it may “coordinate with [the FBI and Secret Service] and benefit from Intel they may have to share in planning for th[e] symposium.” (See Email from B. McMullen to E. Stanton, et al., attached as **Exhibit A**.)

ANSWER: This question raises two issues: First, to the extent that “coordinat[ing]” with the FBI or the Secret Service includes sharing personal information, the City may not coordinate with those agencies, or any others, in planning for the symposium. Section H of the *Kendrick* Consent Decree¹ prohibits the City from “maintain[ing] personal information about any person unless it is collected in the course of a lawful investigation of criminal conduct.” § H(1). It also prohibits the City from sharing “personal information . . . collected in the course of a lawful investigation of criminal conduct” unless the recipient is “another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct.” § H(2). I read this language to impose two applicable restrictions: (1) entirely against the sharing of personal information collected in any way other than via lawful criminal investigation (as such information may not be maintained in the first instance); and (2) against the sharing of personal information collected via lawful criminal investigation unless such sharing is with another governmental law enforcement agency and that agency already is engaged in a lawful criminal investigation.

¹ The decree is ECF No. 3 in Case No. 2:76-cv-000449 before this Court.

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The second restriction is straightforward, but the first warrants elaboration. As an initial matter, § C(1) of the consent decree broadly prohibits the City from “engag[ing] in political intelligence.” Section B(4) defines “political intelligence” to include both “the gathering [and] . . . dissemination of information . . . relating to any person’s . . . exercise of First Amendment rights.” Together, the two provisions prevent the City from sharing information relating to any person’s exercise of First Amendment rights.

Section H(2), cited above, is broader than Section B(4). It speaks of “personal information” without qualification, whereas § B(4) refers to the narrower category of “information . . . relating to any person’s . . . exercise of First Amendment rights.” But § H(2) restricts the permitted recipients of the first category of information to other “governmental law enforcement agenc[ies] then engaged in a lawful investigation of criminal conduct” when that information is acquired “in the course of a lawful investigation of criminal conduct.” If personal information is collected in some way other than via lawful criminal investigation, then § H(2)’s prohibition does not reach it. And if personal information does not relate to the exercise of a person’s First Amendment rights, then §§ B(4) and C(1)’s prohibition does not reach it either.

Thus, §§ B(4), C(1), and H(2), which prohibit outright or limit the sharing of two categories of information, implicitly allow the City freely to share a third category: (1) personal information, (2) not collected in the course of a lawful criminal investigation, that (3) does not relate to any person’s exercise of First Amendment rights.

But § H(1) eliminates this third category. Like § H(2), § H(1) refers broadly to “personal information” without qualification. And it prohibits the City from “maintain[ing] personal information about any person unless it is collected in the course of a lawful investigation of criminal conduct and is relevant to such investigation” (emphasis added). If personal information does not satisfy both criteria, then § H(1) states that it “shall be destroyed.” As a result, if the City were to identify information that fell within this third category, then it could not share that information because § H(1) would not allow the City to keep it in the first place.

The ultimate consequence of these four sections, B(4), C(1), H(1), and H(2), is that the City may collect personal information—related or unrelated to the exercise of First Amendment rights—only in the course of a lawful criminal investigation, and may share that information only with a governmental law enforcement agency that already is involved in a criminal investigation.

Second, the City may not “benefit from the Intel” acquired by the FBI, the Secret Service, or any other law enforcement agencies unless the City first verifies that the information was not acquired in any way that the consent decree prohibits the City from using. Section I of the *Kendrick* Consent Decree forbids the City to “encourage, cooperate with, delegate, employ or contract with, or act at the behest of, any local, state, federal or private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree.” I read this restriction to place the onus on the City to verify that any information it receives from governmental law enforcement

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agencies, non-law enforcement agencies, public and private entities, and individuals satisfies the same standards as information lawfully collected by the City itself.

- (2) The City previously has “expressed concern that the [*Kendrick*] Consent Decree might prohibit the City from receiving intelligence collected by other law enforcement agencies, *e.g.* Shelby County Sherriff’s Department, TBI, or FBI, that would otherwise be prohibited by the Consent Decree if obtained by the MPD.” (*See* June 14, 2019, Letter from M. Glover to E. Stanton, attached as **Exhibit B**, at 2.) “[O]ther law enforcement agencies,” the City explained, “are not bound by the Consent Decree [and] might obtain criminal intelligence through methods for which the MPD is prohibited from using under the Consent Decree.” (*Ibid.*) “The City wants to make sure that its receipt of such information from other law enforcement agencies does not violate the Consent Decree.” (*Ibid.*)

ANSWER: The City’s receipt of intelligence collected by the Shelby County Sherriff’s Department, the TBI, the FBI, or other law enforcement agencies would violate the consent decree unless the City first verified that the information was not acquired in any way that the consent decree prohibits, as explained in the second section of my response to the first question above. In responding to this inquiry on a conference call on June 14, 2019, I stated that the City’s receipt of such intelligence would not violate the consent decree. Upon further review of the consent decree and the court’s orders in this litigation, I continue to believe that this answer is correct—but only so long as all intelligence properly is verified before the City receives it. If intelligence collected by governmental law enforcement agencies is not verified before the City receives it, then the City’s receipt of that intelligence would violate the consent decree. Moreover, if the City receives criminal intelligence from a governmental law enforcement agency for the purpose of conducting or supervising the MPD’s own investigation of criminal conduct, then the City’s receipt of that information also may be subject to the authorization and reporting requirements of § G of the consent decree.²

² Section G of the *Kendrick* Consent Decree states:

1. Any police officer conducting or supervising a lawful investigation of criminal conduct which investigation may result in the collection of information about the exercise of First Amendment rights, or interfere in any way with the exercise of such First Amendment rights, must immediately bring such investigation to the attention of the Memphis Director of Police for review and authorization.
2. The Director of Police shall review the factual basis for the investigation and the investigative techniques to be employed. The Director of Police shall issue a written authorization for an investigation for a period not to

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Please either (1) confirm that the City has not received intelligence collected by governmental law enforcement agencies without first verifying that information as provided above or (2) identify all unverified information that the City has received from governmental law enforcement agencies from June 14, 2019, to the date of this correspondence.

- (3) The City also has asked whether it may “share intelligence about a possible First Amendment Event that might end up on or near, for example, the campus of St. Jude or FedEx Headquarters.” (Ex. B at 2-3.)

ANSWER: The sharing of personal information with non-law enforcement entities was a specific subject of the court’s attention when it held last October that the City had violated the consent decree. (*See* ECF No. 151, PageID # 6268-69.) In a section entitled, “The City Violated the Consent Decree by Disseminating Information Related to First Amendment Rights to Outsiders,” the court observed that the City’s Office of Homeland Security had “shared personal information [collected in the course of a criminal investigation] with certain outside individuals, including Autozone’s Head of Security, upon request and supervisor approval.” (*Ibid.*) In an earlier order in August 2018, the court explained that the MPD had shared joint intelligence briefings (JIBs) with “regional law enforcement officials and certain members of the Memphis community . . . employees of the U.S. Department of Justice . . . [and] Shelby County Schools,

exceed ninety (90) days only if the Director of Police makes written findings that:

- a. The investigation does not violate the provisions of this decree; and
 - b. The expected collection of information about, or interference with, First Amendment rights is unavoidably necessary for the proper conduct of the investigation; and
 - c. Every reasonable precaution has been employed to minimize the collection of information about, or interference with, First Amendment rights; and
 - d. The investigation employs the least intrusive techniques necessary to obtain the information.
3. The Director of Police may authorize an extension of such investigation for an additional period specified by the Director of Police not to exceed 90 days. The Director of Police shall authorize each such an extension only if the Director of Police re-evaluates the factual basis for the investigation and investigative techniques to be employed, and makes current written findings as required in paragraph 2, above.

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FedEx, AutoZone, and St. Jude.” (ECF No. 120, PageID # 4865 (emphasis added).) The court ultimately concluded that the City had “violated Section C(1) of the Consent Decree”³ by sharing JIBs in this way. (*Id.* at PageID 4880, 4881.) It also identified § H(2), which applies to personal information collected in the course of a criminal investigation and is referenced above in my response to the City’s first question, as an additional limitation on sharing “information . . . relating to any person’s beliefs, opinions, associations or other exercise of First Amendment rights.” (Consent Decree § B(4); *see* ECF No. 151, PageID # 6268.)

In responding to this inquiry on a conference call on June 14, 2019, Deputy Monitor Jim Letten stated that the Monitoring Team would need to analyze the inquiry under the consent decree “and suggested that the sharing of intelligence with a quasi-law enforcement agency, such as the security force at St. Jude, might be permissible under the Consent Decree.” (Ex. B at 3.) Upon review of the consent decree and later orders of the court in this litigation, it is my view that the City may not share political intelligence with non- or quasi-law enforcement agencies under any circumstances. As discussed in the first section of my response to the City’s first question above, I read §§ B(4), C(1), H(1), and H(2) of the consent decree to prohibit entirely the sharing of personal information collected in any way other than via lawful criminal investigation. We also read those sections to prohibit the sharing of personal information collected via lawful criminal investigation unless such sharing is with another law enforcement agency and that agency already is engaged in a lawful criminal investigation.

I discern no public-safety or quasi-law enforcement exceptions to these prohibitions in either the plain language of the consent decree or the court’s orders in this litigation.

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³ Section C(1) of the *Kendrick* Consent Decree states: “The defendants and the City of Memphis shall not engage in political intelligence.”

Exhibit A

Bethany Pollock

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Tuesday, July 16, 2019 8:13 PM
To: Edward L. Stanton III
Cc: Jill Silk; Shanell Tyler; Will Perry; Glover, R. Mark; Tullis, Mary Wu; McMullen, Bruce; Sink, Jennifer
Subject: Re: Upcoming event.

Ed and Will,

We are hosting the 2019 PSP Symposium on Violent Crime ([September 9-11](#)). Attorney General William Barr plans to attend as well as executives from the DOJ, FBI, DEA, ATF, and USMS.

Behind the scenes:

1. MPD will be responsible for event security; 5-6 officers each day inside the hotel and additional officers in the parking lot area.
2. MPD will need to provide executive protection on day one with AG Barr. Barr's advance team will arrive the Friday before, [on September 6, 2019](#).
3. MPD will need to coordinate an evening of entertainment and tour of selected MPD facility. Typically [Tuesday night](#). Most Likely RTCC or CGIC and a night on Beale. For 350 attendees, this could mean 6 buses.

We anticipate the need for a lot of coordination with the various agencies. Because of those involved, we expect the FBI and Secret Service to have a security force on the ground (or the air, I don't know the extent of their technology). As you may expect, the expectation is that the agencies will share intelligence with MPD, and they expect the same. The intel they share with MPD may be obtained through methods that are prohibited by the Consent Decree. We would like to know if we have your approval to coordinate with these agencies and benefit from Intel they may have to share in planning for this symposium.

Sent from my iPhone

On Jul 16, 2019, at 6:26 PM, Edward L. Stanton III <Edward.Stanton@butlersnow.com> wrote:

Bruce —

Let's plan to discuss on our call Friday.

ELS

Sent from my iPhone

On Jul 16, 2019, at 6:08 PM, McMullen, Bruce <Bruce.McMullen1@memphistn.gov> wrote:

Ed and Will,

Since we did not get a response with respect to the use of these search terms before the Nathan Bedford rally Saturday at Health Science park, we did not use them. Thankfully, the crowd was in line with what the permit suggested and there was no incident.

Bruce McMullen
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From: Silk, Jennie [<mailto:jsilk@bakerdonelson.com>]
Sent: Friday, July 12, 2019 5:06 PM
To: Edward L. Stanton III
Cc: Shanell Tyler; Will William Perry (will.perry@butlersnow.com); Glover, R. Mark; Tullis, Mary Wu; McMullen, Bruce; McMullen, Bruce
Subject: RE: Search terms for Nathan Bedford Forrest Birthday Rally and Confirming Use of Cameras at Rally Tonight
Apologies, but we would like to add the following search terms to the original list below:
Proud Boys
Garvin McInnes
unite the white
Richard Spencer
Jason Kessler

Thank you,
Jennie Vee Silk
Associate
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.

From: Silk, Jennie
Sent: Friday, July 12, 2019 4:41 PM
To: Edward L. Stanton III
Cc: 'Shanell Tyler'; Will William Perry (will.perry@butlersnow.com); Glover, R. Mark; Tullis, Mary Wu; 'McMullen, Bruce'; McMullen, Bruce
Subject: Search terms for Nathan Bedford Forrest Birthday Rally and Confirming Use of Cameras at Rally Tonight

Hi Ed,
As we discussed on the call today, a rally is planned this weekend to celebrate Nathan Bedford Forrest's birthday, which is tomorrow July 13. You instructed the City to send you the search terms that MPD needs to search on social media in order to adequately prepare for this event. Here is the list:

Confederate
NBF

Forrest
July 13
July 13, 1821
October 29
October 29, 1877
Statue
December 20, 2017
Sons of the Confederacy
SOC
Nathan Bedford Forrest
Friends of Nathan Bedford Forrest
Confederate901
Confederate 901
Taking Our Country Back
Hiwayman Operation Home Front
highwaymen
Rollin Memphis
KKK
Ku Klux Klan
Grand Wizard
Health Sciences Park
Lee Millar
Calvary General
Battle of Fort Pillow
Battle of Shiloh
Confederate Hero
Battle of Fort Donelson
Battle of Tupelo
KKK
Billy Roper
Shield Wall

Possible Counter protesters:

CCC
Coalition of Concerned Citizens
New Black Panthers
Antifa

Please understand that we are very sensitive to the issue of the counter-protester group names listed above, however, the City needs to prepare for the possibility of a large counter protest that could turn violent or become otherwise disruptive. As you know, whenever two ideologically opposite groups converge, things could erupt, similar to what happened in Charlottesville, Virginia.

This note also confirms that today the Monitoring team gave the City the greenlight to operate its SkyCops, Body Worn Cameras, and Dash Cams pursuant to the current MPD policy for each of those cameras at the rally planned for tonight centered on the release of journalist Manuel Duran from ICE custody.

Please let us know if you have any questions or concerns. Thank you and the team for taking the time to address these issues on the call today.

Best,

Jennie Vee Silk

Associate

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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.

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Exhibit B

BAKER DONELSON
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June 14, 2019

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Re: June 14, 2019 Conference Call Recap

Ed,

This letter is intended to recap and memorialize several points from our conversation this morning on the conference call between you, members of your team, and the City's attorneys. Thank you for your prompt attention to the issues and your willingness to provide guidance.

The City's Request for a Real-Time Response Procedure

The City requested a procedure for obtaining a "real time" response from the Monitor on questions or issues that might arise that require immediate guidance.

You recommended that the procedure for the City to obtain an immediate response from the Monitor is first to send an email outlining the issue or question to you, Jim Letten, and Will Perry. If no one responds after a short period of time, you requested that a member of the City's legal team then call the cell phone of you, Jim, or Will to follow up on the initial email. Shanell has since provided the City with the relevant cell phone numbers.

It was then decided that for more long-range requests, a member of the City's legal team will email such a request to you, Jim, and Will and await a response.

Body Worn Cameras at Community Engagement Event

4833-6564-3674v2
2545600-000230 06/14/2019

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The City sought clarification on whether an MPD officer attending the upcoming Community Engagement Event should turn off his/her body worn camera ("BWC") while in the event. Bruce explained that the BWCs have three states: off, sleep, and recording. When the BWC is in the sleep mode, it is recording, but the footage is not retained unless and until the officer activates the BWC to record. Once activated, the BWC goes back and retains the prior 30 seconds of footage just before the BWC's activation. The City further explained that there are also several "triggering events" such as gunshots, sirens, etc. that will cause all the BWCs in the vicinity to start recording, without officer activation.

You recommended that the BWCs remain in sleep mode at the Community Engagement event, pursuant to the current MPD policy.

Interim Authorization Form

The City requested that you approve the use of an Interim Authorization Form. We emailed to you a draft of that Interim Authorization Form earlier this afternoon, per your request.

Please let us know as soon as possible if the Interim Authorization Form is acceptable to use until the Court approves the final Authorization Form. In the event that the Director must authorize an investigation before your team has a chance to review and approve the Interim Authorization Form, the City will just use the Interim Form. You stated that was acceptable to you based upon the events of the past few days.

Sharing of Information with Other Law Enforcement Agencies

The City expressed concern that the Consent Decree might prohibit the City from receiving intelligence collected by other law enforcement agencies, *e.g.* Shelby County Sherriff's Department, TBI, or FBI, that would otherwise be prohibited by the Consent Decree if obtained by the MPD. The City explained that other law enforcement agencies that are not bound by the Consent Decree might obtain criminal intelligence through methods for which the MPD is prohibited from using under the Consent Decree. The City wants to make sure that its receipt of such information from other law enforcement agencies does not violate the Consent Decree.

You stated unequivocally that, according to your understanding, the City's receipt of such information does not violate the Consent Decree.

Sharing of Information with Non-Law Enforcement Agencies

I posed the question concerning whether the City would be allowed to share intelligence about a possible First Amendment event that might end up on or near, for example, the campus of St. Jude or FedEx Headquarters. Jim Letten explained that your team would need to analyze that under the Consent Decree, and suggested that the sharing of intelligence with a quasi-law

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enforcement agency, such as the security force at St. Jude, might be permissible under the Consent Decree, and he understands the public safety purpose.

In the interim, should such a situation arise, the City will use the Real Time Response procedure outlined above to seek your team's authorization.

The City appreciates your team's recognition of the importance of public safety, and your willingness to make decisions in real time. Thank you for your continued guidance.

Best regards,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

A handwritten signature in blue ink, appearing to read "Mark Glover", is written over the typed name.

R. Mark Glover

cc: Will Perry
Jim Letten
Shanell Tyler
Jennie Silk
Mary Tullis

EXHIBIT B



August 26, 2019

VIA ELECTRONIC MAIL

R. Mark Glover, Esq.
Baker Donelson
Bearman, Caldwell & Berkowitz, PC
2000 First Tennessee Building
165 Madison Ave.
Memphis, TN 38103

Re: *ACLU-TN v. City of Memphis*, Case No. 2:17-cv-02120-JPM-jay:
The Monitoring Team's Responses to the City's outstanding RFAs.

Dear Mark:

On Wednesday, August 7, 2019, the court docketed the Monitoring Team's Second Quarterly (Q2) Report and made the report available to the City and the ACLU-TN.¹ (*See* Sealed ECF No. 218.) On Monday, August 12, 2019, the Monitoring Team responded to the City's letter of June 7, 2019, which addressed the City's remaining questions regarding the sufficiency of its January 14, 2019, submissions to the court (*see* ECF Nos. 183, 185) and proposed protocols for the eleven hypothetical scenarios submitted to the Monitoring Team in March (*see* Sealed ECF No. 197-3). The August 12 response mentioned that the discrete requests for authorization (RFAs) raised by the City would be addressed in separate correspondence.

This letter is the second of two correspondences that address the City's RFAs. The first, a memorandum opinion provided to the City on August 21, 2019, addressed RFAs related to the Memphis Police Department (MPD)'s ability to share and receive personal information with other law enforcement entities and non-law enforcement entities and people (Coordination Opinion). This letter both addresses certain questions of the Monitoring Team regarding the RFAs to which I responded before the submission of the Q2 Report and also responds to the RFAs, other than those addressed by the Coordination Opinion, that the City has raised since the submission of the Q2 Report. Related to the prior RFAs is a July 19, 2019, disclosure by the City that concerns the use of imposter accounts on Facebook. This letter also addresses that disclosure.

¹ The Monitoring Team submitted the Q2 Report to the court on Wednesday, July 24, 2019, without one of the report's exhibits—Exhibit 4, the Monitoring Team's proposed Audit & Compliance Plan for the Memphis Police Department. The court then ordered the Monitoring Team to submit the plan by August 2, 2019 (*see* ECF No. 216), which it did.

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I.
Questions Regarding Prior RFAs.

In the Q2 Report (Sealed ECF No. 218), the Monitoring Team highlighted three RFAs by the City to which I had then responded, based on my authority qua “special master” to approve or prohibit certain conduct. (*See* Hr’g Tr., ECF No. 207, PageID # 7189: 16-25.) I responded to those RFAs on May 9, 2019; June 12, 2019; and July 12, 2019. (*See* Sealed ECF No. 218, PageID # 7395.) The Q2 Report also explained that the Monitoring Team was “pursuing additional information related to a July 19, 2019, disclosure by the City related to the use of Facebook.” (*Id.* at PageID # 7390 n. 7.) The questions raised in this section concern the second and third RFAs and the July 19, 2019, disclosure.

A. June 12, 2019, RFA.

At 11:49 P.M. on June 12, 2019, City Attorney Bruce McMullen requested authority to access the Facebook accounts of Memphis residents for “a situation in North Memphis and a crowd out of control.” (Sealed ECF No. 214, Ex. 2.) Mr. McMullen explained that “[t]here was chatter on social media” but that the MPD was “in the blind” and could “only use what people t[old] [them].” (*Ibid.*) He asked to “monitor social media”—specifically “identi[ying] Facebook accounts”—and to use “unidentified accounts” because one suspect was dead, another on the run, and the MPD was “facing a possible reprise of the crowd but d[idn’t] know what [the crowd] w[as] planning.” (*Ibid.*) I approved Mr. McMullen’s RFA 35 minutes later, at 12:24 A.M. (*Ibid.*)

On July 16, 2019, in its quarterly filing regarding the MPD’s use of social media searches, the City elaborated on this RFA, which occurred “in the aftermath of the US Marshal-involved shooting of Mr. Brandon Webber.” (*Id.* at 3.) According to the City, “the vast majority of the individuals on this list of search terms were not associated with a protest or other scenario in which First Amendment rights were being exercised,” but “four individuals listed were present at the scene” of the June 12 incident. (*Ibid.*) “Those persons were Chris Long, Frank Gotti (Gibson), Keedran Franklin, and Derrion Childs.”² (*Id.* at 4.)

The Monitoring Team has questions related to four aspects of this quarterly filing, the social-media searches that the City conducted related to the June 12 incident, and the City’s gathering, maintenance, and reporting of information about those searches:

- **First**, the City identified in its quarterly filing certain limitations in its ability to report the social-media searches conducted by MPD officers as ordered by the court. According to the City, compliance with the court’s orders “must rely in large part on self-reporting by . . . MPD officers.” (*Id.* at 2.) “Even where social media use occurs

² Mr. Franklin, of course, was one of the original plaintiffs in this lawsuit; he and Mr. Gotti actively have been following this case and attended the Community Forum on July 11, 2019. *See, e.g.*, “Team Monitoring MPD Conduct to Speak at Public Forum,” on local Channel 3 (link available [here](#)).

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on the City's network," the City explained further, "some social media sources require an individual account to access content, but others do not, so only those requiring an individual account would presumably have search history that is traceable to that user." (*Ibid.*)

- Please identify which social media platforms used by MPD officers in connection with their official duties require an individual account to access content and which do not.
 - Does the City have any generic accounts on any social media platforms that officers may use in connection with their official duties? If so, then is there a log or other documentation that establishes who uses those accounts and the dates and times of that use?
 - Please confirm that searches that occur via any generic social media accounts operated by the City are being included in the City's quarterly reports to the court irrespective of whether those searches can be linked to specific users.
 - Please state whether all social media searches that occur on the City's network can be linked to specific users. If not, then please explain why.
 - Please also confirm that searches that occur on the City's network are being included in the City's quarterly reports to the court irrespective of whether those searches can be linked to specific users.
- **Second**, in future quarterly reports, please add officers detailed to the Multi-Agency Gang Unit to the groups of officers ordered to report all search terms entered by them into social media sites to collect information for the purpose of conducting police business. The current list of officers as reported by the City includes officers detailed to the Office of Homeland Security, the Real Time Crime Center, the General Investigative Unit, Homicide, the Sex Crimes Unit, and members of Command Staff (Listed Officers). (*See ibid.*)
 - **Third**, in describing the written instructions that Listed Officers receive, the City stated that the instructions are accompanied by reference guides on how to collect individual search history on the commonly used social media sources—Facebook, Instagram, and Twitter. (*Ibid.*) Please confirm whether officers' social media use is limited to these three platforms. If not, then please identify the additional platforms and include reference guides regarding the same with instructions to officers about reporting social media search terms.
 - **Fourth**, the City stated that "Colonel Greg Sanders first viewed the publicly-available Facebook feeds of [Long, Gotti, Franklin, and Childs], . . . identified video containing evidence of . . . assaults and vandalism, and . . . instructed Sergeant Filsinger to obtain a search warrant for video footage of the events that evening." (*Id.* at 4.)

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- Did Col. Sanders or Sgt. Filsinger complete an authorization form contemplated by § G of the consent decree and otherwise document this investigation as contemplated by § G?³
- Were “unidentified” or imposter accounts, on Facebook or other social media platforms, used by MPD in connection with this investigation?
- How many MPD imposter accounts, if any, have remained active since deactivation of the “Bob Smith” Facebook account referenced in this litigation?⁴
- Are the social media searches done via any such imposter accounts being included in the City’s quarterly reports to the court?

B. July 12, 2019, RFA.

On July 12, 2019, the City made two, related requests of the Monitoring Team. First, the City requested permission “to operate its SkyCops, Body Worn Cameras [BWCs], and Dash Cams pursuant to the current MPD policy for each of those cameras at [a] rally planned for [that evening] centered on the release of journalist Manuel Duran from Ice Custody.” (Email from J. Silk to E. Stanton, attached as **Ex. 1**.) Second, the City asked to used certain search terms on social media to prepare for “a rally . . . to celebrate Nathan Bedford Forrest’s birthday, which [wa]s [Saturday] July 13.” (*Ibid.*) The search terms included several “counter-protester group names,” including the Coalition of Concerned Citizens, to which the City explained that it was “very sensitive.” The Monitoring Team reviewed, but did not authorize, the proposed social media search terms. The City since has confirmed that it did not use any of the terms and that the rally went off without incident.

After a conference call with the City’s legal counsel that lasted about an hour—the full Monitoring Team was still in Memphis, having assembled for the first Community Forum on July 11, 2019, and was able to deliberate contemporaneously—I granted the first request. The grant was premised on the understandings that the BWCs would not continuously record—they would instead record only when specifically activated by an officer and would then capture a 30-second “buffer” prior to activation—and that SkyCop and Dash Cam data would not be maintained or indexed without a § G authorization.

This request raises some concerns because it appears not to have been based on accurate information. After the Monitoring Team’s conference call with the City’s legal counsel on July

³ I realize that an Interim Authorization Form for use in § G investigations was approved by the Monitoring Team after June 12, 2019. I’d like to know what, if any, documentation the City used before that form was approved.

⁴ The Monitoring Team has raised this question before. Please see § I(C) & n. 5, *infra*.

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12, 2019, Audit and Compliance Expert Dave McGriff followed up via phone with MPD Deputy Chief Don Crowe to ask about the particulars of the MPD's planned response to the Duran rally that evening. Chief Crowe informed Mr. McGriff that the MPD had planned no response to the rally due to the small number of anticipated protestors and that there would not be any uniform officers on the scene. Chief Crowe also advised Mr. McGriff that there were no stationary SkyCop cameras near the rally site (80 Monroe).

This information is inconsistent with the RFA that the Monitoring Team received earlier in the day. In a subsequent weekly conference call with the City's legal counsel, Mr. McMullen apologized for the error, explaining that there had been some miscommunication between himself and the MPD about the Duran rally and that his information was incorrect. It should go without saying that it is imperative for all RFAs to be verified before they are directed to the Monitoring Team.

C. July 19, 2019, Disclosure.

In the Monitoring Team's Q2 Report, we noted that "community members are aware that the MPD's use of the 'Bob Smith' account was held by the [c]ourt to violate the *Kendrick* Consent Decree, but also understand that several other undercover accounts improperly being used by the City were disabled." (Sealed ECF No. 218, PageID # 7398.) We also noted that we were "pursuing additional information related to a July 19, 2019, disclosure by the City" that implicated these concerns. (*Id.* at PageID # 7390 n. 7.)

The July 19, 2019, disclosure included two sets of correspondence between Mr. McMullen and Facebook.⁵ (*See* Email & attachments from B. McMullen to E. Stanton, attached as **Exhibit 2**.) The first set of correspondence, which occurred in October 2016, concerned several imposter accounts that had been created on Facebook to impersonate Memphis Mayor Jim Strickland and his wife.⁶ The second set, relevant here, occurred in September and October 2018, between the court's August and October 2018 orders holding that the City had violated the consent decree. (*See* ECF Nos. 120 & 151 / 152.) It concerned the MPD's creation and use of imposter accounts and was initiated by Facebook Director and Associate General Counsel for Security Andrea Kirkpatrick. (*See* Second and Third Attachments, **Ex. 2**.)

In September 2018, Ms. Kirkpatrick wrote to MPD Director Michael Rallings, explaining that she "recently [had] learned through media reports and the Electronic Frontier Foundation (EFF) that the [MPD] created fake Facebook accounts and impersonated legitimate Facebook

⁵ Earlier that day, on the Monitoring Team's weekly call with the City, I first raised community concerns about imposter accounts other than the "Bob Smith" account.

⁶ According to the City, the imposter accounts were "misleading and pose[d] a threat to public safety." (Email of October 28, 2016 at 12:32 PM, from B. McMullen to records@facebook.com, First Attachment, **Ex. 2**.) Coordinating with the FBI, it appears that the City was able to get Facebook to shut down these imposter accounts. (*See generally* First Attachment, **Ex. 2**.)

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users as part of its investigation of alleged criminal conduct unrelated to Facebook.” (Second Attachment, **Ex. 2.**) She stated that such imposter accounts “violate[] [Facebook’s] terms of service” and requested that the MPD, “its members, and any others acting on its behalf cease all activities on Facebook that involve impersonation or that otherwise violate [Facebook’s] policies.” (*Ibid.*)

After verifying the authenticity of the letter, Mr. McMullen requested information about “6 additional accounts [other than the “Bob Smith” account],” explaining that he understood “from unconfirmed press reports” that Facebook had identified those accounts as being “associated with MPD’s account.” (*Ibid.*) Ms. Kirkpatrick responded that Facebook had taken action on six accounts that “were forensically related to the ‘Bob Smith’ account,” ultimately checkpointing, authenticating, and reactivating three of the accounts and disabling the other three as fake. (*Ibid.*) She provided Mr. McMullen the URLs for the fake accounts and referred the City to Facebook’s Law Enforcement Guidelines for additional information. (*Ibid.*)

The City’s July 19, 2019, disclosure also included a third set of correspondence, internal to the City. (*See* Third Attachment, **Ex. 2.**) In that correspondence, City employee Michael Rodriguez explained to Mr. McMullen that no forensic analysis of the three fake accounts was possible because those accounts had been deactivated. (*Ibid.*) Mr. Rodriguez also stated that, to be “forensically related” to the “Bob Smith” account, the additional accounts had to have similar associated data—“[P]erhaps the same computer was used to create the account[s], the same user id was used to create the account[s] . . . A MAC address or IP address across the urls was related.” (*Ibid.*)

Despite these correspondences, it is not clear from the July 19, 2019, disclosure whether the MPD has operated or is operating imposter accounts other than the “Bob Smith” account or, if so, whether Facebook is the only platform on which MPD has used imposter accounts. In his cover email describing the disclosure, Mr. McMullen stated that the City “investigated but had no knowledge of any other imposter accounts other than ‘Bob Smith.’” (**Ex. 2.**) Please provide whatever information the City has in its possession, custody, or control regarding the three accounts disabled by Facebook as fake. Please also provide the related information sought by the final three questions in the fourth area of inquiry in § I(A), above.

II.

Responses to Outstanding RFAs.

Aside from an RFA on July 16, 2019, and related inquiries on June 7, 2019, all of which were addressed in the August 21, 2019, Coordination Opinion, the City has directed five RFAs to the Monitoring Team since the submission of the Q2 Report—on July 26, 2019; July 29, 2019; August 5, 2019; August 22, 2019; and August 23, 2019. This section addresses each request.

A. July 26, 2019, RFA.

During a weekly conference call with the City’s legal counsel on Friday, July 26, 2019, the City asked whether City representatives would be allowed to attend planned focus groups

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(*see, e.g.*, Joint Public Engagement Plan, ECF No. 211, PageID # 7282) as they are scheduled.⁷ According to the City, it does not want to participate in the focus groups, but wishes merely to “observe” them, and focus group participants need not be informed that representatives of the City are present. To that end, the City offered to send officers in plain clothes to observe the focus groups and suggested that the officers refrain from identifying themselves.⁸

This request is denied in the strongest possible terms. At best, the request is tone deaf: “May the City secretly monitor Memphis residents during focus groups about the City’s secret (and unlawful) monitoring of Memphis residents?” At worst, it is Orwellian: If granted, the request would convert a mechanism for vindicating individual rights into a device for degrading and invading those same rights—all in the guise of promoting them. Understood either way, the request undermines the court’s impressions that the City’s prior violations of the *Kendrick* Consent Decree “stem from a shared misunderstanding of the Decree’s requirements, rather than political favoritism” (Order, ECF No. 151, PageID # 6272) and that “the officers of MPD have demonstrated their dedication to protecting First Amendment rights regardless of protester opinion” (*id.* at PageID # 6243). Further, no fewer than five specific provisions of the consent decree forbid it.⁹

Yet the request appears to arise from a legitimate concern: that views on the various issues addressed during the focus groups may be skewed due to disproportionate participation by a vocal, but small, minority of Memphis residents. According to the City, certain City Council members and other local constituencies regularly raise concerns with the City that are at odds with those raised by the ACLU-TN and its supporters. To that end, the Monitoring Team has invited the City to propose additional constituencies and individuals that should be included in the focus groups, much as the ACLU-TN has encouraged its members and supporters to contact

⁷ During the same call, the City mentioned that it has reached an agreement with the Tennessee Highway Patrol (THP) to access the speed cameras that THP has on the interstate due to the high number of shootings that happen there. The cameras are a live stream and do not record data. Our understanding is that MPD plans to purchase equipment that would allow officers to record the camera footage for review in case of an internet shooting. This scenario appears to implicate §§ G, H, and I of the *Kendrick* Consent Decree for many of the same reasons outlined in the August 21, 2019, Coordination Opinion.

⁸ During the call, one member of the City’s legal team stated, “They won’t know who we are.”

⁹ *See, e.g.*, §§ C(1) (“[T]he City of Memphis shall not engage in political intelligence.”); D (forbidding the City to “intercept, record, transcribe or otherwise interfere with any communication by means of electronic surveillance for the purpose of political intelligence”); E (forbidding the City to “infiltrate or pose as a member of any group or organization exercising First Amendment rights”); F(1) (forbidding the City to “disrupt, discredit, interfere with or otherwise harass any person exercising First Amendment rights”); and H(1) (forbidding the maintenance of personal information except when collected via and relevant to “a lawful investigation of criminal conduct”).

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the Monitoring Team.¹⁰ The Monitoring Team wishes to include as broad a spectrum of Memphis residents as possible in its focus groups.

Anonymous, surreptitious observations of the focus groups by the very entity whose unlawful conduct necessitated the focus groups in the first place, however, is not the answer. That request is categorically denied.

B. July 29, 2019, RFA.

On July 29, 2019, the City explained that it will install Speed Cameras, whose purpose is student safety, near fifteen local schools. The cameras “will be activated 45 min before school starts and run a short period after school starts and 30 min before school ends and run a short period of time after school.” (Email from B. McMullen to E. Stanton, attached as **Exhibit 3.**) “[D]ata that does not result in a ticket will be kept 90 days and the data resulting in a ticket will be kept 3 years. The data will be held by a third party (Conduent).” (*Ibid.*) The City will start installing the Speed Cameras in September 2019 and expects them to go live by December 2019. (*Ibid.*) The City has asked whether this proposed use of the cameras violates the consent decree.

This question implicates § H of the consent decree. Section H prohibits the City from “maintain[ing] personal information about any person unless it is collected in the course of a lawful investigation of criminal conduct.” § H(1). It also prohibits the City from sharing “personal information . . . collected in the course of a lawful investigation of criminal conduct” unless the recipient is “another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct.” § H(2). As stated in the August 21, 2019, Coordination Opinion, I read this language to impose two applicable restrictions: (1) entirely against the sharing of personal information collected in any way other than via lawful criminal investigation (as such information may not be maintained in the first instance); and (2) against the sharing of personal information collected via lawful criminal investigation unless such sharing is with another governmental law enforcement agency and that agency already is engaged in a lawful criminal investigation.

Traffic offenses generally are classified as misdemeanors under Tennessee law. *See, e.g.*, Tenn. Code Ann. § 55-8-103 (classifying traffic offenses as misdemeanors unless “otherwise declared . . . with respect to particular offenses”). Thus, § H(1) appears to allow the City to collect personal information via the Speed Cameras as part of a “lawful investigation of criminal conduct.” Where the data does not result in a ticket, however, that data “shall be destroyed,” according to § H(1), rather than kept for ninety (90) days. Additionally, § H(2) appears to forbid the City from sharing the collected information with Conduent or any other non-law enforcement third party, as it prohibits the sharing of “personal information . . . collected in the course of a lawful investigation of criminal conduct” unless the recipient is “another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct.” Finally, the

¹⁰ In fact, the ACLU-TN provided via email earlier today some resources to assist the Monitoring Team as it organizes focus groups and subsequent community forums.

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Monitoring Team would like to know the law enforcement purpose for maintaining data that results in a ticket for three (3) years rather than a shorter amount of time.

C. August 5, 2019, RFA.

On August 5, 2019, a Shelby County Sherriff was involved in a fatal shooting near 201 Poplar. According to the City, the Sherriff's Office asked the MPD to control the scene, as the shooting occurred within City limits, and the TBI also was on the scene because the shooting involved a peace officer. At 3:46 P.M. that afternoon, the City requested through its legal counsel "permission for MPD to be able to go on social media to gauge the potential response to this situation and anticipate crowd swell." (Email from B. McMullen to E. Stanton, attached as **Exhibit 4**.) The City also noted "that there may be plans to have a larger gathering at another location, and [that] MPD wants to be able to be prepared in order to adequately provide public safety at that location." (*Ibid.*) Director Rallings elaborated in a follow-up email at 4:31 P.M., explaining "that the officers are terrified to use their personal accounts and [MPD] cannot force them to do so." (Email from M. Rallings to E. Stanton, attached as **Exhibit 5**.) According to Director Rallings, "[t]he prohibition on [alternate] social media account[s] is crippling MPD and may put our citizens['] safety at risk. We need to resolve asap before we have an El Paso type incident." (*Ibid.*)

I approved this request contemporaneously, conditioned on the City's maintaining a log of all social media search terms used in connection with this incident.¹¹ Please provide that search-term log as soon as possible and also include its contents in the City's next quarterly search-term report to the court.

D. August 22, 2019, RFA.

On August 22, 2019, after having reviewed the Monitoring Team's August 12, 2019, response to the City's letter of June 7, 2019, the City stated that it intended to raise with the court certain recommendations of the team regarding the City's security procedures for entering City

¹¹ I also responded separately to Director Rallings' email, stating the following:

Director Rallings –

Thank you for sharing this concern. Please tell your officers that they may use their personal devices and social media accounts but that any such use will be subject to the same auditing and reporting requirements that apply to official MPD devices and accounts. We recognize that MPD has a critical public safety function. The purpose of my team is not to interfere with or inhibit that function but to help guide it, consistent with the parameters that Judge McCalla has identified. As long as your officers report their social media use as we have requested, the Monitoring Team will be able to proceed according to the court's instructions.

(August 5, 2019, Email from E. Stanton to M. Rallings, attached as **Exhibit 6**.)

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Hall. (See Email from B. McMullen to E. Stanton, attached as **Exhibit 7**.) In the interim, the City proposed a modified entry procedure:

[U]ntil we can get some clarity from the Court (and I would like to bring it up Tuesday because this is so critical), we plan to advise the City Hall security team to first ask persons where they intend to go when they enter City Hall. If they advise that they are going to pay their taxes on the 3rd Floor or to attend City Council events open to the public, we will not require those individuals to show ID or sign in on the desk log. If individuals advise that they are visiting any other area, we will ask them to show ID and sign in on the desk log, and we will make a visitor's badge so that employees are aware that a non-employee is in the restricted area. The photo will be retained until after court on Tuesday.

...

Finally, with respect to 170 Main which houses MPD, parts of HR, Legal and the sex offender registry office, we will continue to require the visitors state their business and produce their identification, and we will produce a photo badge and maintain the information for security purposes.

(*Ibid.*) The City asked that I approve this interim approach until the City obtains "further clarification from the Court on Tuesday[, August 27, 2019]." (*Ibid.*)

I approved that request.

E. August 23, 2019, RFA.

Finally, this past Friday, August 23, 2019, the City made a request regarding its use of Crime Stoppers. (See Email from B. McMullen to E. Stanton, attached as **Exhibit 8**.) According to the City, when a crime is committed, the City encourages anyone with information related to the crime to call Crime Stoppers, which is "a standalone entity that is separate from MPD." (*Ibid.*) Crime Stoppers then shares that information that it receives with MPD. (*Ibid.*) The MPD has no way to determine how the caller obtained the information that it receives or whether the collection of the information complies with the consent decree. The City wants to know whether the MPD may continue to receive information from Crime Stoppers under the consent decree.

This request implicates § I of the consent decree. Section I forbids the City to "encourage, cooperate with, delegate, employ or contract with, or act at the behest of, any local, state, federal or private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree." As stated in the August 21, 2019, Coordination Opinion, I read this restriction to place the onus on the City to verify that any information it receives from governmental law enforcement agencies, non-law enforcement agencies, public and private entities, and individuals satisfies the same standards as information lawfully collected by the City itself.

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Information collected by civilian residents of the City, shared with Crime Stoppers, and then shared with the MPD ordinarily would not implicate the First Amendment. The First Amendment restrains only the government, and not private individuals or organizations. Thus, the practices of private individuals and organizations do not offend the First Amendment even when those same practices, employed by the government, would violate it.

Section I of the consent decree, however, forbids the City to coordinate both with governmental entities—“any local, state, [or] federal” entity—and with any “private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree.” As a result, the practices of private individuals or organizations may offend the consent decree if the City “encourage[s], cooperate[s] with, delegate[s], employ[s] or contract[s] with, or act[s] at the behest of” such private individuals or organizations “to plan or conduct any . . . activity . . . prohibited by th[e] decree.” § I.

The only way to ensure that the City does not offend the consent decree in working with private individuals or organizations is to require the same verification process for information received from private individuals and organizations as I understand the consent decree to impose for receiving information from the FBI, the Secret Service, or any other law enforcement agencies. (*See generally* August 21, 2019, Coordination Opinion.) The City’s ability to receive information from private citizens, either through Crime Stoppers or directly, is thus subject to verification that the information satisfies the same standards as information lawfully collected by the City itself.

III.
Conclusion.

All remaining questions about the City’s prior RFAs and all outstanding RFAs by the City should now have been addressed. We look forward to seeing you tomorrow at the court’s next hearing in this matter.

Sincerely,

BUTLER SNOW LLP



Edward L. Stanton III

ES:tw

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cc: Bruce A. McMullen, Esq. (via email only)
Jim Letten, Esq. (via email only)
Gadson W. Perry, Esq. (via email only)

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Exhibit 1

From: Silk, Jennie <jsilk@bakerdonelson.com>
Sent: Friday, July 12, 2019 4:41 PM
To: Edward L. Stanton III
Cc: Shanell Tyler; Will Perry; Glover, R. Mark; Tullis, Mary Wu; McMullen, Bruce; McMullen, Bruce
Subject: Search terms for Nathan Bedford Forrest Birthday Rally and Confirming Use of Cameras at Rally Tonight

Hi Ed,

As we discussed on the call today, a rally is planned this weekend to celebrate Nathan Bedford Forrest's birthday, which is tomorrow July 13. You instructed the City to send you the search terms that MPD needs to search on social media in order to adequately prepare for this event. Here is the list:

Confederate
NBF
Forrest
July 13
July 13, 1821
October 29
October 29, 1877
Statue
December 20, 2017
Sons of the Confederacy
SOC
Nathan Bedford Forrest
Friends of Nathan Bedford Forrest
Confederate901
Confederate 901
Taking Our Country Back
Hiwayman Operation Home Front
highwaymen
Rollin Memphis
KKK
Ku Klux Klan
Grand Wizard
Health Sciences Park
Lee Millar
Calvary General
Battle of Fort Pillow
Battle of Shiloh
Confederate Hero
Battle of Fort Donelson
Battle of Tupelo
KKK
Billy Roper
Shield Wall

Possible Counter protesters:

CCC

Coalition of Concerned Citizens

New Black Panthers

Antifa

Please understand that we are very sensitive to the issue of the counter-protester group names listed above, however, the City needs to prepare for the possibility of a large counter protest that could turn violent or become otherwise disruptive. As you know, whenever two ideologically opposite groups converge, things could erupt, similar to what happened in Charlottesville, Virginia.

This note also confirms that today the Monitoring team gave the City the greenlight to operate its SkyCops, Body Worn Cameras, and Dash Cams pursuant to the current MPD policy for each of those cameras at the rally planned for tonight centered on the release of journalist Manuel Duran from ICE custody.

Please let us know if you have any questions or concerns. Thank you and the team for taking the time to address these issues on the call today.

Best,

Jennie Vee Silk

Associate

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
2000 First Tennessee Building
165 Madison Avenue
Memphis, TN 38103

Phone 901.577.8212
Fax 901.577.0812
JSilk@bakerdonelson.com

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.

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Exhibit 2

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Friday, July 19, 2019 4:28 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler; Jim Letten
Cc: Glover, R. Mark; Jill Silk; Saleem, Zayid-mem; Tullis, Mary Wu; Sink, Jennifer
Subject: Facebook inquiry about Imposter
Attachments: SKM_C45819071914390.pdf; SKM_C45819071914391.pdf; SKM_C45819071914420.pdf

Ed, Will, Jim, & Shanell,

Attached is the letter from Facebook's Associate General Counsel, Andrea Kirkpatrick, and the subsequent emails discussing the imposter accounts in September 2019.

Before I get to those, in October 2016, I contacted Facebook about 5 imposter accounts that were created in the likeness of the Mayor, the Police Director, the City, and the Mayor's wife. See attached emails I exchanged with FBI Agent David Palmer, as well as my email to Facebook notifying them of the imposter accounts, requesting that they shut down the accounts, and advising them that I had reached out to the US Attorney's Office. Ultimately, we were unable to trace the origin of the Facebook accounts, although the FBI was able to trace 2 imposter Twitter accounts to Paul Garner.

Following the ACLU trial, MPD received a letter dated September 19, 2018 from Andrea Kirkpatrick. Initially, I thought the letter was fake but we verified it was in fact legitimate. I contacted Ms. Kirkpatrick by email on September 25, 2018 and inquired about the imposter accounts alleged to have been created by MPD. In an email of September 26th Ms. Kirkpatrick advised that Facebook took action on 6 accounts because they appeared to be "forensically related" to the "Bob Smith" account, but determined 3 were authentic and 3 were disabled for being fake. She provide us with the URLs of the three fake accounts but they were disabled.

We investigated but had no knowledge of any other imposter accounts other than "Bob Smith" which was deactivated. I did not know what "forensically related" meant, so I inquired with our Chief IS Officer Mike Rodriguez as to its meaning and whether he could determine the identity of the disabled Facebook accounts, including their creator (see email of Oct 3 2018 for his response). Mr. Rodriguez could not make any determinations. We also engaged an outside Cyber security attorney but he was also I unsuccessful.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Palmer, David E. (ME) (FBI) <David.Palmer2@ic.fbi.gov>
Sent: Friday, October 28, 2016 2:11 PM
To: McMullen, Bruce
Subject: RE: IMMINENT MATTER--imposter account of Public official

David E. Palmer
Special Agent
FBI Memphis Division
225 N. Humphreys Blvd.
Memphis, TN 38120
Office: 901-747-9607
Cell: 901-233-3213
david.palmer2@ic.fbi.gov



From: McMullen, Bruce [<mailto:Bruce.McMullen1@memphistn.gov>]
Sent: Friday, October 28, 2016 2:09 PM
To: Palmer, David E. (ME) (FBI)
Subject: Fwd: IMMINENT MATTER--imposter account of Public official

Sent from my iPhone

Begin forwarded message:

From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>
Date: October 28, 2016 at 12:32:10 PM CDT
To: "records@facebook.com" <records@facebook.com>
Cc: "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>
Subject: IMMINENT MATTER--imposter account of Public official

Dear Facebook legal

I am the Chief Legal officer for the City of Memphis Tennessee. Someone has created at least 5 imposter accounts all of which claim to be the Mayor of Memphis' page or His wife's page.

<http://cp.mcafee.com/d/k-Kr6zqb0UsUYyqehPNISyvvvM-C-UOrhhhhovjshhdCPpJnRlysGjxN6FASCCWOaIXp0lZTni7Lm5nJjp5mdto5thd7bUGCg7e47n1SKc8CPpISr9PCJhbcasXJL8IGIVv49hCmEuTdMtx9SfKdJErdELef6PtPqpJUTsTsSyrh>

http://cp.mcafee.com/d/FZsScy0Qrho73D7AjhOeudCQkkkm7QTT6jqaaab3Wrya9ISrdG-GljBise8RcCQQTmhlDr82LKWWgZWGMZGr8GNHH0HG9EVv5kOOVMwWUeRNx4SrdCPpesRG9pxjDtJV2JiLbU7q2_Q_Wj6Zblzx9SfKDjErdELef6PtPqpJUTsTsSyrh
<http://cp.mcafee.com/d/2DRPoQ73gwcCQm1MVNV4QszDzpJ5555xZdZNASyyyyM-CUyyrdCPqLGH4Vkd3yjdj9JddRAIpSO0HXKKAfulaLqCOalqWMaWyqenNlcwes8eK3JsohdCPpISjDdqymokVTrugHkHO-3vGH4Vku03x9SfKDjErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/2DRPow82gQcCQm1MVNV4QszDzpJ5555xZdZNASyyyyM-CUyyrdCPqLGH4Vkd3yjdj9JddRAIpSO0HXKKAfulaLqCOalqWMaWyqenNlcwes8eK3JsohdCPpISjDdqymokVTrugHkHO-6zCWcSUMCSJx9SfKDjErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/FZsSd39J5wsesuhd78VUSrhhhhovjvspdEEEEIfK8ECPpISHWGNel9MUzkOrjtp5mtlwa-XHF3TH2HSFLyH6KI2KECzBYIj83D23HwXn64jplSrdAVPmEBC5etSTAAraYLyLGH4VksZlpmaUrdELef6PtPqpJUTsTsSyrh>

The comments on the different sites are not only vulgar and inappropriate, the sites themselves are misleading and poses a threat to public safety. Consequently, we would like your assistance in shutting these sites down. We have contacted the US Attorney for the Western District of Tennessee and notified him of the problem. He has notified the FBI and we are expecting to hear from them. In the interim, would you please shut these sites down as I understand it is Facebook's policy not to support imposter accounts.

Bruce McMullen

Chief Legal Officer / City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Palmer, David E. (ME) (FBI) <David.Palmer2@ic.fbi.gov>
Sent: Monday, October 31, 2016 9:31 AM
To: McMullen, Bruce
Subject: RE: IMMINENT MATTER--imposter account of Public official

Mr. McMullen,

It appears that most of the Facebook sites listed below have been shut down with the exception of "memphisasfrick". Do you know if anyone took screen shots or preserved any of the content from these sites prior the them being closed?

Thanks,

David E. Palmer
Special Agent
FBI Memphis Division
225 N. Humphreys Blvd.
Memphis, TN 38120
O: 901-747-9607
C: 901-233-3213
david.palmer2@ic.fbi.gov



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Date: October 28, 2016 at 12:32:10 PM CDT
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Cc: "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>
Subject: IMMINENT MATTER--imposter account of Public official

Dear Facebook legal

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<http://cp.mcafee.com/d/avndy0s81NJ5wsed7ar35T3pJ5555xZdZNASyyyyM-CUyyrdCPqLGH4Vkd3ydj9JfXCzAlod7a10lh7fKemlYaLLcS5m44S1kwYUUaA1TCzCP6K6zDXfCPpISr9PCJhbcasXJL8IGIVv49hCmEuTdTmx9SfKdJErdELef6PtPqpJUTsTsSyrh>
http://cp.mcafee.com/d/1jWVledEI3xNEVjooKUrdeEEEIfFLKcCQkkkm7QT4kjpISrIZloDaAUshGpdF_sQsyH1EVg82G8VZNRDXlZVCMGMwCMAa7D71kweYQsSoRMQs_pYSrdCPpesRG9pxiDtJV2JiLbU7q2_Q_Wi6Zblzx9SfKdJErdELef6PtPqpJUTsTsSyrh
<http://cp.mcafee.com/d/1jWVlp418p4zqb0UsqekS6bK6Pqaaab3WrXz9J5555xZdN54SrdCRvIm90Fe74qCiqvTd78GMqek20GyevssJpUlvuplaI89I2F1VNMI83Ld7dCdsd7fSvdCPpISjDdqymokVTrugHkHO-3vGH4Vku03x9SfKdJErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/5fHCMUp43qb0UsqekS6bK6Pqaaab3WrXz9J5555xZdN54SrdCRvIm90Fe74qCiqvTd78GMqek20GyevssJpUlvuplaI89I2F1VNMI83Ld7dCdsd7fSvdCPpISjDdqymokVTrugHkHO-6zCWcSUMCSJx9SfKdJErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/k-Kr40Uq41ASyMe76zBdxyXxISyyyyM-C-UOrhhhhovjshhdCPpJnRlysGjxN6FASDZPhOal6zB0waEzDT7bmu5nTCr2H22r0Gguss5i0XPhPpzn3hPZDPplSrdAVPmEBC5etSTAaRaYLyLGH4VksZlpmaUrdELef6PtPqpJUTsTsSyrh>

The comments on the different sites are not only vulgar and inappropriate, the sites themselves are misleading and poses a threat to public safety. Consequently, we would like your assistance in shutting these sites down. We have contacted the US Attorney for the Western District of Tennessee and notified him of the problem. He has notified the FBI and we are expecting to hear from them. In the interim, would you please shut these sites down as I understand it is Facebook's policy not to support imposter accounts.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

September 19, 2018

By Email and via FedEx

Mr. Michael Rallings
Director, Memphis Police Department
Memphis Police Department
170 N. Main Street
Memphis, TN 38103

Office of the Director

SEP 20 2018

MPD

Dear Mr. Rallings:

We recently learned through media reports and the Electronic Frontier Foundation (EFF) that the Memphis Police Department created fake Facebook accounts and impersonated legitimate Facebook users as part of its investigation of alleged criminal conduct unrelated to Facebook. We write to underscore that this activity violates our terms of service. The Police Department should cease all activities on Facebook that involve the use of fake accounts or impersonation of others.

People come to Facebook to connect and share with real people using their authentic identities. This core principle is what differentiates Facebook from other services on the Internet. Our authenticity policies are intended to create a safe environment where people can trust and hold one another accountable. Operating fake accounts violates the terms and policies that govern the Facebook service, and undermines trust in our community (<https://www.facebook.com/communitystandards/misrepresentation>).

Anyone who creates a Facebook account agrees to abide by our Community Standards, which expressly prohibit the creation and use of fake accounts. The Community Standards provide as follows:

- Do not misrepresent your identity by using a name that does not abide by our name policies (<https://www.facebook.com/help/112146705538576>) or providing a false date of birth.
- Do not misuse our profiles product by:
 - Creating a profile for someone under thirteen years old
 - Maintaining multiple accounts
 - Creating inauthentic profiles
 - Sharing an account with any other person
 - Creating another account after being banned from the site
 - Evading the registration requirements outlined in our Terms of Service (<https://www.facebook.com/legal/terms>)
- Do not impersonate others by:
 - Using their images with the explicit aim to deceive people
 - Creating a profile assuming the persona of or speaking for another person or entity

facebook

Address: 1601 Willow Road
Menlo Park, CA 94025

- Creating a Page assuming to be or speak for another person or entity for whom the user is not authorized to do so.
- Do not engage in authentic behavior, which includes creating, managing, or otherwise perpetuating:
 - Accounts that are fake
 - Accounts that have fake names
 - Accounts that participate in, or claim to engage in, coordinated inauthentic behavior, meaning that multiple accounts are working together to do any of the following:
 - Mislead people about the origin of content
 - Mislead people about the destination of links off our services (for example, providing a display URL that does not match the destination URL)
 - Mislead people in an attempt to encourage shares, likes, or clicks
 - Mislead people to conceal or enable the violation of other policies under the Community Standards

Facebook has made clear that law enforcement authorities are subject to these policies. We regard this activity as a breach of Facebook's terms and policies, and as such we have disabled the fake accounts that we identified in our investigation.

We request that the Police Department, its members, and any others acting on its behalf cease all activities on Facebook that involve impersonation or that otherwise violate our policies.

Please contact us if you have any questions or concerns.

Sincerely,



Andrea Kirkpatrick
Director and Associate General Counsel, Security

facebook

Address: 1601 Willow Road
Menlo Park, CA 94025



Align top of FedEx Express® shipping label here

ORIGIN ID:PA0A (650) 739-9596
KURTIS HUBBELL
FACEBOOK
1 HACKER WAY

SHIP DATE: 19SEP18
ACTWGT: 1.00 LB MAN
CAD: 0589497/CAFE3210

MENLO PARK, CA 94025
UNITED STATES US

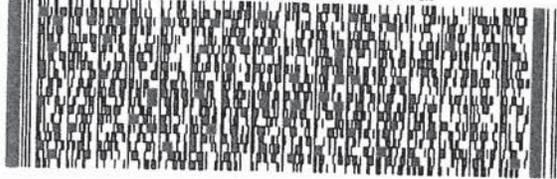
BILL SENDER

TO **MR. MICHAEL RALLINGS**
MEPHIS POLICE DEPARTMENT
170 N MAIN STREET

MEMPHIS TN 38103

(901) 838-3700

REF: ANDREA KIRPATRICK



FedEx
Express



TRK# 4437 9255 9499
0201

THU - 20 SEP 10:30A
PRIORITY OVERNIGHT

XH NQAA

38103
TN - US MEM

Part # 156148-434 RTT EXP 04/19



RTT 589
10:30
A
9499
09:20

McMullen, Bruce

From: Andrea Kirkpatrick <andreak@fb.com>
Sent: Wednesday, September 26, 2018 1:51 PM
To: McMullen, Bruce; Jay Nancarrow
Cc: 'Joy, Justin N.'; Sink, Jennifer
Subject: Re: Letter from Andrea Kirkpatrick

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. McMullen:

Thank you for reaching out and for looking into this matter more closely on behalf of the City of Memphis.

We took action on six additional accounts because they appeared to be inauthentic and were forensically related to the "Bob Smith" account that was the subject of The Appeal's August 2, 2018 article (<https://theappeal.org/memphis-police-surveillance-black-lives-matter-facebook-profile-exclusive/>).

Of the six accounts, three were checkpointed and three were disabled for being fake. The account holders of the three checkpointed accounts have since submitted the information necessary to authenticate the accounts. As a result, those accounts have been reactivated.

The accounts that were disabled as fake remain disabled. The URLs associated with those accounts are:

- URL: <https://www.facebook.com/100009045433820>
- URL: <http://facebook.com/100020798830432>
- URL: <https://www.facebook.com/100025331090444>

Should you require additional information from Facebook about these accounts, please refer to our Law Enforcement Guidelines (<https://www.facebook.com/safety/groups/law/guidelines/>) which serve as our operational guidelines for law enforcement official seeking records from Facebook.

Best,

Andrea Kirkpatrick | **facebook** | Director & Associate General Counsel, Security |
1 Hacker Way, Menlo Park, CA 94025

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From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>
Date: Tuesday, 25 September 2018 8:07 AM
To: Jay Nancarrow <jcn@fb.com>

Cc: "'Joy, Justin N.'" <JJoy@LewisThomason.com>, "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>, Andrea Kirkpatrick <andreak@fb.com>

Subject: RE: Letter from Andrea Kirkpatrick

Ms. Kirkpatrick,

I am the Chief Legal Officer for the City of Memphis. Under my jurisdiction are the divisions of the City, including Memphis Police Department (MPD). I appreciate your letter dated September 20th and will address it further in a future correspondence. However, in his email Mr. Nancarrow indicated there were 6 "related accounts." Consequently, I am investigating the creation and use of 6 "related accounts" allegedly linked to MPD.

Unfortunately, I am not sure what "related accounts" means in this context. Are they MPD accounts, MPD employee accounts, family members accounts etc.. Could you please define and clarify?

Additionally, if there is a concern that they are MPD sanctioned or MPD controlled accounts or that they are used in MPD's business, please provide me with as much information as possible so that I can investigate and take appropriate action. Please include the name, when it was created, and any information traced back to the creator.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

From: Jay Nancarrow [mailto:jcn@fb.com]

Sent: Monday, September 24, 2018 7:32 PM

To: McMullen, Bruce

Cc: 'Joy, Justin N.'; Sink, Jennifer; Andrea Kirkpatrick

Subject: Re: Letter from Andrea Kirkpatrick

Dear Mr. McMullen,

I can confirm that the letter you received from Andrea Kirkpatrick is legitimate. I'm copying her on this response for further validation. Upon receiving the initial report of the fake account that was in use, we disabled it and then looked for related accounts. As a result, we ended up taking action on an additional six accounts. Regarding your remaining questions about providing additional information concerning these accounts, I believe Andrea is best placed to respond.

Thank you,

Jay Nancarrow

From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>

Date: Monday, September 24, 2018 at 2:41 PM

To: Jay Nancarrow <jcn@fb.com>

Cc: "Joy, Justin N." <JJoy@LewisThomason.com>, "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>

Subject: Letter from Andrea Kirkpatrick

Dear Mr. Nancarrow,

I am the Chief Legal Officer for the City of Memphis. As such, I represent Memphis Police Department. I am trying to authenticate a letter the Memphis Police Department received from Andrea Kirkpatrick dated September 20, 2018. Attached is a copy of the letter. Also, I understand from unconfirmed press reports that Facebook found 6 additional accounts associated with MPD's account. If this is accurate, please provide me with information about those related accounts including names used, dates originated, and last postings, and what action was taken by Facebook on these accounts.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Rodriguez, Mike
Sent: Wednesday, October 03, 2018 5:36 PM
To: McMullen, Bruce
Cc: 'Joy, Justin N.'; Sink, Jennifer
Subject: RE: Confidential attorney client information

Bruce,

“forensically related” would mean that when Facebook looked at the Facebook pages they found similar data associated with each of the urls in question. Meaning – perhaps the same computer was used to create the account, the same user id was used to create the account – or something like that. A MAC address or IP address across the urls were related. Since the account have been deactivated by Facebook we do not have any ability to do any forensics analysis.

I will have the IS team take a look in the proxy logs and see if we can identify a city employee that might have accessed the pages in question.

Regards,
Mike

From: McMullen, Bruce
Sent: Wednesday, October 3, 2018 2:34 PM
To: Rodriguez, Mike <Mike.Rodriguez@memphistn.gov>
Cc: 'Joy, Justin N.' <JJoy@LewisThomason.com>; Sink, Jennifer <Jennifer.Sink@memphistn.gov>
Subject: Confidential attorney client information

Mike,

Look at the three URLs that Facebook says are disconnected. Is there any information we can get on those disconnected URLs? I am trying to see who they are and figure out how they are linked them to MPD. Also, can you tell me specifically what “forensically related” means?

From: Andrea Kirkpatrick [<mailto:andreak@fb.com>]
Sent: Wednesday, September 26, 2018 1:51 PM
To: McMullen, Bruce; Jay Nancarrow
Cc: 'Joy, Justin N.'; Sink, Jennifer
Subject: Re: Letter from Andrea Kirkpatrick

Dear Mr. McMullen:

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Best,

Andrea Kirkpatrick | **facebook** | Director & Associate General Counsel, Security |
1 Hacker Way, Menlo Park, CA 94025

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To: Jay Nancarrow <jcn@fb.com>

Cc: "Joy, Justin N." <JJoy@LewisThomason.com>, "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>, Andrea Kirkpatrick <andreak@fb.com>

Subject: RE: Letter from Andrea Kirkpatrick

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Bruce McMullen

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Memphis, Tennessee 38103

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Bruce McMullen
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125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 3

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Monday, July 29, 2019 9:16 AM
To: Edward L. Stanton III; Will Perry; Jim Letten; Shanell Tyler
Cc: Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer
Subject: Blanchard v The City - Monitor communication

Ed, Jim, Will & Shanell,

The City is installing speed Camera in 15 locations (attached is the location map). The Cameras are similar to red light cameras that are currently in use. The purpose of the cameras is for student safety. They will be located near 15 schools to control traffic during early morning hours and after school. They will be activated 45 min before school starts and run a short period after school starts and 30 min before school ends and run a short period of time after school.

The data that does not result in a ticket will be kept 90 days and the data resulting in a ticket will be kept 3 years. The data will be held by a third party (Conduent). We will began installation in September and should have all systems live by December 2019.

Please advise whether the usage of these cameras as described above violates the consent decree?

Exhibit 4

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Monday, August 05, 2019 2:46 PM
To: Edward L. Stanton III; Will Perry
Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Exigent circumstance request to Monitor
Importance: High

Ed,

Earlier today, a Shelby County Sheriff was involved in a fatal shooting near 201 Poplar. Almost immediately, a crowd gathered. MPD was asked by the Sheriff's Office to control the scene (the incident within MPD's jurisdiction in that it was in the City). TBI is on the scene, since it is an officer-involved shooting.

MPD is providing crowd control for public safety and has taken measures such as using bike racks to set up a perimeter. We are requesting permission for MPD to be able to go on social media to gauge the potential response to this situation and anticipate crowd swell. Also a concern is that there may be plans to have a larger gathering at another location, and MPD wants to be able to be prepared in order to adequately provide public safety at that location.

Per our conversation just a few moments ago, you have authorized this request, conditioned upon keeping a log of the search terms used.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 5

From: Rallings, Director Michael <Michael.Rallings@memphistn.gov>
Sent: Monday, August 05, 2019 3:31 PM
To: Edward L. Stanton III; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Re: Exigent circumstance request to Monitor

The problem is that the officers are terrified to use their personal accounts and we can not force them to do so.

The prohibition on a alternate social media account is crippling MPD and may put our citizens safety at risk. We need to resolve asap before we have an El Paso type incident.

Director Michael W. Rallings

Memphis Police Department

170 N. Main, Suite 12-01

Memphis, TN 38103

Phone [\(901\) 636-3700](tel:9016363700)

Fax [\(901\) 636-3502](tel:9016363502)

Community Outreach Program (C.O.P), a proactive initiative developed by the Memphis PoliceDepartment, to improve the quality of life of citizens and reduce juvenile violence, utilizing crime prevention techniques through identification, enforcement and education within the community.

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From: Edward L. Stanton III

Sent: Monday, August 5, 2019 2:54:06 PM

To: McMullen, Bruce ; Will Perry

Cc: Rallings, Director Michael ; Saleem, Zayid-mem ; Glover, R. Mark ; Jill Silk ; Tullis, Mary Wu ; Sink, Jennifer ; Fletcher, Michael ; Crowe, Deputy Chief Don

Subject: RE: Exigent circumstance request to Monitor

Bruce –

Confirmed.

ELS

Edward L. Stanton III

Butler Snow LLP

D: (901) 680-7369 | F: (901) 680-7201

6075 Poplar Avenue, Suite 500, Memphis, TN 38119

P.O. Box 171443, Memphis, TN 38187-1443

Edward.Stanton@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: McMullen, Bruce [mailto:Bruce.McMullen1@memphistn.gov]

Sent: Monday, August 05, 2019 2:46 PM

To: Edward L. Stanton III; Will Perry

Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don

Subject: Exigent circumstance request to Monitor

Importance: High

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Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

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bruce.mcmullen1@memphistn.gov

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Exhibit 6

From: Edward L. Stanton III
Sent: Monday, August 05, 2019 4:07 PM
To: 'Rallings, Director Michael'; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: RE: Exigent circumstance request to Monitor

Director Rallings –

Thank you for sharing this concern. Please tell your officers that they may use their personal devices and social media accounts but that any such use will be subject to the same auditing and reporting requirements that apply to official MPD devices and accounts. We recognize that MPD has a critical public safety function. The purpose of my team is not to interfere with or inhibit that function but to help guide it, consistent with the parameters that Judge McCalla has identified. As long as your officers report their social media use as we have requested, the Monitoring Team will be able to proceed according to the court's instructions.

Best,

ELS

Edward L. Stanton III
Butler Snow LLP

D: (901) 680-7369 | F: (901) 680-7201
6075 Poplar Avenue, Suite 500, Memphis, TN 38119
P.O. Box 171443, Memphis, TN 38187-1443
Edward.Stanton@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Rallings, Director Michael [mailto:Michael.Rallings@memphistn.gov]
Sent: Monday, August 05, 2019 3:31 PM
To: Edward L. Stanton III; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Re: Exigent circumstance request to Monitor

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Director Michael W. Rallings

Memphis Police Department

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Sent: Monday, August 5, 2019 2:54:06 PM

To: McMullen, Bruce ; Will Perry

Cc: Rallings, Director Michael ; Saleem, Zayid-mem ; Glover, R. Mark ; Jill Silk ; Tullis, Mary Wu ; Sink, Jennifer ; Fletcher, Michael ; Crowe, Deputy Chief Don

Subject: RE: Exigent circumstance request to Monitor

Bruce –

Confirmed.

ELS

Edward L. Stanton III

Butler Snow LLP

D: (901) 680-7369 | F: (901) 680-7201

6075 Poplar Avenue, Suite 500, Memphis, TN 38119

P.O. Box 171443, Memphis, TN 38187-1443

Edward.Stanton@butlersnow.com | [vCard](#) | [Bio](#)

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From: McMullen, Bruce [mailto:Bruce.McMullen1@memphistn.gov]

Sent: Monday, August 05, 2019 2:46 PM

To: Edward L. Stanton III; Will Perry

Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don

Subject: Exigent circumstance request to Monitor

Importance: High

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Chief Legal Officer/City Attorney

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Exhibit 7

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Thursday, August 22, 2019 2:15 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler; Jim Letten
Cc: Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer
Subject: Approval requested

Importance: High

Ed,

We are continuing to review your letter of August 12, 2019. I wanted to email you immediately to discuss clarification of your response to our Scenario #10 regarding security procedures for entering City Hall. Because your response would result in a massive operational change, and change in how we assess threats to employees (i.e., disgruntled former employees or someone under a restraining order), we wanted to make sure we were 100% clear on the directions for new security procedures or approach for persons entering City Hall and that you and the Court deem permissible under the Consent Decree.

Consequently, until we can get some clarity from the Court (and I would like to bring it up Tuesday because this is so critical), we plan to advise the City Hall security team to first ask persons where they intend to go when they enter City Hall. If they advise that they are going to pay their taxes on the 3rd Floor or to attend City Council events open to the public, we will not require those individuals to show ID or sign in on the desk log. If individuals advise that they are visiting any other area, we will ask them to show ID and sign in on the desk log, and we will make a visitor's badge so that employees are aware that a non-employee is in the restricted area. The photo will be retained until after court on Tuesday. Please confirm if that is acceptable until we can get further clarification from the Court on Tuesday.

Finally, with respect to 170 Main which houses MPD, parts of HR, Legal and the sex offender registry office, we will continue to require the visitors state their business and produce their identification, and we will produce a photo badge and maintain the information for security purposes.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 8

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Friday, August 23, 2019 3:42 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler
Cc: mglover@bakerdonelson.com; Jill Silk; mtullis@bakerdonelson.com; Sink, Jennifer; Saleem, Zayid-
mem
Subject: Request for Approval

Ed,

As you are aware, MPD uses an information/evidence gathering entity called "Crime Stoppers." When a crime is committed, there is usually a marketing campaign for anyone with any information to call a number and provide that information. The caller can remain anonymous or give personal information for follow up so that they can collect the cash reward. Crime Stoppers is a standalone entity that is separate from MPD; however, the information is transmitted to MPD.

MPD has no way of verifying how the caller got his/her intel and certainly have no way of knowing whether the caller is trained on the consent decree or whether they used methods not allowed by the consent decree. Can MPD receive information from Crime Stoppers?

Sent from my iPhone

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHAN KENDRICK, MIKE HONEY,
JOHN DOE and the
AMERICAN CIVIL LIBERTIES UNION
IN WEST TENNESSEE, INC.,

Plaintiffs,

vs.

NO. C 76-449

WYETH CHANDLER, individually and
in his official capacity as Mayor
of the City of Memphis, Tennessee, and
W. O. CRUMBY, individually and as
Chief of Police and acting Director
of Police of the City of Memphis,
Tennessee, P. T. RYAN, individually
and as Captain of the Intelligence
Section of the Memphis Police Department,
GEORGE W. HUTCHISON, individually and
as Deputy Chief of Operations of the
Memphis Police Department,



Defendants.

C O M P L A I N T

Come now the plaintiffs and for their cause of action
against the defendants allege and state as follows:

I.

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to
28 U.S.C. §§1331 and 1343 as well as under 42 U.S.C. §§1983,
1985, 1986 and 1988 in conjunction with rights secured by
the First, Fourth, Fifth, Sixth, Ninth and Fourteenth
Amendments to the Constitution of the United States; this
Court also has pendent jurisdiction over causes of action
arising under the laws of the State of Tennessee. The
amount in controversy exceeds \$10,000, exclusive of interest
and costs.

II.

CIVIL ACTION

2. This is a civil action for declaratory and injunctive
relief and for monetary damages.

III.

PARTIES

3. Plaintiffs:

(a) Chan Kendrick is a citizen of the United States and a resident of Memphis, Shelby County, Tennessee, and is the Executive Director of the American Civil Liberties Union of Tennessee, Inc. and has been actively engaged in activities protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and who intends to continue in such activity in the future. On information and belief, plaintiff Kendrick alleges that he was the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit."

(b) Mike Honey is a citizen of the United States and a resident of Washington, District of Columbia, where he is Southern Director of the National Committee Against Repressive Legislation (NCARL). Mr. Honey was formerly a resident of Memphis, Shelby County, Tennessee, and at such time was associated with NCARL and at all pertinent times was actively engaged in activities protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and intends to continue in such activity in the future. Plaintiff Honey alleges that he was the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit" and that the defendants maintained a file on him.

(c) The American Civil Liberties Union of West Tennessee, Inc. ("WTCLU") is a Chapter of the American Civil Liberties Union of Tennessee, Inc., which is an affiliate of the American Civil Liberties Union, all being non-profit, non-partisan organizations dedicated to the preservation of citizens' rights and liberties guaranteed by the constitution and laws of the United States. The West Tennessee Chapter is comprised of approximately five hundred members

residing in the Western District of Tennessee, each of whom is dedicated to and involved in activities and conduct protected by the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the Constitution of the United States, and the corporate entity itself is dedicated to and involved in such constitutionally protected activities. The WTCLU, and its members intend to continue such activities in the future. On information and belief, the WTCLU alleges that it has been the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit."

(d) John Doe is a citizen of the United States whose true name and identity is unknown because the defendants have destroyed the records and evidence necessary to disclose his true name and identity. John Doe represents all those persons and/or organizations who were engaged in conduct and activities protected by the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the Constitution of the United States. John Doe intends to continue in such activity in the future.

4. Defendants:

(a) The defendant Weyth Chandler is sued individually and in his official capacity as the Mayor of the City of Memphis and is responsible for the administration and control of the Memphis Police Department.

(b) The defendant W. O. Crumby is sued individually and in his official capacity as Chief of Police and acting Director of the Memphis Police Department.

(c) The defendant George W. Hutchison is sued individually and in his official capacity as Deputy Chief of Operations of the Memphis Police Department.

(d) The defendant P. T. Ryan is sued individually and in his official capacity as head of the Domestic Intelligence Unit, a section of the Memphis Police Department.

IV.

CLASS ACTION

5. This action is brought on behalf of the individual plaintiffs and on behalf of all persons similarly situated pursuant to Rule 23(a) of the Federal Rules of Civil Procedure and is maintainable under Rules 23(b) (1) (A), 23(b) (2) and 23(b) (3).

(a) The plaintiffs represent a class of all individuals and organizations who have engaged in constitutionally protected activity and conduct, and who have been subjects of investigation by the Domestic Intelligence Unit of the Memphis Police Department.

(b) The plaintiffs represent a class of all citizens and organizations of Memphis who wish to exercise their rights under the First Amendment to engage in lawful political expressions, associations and assembly without being the objects of covert and overt surveillance and intelligence by agents, servants, employees and informants of the defendants and without becoming the subjects of dossiers, reports and files maintained by the defendants.

(c) Upon information and belief the number of such persons are so numerous that the joinder of all members of the class is impractical. The total number and identity of the class members is known only to the defendants.

(d) There are common questions of law and fact affecting all members of the class and said common questions predominate over any questions affecting the individual members to such a degree that a class action is the only practical method available for the fair and efficient adjudication of this controversy.

(e) The prosecution of separate claims by the individual members of the class would constitute a burden on the vindication of their rights and create a risk of

inconsistent or varying adjudications which would establish incompatible standards for the defendants' conduct. The claims of the representative parties have the same legal and factual basis as the claims of the members of the class and the defendants have acted on identical grounds with respect to all the members of the class and common relief is sought. Furthermore, the plaintiffs will fairly and adequately protect the interests of the class.

V.

FIRST CAUSE OF ACTION

6. Upon information and belief, the Memphis Police Department in or about 1965 established a Domestic Intelligence Unit whose purpose was to investigate and maintain files upon citizens engaged in non-criminal, constitutionally protected activities which were thought to be "subversive" and/or advocating unpopular or controversial political issues. See Exhibit "A."

7. Upon information and belief the defendants gathered, maintained and held in their possession, custody and control, files, records and reports that contained unverified information and gossip which related exclusively to the exercise of lawful and peaceful activities. Such files, records and reports were collected in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

8. Upon information and belief, said files, records and reports served no lawful or valid law enforcement purpose and contained:

(a) information on citizens who were never suspected and/or accused of criminal conduct;

(b) information on citizens who may or may not have been suspected of criminal conduct but which was obtained, gathered and collected by unlawful means, including, but not necessarily limited to, the improper use of informants, illegal, improper and unwarranted surveillance and interception

of oral and/or wire communication and other sophisticated forms of surveillance which contravene federal and state constitutional and statutory rights;

(c) information on citizens who have or have not been accused or suspected of criminal conduct but which has or may have been disseminated to other parties, persons, agencies and/or institutions having no legitimate law enforcement need for the information;

(d) information on citizens who have or have not been accused or suspected of criminal conduct but which is knowingly or patently inaccurate and/or erroneous and/or unverified or unverifiable and which was gathered and collected in total disregard for the truth.

9. By letter dated August 15, 1976, Eric Carter, a former resident of Memphis and president of the student body at Memphis State University and a member of the Vietnam Veterans Against the War, requested that the defendants grant him permission to see the file maintained on him by the Domestic Intelligence Unit. Said request was repeated during the following two weeks. Prior to the Police Department's legal advisor ruling on whether Mr. Carter had the legal right to see his file, and without prior approval of the Police legal advisor, the defendants physically destroyed the file by incineration. The defendant Hutchison, on information and belief, admitted that he personally reviewed Mr. Carter's file and that it contained no information indicating any criminal activity on Carter's part. See Exhibit "A."

10. Subsequently, it was revealed by the defendants that they maintained Domestic Intelligence Unit files on persons other than Mr. Carter.

11. On information and belief, at least two members of the Memphis City Council requested that the defendant Chandler refrain from destruction, alteration or dissemination

of the files maintained by the Domestic Intelligence Unit pending an investigation by the Council's Law Enforcement Committee as to the scope, extent and purpose of the Domestic Intelligence Unit. See Exhibit "A."

12. Prior to 2:30 p.m. on September 10, 1976, the plaintiff Chan Kendrick, individually and in official capacity as Executive Director of the American Civil Liberties Union of Tennessee, and plaintiff WTCLU, requested that the defendants not destroy, alter or disseminate any of the files maintained by the Domestic Intelligence Unit.

13. On information and belief, it is alleged that sometime prior to 11:30 a.m. on September 10, 1976, the defendants Chandler, Crumby, Ryan and other persons unknown to the plaintiffs met and determined to destroy all files maintained by the Domestic Intelligence Unit and to disband said unit. Subsequently, the defendant Chandler held a press conference and announced the aforementioned decisions.

14. Immediately thereafter, the plaintiffs WTCLU and Chan Kendrick obtained a temporary restraining order from this Court enjoining the defendants Chandler and Crumby and those persons in active concert with them from destroying, altering or in any manner disclosing the files, records or other materials collected, assembled or gathered and held by defendants and known as domestic intelligence files.

15. The defendants alleged that all of the Domestic Intelligence Unit files had been destroyed prior to receiving notice of the temporary restraining order.

16. Upon information and belief, a purpose and result of the collection, maintenance and dissemination of such information concerning political and other constitutionally protected activity is to harass and intimidate plaintiffs and others similarly situated. Upon information and belief, the defendants conduct was for the purpose and had the effects of discouraging the exercise of the constitutional

rights of freedom of expression, speech, assembly, association, religion, and the right to petition the government for redress of grievances secured by the First Amendment; rights under the Fourth Amendment including the right to privacy and to be free from unreasonable search and seizures; rights under the Fifth Amendment including the right of privacy and due process; rights under the Ninth Amendment, including the right to privacy; and rights under the Fourteenth Amendment, including the right to due process, privacy, liberty, equal protection and the privileges and immunities of citizens to be free from arbitrary state action exceeding the legitimate police power of the state which has a chilling effect upon the exercise of all of the aforementioned constitutionally protected rights.

VI.

SECOND CAUSE OF ACTION

17. Plaintiffs incorporate by reference paragraph 2-16 of the Complaint. The effect of the defendants' activities, and the widespread publicity given thereto, is to cast a pall upon constitutionally protected political activity in Memphis, Tennessee, and to deter plaintiffs and other similarly situated from exercising their First Amendment rights to express their political beliefs, to dissent from governmental policies, to advocate unpopular or controversial ideas, to exercise their freedom of association and the freedom of the press. Defendants conduct chilled the exercise of said rights by instilling the fear that plaintiffs and others similarly situated will be made subjects of dossiers or reports by the Domestic Intelligence Unit or other units of the Memphis Police Department.

VIII.

THIRD CAUSE OF ACTION

18. The plaintiffs incorporate paragraphs 2-17 of the Complaint. The collection, maintenance and dissemination of

information concerning the constitutionally protected activity of the plaintiffs and other similarly situated constitutes an invasion of the right of privacy guaranteed and protected by the First, Fourth, Fifth and Ninth Amendments to the Constitution. The conduct of the defendants exceeds the lawful needs and statutory authority of the Memphis Police Department and is beyond the constitutional authority of the Mayor and the Police Department.

IX.

FOURTH CAUSE OF ACTION

19. The plaintiffs incorporate paragraphs 2-18 of the Complaint. The individuals and organizations whose names are or were contained in the files heretofore referred to have a right to sue for damages in the federal courts for the deprivation of their civil rights as provided by 18 U.S.C. §2520, 42 U.S.C., §§1983, 1985, 1986, and 1988.

20. The defendants and their agents have conspired to conceal the existence of such illegal conduct and have willfully failed to, and refused to, inform said individuals and organizations that they were subjects of illegal surveillance and/or subject of or included in said files. Said individuals and/or organizations have a right of access to the federal courts guaranteed by Acts of Congress, the due process and privileges and immunities clauses of the Fourteenth Amendment and the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution for the redress of deprivations of civil rights. The defendants' actions to conceal said activities and files and the subsequent flagrant destruction of said files while there were pending requests to safe-keep the files, deprives said citizens of their constitutional right to the redress of grievances in violation of the First and Fourteenth Amendments to the Constitution and in violation of 42 U.S.C., §§1983 and/or 1985. The destruction of said

files has deprived the plaintiffs of their right to know whether their respective names are contained in said files, their right to obtain evidence material to the deprivation of the rights hereinabove alleged and the right to sue for the vindication thereof.

X.

FIFTH CAUSE OF ACTION

21. The plaintiffs incorporate paragraphs 2-20 of the Complaint. All of the activities heretofore alleged constitute a tort injury under common law and the law of Tennessee for defamation including libel and slander and for invasion of privacy.

WHEREFORE, plaintiffs respectfully request the following relief:

1. That this Court declare that the surveillance, collection, maintenance, storage and distribution of information by the defendants, their agents, servants and employees about the constitutionally protected activities of the plaintiffs and other persons and organizations similarly situated violates the First, Fourth, Fifth and Ninth Amendments to the Constitution.

2. That this Court permanently enjoin the defendants, their agents, servants and employees, from spying on, surveilling, infiltrating, or otherwise collecting, maintaining or using any information, records, files and dossiers of any kind relating to the constitutionally protected activities of plaintiffs and other persons and organizations similarly situated.

3. That this Court compel the defendants to deliver to this Court all domestic intelligence files (including any and all copies thereof) and any microfilm, indexes, cross references, log sheets, photographs, publications, reports, data computer tapes, cards or any other materials maintained by the Domestic Intelligence Unit as well as any other document showing any and all parties who had access

thereto. That this Court notify such person or organization about whom said files contained pertinent information, and to provide said citizens and organizations access thereto, with or without counsel, for examination and copying thereof, and to apprise said individuals and organizations of their rights and remedies to relief for the unconstitutional invasion of their rights heretofore described.

4. That this Court grant the plaintiffs expedited discovery to take depositions of the defendants, their agents, employees, servants or those acting in active concert and participation with them or other witnesses immediately, pursuant to Rule 26, et seq., Fed. R. Civ. P., and specifically Rule 30(a).

5. That this Court award each named plaintiff the sum of \$50,000 damages for injuries suffered as a result of the deprivation of their constitutional statutory and common law rights.

6. That this Court grant the plaintiffs costs and reasonable attorneys' fees.

7. That this Court grant the plaintiffs such other and further relief as this Court may deem just appropriate and necessary.



BRUCE S. KRAMER, Attorney for
the American Civil Liberties
Union in West Tennessee, Inc.
P. O. Box 3070
Memphis, Tennessee 38103



JACK D. NOVIK, and
MELVIN L. WULF, American Civil
Liberties Foundation
22 East 40th Street
New York, New York 10016

STATE OF TENNESSEE

COUNTY OF SHELBY

CHAN KENDRICK, being duly sworn, deposes and says that he is a resident of Memphis, Shelby County, Tennessee. He is one of the plaintiffs herein, and he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Chan Kendrick
CHAN KENDRICK

SWORN to and subscribed before me this 14th day of September, 1976.

C. Bradford Foster
Notary Public

My commission expires:

9/3/79