

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4 ELAINE BLANCHARD, KEEDRAN
5 FRANKLIN, PAUL GARNER, AND
6 BRADLEY WATKINS,

7 Plaintiffs (dismissed),

8 and

NO. 2:17-cv-02120-JPM-egb

9 ACLU OF TENNESSEE, INC.,

10 Intervening Plaintiff,

11 vs.

12 THE CITY OF MEMPHIS,

13 Defendant.

14 HEARING RE: SANCTION 5

15 BEFORE THE

16 HONORABLE JON PHIPPS McCALLA

17 (via Skype)

18 May 14, 2020

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24 CATHERINE J. PHILLIPS, FAPR, RMR, CMRS, FPR
25 OFFICIAL REPORTER
 FOURTH FLOOR FEDERAL BUILDING
 MEMPHIS, TENNESSEE 38103

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A P P E A R A N C E S

COURT-APPOINTED MONITOR/SPECIAL MASTER:

EDWARD L. STANTON, III, ESQUIRE (Lead)
OF: Butler Snow, LLP
6075 Poplar Avenue, Suite 500
Memphis, TN 38119
901.680.7369
edward.stanton@butlersnow.com

MONITOR TEAM:

JIM LETTEN, ESQUIRE
OF: Butler Snow, PLLC
201 St. Charles Avenue, Suite 2700
New Orleans, LA 70170
504.299.7777

GADSEN WILLIAM (WILL) PERRY, ESQUIRE
OF: Butler Snow, PLLC
6075 Poplar Avenue, Suite 500
Memphis, TN 38119
901.680.7341

RACHEL LEVINSON-WALDMAN, ESQUIRE
OF: Brennan Center for Justice

APPEARING ON BEHALF OF THE PLAINTIFFS:

THOMAS HAUSER CASTELLI, ESQUIRE
OF: American Civil Liberties Union
Foundation of Tennessee
210 25th Avenue N., Suite 1000
P.O. Box 120160
Nashville, TN 37212
615.320.7142 x-303
tcastelli@aclu-tn.org

AMANDA STRICKLAND FLOYD, ESQUIRE
OF: Bone McAllester Norton, PLLC
511 Union Street, Suite 1600
Nashville, TN 37219
615.238.6302
mfloyd@bonelaw.com

1 APPEARING ON BEHALF OF THE DEFENDANT:

2 BRUCE McMULLEN, ESQUIRE
3 R. MARK GLOVER, ESQUIRE
4 JENNIE VEE SILK, ESQUIRE
5 MARY WU TULLIS, ESQUIRE
6 OF: Baker Donelson Bearman
7 Caldwell & Berkowitz - Memphis
8 165 Madison Avenue, Suite 2000
9 Memphis, TN 38103
10 901.577.2356
11 bmcullen@bakerdonelson.com
12 mglover@bakerdonelson.com
13 jsilk@bakerdonelson.com
14 mtullis@bakerdonelson.com

9 ALSO PRESENT:

10 Jennifer Sink, Chief Legal Counsel
11 Dr. Darren Boldman
12 John Henegan
13 David McGriff
14 Keedran Franklin, Plaintiff
15 Michael McGuinness, Law Clerk
16 Ms. Y. Jones - Media Reporter
17 Zayid Saleem, Attorney for MPD
18 Major Darren Goods, MPD

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THURSDAY

May 14, 2020

The Skype Video Hearing, regarding Sanction 5, in this case began on this date, Thursday, May 14, 2020, at 10:12 a.m. when and where evidence was introduced and proceedings were had as follows:

THE COURT: We are proceeding by video conference today using the system that the Administrative Office has put in place for us. And this -- we are going to need to do a little bit of a re-roll call to make sure we know who we have.

The first thing we're going to go over --

Mr. Samples, do you want to announce that court is in session? That's a good starting point.

CASE MANAGER: Yes, sir. And good morning to everyone.

This United States District Court is now in session. Presiding is the Honorable Jon Phipps McCalla.

THE COURT: All right. We are in session and I'm going to do a bit of that roll call again.

The first thing we went over preliminary was the fact that Ms. Phillips is our court reporter. She has the

1 right to speak up and tell you that she cannot hear you,
2 because I can't. She's at a different location. And if she
3 interrupts to ask you to speak up or that she could not hear
4 you, please then speak up and repeat what you said because
5 she's going to make a very accurate record here.

6 Also, if there is any over-speaking, she is
7 allowed to speak up, even with me -- I'll be careful about
8 that -- and ask people to please repeat, that I could not
9 understand because there were multiple voices. We'll try to
10 follow that protocol. We would do that in court anyway,
11 that's the right way to do it, but in this situation it's
12 even more important.

13 The next thing is we'll go over the order in
14 which we will go through a few things. Mr. Stanton is the
15 Special Master and Monitor in the case. And he will make an
16 initial statement. You have detail papers, which have been
17 filed in connection with the issue that's before the Court.
18 But he will make a preliminary statement. And, of course,
19 the Special Master is always available to make further
20 comments or to answer questions if that's useful. Of course,
21 he is the Special Master for the Court and we have to
22 recognize that there is a level of deference there, as
23 everybody understands.

24 Now, I am going to quickly again recall the roll,
25 because, hopefully, we've got everybody. I'm going to start

1 with Mr. Castelli. And we have done this once, Mr. Castelli,
2 but I'm going to ask you again to advise who is with you
3 today.

4 MR. CASTELLI: Thank you, Your Honor. Tom
5 Castelli for the Intervenor, ACLU. And here with me today is
6 Mandy Floyd.

7 THE COURT: Right. Exactly. And, of course,
8 both of you have been at most of these proceedings.

9 Now I'm going to go to Mr. Glover, who is lead
10 counsel for the City of Memphis in this case. And ask him to
11 indicate, again, who is with you. We did actually have a
12 little trouble understanding the first time around. So we're
13 going to -- I'm going to wait for a minute for Mr. Glover to
14 come back on the screen.

15 You may or may not be able to see me because
16 there's a limitation under Skype as to who you can see and I
17 cannot tell if you can see me.

18 Okay. It doesn't hurt my feelings in the least.

19 MR. GLOVER: Your Honor, this is Mark Glover.
20 And I can hear you well. I hope you can hear me better now.

21 THE COURT: Yes, much better.

22 MR. GLOVER: And in the room with me are Bruce
23 McMullen. He's going to be handling the presentation for
24 the -- the primary presentation for the City today. Jennifer
25 Sink, who is the Chief Legal Officer for the City. Jennie

1 Silk, who's counsel of record, and Mary Tullis, also counsel
2 of record for the City.

3 THE COURT: All right. Thank you very much.

4 MR. McMULLEN: We have a witness, Your Honor --

5 THE COURT: Yes, sir.

6 MR. McMULLEN: -- who's been allowed to sign in,
7 Major Darren Goods, with the Memphis Police Department. He's
8 not in the same location that we are, but I believe has
9 joined us by Skype, as well the police department attorney,
10 Zayid Saleem. Those are people who are not counsel of record
11 but are present as possible -- at least in Mr. Goods'
12 situation, possible participant as a witness.

13 THE COURT: Absolutely. And, Major, can you hear
14 us okay? It will let you unmute, just to make sure you can
15 hear us.

16 MAJOR GOODS: Yes, sir, Your Honor, I can.

17 THE COURT: All right. Good to have you.

18 And, Mr. Saleem, can you hear us? I'm just going
19 to check to make sure everybody can hear okay.

20 Looking here to see on my list. I can't tell
21 if -- Mr. Saleem, I can't tell that you're on the list of
22 participants. So that means, Mr. Glover, that if you need to
23 give him a call to reenter the conference, he's certainly
24 welcome to do so.

25 MR. GLOVER: Thank you, Your Honor.

1 THE COURT: No problem at all.

2 There was also an inquiry or request for various
3 guests or potential witnesses to be present.

4 And, Mr. Letten, I think that you are on and you
5 can hear us; is that correct?

6 MR. LETTEN: Yes, sir, I can, Your Honor. Thank
7 you, sir.

8 THE COURT: All right. And there may be --

9 MR. SALEEM: Your Honor, I can hear you. This is
10 Attorney Saleem.

11 THE COURT: Okay, good. Absolutely. I wanted to
12 make sure you're able to be there.

13 And I think there was a reporter that asked to be
14 present. I know you're muted, and that's appropriate. We
15 just want to make sure that you could gain access to the
16 hearing, because it's a public hearing. It cannot be
17 recorded. There's no video that can be used and no
18 photographs can be taken, just like we're in the courtroom.
19 But I want to make sure that anyone who wanted to participate
20 in an observery capacity can do so.

21 Do we have an observer or a reporter? It doesn't
22 matter to me, but my main point is that we want to have this
23 publicly available.

24 Do we have a reporter available, Mr. Sample, or
25 not?

1 CASE MANAGER: Yes, sir. I know that Ms. Jones
2 is present.

3 THE COURT: Okay. That's fine. And, Ms. Jones,
4 that's good.

5 And, of course, anybody else who requested,
6 Mr. Sample, I've given them the link; is that correct?

7 CASE MANAGER: That's correct, Your Honor. All
8 requests have been honored.

9 THE COURT: Thank you very much. That is
10 important, that all matters be public.

11 All right. I think that we -- there may be
12 someone I left out. Is there anyone else who needs to
13 announce their presence?

14 Not hearing anyone, we're going to go then to
15 Mr. Stanton.

16 And, Mr. Stanton, if you will review our current
17 status. I think -- well, the Court's certainly aware of it,
18 but this is an opportunity for you to do that.

19 MR. STANTON: Thank you, Your Honor. And, first,
20 can you hear me okay?

21 THE COURT: Yes, very well. Thank you.

22 MR. STANTON: Thank you, Your Honor. May it
23 please the Court. For the court reporter, Edward L. Stanton,
24 III, Court-Appointed Independent Monitor and Special Master.

25 Before getting started, Your Honor, I believe

1 there are few other individuals -- in fact, we invited the
2 entire Monitoring Team to participate. You've acknowledged
3 Deputy Monitor Jim Letten, who is participating on this call.
4 But I believe we also have, Your Honor, Ms. Levinson-Waldman,
5 Rachel Levinson-Waldman, who is our public policy, social
6 media subject matter expert. Also on the line, Your Honor,
7 is our law enforcement and police practices expert,
8 Dr. Darren Boldman; also, our Constitutional Law and First
9 Amendment expert, John Henegan; Compliance and Oddity expert,
10 David McGriff; and also legal counsel to the monitoring team,
11 and that's Will Perry, Your Honor, should all be on the line
12 in the Skype call.

13 THE COURT: Yes, sir, thank you.

14 MR. STANTON: Very briefly, Your Honor, I do just
15 have an update statement and just kind of how we got here.
16 Again, we appreciate the Court and this team getting us
17 together under these challenging times, to say the least.

18 As the Court is aware, back in February, in fact,
19 February the 28th, I shared with the Court a letter of
20 materials, something that was brought to my attention that I
21 was made aware of the previous months and weeks, Your Honor,
22 as it relates to compliance, and the defendants, the City's
23 compliance with the Court's order.

24 And particularly, Your Honor, there was a
25 Sanction 5, there was a concern that I had after receiving

1 submissions from the City, a November of 2019 letter, that I
2 reviewed and that letter was responding to inquiries that I,
3 along with my team, had earlier in the year -- again, this
4 was Summer of 2019 -- in reviewing the responses from the
5 City, Your Honor, had some serious concerns that the City of
6 Memphis had been departing from Sanction 5 of this Court's
7 October 26th and October 29th, 2018 orders.

8 Just for reference, Your Honor, those are ECF
9 numbers 151 and 152. It was the opinion of the Monitor, as
10 well as the Monitor Team, Your Honor, that the City had
11 departed from.

12 Again, Sanction 5 of the order -- I'll just read
13 a pertinent part in the record. Obviously, the Court is very
14 familiar and the parties as well. But the pertinent part of
15 Sanction 5, Your Honor, says that the City shall maintain a
16 list of all search terms entered into social media collators
17 or otherwise used by MPD officers collecting information on
18 social media while on duty. This list shall be filed under
19 seal every three months until the Court orders otherwise.

20 And that's kind of the gravamen, Your Honor, of
21 the concern that we have as, again, the Court's eyes and
22 ears, if you will.

23 And, of course, this Court has made it clear that
24 my role as independent Monitor is to ensure compliance with
25 the Kendrick Consent Decree, and it's a supervised

1 implementation of the Court's sanctions.

2 And so before, I guess jumping to conclusions,
3 Your Honor, again had these concerns when we received this
4 November letter and correspondence from the City, earlier
5 this year, and after we had a chance to review all the
6 materials from the City, we gave the City an opportunity in
7 February of this year, Your Honor, by letter, an opportunity
8 to respond to our concerns that Sanction 5 was not being
9 adhered to, and that there this was departure from the City.

10 The City did respond back on February 14th,
11 responded to my letter and inquiry. And as the Court has
12 clearly outlined the procedure in this case, before bringing
13 this to the Court's attention, we shared -- I shared this
14 information, my concern as well as the City's response, Your
15 Honor, with the plaintiffs in this case, the ACLU of
16 Tennessee, Mr. Castelli and his colleagues. And they had an
17 opportunity to weigh in and share pretty much that they were
18 in agreement with my assessment, that Sanction 5 had not been
19 adhered to as instructed by this Court.

20 And so that is when, Your Honor, we requested a
21 hearing upon this matter. If the Court would like for me --
22 again, I've submitted all the materials. If the Court would
23 like me to go into further detail, I'm happy to do that, but,
24 again, I believe the materials that we submitted have
25 outlined the areas, and particularly the City's response as

1 to not complying with Sanction 5 of the order.

2 And if I may, Your Honor, just briefly, for the
3 record, it's worth noting that the City stated in its
4 November 20th of 2019 letter -- and, again, this is one of
5 the items that we had serious concerns about. The City
6 stated that it has not been including in its required
7 quarterly filings the search terms entered by MPD officers
8 assigned to the Multi-Agency Gang Unit, also know as MGU,
9 Your Honor. And the City also brought -- it came to my
10 attention, Your Honor, it also stated in that same letter of
11 November 20th of 2019, the City also disclosed that it has
12 not been including the social media searches of officers
13 operating undercover accounts in its required quarterly
14 filings as well.

15 And so those items -- again, reviewed those items
16 with the Monitor Team, Your Honor. Gave the City an
17 opportunity to respond. Obviously you've seen that response.
18 The ACLU has seen that response.

19 But acting in the capacity, Your Honor, as
20 Special Master -- and I'll just kind of close with this, Your
21 Honor. You made it clear that not only from the Independent
22 Monitor standpoint, but the authority to serve as Special
23 Master, it is the opinion that if there was a question or
24 issue or a request for modification or an interpretation of
25 Sanction 5, I believe the Court has made it clear that the

1 defendant certainly had the right and opportunity to seek my
2 advice or counsel to get clarification, and possibly even
3 authority, to proceed in a manner that they were requesting.
4 That never came to my attention, Your Honor. And I don't
5 believe it came before the Court's attention that the City,
6 again, in my review of the City's materials, has not been
7 complying completely with Sanction 5 of the Court's orders.

8 That is why we're here today, Your Honor. And,
9 again, I requested a hearing. And the ACLU -- I'll let
10 Mr. Castelli speak for himself, but it's my understanding
11 that they are in agreement, and the same concerns that we've
12 posted and made known to the City as well as to the Court.

13 THE COURT: Mr. Castelli, this is also an
14 opportunity for the ACLU to make an initial statement. I
15 think we will hear some evidence today. I know we will.
16 This is part of the appellate process in terms of review.

17 Anything that you would like to state at this
18 time?

19 MR. CASTELLI: Your Honor, I would just --

20 THE COURT: If you would --

21 MR. CASTELLI: Sorry, Your Honor.

22 THE COURT: No, go right ahead. You're fine. I
23 wanted to make sure you were close to that mic.

24 MR. CASTELLI: Yes, sir. And I'll just be brief.
25 I think that Mr. Stanton captured our position well. We

1 reviewed the documents that the Monitor sent us in February.
2 He asked us to take a while to look at them and then give him
3 our position on the matter. And we agree with the Monitor,
4 that the sanctions order this Court put down in October 2018
5 did compel the City to provide all of those search terms.

6 That it appeared that the City had made some
7 judgment calls on their own about which departments would be
8 providing those terms. And then once the Monitoring Team
9 determined that that was the case, they asked for a
10 correction, and I think that's what brought us here.

11 So the ACLU's position is that the Court's order
12 said what it said and that the City should be complying with
13 it. And I think if it's possible, perhaps even go back in
14 time and try to provide those terms that have been missing,
15 so that the Monitoring Team and the ACLU can have the benefit
16 of looking at those and make sure that the City is complying
17 with the Kendrick Decree and the Court's October order.

18 THE COURT: I'm sorry, go ahead.

19 MR. CASTELLI: That's really -- that's our
20 position at this point. We'll look forward to hearing some
21 evidence and commenting further after the evidence has been
22 presented. Thank you, Your Honor.

23 THE COURT: Okay. Thank you.

24 And now, Mr. Glover, this is an opportunity if
25 you -- we've figured out a couple of things here, so I think

1 I should be able to see you on the screen in just a moment.
2 I'll make a few adjustments here. All I want to do is click
3 on this and that should do it, I think.

4 Is your video off, Mr. Glover? It looks like it
5 might be.

6 MR. GLOVER: I believe -- I'm on Ms. Silk's
7 computer here, so I should be on the screen.

8 THE COURT: I can go to Mr. McMullen.

9 Mr. McMullen, I'm going to try yours and see if I
10 can't unmute your mic and then go to the video.

11 You know, we figured out something, and that is
12 Zoom actually works. But this particular technology seems to
13 have some limitations.

14 MR. GLOVER: Your Honor, if I may. If Your Honor
15 can hear me, this is Mr. Glover, Mr. McMullen is the one who
16 will make the presentation. So if we're trying to get
17 technology to work, it's probably best to get his video on.

18 THE COURT: We are. We were trying to also help
19 out -- we were trying to unmute him, but apparently he needs
20 to do that himself.

21 MR. McMULLEN: Your Honor?

22 THE COURT: There you go.

23 MR. McMULLEN: Can you hear me?

24 THE COURT: I can hear you just fine. We were
25 trying to get your video up, and for some reason it's -- the

1 project was done by the lowest bidder.

2 All right. Mr. McMullen, I've seen you before
3 anyway. I hope everybody's well in your home and that the
4 judge is doing well in the household.

5 MR. McMULLEN: Yes, everybody is doing well under
6 the circumstances.

7 THE COURT: We do miss seeing everybody at the
8 gym. So maybe we'll get back to that in the next couple of
9 months. I was hoping to get your video up, but we're going
10 to go right ahead. Go right ahead, please.

11 MR. McMULLEN: Your Honor, Sanction 5, as
12 Mr. Stanton pointed out, says the City must maintain a list
13 of all search terms entered into social media collators or
14 otherwise used by MPD officers collecting information on
15 social media while on duty.

16 That's the pertinent portion of Sanction 5. Now,
17 on January 14th, 2019, we sent the first set of search terms,
18 we explained the methodology that we were using to come up
19 with the search term in our submission. And we also advised
20 them that every police officer of homeland security, real
21 time crimes center, general investigation unit, homicide, sex
22 crime units, and members of the command staff were the ones
23 that were providing search terms.

24 We also, in that submission, invited comments
25 from the Monitor and the ACLU. The only objections to our

1 submissions had to do with the training modules. It had
2 nothing to do with --

3 COURT REPORTER: Excuse me, Your Honor. I've
4 lost his voice.

5 THE COURT: Mr. McMullen, we just lost your
6 audio, which means somebody probably hit a mute by mistake.

7 MR. McMULLEN: I think I'm back.

8 THE COURT: Yes, yes. Now you are, right.

9 MR. McMULLEN: Okay. Where I think I left off
10 when I heard the announcement on the phone was, we made it
11 abundantly clear what units of the police department we were
12 providing search terms for. And we invited comment to our
13 letter in our submission. We got no objection from the ACLU
14 or the Monitor about what we were presenting at that time.

15 Subsequently, we were asked by the Monitor
16 specifically about MGU's search terms. We advised -- I think
17 we advised the Monitor that the search terms that were not
18 included were the patrol officers' search terms, OCU, MGU,
19 and Internet Crimes Against Children. And those units will
20 not use -- and as we outlined in our brief, those units do
21 not collect information. Those units do not investigate
22 First Amendment activities. Those units do not do security
23 threat, threat assessment investigations, where you have to
24 investigate things before they become a crime. Those units
25 are strictly crime units and they have a nexus, a criminal

1 nexus for any search that they do. And they do not correct
2 or gather searches.

3 I think earlier the Court explained in its order
4 for --

5 (Audio interference.)

6 COURT REPORTER: Excuse me.

7 MR. McMULLEN: The Court explained in its order
8 of contempt that there is an active requirement in the
9 Consent Decree. So when it comes to gathering or collecting
10 information, there is a requirement, an action requirement
11 required.

12 And in this situation, neither of those units
13 collect or gather information on any person exercising their
14 First Amendment right. They have targeted investigations at
15 criminals for crimes that have been committed.

16 Under that interpretation, if -- under that
17 interpretation, it was from that that we felt that those
18 units search terms were not what the Court was asking for.

19 To put that in context --

20 THE COURT: Right. I think -- I can see you now,
21 which is very helpful, so I appreciate that. And I
22 understand the position on that.

23 Let me ask something so I'll understand it. How
24 many additional -- have you accumulated those terms even
25 though they weren't disclosed?

1 MR. McMULLEN: We did not accumulate the terms at
2 the time. But when we -- when the Monitor pointed -- when
3 the Monitor objected to this methodology, we went to MGU and
4 we went through and had them to -- and we went through their
5 search history and was able to compile those search terms
6 from MGU.

7 We have not done that with Internet Crimes
8 Against Children, IK. And we have not done that with OCU.
9 But we have also -- and I think the Monitor will confirm
10 this. We've also tried to make arrangements for the Monitor
11 to come see these terms, come to the MGU unit to see these
12 terms.

13 And the reason we wanted him to come out and look
14 at the terms that were accumulated, because of the
15 sensitivity of what's on those search terms and the
16 inadvertent disclosure -- we realize the Monitor's a
17 professional, the Court is a professional, and the ACLU also,
18 but sometimes when you're transferring very, very sensitive
19 information inadvertent disclosure could cause dire
20 consequences with that. So we set up an opportunity.

21 Unfortunately, during the time we were working
22 out the details, we got hit with this COVID-19 virus and we
23 had to postpone it.

24 THE COURT: All right. And I wasn't trying --
25 anything else that you want -- certainly I'm aware of the

1 position of the City in connection with your interpretation
2 of the order. I'm aware of some of the issues relative to
3 the collection question. So I think we've got that.

4 I know you want to present -- and, I'm sorry, you
5 may have some more to go over. I was not trying to cut you
6 off at all.

7 MR. McMULLEN: No, Your Honor, I think we're --
8 you and I are at the same place. We would like to call
9 Officer Darren Goods to the stand if the Court thinks it will
10 be helpful to explain the sensitivity of the search terms,
11 and MGU to explain what MGU does, and the types of crimes
12 that they go after. And if we think that if that's helpful
13 to the Court, we're prepared to call Major Goods to talk
14 about those things.

15 THE COURT: I think when a witness is made
16 available, and you have information you think that witness
17 should present to the Court, we should hear from Officer
18 Goods. So what we'll do is I'm going to try to switch to
19 his -- we'll come over here and switch to his camera so he
20 can be sworn in. And then have an examination and
21 cross-examination. He's right here. So I'm watching this to
22 make sure that -- I think we're almost there. There we are.

23 All right. I did see you earlier. And so if
24 you'll raise your right hand. Mr. Sample is actually going
25 to swear you in.

1 CASE MANAGER: Sir, do you solemnly affirm or
2 swear that you will tell the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, sir.

5 THEREUPON,

6 MAJOR DARREN GOODS,
7 having been produced and first duly sworn, was examined and
8 testified as follows.

9 COURT REPORTER: Excuse me, Judge?

10 THE COURT: Can my court reporter hear okay?

11 COURT REPORTER: Yes, sir.

12 (Off-the-record discussion.)

13 THE COURT: All right. Mr. McMullen -- we're
14 going to let you stay right here so we're able to handle
15 this.

16 Mr. McMullen, you may proceed, and we'll get some
17 background information on our officer and testimony.

18 DIRECT EXAMINATION

19 BY MR. McMULLEN:

20 Q. Major Goods, could you please introduce yourself to
21 the Court.

22 A. Good morning, Your Honor. My name is Darren Goods.
23 D-A-R-R-E-N. Last name Goods, G-O-O-D-S. And I am a
24 34-plus-year employee with the Memphis Police Department.
25 Currently, I serve as a major with the Memphis Police

1 Department. And I am the operations commander for the
2 Multi-Agency Gang Unit.

3 Q. Major Goods, what does your unit investigate? Tell
4 the Court what the major Multi-Agency Gang Unit investigates
5 and who's involved with those investigations.

6 A. Yes, sir. We investigate criminal activity involving
7 violent street gangs in Shelby County. That's our primary
8 area, but we actually work with any law enforcement agency
9 that needs assistance from us. Or if we need assistance from
10 them, we have pretty good working relationships with outside
11 agencies.

12 Primarily the Multi-Agency Gang Unit is made up of
13 officers from the Memphis Police Department, Shelby County
14 Sheriff's deputies, and agents from the Alcohol, Tobacco &
15 Firearms. However, our executive board consists of
16 department heads from the six majority law enforcement
17 agencies in Shelby County, which includes the Memphis Police
18 Department, which is Director Rallings; Shelby County
19 Sheriff's Office, which is Sheriff Bonner; the Shelby County
20 District Attorney General's Office, which is General Amy
21 Weirich; United States Attorneys Office for the Western
22 District of Tennessee, which is Michael Dunavant; the
23 Alcohol, Tobacco & Firearms, and they fall under the
24 Nashville office, which is Marcus Watson; and the FBI for the
25 Western District of Tennessee, their special agent in charge

1 is Mr. Myers.

2 Those are the primary agencies that make up the
3 Multi-Agency Gang Unit; however, but there's probably not a
4 law enforcement agency in this region that we don't or have
5 not worked fairly closely with, including all the
6 municipalities in Shelby County as well as North Mississippi,
7 and Eastern Arkansas.

8 Q. Are you familiar with the Consent Decree?

9 A. Yes, sir.

10 Q. Would you tell the Court your understanding of its
11 prohibitions and what you all do to not violate those
12 prohibitions.

13 A. Yes, sir. Primarily, I guess the Reader's Digest
14 version, we're just simply not allowed to perform any kind of
15 surveillance, whether it be electronic surveillance, physical
16 surveillance of any type that involves anyone or any agency
17 that is involved in any kind of political activism.

18 We do handle all kinds of complaints, but our mostly
19 our complaints have a gang nexus, and it has a criminal nexus
20 to it as well.

21 In the event we get a complaint that involves any
22 individuals that we know of or that during course of the
23 investigation find out are involved in some of these groups,
24 then there are protocols -- there certainly are protocols in
25 place within the Memphis Police Department that we send that

1 information through our chain of command up to Director
2 Rallings, and then he determines whether or not that
3 investigation will continue.

4 Q. Does your unit, does that conduct investigations on
5 First Amendment activity?

6 A. No, sir.

7 Q. And you investigate crimes that have occurred; is that
8 correct?

9 A. Yes, sir.

10 Q. And I think you said before any -- any investigative
11 activity you all do, it has a criminal nexus; is that
12 correct?

13 A. Yes, sir.

14 Q. All right. Does your unit as a routine -- as a
15 routine collect social media terms?

16 A. Do we collect social media terms? Are you asking -- I
17 guess --

18 Q. I'm sorry.

19 THE COURT: I think the question -- probably the
20 best question is, do you do that?

21 THE WITNESS: Yes, sir, we do do social media
22 investigation where we -- if we are actively working an
23 investigation, a criminal investigation of Gang X, so to
24 speak, then we want to see what kind of -- what conversations
25 or what's out there in social media.

1 We're aware that a lot of the gangs use social
2 media to communicate with one another. And, you know, they
3 talk about their crimes on social media.

4 BY MR. McMULLEN:

5 Q. Does your unit collect the social media search terms
6 that you get, as a routine?

7 A. I want to make sure I understand the question by the
8 words you're using, collect.

9 Do we collect and save search terms in the instance
10 where there's some kind of social media search collator? No,
11 we do not. But if we are investigating Darren Goods that's
12 involved in some kind of gang activity or some kind of
13 criminal activity, then we will certainly search Darren
14 Goods' name to see if there is anything in social media that
15 he may be, you know, posting the selling of contraband or
16 anything along those terms.

17 So the searches, yes. I'm not completely
18 understanding the word collect. But if it's collect in the
19 sense of using social media collators to just randomly, you
20 know, search for terms and that sort of thing? No. All of
21 our searches are done by individual investigators. And they
22 conduct those searches themselves.

23 Q. Okay. When you say they're done by the individual
24 investigators, is that person signing in Facebook, or
25 whatever platform that they use? Is that what you're talking

1 about?

2 A. Yes, sir. Whatever social media platform that they
3 use at the time, yes.

4 Q. Okay. Now, the City Attorney -- you're aware that the
5 City Attorney asked y'all to try to recreate your searches
6 through your search history; is that correct?

7 A. Yes, sir.

8 Q. And since then, you all have been compiling whatever
9 search terms the individual officers were using?

10 A. Yes, sir.

11 Q. How sensitive are those search terms?

12 A. They're very sensitive. And let me say one thing
13 before I get into that question.

14 The Multi-Agency Gang Unit is a part of the Organized
15 Crime Bureau, so we are under the umbrella of OCU. We do a
16 lot of the same type of investigation that they do. The
17 biggest difference is ours involve a level of violence, where
18 OCU, you know, maybe not. They don't conduct the type of
19 violent investigation that we do. Some cases they will.
20 But, primarily, we're looking at violent gangs and violent
21 gang members and the crimes that they're committing.

22 We do have officers in situations where we work in a
23 covert capacity. We use sources, just like Organized Crime
24 does. And if some of those sources were out and some of
25 those officers' identities were revealed, I mean, that could

1 be catastrophic not only to the officers, but also to the
2 sources as well as to some of the very sensitive
3 investigation that they're involved in.

4 Q. Okay. Without telling us exactly the details of the
5 case, have you had sensitive documents to be revealed by an
6 administrative person not affiliated with the police
7 department that has jeopardized the case of safety for
8 officers before?

9 A. Yes, sir.

10 MR. McMULLEN: Those are all the questions, Your
11 Honor. And I phrased the last question a little more cryptic
12 because it does involve something that's ongoing and I didn't
13 want to get into the details. But the point of it was the
14 sensitivity of documents in search terms if they're
15 inadvertently disclosed.

16 Those are all my questions, Your Honor.

17 THE COURT: All right. Let's go back to
18 Mr. Castelli. Any questions?

19 MR. CASTELLI: Yes, Your Honor, a couple of
20 questions.

21 CROSS-EXAMINATION

22 BY MR. CASTELLI:

23 Q. Is it Major Goods? Am I getting your rank correct,
24 sir?

25 A. Yes, sir, that's fine. But my mama calls me Darren,

1 so it doesn't matter.

2 Q. Just a couple of questions. Does the Multi-Agency
3 Gang Unit work with other departments within the City --
4 within the police department?

5 A. Yes, sir, we do.

6 Q. Okay. And would that be if maybe another department,
7 another agency needed some additional manpower, they may
8 borrow people assigned to the gang unit?

9 A. Yes, sir.

10 Q. Does the gang unit help other departments with their
11 investigations into criminal cases?

12 A. Yes, sir. If there's a gang nexus, yes, sir.

13 Q. All right. So would there be times where the unit --
14 the gang unit might aid in an investigation that does not
15 have a gang nexus?

16 A. Yes, sir, it's possible. If we get a bureau that is
17 short on manpower -- I'll give you an example. Sex Crime
18 Bureau was working a serial rapist and they needed just some
19 bodies for surveillance and we provided those bodies. And we
20 were able to assist in identifying and arresting that subject
21 and taking him into custody. He was a serial rapist.

22 Q. Thank you.

23 And then a couple other questions about the testimony
24 you just gave.

25 I think you testified that you have compiled the list

1 of search terms at the request of the City's attorneys; is
2 that correct?

3 A. Yes, sir.

4 Q. Okay. When did you start compiling those search
5 terms? I guess -- let me rephrase that.

6 How far back do those search terms go?

7 A. The search terms that we've compiled go back to, I
8 think, the summer of last year -- no, I'm sorry. It goes
9 back to January of -- I want to say 2019.

10 Whenever the City was to start reporting those search
11 terms, we've actually gone back to that particular date.

12 Q. Okay. So you were able, through -- being able to look
13 through the search history of the different social media
14 platforms that were used to recreate what terms had been used
15 in the past?

16 A. Yes, sir.

17 Q. Okay. And was that done for every officer assigned to
18 the gang unit?

19 A. It was done for the officers that actually used the
20 social media platforms to do their investigations.

21 Q. Okay. Do you know whether that was also done for the
22 Organized Crime Unit?

23 A. I have no idea.

24 MR. CASTELLI: Okay. I think those are my
25 questions, Your Honor.

1 THE COURT: Certainly. Are there -- is there any
2 question that the Monitor would like to ask? I know you
3 don't have to, but you certainly can if you would like.

4 MR. STANTON: No questions, Your Honor. I would
5 like to make, I guess, a comment, though; and that is to
6 acknowledge the fact that Major Goods -- the City, as
7 Mr. McMullen has mentioned, offered Major Goods to meet with
8 myself and the Monitoring Team. And he was very insightful
9 as to interoperational framework of the MGU.

10 Obviously, I have -- or maybe not so obvious, but
11 just for the record, but I have a strong familiarity of the
12 MGU during my tenure as the United States Attorney, Your
13 Honor. And I worked closely with Major Goods and he was
14 always someone that was reliable and had a stellar career
15 throughout his tenure.

16 So I just wanted to note that Major Goods was
17 very insightful. Took quite a bit of time, again via Zoom,
18 in the conference call with our time. So no
19 cross-examination here, Your Honor.

20 Again, Sanction 5 speaks for itself, and that was
21 instituted in 2018. But with regard to Major Goods making
22 himself available and explaining and answering a number of
23 questions from the Monitoring Team, found him to be very
24 resourceful and insightful.

25 THE COURT: Thank you. Thank you.

1 Mr. McMullen, redirect for Major Goods?

2 MR. McMULLEN: Yes, just a question or two, Your
3 Honor.

4 REDIRECT EXAMINATION

5 BY MR. McMULLEN:

6 Q. Major Goods, can you hear me?

7 A. Yes, sir.

8 Q. Okay. When you said the City Attorney went back
9 through the search history, the compilation, the compiling of
10 that, was done on hard copy; is that correct?

11 A. Yes, sir.

12 Q. And those hard copy documents are there at MGU; is
13 that correct?

14 A. You broke up, but I think your question was are the
15 hard copies in my possession? Yes, sir, they are. We do
16 have them.

17 Q. And other than going back and doing a search history,
18 you all didn't collect or compile those searches as a routine
19 before the City Attorney asked you to do it.

20 A. No, sir, we did not.

21 MR. McMULLEN: No further questions, Your Honor.

22 THE COURT: All right. Anything else then that
23 we need from Major Goods at this time?

24 Major, I don't think we have a little background
25 that would be useful as to your unit, and I don't want to ask

1 anything that's problematic, I wouldn't know necessarily.

2 How large is the unit that you direct?

3 THE WITNESS: Your Honor, we have 27 MPD
4 officers. That includes myself and a civilian employee. We
5 also just hired an analyst for our gun unit, which is a part
6 of the gang unit. And we have 20 -- now have 23 Shelby
7 County Sheriff deputies that are assigned. Nine special
8 agents with the ATF, which includes one supervisor.

9 Those are the bodies that are in seat every day,
10 that show up every day here physically to the MGU operations
11 center. But we also have two part-time agents with the
12 Tennessee National Guard. We also have resources with the
13 Tennessee Department of Corrections as well.

14 THE COURT: Okay. Department of Corrections
15 personnel, is that another two or three people? I just --
16 about how many?

17 THE WITNESS: Two. I'm sorry. Two.

18 THE COURT: Two, okay.

19 THE WITNESS: Yes, sir. They are not here every
20 day. It's just an as-needed basis. It gives us a point of
21 contact instead making four or five phone calls, just maybe
22 two phone calls to kind of get the liaison with the Tennessee
23 Department of Corrections.

24 THE COURT: Sure. Absolutely. And is it fair
25 to -- to understand that search terms would be transmitted

1 from one officer to another? I don't know.

2 THE WITNESS: That is possible. You know, it's
3 very possible that, you know, we get and receive -- we
4 receive and provide search terms to other agencies. And,
5 primarily, those are going to be the agencies that are here,
6 Shelby County, of course, as well as ATF. Those are the two
7 primary.

8 The Memphis Police Department, the Shelby County
9 Sheriff's Department, and the ATF are the three primary law
10 enforcement agencies that are basically in the building at
11 this day. And it's very common to kind of share information
12 intelligence amongst those agencies.

13 THE COURT: In the process of conducting the
14 searches, does the person conducting the search download
15 information from the search periodically?

16 THE WITNESS: Yes, sir, that is very possible.
17 Some of the information that we glean from the searches we
18 actually use in the actual investigation. And sometimes we
19 use it as probable cause.

20 THE COURT: And I'm curious about whether it is
21 stored typically electronically or if some of it is stored in
22 hard copy?

23 THE WITNESS: That's going to depend on the
24 investigation, Your Honor, to be quite honest with you. If
25 it's just something that the officers are just reviewing for

1 their investigation, there's no need to store that anywhere
2 for either probable cause for an arrest, a search warrant, or
3 to be used in any kind of court proceedings, then there's no
4 need to save that data.

5 However, if the information gleaned from those
6 searches kind of fall into those categories, then quite
7 naturally we will have to store that to preserve that to be
8 later used in the court proceedings.

9 THE COURT: Right. I wanted to -- I'm going to
10 pass this back to Mr. McMullen and then, of course, to
11 Mr. Castelli. Because until we understand the mechanism it's
12 a little hard to understand what's being done.

13 Mr. McMullen, you may want to clarify some of
14 that. I just wanted to make sure I understood just a little
15 better picture of everything that's occurring. And have that
16 from a person who is in a position, really, to know
17 everything personally.

18 So it's very helpful, Major Goods, and I
19 appreciate you answering those questions.

20 Mr. McMullen, any follow-up? It's not necessary,
21 but if you wish to, you're certainly welcome to.

22 MR. McMULLEN: Yes, Your Honor. Kind of based on
23 your point, I don't think it's coming across exactly as clear
24 as I understand it, so I want to ask some questions to kind
25 of follow up.

1 THE COURT: Sure.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. McMULLEN:

4 Q. Now, there was a mention of undercover accounts. Can
5 you explain what that would be in OCU.

6 A. Well, I can speak for MGU. I can't speak for --

7 Q. I'm sorry, I misspoke. I meant MGU.

8 A. Yes, sir. We do have officers that have what we call
9 UC accounts. It's pretty much accounts that they've created.
10 They've taken on a persona of another name or street name or
11 moniker, and they use those accounts to conduct these
12 searches -- to conduct the search terms.

13 And the reason why is because, first of all, they
14 don't want -- they're trying to maintain their own personal
15 safety and integrity. Because they don't want to be
16 searching Trulla Mafia or -- which is one of the most violent
17 gangs we're dealing with now. And then have a Trulla Mafia
18 member find out that, hey, Darren Goods has been searching
19 for me. And then it's a matter of just simply, you know,
20 Googling Darren Goods and you can find, you know, my social
21 media page and all my friends and families and that kind of
22 exposes my friends and families to some type of retaliatory
23 attacks and that sort of thing.

24 So that's the primary reason why they use what we call
25 the UC accounts, undercover accounts, to actually run those

1 searches when they're involved in their respective
2 investigations.

3 Q. And these are not accounts tied to the police
4 department. This is the individual officer's choice to have
5 an additional Facebook account?

6 A. Yes, sir.

7 THE COURT: Well, let's clarify that. Is that
8 account used for official business? I mean, is it part of
9 the investigation?

10 THE WITNESS: Yes, sir, they are used for -- as a
11 part of the -- on whatever investigation the officer is
12 conducting, yes, sir.

13 THE COURT: Sure. Who pays for the -- who pays
14 for the account?

15 THE WITNESS: Those accounts are free.
16 Facebook -- most social media accounts are. There are no
17 fees associated with social media accounts.

18 THE COURT: Sure. I'm sorry, go ahead. It's
19 helpful to hear.

20 MR. McMULLEN: Your Honor, if I could have a
21 little latitude to kind of lead on my questions, because
22 there's a lot of -- it's kind of a nuance type of thing.

23 THE COURT: That's the reason usually we don't
24 allow leading.

25 You know, if there's no objection -- if there's a

1 problem, somebody will point that out. So go right ahead.

2 But, Officer Goods -- or Major Goods, if he gets
3 it wrong now, you don't have to agree with him. Okay?

4 THE WITNESS: Yes, sir. Thank you.

5 THE COURT: All right. Go right ahead.

6 BY MR. McMULLEN:

7 Q. These are not -- the accounts -- I want you to explain
8 whose choice is it to have additional Facebook accounts. Is
9 that the police department or the officers' own choice?
10 Explain that.

11 A. The accounts are squarely and solely with the
12 individual officer, if he or she wants to create that
13 account, if they feel that there is a need to. If they're
14 doing those type of investigations and if there is a need to
15 create an imposter social media account persona to kind of
16 aid in their investigation, it falls squarely on the
17 individual investigator.

18 Q. And who has access to the sign-in code and all of that
19 for those -- any account that an officer might create?

20 A. The individual investigator maintains the passwords
21 and logins.

22 Q. And so it's not passed around, like one account
23 someone uses over and over, it's just that officer decides to
24 have a second Facebook account and logs in and creates it?

25 A. That is correct.

1 Q. All right. Like you, as head of the MGU, could you
2 grab -- just get one of your officers -- well, you don't need
3 his phone to do it.

4 Could you just log in -- do you have the ability to
5 just log in to their Facebook account and see what they've
6 searched or done?

7 A. No, sir.

8 Q. And so it is not -- the second account that some
9 officers have to hide their persona, is not an account on the
10 MPD server?

11 A. It's not an account that is, quote/unquote, on the
12 server. But in order to access the account you have to
13 use -- they're using some MPD or City of Memphis equipment,
14 whether it be a desktop or a PDA or cell phone.

15 Q. But if it's a Facebook account, as I understand it,
16 they could also access it from my house, if I've got Wi-Fi.

17 A. Absolutely. Yes, sir.

18 Q. Okay. So it's nothing unique about MPD's equipment
19 that allows them to access the account.

20 A. No, sir, not at all.

21 Q. And do y'all have any social media collators at MGU?

22 A. No, sir.

23 MR. McMULLEN: I think those are all my
24 questions.

25 THE COURT: Mr. Castelli, any follow up?

1 MR. CASTELLI: No, Your Honor, I don't think I
2 have any other questions. Thank you.

3 THE COURT: I certainly am going to ask
4 Mr. Stanton if there's something we need to go into.
5 Anything else from the Special Master?

6 MR. STANTON: No, Your Honor.

7 THE COURT: Major Goods, very good to see you.
8 Apparently we can only see a certain number of people at one
9 time, so you couldn't see me, but that's perfectly okay.

10 Good luck with you and we appreciate what you're
11 doing. So we're going to let you sign off. Thank you so
12 much.

13 THE WITNESS: Thank you, Your Honor. And you
14 guys have a blessed day.

15 THE COURT: Thank you.

16 Let's go back to Mr. McMullen. Will there be
17 additional witnesses for the City of Memphis on the issues
18 before the Court?

19 MR. McMULLEN: No, Your Honor, that's our only
20 witness.

21 THE COURT: All right. Mr. Castelli, let's go to
22 you. And are there any individuals or witnesses you would
23 like to call for testimony in this matter?

24 MR. CASTELLI: No, Your Honor, no witnesses.

25 THE COURT: All right. Mr. Stanton, we have a

1 whole group of qualified individuals who might be able to
2 provide information here, and this is the opportunity for
3 them to present information, or you to present information
4 that would be of assistance to the Court.

5 Do we need to take a break for you to confer with
6 your support team? I've often heard from several of them on
7 occasion. Certainly, Mr. McGriff is someone we've heard
8 from, Mr. Bolden, and our professor.

9 Do we need to take a ten-minute break and then
10 come back, or what's the best way to handle that?

11 MR. STANTON: Your Honor, I think that's an
12 excellent idea. If you'll indulge us just for maybe ten
13 minutes just to ensure from the Monitor Team's end. I think
14 we are -- I don't think there's much, but, Your Honor, I want
15 to make sure that I don't leave anything out that the Monitor
16 Team may have a question or point to make.

17 So if you would indulge us for ten minutes, that
18 will be plenty enough time, Your Honor, for us to loop back
19 in.

20 THE COURT: That's fine. We certainly want to
21 complete the record at this time. I'm going to sign off and
22 I will rejoin in ten minutes. And if you need to consult by
23 phone or other secured method, then that's certainly fine.

24 Mr. Sample, we'll be in a ten-minute recess.

25 CASE MANAGER: Thank you, Your Honor. We stand

1 in recess.

2 THE COURT: Thank you.

3 (Recessed at 11:11 a.m. and resumed at 11:35 a.m.)

4 THE COURT: Gentlemen, we switched out computers
5 so we get a little bit better screen there.

6 And, Mr. Stanton, did you have anyone who you
7 wished to allow to provide testimony for the Court?

8 MR. STANTON: Thank you, Your Honor.

9 No, we had a chance to convene, the Monitoring
10 Team. And, again, we'll stand on the documents and the
11 submissions we provided to the Court. We believe that there
12 is certainly a departure in violation of the plain and
13 unambiguous language of Sanction 5.

14 The appropriate remedy, if there was any
15 question, Your Honor, or concerns or even a carve-out
16 exception that that should have been addressed and confirmed
17 by the Court; or at a minimum, directed to myself as the
18 Special Master as the Court has outlined.

19 And I guess the final concern there, Your Honor,
20 is we sent an inquiry in August of 2019 of these items, and
21 it was late into the year, November, that we actually got a
22 response and was -- confirmed our concerns that Sanction 5,
23 in our opinion, was not being adhered to per the plain
24 language of the Court's order.

25 But nothing further from the Monitor Team, Your

1 Honor.

2 THE COURT: All right. I am going to ask, just
3 because we've come back and everybody's had a chance to
4 review where they were.

5 Mr. Castelli, anything else? This is our last
6 opportunity, essentially, for a closing statement from the
7 ACLU. And so anything else you would like to present or
8 anything else you would like to say, either way?

9 MR. CASTELLI: Yes, Your Honor, just, I guess, a
10 brief closing statement from the ACLU.

11 We agree with the Monitor's assessment that the
12 clear language of the sanction requires that all officers
13 provide these search terms.

14 And I think our concern, really, here is we heard
15 from testimony today that there's about 27 Memphis Police
16 officers that have not been tasked with keeping track of
17 their search terms, and those terms have not been made
18 available to the Monitor. And that the testimony that we
19 heard from Major Goods that often -- or at least on occasion,
20 the gang unit will work with other departments on their
21 investigations. So there's an opportunity there for the
22 departments that were under the scrutiny to use the gang
23 unit. I'm not saying that it happened, but that opportunity
24 is there, that there'd be a blind spot where these search
25 terms were not being monitored by the Court-Appointed

1 Monitor. So those are our concerns with exempting the gang
2 unit.

3 Kind of outside of the fact is the -- as the
4 Monitor stated, that, really, I think, if there needed to be
5 an exemption, then that should have been brought to the
6 Monitor's attention and gone through this process a lot
7 sooner.

8 And then certainly I -- just briefly, I think the
9 City has some concerns about the sensitivity of the
10 information, particularly from the gang unit. And I don't
11 doubt that this is sensitive information. But I do think
12 that the Court could fashion --

13 Well, first of all, the terms are being filed
14 under seal with the Court, so they are not publicly
15 available. The third is that there could be some remedy to
16 address those confidentiality concerns, but still allow the
17 Monitor to do the compliance work that the Monitor's been
18 tasked to do by this Court.

19 And, finally, I think we've heard from the gang
20 unit. But my understanding, from the documents that the
21 Monitor has submitted in this case, that it's not just the
22 gang unit, that there are other departments that have not
23 been tasked with compiling these search terms.

24 I believe the Organized Crime Unit may be another
25 department that hasn't been tasked with it, as well as, I

1 believe, certain patrol officers and maybe a sex crime unit
2 were mentioned. So that is of concern as well, that there
3 may be multiple blind spots where the Monitor is not seeing
4 the full picture of the social media search terms or searches
5 that are being conducted by the police department.

6 So that's the ACLU's position on this matter,
7 Your Honor, and we have nothing further.

8 THE COURT: I had one question for you, and that
9 is, what is the ACLU's response to the argument of the City
10 that it would be unduly burdensome to require rank and
11 file -- all rank and file and PD officers to file social
12 media search terms? Do you have a response to that?

13 MR. CASTELLI: Well, I guess my response is I
14 don't really know -- we haven't really heard evidence that
15 that's the case. It may be the case, but I think we need to
16 maybe explore that. I mean, I don't know how often these
17 officers are really using social media to conduct searches
18 and what legitimate reasons they may have. And I certainly
19 don't want to be -- for the Court or anyone else to be
20 reviewing an officer's personal searches on their personal
21 time, that's not what we're talking about.

22 But it might be helpful if the City and the
23 Monitor and the parties to get together and say, well, what
24 is the burden to have these rank and file officers submit the
25 terms. And if there is a major burden, then we can bring

1 that to the Court and say, you know, there may need to be an
2 exception here.

3 But as for the evidence today, there hasn't been
4 any evidence other than an assertion that there is a burden.

5 THE COURT: All right. And then, of course, we
6 have Mr. McMullen. And this is the -- you get the last word
7 today on this.

8 Anything else, Mr. McMullen, for a closing
9 statement?

10 MR. McMULLEN: Thank you, Your Honor. Can
11 everybody hear me?

12 THE COURT: Yes. And you can see we've improved
13 the quality of what we're doing. So I appreciate everybody
14 letting us work on that.

15 MR. McMULLEN: Absolutely. I would like to first
16 of all say that it is not the clear language of the Consent
17 Decree, but it is the clear language of the Court's order
18 that the City must maintain a list of all social terms
19 entered into social media collators -- there are no social
20 media collators at MGU -- or otherwise by MPD officers
21 collecting information. MPD -- MGU does not collect
22 information.

23 Now, they were able to voluntarily -- they were
24 able to go back and provide search histories, but those are
25 histories provided by those officers on their individual

1 accounts.

2 I think one thing that has gotten lost into this,
3 Facebook says the average person has about four different
4 Facebook accounts. Some have them for their dog, some have
5 them for other things, but they have multiple accounts.

6 Some officers have multiple Facebook accounts
7 that have different personas. They are not accounts
8 sponsored by MPD. They're not accounts controlled by MPD,
9 nor does Memphis Police Department have the ability to go
10 into those accounts. They are separate accounts that those
11 officers choose themselves, and they are not mandated to do
12 it, nor asked to do it, that they choose themselves and they
13 use to do searches so that they are not identified as a
14 police officer.

15 So production of any of that would be voluntary,
16 in which they have voluntarily let us look at their search
17 history. They provided their search history printout,
18 provided to us and we provided that to MPD.

19 There was a reference to MGU assisting -- and I
20 do want to point out the history of this.

21 We laid out, on January 14th, our methodology of
22 how we were going to get the social media terms to provide to
23 the Court. There was no -- and we laid out specifically what
24 units we were going to provide those from.

25 We got no objection from the ACLU. We got no

1 objection from the Monitor's team about what we were going to
2 be providing. It wasn't a matter of that the MPD wanted to
3 hide some use of -- hide some unit, we were very specific
4 with what we provided.

5 And our interpretation was we were providing
6 units that were collecting information. And units that more
7 than likely would be doing investigations that involve First
8 Amendment protected rights.

9 These units, the IK, the Internet Crimes Against
10 Children, MGU, Multi-Agency Gang Unit, OCU, all of these are
11 units that operate once a crime is committed. They don't do
12 threat assessments. They don't do any of these things.

13 We have submitted -- and I would like to say the
14 City of Memphis has submitted thousands of terms. We made
15 six submissions with thousands of terms. And at no time has
16 there been any objection to any search terms we've used in
17 that time. The ACLU has been provided those search terms.

18 And so, overall, we feel that the City was
19 compliant with the Court's order. There may be a difference
20 in interpretation of what the Court was saying, and the City
21 accepts the fact that the Court may have a different
22 interpretation than they had. The City understands that.
23 But the City was no way willfully violating the Court's
24 order, or any parts of the Consent Decree.

25 And I think what's very important with respect to

1 the patrol officers, those would be searches that they would
2 do just -- again, when they're pursuing an investigation for
3 a crime, those would also be voluntary. We looked at several
4 ways. The only way we could get that from them is voluntary.
5 There's no way that we could download each of their
6 individual devices for their Google search, and if they
7 had -- if they log into some social media account, Facebook,
8 TikTok, whatever they use personally and look, all of that
9 would have to be voluntary for them to say that, okay, I
10 logged into my Facebook and looked up this business to see
11 what they really do or how they advertised. All of that
12 would have to be voluntary.

13 We have 2,100 officers. And, admittedly, all of
14 them are not patrol officers, but a large part of them are
15 patrol officers. That would be overly burdensome for them to
16 provide that information on any and all searches they do in
17 their regular course of business.

18 So, in closing, the City would like the Court to
19 know that the City in no way ignored the Court's order or
20 felt that it deviated from the order. The City's
21 interpretation of the order was that we would provide those
22 units that collected information. We were very transparent
23 and upfront in our submission. We told specifically what
24 units we were providing information from, and we got no
25 objection until recently, by the Monitor.

1 And that's all we have to say, Your Honor.

2 THE COURT: Certainly. I appreciate that. What
3 I'm going to do is I'm going to allow -- we have very
4 sufficient materials submitted in the case. There's really
5 not a need for much, if anything, more. However, we did
6 receive some additional information today. Because a party
7 may wish to point out -- and I think all of you have -- some
8 of that, as we reach a final resolution of how this should be
9 concluded, I'm going to allow each of you, within the next
10 seven days, to submit a memo of ten pages or less, if you
11 wish to do so, which only relates to the information that we
12 received today, and the final arguments that were made. If
13 ten pages is too little, you can tell me, but we have a lot
14 of materials submitted. And, really, that's for the purpose
15 of addressing what was presented today.

16 Now, you don't have to submit it. But we'll say
17 that within seven days, which would be by the 21st, at end of
18 the day, we would receive anything. We also -- we probably
19 will get a transcript of a portion of this to make sure that
20 we have the exact testimony.

21 I want to thank everybody for participating by
22 Skype today. There were some technical issues, and I think
23 we all found out what they were, some of them. We actually
24 changed the hardware issue here, which has improved what
25 we're doing. But we think we're going to be doing this for a

1 while.

2 I'll also tell you a couple of things about when
3 we do reopen for in-person appearances. That may be a little
4 while -- it will be a little while longer for sure. I want
5 to let everybody know that there are going to be some
6 requirements. But in the public areas, in all likelihood,
7 everyone will need to wear a mask. That's just to protect
8 everyone.

9 Just letting you know, so that -- as we talked
10 with some counsel the other day, you won't be caught by
11 surprise. And just be sure you watch the website for the
12 court with what you will need to do when you're coming in the
13 building. There may be some temperature checks and other
14 things. The objective is to keep everyone safe.

15 I also would like comments, from anyone who would
16 like to, about ways in which we can improve this Skype
17 process. I know we have some individuals who have been on
18 this -- in this process, who were watching the proceedings,
19 and you're certainly welcome to submit comments, either to
20 the Court, if it's about technique or technology. Or if you
21 wish to submit them to the Monitor, please go ahead and very
22 promptly do that so that we'll have the benefit of how we can
23 do this better.

24 But for all of you, Mr. Sample, I think that that
25 is everything that we have to do. That will be a seven-day

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C E R T I F I C A T E

I, CATHERINE J. PHILLIPS, Fellow of the Academy of Professional Reporters, Registered Merit Reporter, Certified Manager of Reporting Services, Florida Professional Reporter, do hereby certify that the foregoing 53 pages are, to the best of my knowledge, skill, and abilities, a true and accurate transcript from my stenotype notes of the Skype Video Hearing on the 14th day of May, 2020, in the matter of:

ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER, AND BRADLEY WATKINS,

and

ACLU OF TENNESSEE, INC.

vs.

THE CITY OF MEMPHIS

Dated this 18th day of May, 2020.

S/ CATHERINE J. PHILLIPS, FAPR, RMR, CMRS, FPR
Official Court Reporter
United States District Court
Western District of Tennessee