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

ACLU of Tennessee, Inc.,

Plaintiff,

vs.

NO. 2:17-cv-02120

City of Memphis, Tennessee,

Defendant.

TRANSCRIPT OF PROCEEDINGS
NON-JURY TRIAL
VOLUME III

BEFORE THE HONORABLE JON P. MCCALLA, JUDGE

TUESDAY

21ST OF AUGUST, 2018

LISA J. MAYO, CRR, RMR
OFFICIAL REPORTER
FOURTH FLOOR FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

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TUESDAY

August 21, 2018

The trial of this case resumed on this date, Tuesday, the 21st day of August, 2018, at 8:38 a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: All right. We're ready to proceed. And where is our witness? Where is our witness? Where is our witness? If he's not here, then we'll just strike his testimony and go to the next witness.

MR. WELLFORD: Ms. Tilton I think stepped outside to get him.

THE COURT: Is there any other witness here present ready to proceed? He's maybe in the jury room -- the witness room. Want to go get him? We'll find him. We lost our witness, but we won't do that again. I think everybody knows we're going to be a lot more brisk today. We tried to focus the hearing yesterday so that we didn't talk about irrelevant material with things that were not important in the disposition of the case. So now, we should stay focused and move through it promptly.

Okay. Our witness is late today. So come on up. They didn't tell you, did they? Come on in here. They

1 didn't tell to you do that.

2 **MR. WELLFORD:** I think he was here, Judge. He
3 was waiting to be called.

4 **THE COURT:** You can always -- we're always glad
5 to have you here. Get comfortable. We're ready to go.
6 All right. Yes, ma'am. And I will watch your time today,
7 and you will need to conclude before 9:30. If you're not
8 concluded at 9:30, I will tell you, thank you very much,
9 and you will be concluded. So I know you're going to
10 finish, right?

11 **MS. FLOYD:** Yes, Your Honor.

12 **THE COURT:** You worked on it yesterday.
13 Apparently we need to follow some restrictions on time just
14 to make sure we get it all done.

15 **MS. FLOYD:** Yes, Your Honor.

16 **THE COURT:** No problem. I think we're going to
17 be fine.

18 **MS. FLOYD:** Yes, Your Honor.

19 **THE COURT:** Ready to go.
20
21
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25

DIRECT EXAMINATION OF T. REYNOLDS

249

1 * * *

2
3 **SERGEANT TIM REYNOLDS,**

4 **was called as a witness and having first been duly sworn**
5 **testified as follows:**

6 **DIRECT EXAMINATION**

7 **BY MS. FLOYD:**

8 Q. Good morning, Sergeant Reynolds.

9 A. Good morning.

10 Q. All right.

11 **MS. FLOYD:** My next exhibit is an e-mail from
12 Reynolds on 7-30-2016.

13 **THE COURT:** Marked and received as 68, and we're
14 going to try to do those markings just as fast as we can.

15 **MR. WELLFORD:** May I ask, Your Honor, yesterday,
16 I'm not -- I think the witness didn't have an extra copy up
17 there with him after it was marked. Can I ask that he have
18 a copy even when she shows him?

19 **THE COURT:** It's not necessary. I appreciate
20 that. Thank you.

21 (WHEREUPON, the above-mentioned document was
22 marked as Exhibit Number 68.)

23 **BY MS. FLOYD:**

24 Q. Is this an e-mail that you sent?

25 A. Yes, ma'am.

DIRECT EXAMINATION OF T. REYNOLDS

250

1 Q. All right. And what is this e-mail discussing?

2 A. Mary Stewart's Facebook page.

3 Q. And who is Mary Stewart?

4 A. Darrius Stewart's mother.

5 Q. And who is Darrius Stewart?

6 A. He was killed by -- in an officer-involved shooting
7 with Connor Schilling.

8 Q. Okay. And what was happening on Mary Stewart's
9 Facebook page that you shared with Lieutenant Chandler and
10 Major Bass?

11 A. She's posting a video and trying to imply that it is
12 dash camera video from Officer Schilling's marked unit, but
13 it was a witness video that was circulating and showed two
14 individuals fighting, and it wasn't really clear who it
15 was.

16 Q. And is this the type of information that Homeland
17 Security was looking for on Mary Stewart's Facebook page?

18 A. This type of information usually got people excited,
19 and then we were having another demonstration. So yes.

20 Q. Okay. All right.

21 **MS. FLOYD:** My next exhibit is an e-mail from Tim
22 Reynolds on 7-30-2016.

23 **THE COURT:** Exhibit 69.

24 (WHEREUPON, the above-mentioned document was
25 marked as Exhibit Number 69.)

DIRECT EXAMINATION OF T. REYNOLDS

251

1 BY MS. FLOYD:

2 Q. And --

3 **THE COURT:** Marked and received.

4 **MS. FLOYD:** Thank you.

5 BY MS. FLOYD:

6 Q. Is this e-mail from you?

7 A. Yes, ma'am.

8 Q. And what is it?

9 A. Is dated 7-30, and the subject is JIB July 30, 2016.

10 Q. So this is a joint intelligence briefing?

11 A. It is.

12 Q. And what information is -- is this the information
13 that you shared with in the last exhibit --

14 A. It is.

15 Q. -- included in the JIB, in the joint intelligence
16 briefing?

17 A. Yes, ma'am.

18 Q. Okay. All right.

19 **MS. FLOYD:** My next exhibit --

20 **MR. WELLFORD:** Pretrial, please. Pretrial?

21 **THE COURT:** That will be 70, marked and received.

22 (WHEREUPON, the above-mentioned document was
23 marked as Exhibit Number 70.)

24 **MS. FLOYD:** That was beginning Bates number 9198.

25 BY MS. FLOYD:

DIRECT EXAMINATION OF T. REYNOLDS

252

1 Q. And my next exhibit is an e-mail from Tim Reynolds on
2 9-29-2016.

3 And what was the purpose of sharing photographs from
4 the events after they occurred?

5 A. Show crowd size. It was -- and that there was an
6 event.

7 Q. Okay. And is this an e-mail that you sent?

8 A. Yes, ma'am.

9 Q. And is it a joint intelligence briefing from
10 September 29, 2016?

11 A. Yes, ma'am.

12 Q. And what does this photo depict?

13 A. It depicts three individuals, Frank Gotti seated in
14 rear, Ian Jeffries far right.

15 Q. Do you recall why this photograph was included in the
16 joint intelligence briefing for that day?

17 A. Because there was -- on Facebook there was going to be
18 a demonstration protest, whatever, near the law school, and
19 that was to show that that did -- there was some kind of
20 demonstration there.

21 Q. Okay. And is this a description of the event that
22 occurred?

23 A. It appears to be, yes, ma'am.

24 Q. Okay. All right.

25 **MR. WELLFORD:** May we ask that the pretrial be

DIRECT EXAMINATION OF T. REYNOLDS

253

1 designated so we know what it is.

2 **MS. FLOYD:** Yes. It's Bates number 15586. Of
3 a -- it's a joint intelligence briefing.

4 **MR. WELLFORD:** JIB.

5 **MS. FLOYD:** Thank you.

6 BY MS. FLOYD:

7 Q. All right. On what occasions --

8 **MS. FLOYD:** My next exhibit is a collective
9 exhibit of two e-mails from Tim Reynolds on 1-10-2017, and
10 it is pretrial 116 and 117.

11 **THE COURT:** Marked as 71 and received.

12 (WHEREUPON, the above-mentioned document was
13 marked as Exhibit Number 71.)

14 BY MS. FLOYD:

15 Q. On what occasions would the Office of Homeland
16 Security share information with other law enforcement
17 agencies about protest activity?

18 A. You'll have to give me a specific example.

19 Q. Is this an e-mail from you?

20 A. It is.

21 Q. And who is this e-mail going to?

22 A. Christopher House@MinneapolisMinnesota.gov.

23 Q. Do you recall who that is?

24 A. No, ma'am.

25 Q. Is that someone who is in law enforcement?

DIRECT EXAMINATION OF T. REYNOLDS

254

1 A. Yes, ma'am.

2 Q. Is this the e-mail that you attached or the image that
3 you attached to that e-mail?

4 A. Yes, ma'am. We had moved to -- protests about the
5 fight for 15, \$15 an hour, and after President Trump was
6 elected, inauguration day, there was a lot of rumors of
7 protest. And if we got something on the feed that we were
8 getting in Memphis about an event in another city, we would
9 share that information with that law -- that department's
10 Office of Homeland Security or their counter part or
11 closest equivalent.

12 Q. And so where was this event occurring?

13 A. Minneapolis, Minnesota.

14 Q. Okay. And did you pull this information from the Bob
15 Smith account?

16 A. I did.

17 Q. And this demonstrates that someone is -- does this
18 demonstrate that someone is going to that event?

19 A. No. It just -- well, there's 398 interested and 107
20 going.

21 Q. Okay. When it says Spencer is interested, who does
22 that refer to?

23 A. Spencer Kaaz.

24 Q. Okay. Is this also an e-mail that you sent to Mr. --
25 or Officer House?

DIRECT EXAMINATION OF T. REYNOLDS

255

1 A. Yes. Yes, ma'am.

2 Q. Okay. And what is the subject?

3 A. Spencer Kaaz.

4 Q. And what is attached to that e-mail?

5 A. His driver's license and -- driver's license
6 information.

7 Q. And just for the record, these redactions were for
8 this lawsuit, were they not?

9 A. Yes, ma'am.

10 **MS. FLOYD:** My next exhibit is part of the Bob
11 Smith data file beginning Bates number 24434.

12 **THE COURT:** Exhibit 72, marked and received.

13 (WHEREUPON, the above-mentioned document was
14 marked as Exhibit Number 72.)

15 BY MS. FLOYD:

16 Q. And did you communicate with Spencer Kaaz using the
17 private message function of the Bob Smith account?

18 A. I did.

19 Q. And when did you begin those communications?

20 A. Those communications started right after I sent a
21 friend request to Fergus Nolan.

22 Q. And when was that? Generally, what year?

23 A. 2016.

24 Q. Okay. All right. Is this a direct message that
25 Spencer Kaaz sent to you on the Bob Smith account?

DIRECT EXAMINATION OF T. REYNOLDS

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1 A. Yes, ma'am.

2 Q. And what does it provide information about?

3 And while you're looking at that, the original Bates
4 number of this section begins 24434.

5 So what event was Spencer Kaaz sharing with you?

6 A. He shared me some information about Elvis week at
7 first. I'm asking about Elvis week, and he's providing me
8 information about Black Lives Matter.

9 Q. Okay. On August 3, 2016, at 10:21 a.m., what does
10 Spencer Kaaz send you information about?

11 A. "There's information" -- "there's a BLM interest
12 meeting Sunday. Thought you'd appreciate the heads-up if
13 you hadn't already seen it. Best wishes."

14 Q. Okay. And then at -- on August 3, 2016, this is about
15 14 minutes later, 13 minutes later, what is your response
16 to him?

17 A. I said: "What's up, man? Yeah, I heard about that
18 one. I think it's a civil rights" -- "I think it's at the
19 Civil Rights Museum. Is that it? I'm working this Sunday.
20 Sucks, but I'll be around for Elvis week. Ain't missing
21 that one. Do we have plans where we're going to organize
22 before we hit the street? I think this would" -- "I think
23 is would be best to show up for" -- "show up in a group
24 rather than a few at a time. Greater show of force.
25 L-O-L." Laugh out loud.

DIRECT EXAMINATION OF T. REYNOLDS

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1 Q. And is that a typo? Should that read I think it would
2 be instead of I think is would be?

3 A. Yes, ma'am.

4 Q. Okay. All right. And later that day on August 3,
5 2016, at 2:31, you provide -- Bob Smith provides Spencer
6 Kaaz with a phone number for texting. What is that phone
7 number?

8 A. (404) 982-4994.

9 Q. And is that your personal cell phone number?

10 A. No, ma'am.

11 Q. What is that cell phone number?

12 A. It's an undercover phone number.

13 Q. Okay. Did you use that undercover phone number for
14 anyone other than Spencer Kaaz?

15 A. No, ma'am.

16 Q. All right. My next exhibit is an e-mail from
17 Lieutenant Bass on 12-31-2016, and was there an incident
18 that occurred where protest groups were involved with the
19 Malco theater?

20 A. There was gang activity and flash mobs. This must be
21 around Christmas of 2016. And some of the gang activity
22 and gang fights, the information we're getting was going to
23 incur at the Malco movie theaters.

24 Q. Okay. And what was the involvement of Keedran
25 Franklin in those with the Malco theater?

DIRECT EXAMINATION OF T. REYNOLDS

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1 A. He posted something. He wanted to buy movie tickets
2 for kids.

3 Q. Okay. So starting here --

4 **THE COURT:** Right. I believe that we had 73.
5 That was marked and received.

6 (WHEREUPON, the above-mentioned document was
7 marked as Exhibit Number 73.)

8 **MS. FLOYD:** Thank you, Your Honor.

9 BY MS. FLOYD:

10 Q. So starting here on December 30, 2016, Louis Brownlee
11 sends an e-mail. Did you receive that e-mail?

12 A. Yes, ma'am.

13 Q. Okay. And who is Louis Brownlee?

14 A. He is the PIO.

15 Q. What is PIO mean?

16 A. Public information officer.

17 Q. Okay. And what information does he share with you?

18 A. He says TNT is trying to get involved as well.

19 Q. Okay. And that refers to --

20 A. Keedran Franklin.

21 Q. -- what we just discussed about the movie tickets?

22 A. Yes, ma'am, Keedran Franklin.

23 Q. Okay. And what was your response?

24 A. "How about an AOA for Keedran Franklin on the Malco
25 properties?"

DIRECT EXAMINATION OF T. REYNOLDS

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1 Q. Okay.

2 **THE COURT:** Let's make sure we understand what an
3 AOA is.

4 **MS. FLOYD:** Thank you, Your Honor.

5 BY MS. FLOYD:

6 Q. What is an AOA?

7 A. It's an authorization of agency. Businesses, private
8 property, you can have a list of people that are not
9 welcome on that property. The AOA is the department's way
10 of notifying that individual that they are not allowed on
11 that property, and should they return, they'll be arrested
12 for trespassing.

13 Q. Okay. And that's the same procedure that was followed
14 with the mayor's residence and the city hall?

15 A. And the direct -- the mayor's residence and the
16 director.

17 Q. Okay. All right.

18 **MS. FLOYD:** My next exhibit is an e-mail from
19 7-10-2016 from Lieutenant Chandler.

20 **THE COURT:** Exhibit 74, marked and received.

21 (WHEREUPON, the above-mentioned document was
22 marked as Exhibit Number 74.)

23 BY MS. FLOYD:

24 Q. And --

25 **MR. WELLFORD:** Pretrial, please.

DIRECT EXAMINATION OF T. REYNOLDS

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1 **MS. FLOYD:** Yes. I believe it's 215.

2 BY MS. FLOYD:

3 Q. And did you use the Bob Smith account to create the
4 authorization of agency for the mayor's residence?

5 A. Not exclusively.

6 Q. But in part?

7 A. Partly, yes.

8 Q. Okay. Excuse me.

9 All right. Is this an e-mail chain that you were a
10 recipient on?

11 A. Yes, ma'am.

12 Q. Okay. All right. Is this an e-mail from Officer
13 Bradley Wilburn that you received?

14 A. It is.

15 Q. And what does Officer Wilburn share with you and Jeff
16 Dickerson?

17 And sorry to interrupt my own question, but who is
18 Jeff Dickerson?

19 A. He was at the time the lieutenant of the Real Time
20 Crime Center. He's since retired.

21 Q. Okay. And what did Officer Wilburn share with the two
22 of you?

23 A. That there's a possibility, there had been rumors that
24 the Klu Klux Klan or KKK was coming to the Black Lives
25 Matter rally. And this was the day of the bridge.

DIRECT EXAMINATION OF T. REYNOLDS

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1 Q. Okay. And what is the last sentence of that e-mail?

2 A. "Tami Sawyer is active with Steve Cohen, post below."

3 Q. Okay. Is this the post from Tami Sawyer?

4 A. No. It's the one that Bradley got from Tami Sawyer,
5 and the picture shows Congressman Cohen.

6 Q. Okay. What is Tami Sawyer discussing in this post?

7 A. "Tami Sawyer, Congressman Steve Cohen calling for
8 cultural training for police officers. Says Black Lives
9 Matter is doing important work. He also is addressing
10 crack and marijuana sentencing, disparities, and calls for
11 community sentences for people" -- "commuting sentences for
12 people imprisoned under the unfair sentencing guidelines.
13 The private prison industry is hatched in Tennessee, and
14 they are making a profit on people's lives. This is what
15 awareness and work looks like" -- or "look like."

16 Q. All right.

17 **MS. FLOYD:** My next exhibit will be pretrial 82,
18 and it is an e-mail from 8-22 from Jeff Sealey.

19 **THE COURT:** Marked as 75 and received.

20 (WHEREUPON, the above-mentioned document was
21 marked as Exhibit Number 75.)

22 BY MS. FLOYD:

23 Q. And are you familiar with Snagit. What is Snagit?

24 A. Snagit is just the program that you can use on an IBM
25 kind of computer to snip posts that you want and send it.

DIRECT EXAMINATION OF T. REYNOLDS

262

1 Q. Okay. So you would have to be logged in to -- you
2 would have to see whatever you were trying to capture on
3 your own screen?

4 A. It's a screen shot.

5 Q. Okay.

6 A. Yes, ma'am.

7 Q. Is this an e-mail you received from Jeff Sealey?

8 A. It is.

9 Q. And is it in response to an e-mail that you sent him?

10 A. Yes, ma'am.

11 Q. Okay. And who is Jeff Sealey?

12 A. He's a police officer that works with Real Time Crime
13 Center.

14 Q. Okay. And what's the subject of your original e-mail
15 to Jeff Sealey?

16 A. Snagit.

17 Q. Okay. And then what is this link here?

18 A. It's a Facebook link to aktion kat.

19 Q. Okay. And then here there's a long list of exhibits.
20 Is this the first page of those attached exhibits?

21 A. They are. It is.

22 Q. Okay. And I'm going to zoom out. Is this taken from
23 the Bob Smith account?

24 A. It is.

25 Q. So based on your testimony that you would have to be

DIRECT EXAMINATION OF T. REYNOLDS

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1 logged in to the account, Jeff Sealey was logged in to the
2 Bob Smith account in order to capture these images?

3 A. I went around to Jeff Sealey's -- I didn't have Snagit
4 at the time. I went around to Jeff Sealey's computer,
5 logged in to Bob Smith, and allowed him to Snagit for me
6 because I didn't have the program.

7 Q. Okay. So -- okay. And then attached are the next few
8 pages the people who liked or reacted to that Facebook
9 post?

10 A. Yes, ma'am.

11 Q. And how many people liked or reacted to the Facebook
12 post?

13 A. 58.

14 Q. And are all of those captured?

15 A. It appears that they were.

16 Q. Okay. What is this Facebook page -- what is this
17 Facebook post about?

18 A. This is for my PowerPoint presentation. I needed this
19 post about Saul Alinsky for a PowerPoint presentation that
20 the director requested.

21 Q. And why did you need this for the PowerPoint
22 presentation?

23 A. This is after the bridge but explained some of the
24 reasons why we were having the type of protest from this
25 unlawful group that we were having.

DIRECT EXAMINATION OF T. REYNOLDS

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1 Q. So the motivating factors for their actions and
2 protesting?

3 A. And an explanation.

4 Q. All right. My next exhibit is pretrial 137.

5 **THE COURT:** Marked as 76 and received.

6 (WHEREUPON, the above-mentioned document was
7 marked as Exhibit Number 76.)

8 BY MS. FLOYD:

9 Q. Discussing the PowerPoint presentation, what was the
10 name of that presentation?

11 A. Blue Suede Shoes maybe. I don't know. I don't
12 remember.

13 Q. So the Blue Suede Shoes presentation, who instructed
14 you to prepare that presentation?

15 A. Colonel -- Lieutenant Colonel Bass.

16 Q. And do you know who instructed Colonel Bass to have
17 you prepare that presentation?

18 A. You'll have to ask Colonel Bass.

19 **MR. WELLFORD:** Excuse me, Your Honor. It's a
20 multipage document. I do think the witness is entitled to
21 have it in front of him if he's being examined on a
22 multipage document.

23 **THE COURT:** Well, we need to show the page we're
24 talking about it. That's for sure. The reason that I
25 didn't say that I was going to require them to put one up

DIRECT EXAMINATION OF T. REYNOLDS

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1 here was because opposite counsel doesn't really get to
2 dictate how we do this. She can examine in ways as long as
3 it's fair. And your point about that one is that's a
4 multipage document, and she needs to see that. I think
5 that makes sense. Single pages, it's not necessary really
6 because -- I'm going to leave that up to the lawyer.

7 **MR. WELLFORD:** I agree with the Court on single
8 page.

9 **THE COURT:** Right. Otherwise we might be looking
10 at the wrong page. You can see your screen okay, can't
11 you?

12 **THE WITNESS:** Yes, sir. That's okay.

13 **THE COURT:** It helps us stay focused on what
14 we're talking about. Sure.

15 **THE WITNESS:** Okay.

16 **THE COURT:** By the way, you can actually touch
17 the screen. And if you mark something, you can, if you
18 want to emphasize or point out something, you can do that,
19 and we'll see it on our screens.

20 **THE WITNESS:** Thank you, sir.

21 **THE COURT:** You're allowed to do that.

22 BY MS. FLOYD:

23 Q. Actually, before I move on to talking about this
24 exhibit, I wanted to see if this refreshes your
25 recollection about who ordered you to prepare this

1 presentation.

2 **MS. FLOYD:** This is pretrial Exhibit 310.

3 **THE COURT:** You want to the mark another
4 document?

5 **MS. FLOYD:** Yes, Your Honor.

6 **THE COURT:** We'll mark that as 77, and it can be
7 marked and received.

8 **MS. FLOYD:** It is an e-mail from Tim Reynolds
9 dated 8-23-2016.

10 (WHEREUPON, the above-mentioned document was
11 marked as Exhibit Number 77.)

12 BY MS. FLOYD:

13 Q. And I'll only be discussing the first page, although
14 it is a multipage document.

15 **THE COURT:** You can -- okay. Go ahead. You can
16 say you as opposed to the name if you want to. It's fine.
17 Go right ahead.

18 **MS. FLOYD:** Thank you, Your Honor.

19 BY MS. FLOYD:

20 Q. Is this an e-mail from you to Major Bass, Major
21 Sampietro, and Lieutenant Chandler?

22 A. It is.

23 Q. And what did you say in that e-mail?

24 A. I said: "This is the project the director had me
25 start last week. There have been some issues getting some

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1 of the information I needed (arrests from July 12th)."

2 That was an unlawful assembly in Graceland that caused
3 delay. We were having trouble getting those arrest tickets
4 and information that he requested. It's almost done, but
5 here -- this is kind of my rough draft.

6 Q. Does this refresh your recollection about who gave you
7 this assignment?

8 A. It does.

9 Q. And who gave you the assignment?

10 A. The director.

11 Q. And the director -- when you say "the director,"
12 you're referring to?

13 A. Director Rallings.

14 Q. And what was the purpose of this presentation?

15 A. It was for a TRACK meeting, which is the meeting every
16 Thursday with the command staff, and the director wanted a
17 PowerPoint to show the trends in the compressed nature of
18 all these protests and events that were going on and to try
19 to explain why we're having a problem with a very small
20 unlawful group that tends to want to protest on private
21 property.

22 Q. Okay. I'm going to hand you a copy of this exhibit.
23 The staple is a little sharp on the back. Please be
24 careful.

25 A. Yes, ma'am.

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1 Q. All right. Turning to page 22814, and we are on
2 Exhibit 76 now. Is this phrase -- where does this quote
3 come from that's on the slide?

4 A. It's a quote from the book from Saul Alinsky. "Pick a
5 target. Freeze it. Personalize it. Polarize it."

6 Q. Okay. And where did you get that quote?

7 A. Alinsky Rules for Radicals, number 12.

8 Q. Were you just familiar with that quote?

9 A. I'm not familiar with the quote. I had to do some
10 research myself on Saul Alinsky.

11 Q. Okay. Is that from Paul Garner's Facebook post?

12 A. Paul Garner mentioned Saul Alinsky. I went over the
13 broad strokes of the book so I can put that -- it seemed to
14 explain some of the actions of this group, so I put it in
15 there.

16 Q. I apologize.

17 Is this another -- is this a slide that includes the
18 Facebook post we discussed in two exhibits ago from Paul
19 Garner's Facebook account?

20 A. Yes, ma'am. That's a Snagit that after I logged in to
21 Jeff Sealey's computer, he prepared that for me and
22 e-mailed it to me so I would have it for this presentation.

23 Q. And who did you give the presentation to?

24 A. The command staff at the TRACK meeting.

25 Q. Okay. You know, what does and TRACK -- what's TRACK

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1 stand for?

2 A. I don't -- it's TRACK. They talk about crimes and
3 crime trends and -- I don't know what the acronym stands
4 for.

5 Q. Okay. But who is included in that meeting?

6 A. The command staff.

7 Q. And what does command staff mean?

8 A. Chiefs, lieutenant colonels, colonels, and some majors
9 and the director and deputy director.

10 Q. Okay. And does this slide continue on with the theme
11 of -- talking about the motivations of the protesters?

12 A. Yes, ma'am.

13 Q. And this final slide of the presentation, why was this
14 important to include?

15 A. It was my summary of the overall presentation.

16 Q. A summary of the investigation?

17 A. No, of the presentation.

18 Q. Okay. Can you tell us about what's included?

19 A. Okay. I'll read it. "Conclusion, an expressed goal
20 of one of these" -- "of these smaller radical groups is to
21 embarrass law enforcement in order to undermine the bond
22 between law enforcement and the community. For the most
23 part, these STRATAGEMS and these goals by these small
24 groups of radical individuals have not worked in Memphis,
25 Tennessee. The citizens of Memphis are aware that officers

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1 with the Memphis Police Department are not perfect, but
2 officers are doing the best to reduce crime, allow public
3 to make" -- "and allow the public to make their issues
4 known and to maintain order."

5 Q. Okay. And were your conclusions for this PowerPoint
6 presentation drawn from your work at the Office of Homeland
7 Security and your investigations?

8 A. Right. All the protests to that point, this is my
9 conclusion.

10 Q. Okay.

11 **MS. FLOYD:** I am finished with my questioning,
12 Your Honor.

13 **THE COURT:** All right. Good schedule.
14 Cross-examination?

15 And for lunch today, we will take a vastly
16 shorter break. I think everybody's had enough time to get
17 into the rhythm. So we'll take about a 55-minute break,
18 and we will -- if you need to make some arrangements,
19 you'll have time to do that.

20 **CROSS-EXAMINATION**

21 **BY MR. WELLFORD:**

22 Q. Sergeant Reynolds.

23 A. Good morning.

24 Q. Morning.

25 I wanted to take you briefly through your background

1 and training that kind of led you up into the Office of
2 Homeland Security, a little context on your training and
3 background. How long have you been with the Memphis Police
4 Department?

5 A. 21 years.

6 Q. And in what capacities? Just kind of briefly walk us
7 through your different rolls within the department.

8 A. I was a recruit in 1998. Came on the department
9 February 16th. I received my full commission in 1999. I
10 was assigned to the then east precinct, uniform patrol,
11 answering calls just like any other uniform patrol officer.
12 While at the precinct, I was assigned to a robbery task
13 force after a few years. I worked that and then worked my
14 way into the organized crime unit in 2003. Spend -- from
15 2003 to 2007, in various teams inside the narcotics unit.
16 I was then assigned to the safe streets task force and
17 worked robberies with the FBI.

18 About a year of that. I went back to the uniform
19 patrol and stayed there for about three years working the
20 precinct task force until I went back to the organized
21 crime unit and worked for one of the narcotics teams.

22 Q. Now, when you were with the organized crime unit, did
23 you have occasion to periodically do undercover work there?

24 A. I did.

25 Q. And actually use undercover accounts periodically as a

1 part of those operations?

2 A. I did.

3 Q. Now when did you join the department -- the Office of
4 Homeland Security?

5 A. In April of 2015.

6 Q. In 2015. And.

7 Who comprised the office at the time of your arrival?

8 A. There was only one officer, Officer Stuart Frisch.

9 Q. And what were the basic functions and actions of the
10 Office of Homeland Security during the first month or so
11 after your arrival?

12 A. It was -- I wanted to bring a money laundering
13 component, an investigative component to the team. There
14 was a lot of suspicious money coming from Memphis into the
15 middle east through criminal enterprises, and money
16 laundering was the mechanism. And the suspicious --
17 specified unlawful activity was fraud, but Stuart --
18 Detective Frisch also had his side of the team, and that
19 was very much still kind of embedded in the post 2001 view
20 of terrorism, asymmetric threats in the middle east to see
21 if they're coming here and to track radical extremist
22 groups in the United States.

23 **MR. WELLFORD:** Your Honor, I'd like to mark as
24 the next trial exhibit an in-service training PowerPoint
25 that is Plaintiff's 321.

1 **THE COURT:** Certainly. 78, marked and received.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 78.)

4 BY MR. WELLFORD:

5 Q. Do you recall an in-service training presentation that
6 you -- was it -- what was detective --

7 A. Detective Frisch.

8 Q. -- Detective Frisch provided shortly after your
9 arrival at the Office of Homeland Security in April
10 of 2015?

11 A. Yes, sir.

12 Q. What was its purpose? This is an e-mail of
13 October 26th where you're forwarding the presentation, but
14 the presentation itself was made shortly after your
15 arrival?

16 A. Yes, sir. At the academy every year, there's
17 in-service training, and it lasts for the majority of the
18 year. And for this particular year, the Office of Homeland
19 Security had a block of instructions that went over what
20 the office did.

21 Q. And the unit overview that appears at Bates Stamp 1952
22 of this document, is that an accurate overview of the
23 functions of the department -- of the office at the time?

24 A. Yes, sir.

25 Q. And if you could look at the first sentence that's

1 italicized, does that accurately reflect the mission of the
2 unit as of the time of your arrival?

3 A. Yes, sir.

4 Q. You mentioned asymmetric?

5 A. Asymmetric threats, yes, sir.

6 Q. Does the PowerPoint actually describe what you're
7 talking about when you reference asymmetric threats?

8 A. Yes, sir. And there's one acronym in there because
9 we're talking to police officers. LEO is law enforcement
10 officers, if we needed to clear that up.

11 Q. And at Bates Stamp Page 191 -- excuse me -- 19168,
12 does this accurately reflect the overview of the office as
13 of the time of your arrival and its partnerships with other
14 governmental law enforcement home security-type -- homeland
15 security-type operations?

16 A. Yes, sir.

17 Q. And which would they be? Describe briefly what
18 each -- what the Office of Homeland Security had to do with
19 these divisions.

20 A. They're state and local, FBI joint terrorism task
21 force, federal Office of Homeland Security, TSA, the air
22 Marshall service, and then Tennessee Fusion Center. And,
23 of course, we do work with secret service, especially
24 during campaign years, to assist with the secret service
25 with dignitary protection, and the Shelby County Office of

1 Criminal Intelligence, Homeland Security.

2 Q. Now at Bates Stamp Page 201, there's a section in the
3 report entitled "What Are We Working on Now?"

4 Do you see that?

5 A. Yes. Yes, sir.

6 Q. Does that accurately reflect the level of activity
7 within the office very shortly after your arrival on the
8 types of focus that the office had at the time?

9 A. Yes, sir.

10 Q. Now there is a reference to violent sovereign citizens
11 militia. Do you see that?

12 A. Yes, sir.

13 Q. And then to different threat assessments underneath
14 that.

15 At that point in time, very shortly after your
16 arrival, how much of a focus were sort of local protest
17 demonstrations, especially unpermitted demonstrations, at
18 this point in time?

19 A. Very -- none hardly. With the exception of the
20 violent sovereign citizens, because with the death of
21 Officer Pallard over in West Memphis, we were still kind of
22 concerned about the local impact of sovereign citizens
23 here.

24 Q. What was the concern?

25 A. It's an officer safety concern that there would be,

1 you know, threats to the lives of officers.

2 Q. Now the report identifies certain intelligence gaps.

3 Do you see that?

4 A. Yes, sir.

5 Q. Now, do you -- explain what you mean or what you and
6 your colleague meant by intelligence gaps at the time.

7 A. We searched a lot of open source stuff to get the
8 information that we need, but there was a lot of gaps.

9 There's a lot of threats that were slipping past us,
10 especially to like little churches and synagogues that we
11 just weren't getting. The reports of suspicious
12 activities, we would get, you know, some just from tips
13 from the general public, but nothing we were
14 self-generating. And the reports of suspicious activities
15 or incidents associated with mass gatherings and special
16 events, we didn't have anyway -- mechanism to figure out
17 what to expect on mass gatherings.

18 Q. What was the most effective way to address those
19 intelligence gaps?

20 A. One way was the collators, and the other way was for
21 me to start using my undercover account.

22 Q. Now, was there an event that occurred fairly shortly
23 after your arrival in the city of Memphis that did ramp up
24 a lot of unpermitted, spontaneous-type demonstrations and
25 protests?

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1 A. Yes, sir. The death of Darrius Stewart.

2 Q. And what impact did that have on the office in which
3 you worked and how you attempted to address the
4 intelligence gaps that you had referenced on the section of
5 the slide we just looked at?

6 A. We were receiving a lot of general threats all over
7 social media that were coming in from citizens, and to
8 Officer Schilling specifically. So we felt we needed to
9 get a handle on these and start vetting these threats to
10 see if they're viable or not.

11 Q. You were shown some trial exhibits yesterday, exhibits
12 23 through 31, that reference certain Facebook posts and
13 likes and other things that you did under the undercover
14 account Bob Smith starting in 2015. Do you remember that?

15 A. Yes, sir.

16 Q. So tell us about how you started to use the Bob Smith
17 account in the aftermath of the Darrius Stewart shooting
18 and the activities and the concerns that were expressed
19 following that shooting incident?

20 A. Once you make it -- the jump into social media, it's
21 not only just local, but national trends, like all the
22 protests that were going on nationally would filter their
23 way through certain people's Facebook page. The most
24 popular people are the ones I started paying attention to.
25 The ones that are most vocal about the issues and topics

1 that are happening across the country.

2 Q. Now, you were questioned about a lot of these
3 postings, specific postings yesterday, but that didn't
4 come -- those questions from Exhibits 23 through 31 -- from
5 some files you keep in your office, did they? They came
6 from a Facebook dump that we produced in this litigation
7 from Facebook, right?

8 A. Yes, sir.

9 Q. So what types -- how did you decide what to save of
10 the Bob Smith just sort of general activity that you were
11 doing in the mid and latter part of 2015? Or did you save
12 anything?

13 A. No, we would always be able to go back to my Bob Smith
14 account and pull up whatever we needed. We didn't need to
15 save anything because it's on social media.

16 Q. Were you keeping files of some kind on specific
17 protesters or people who were prominent in the protests or
18 demonstrations that followed the Darrius Stewart shooting?

19 A. No, sir. That's the purpose of the account. I can
20 just hop on and see who's talking about it.

21 Q. And did you -- did you care which opinions were being
22 expressed by either side, the side that was quite critical
23 of the reaction of law enforcement and government agencies
24 to the shooting and those who tended to band around law
25 enforcement and support them at the time?

1 A. The topic didn't matter. It's just the popularity of
2 the topic. And then with any one point of view, there's
3 always an opposing point of view. And the purpose of that
4 was to see if these two opposing points of view are going
5 to have a clash and roped under some type of demonstration
6 or threat to officer safety or community or private
7 property.

8 Q. Were there demonstrations and protest activity that
9 occurred following -- by the way, do you remember when the
10 Darrius Stewart shooting was?

11 A. July -- it was in July of 2015. I don't remember the
12 exact date.

13 Q. All right. And were there unpermitted protests and
14 demonstrations that occurred during that time frame?

15 A. Yes, sir.

16 Q. Is that something -- why would that be something that
17 would concern or that your office would need to be
18 interested in or concerned about?

19 A. All across the country, major metropolitan areas were
20 having spontaneous protests that sometimes got out of hand.
21 And we wanted to make sure that these protests, A, because
22 of the gap of intelligence we knew about them; and, B, have
23 officer presence to ensure public safety and also to make
24 sure that the protesters themselves were not injured.

25 Q. Were there threats during this time frame to the

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1 officer who was involved in the shooting?

2 A. Yes, sir.

3 Q. Now, Sergeant, as you used the Bob Smith account, what
4 was your personal familiarity or your awareness with the
5 terms of the -- what's been called the Kendrick consent
6 order?

7 **THE COURT:** It's consent decree.

8 **MR. WELLFORD:** Consent decree.

9 **THE COURT:** You want to get that terminology
10 right, okay.

11 BY MR. WELLFORD:

12 Q. What was your level of personal knowledge of the
13 Kendrick consent decree as of the time you started to use
14 the Bob Smith undercover account and monitor unpermitted or
15 large public gatherings in the aftermath of the Darrius
16 Stewart shooting?

17 A. I didn't know much about the 40-year-old decree. I
18 just knew what was in the policy and procedure book and
19 like the brief version of what we needed to look out for.

20 Q. It's pretrial defense 67.

21 **MR. WELLFORD:** Your Honor, I would like to --

22 **THE COURT:** Sure, mark that --

23 **MR. WELLFORD:** -- move into evidence as the next
24 exhibit.

25 **THE COURT:** Marked and received as 79.

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1 (WHEREUPON, the above-mentioned document was
2 marked as Exhibit Number 79.)

3 BY MR. WELLFORD:

4 Q. The policy and procedure dated December 20, 2010,
5 DR138, which is the posting of the summary of the Kendrick
6 decree on the Memphis city police department kiosk.

7 Now, were you aware of the posting of this document on
8 the kiosk at the time?

9 A. I was.

10 Q. Tell the Court what your general awareness was of the
11 policy and/or the Kendrick decree as of this time frame?

12 A. When this policy came out, I was in the organized
13 crime unit in 2010, and we discussed the decree and -- very
14 briefly and this specifically. And we don't gather
15 political intelligence anyway, so -- but -- it prohibited.
16 That was a prohibited thing to do.

17 Q. Well, what I'm focusing on right now is what's in your
18 mind and not the legal import of what the consent decree
19 means. I'm focusing upon what's in your mind. So what was
20 in your mind with respect to the level of understanding or
21 awareness of all of the things that appear here in DR138?

22 A. I felt that we were in compliance, especially with 28
23 CFR part 23.

24 Q. Which is in the federal regulations down here?

25 A. Yes, sir.

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1 Q. Now, do see the first paragraph and how that reads on
2 DR138?

3 A. Yes, sir.

4 Q. Do you think you ever read that, read it as opposed to
5 being briefed on it?

6 A. I read it.

7 Q. Okay. And how did you interpret it?

8 A. That as a police officer, I don't engage in political
9 intelligence.

10 Q. Did you view anything that was happening with the Bob
11 Smith account and any intelligence-gathering operations
12 that were being conducted in association with protester
13 demonstration activity to be done for the purpose of
14 political intelligence gathering?

15 A. No, sir. The politics doesn't matter to me. It's the
16 event. It's a public safety aspect, and it's the officer
17 safety aspect of it.

18 Q. Did you know exactly what political intelligence was
19 as described in the consent decree itself?

20 A. No, sir. It just says political intelligence. I
21 don't know what -- I didn't -- I didn't know what to think
22 to investigate further what that was.

23 Q. Now, as we are moving forward through 2015 -- and by
24 the way, does July 15, 2015, is that the date that Darrius
25 Stewart was shot?

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1 A. Yes, sir. That was it.

2 Q. It seemed like you were asked a question yesterday,
3 and I can't put my figurers on it, but it concerned some
4 your Facebook postings that are likes and groups that you
5 were attempting to join.

6 A. Yes, sir.

7 Q. I thought there was a question about whether you were
8 trying to join any of those groups in 2015 that -- before
9 the Darrius Stewart shooting that related in some manner to
10 Black Lives Matter or concerns about police relationships
11 with the African-American community. So my question to you
12 is, did you do that before the Darrius Stewart shooting?

13 A. No, sir.

14 Q. All right. Now, do you understand the level of
15 frustration and anger in large -- in large sections of the
16 African-American community and the community generally
17 associated with police-related shootings --

18 A. Yes, sir.

19 Q. -- of African-American men?

20 A. Absolutely. That's one of the reasons why, you know,
21 we went to the body-worn cameras.

22 Q. What impact, if any, did other high profile similar
23 shootings that were occurring around the country of
24 African-American men following police encounters have upon
25 your office's focus and activities in this area?

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1 A. That was a little unusual. I mean, normally we worry
2 about what happens in Memphis, but social media, things
3 that happen across the country, people get excited about it
4 in Memphis, so Alton Sterling in Louisiana. I can't
5 remember the gentleman's name in -- that was killed live on
6 Facebook in an officer-involved shooting. That was pretty
7 rough. That went over everywhere, and just the news in
8 general, there was a lot of -- there was a lot of shootings
9 that were -- and news clips of shootings going around on
10 social media that kept everybody, you know -- it kept the
11 temperature level of protest high in Memphis.

12 Q. Now, did there come a time in 2016 when you actually
13 tried to develop more of a background and base of knowledge
14 about the most effective manner and way to use social media
15 to try to track large public gatherings, especially
16 spontaneous ones?

17 A. Yes, sir. Since I was new to the -- to this
18 particular office or line of investigation, I went to
19 Nashville and hooked up with their Office of Homeland
20 Security because they had a more established, in my mind,
21 office. And I learned a little bit about how to bridge
22 some of the gaps that we have in intelligence and using
23 undercover accounts and how to watch popular people to see
24 what's going on so you can anticipate rallies, protests,
25 and so forth in Memphis.

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1 Q. Well, tell us what you learned, what you observed when
2 you went to Nashville for that purpose.

3 A. There was a Black Panther rally that was being
4 scheduled there, and I wanted to see how they handled it.
5 I was in the office, and he showed me his social undercover
6 account and how he kind of found out about the protest and
7 kind of gauged how big it was. We go out on the ground,
8 observed the protest, and it should have had a permit.
9 They have a similar permit rule that we do. The gentleman
10 stayed on the sidewalk, but there was -- it was impeding
11 traffic, and it did cause a lot of congestion there. And I
12 asked them, I said, why aren't y'all breaking this up or
13 having to move along or whatever. He says it's better just
14 to let them go and get -- you know, this is -- you know,
15 just make the traffic and the pedestrians work while he's
16 doing his demonstration, and then it will -- you know, it
17 will be over, and we can get back to business.

18 Q. Were they using social media to try to track in real
19 time the level of interest in an activity associated with
20 that event?

21 A. Yes, sir. He had a very small group of people that he
22 was really watching, which was 25 or 30, and based on, you
23 know, the traffic between these 25 and 30 people, you kind
24 of knew what was going to go on the activism, whatever the
25 protest was or whatever the issue was in Nashville, and you

1 can anticipate and report back to the precincts or district
2 that they had that they were probably having an event there
3 so they can prepare.

4 Q. Now, following your return from Nashville on that
5 trip, did your use of social media, specifically the Bob
6 Smith account, significantly increase?

7 A. Yes, sir. Right after the -- right after that visit,
8 I started friending some people that I thought were popular
9 or might have an idea of what's going on as far as social
10 activism in the community.

11 **MR. WELLFORD:** Your Honor, I would like to mark
12 as the next exhibit a two-page time line --

13 **THE COURT:** Sure.

14 **MR. WELLFORD:** -- that I've shown Mr. Castelli
15 and stipulated.

16 **THE COURT:** Without objection, that will be 80 in
17 the case, marked and received.

18 (WHEREUPON, the above-mentioned document was
19 marked as Exhibit Number 80.)

20 BY MR. WELLFORD:

21 Q. Move this around some, but, Sergeant, I want to focus
22 now when we're moving into the 2016 time frame. And do you
23 see where we're talking about here, in the 2016, when we're
24 moving into that area?

25 A. Yes, sir.

1 Q. All right. Were all of the events and activities you
2 were following during this time frame, were they all Black
3 Lives Matter things?

4 A. No, sir.

5 Q. All right. What was -- what other big topics or
6 issues of concern were there that were sort of generating
7 spontaneous sometimes unpermitted activity in 2016?

8 A. The greensward and then the Pulse Nightclub shooting.

9 Q. Let's talk about the greensward first. What was the
10 essence of your office's involvement in what I guess has
11 been called the greensward controversy concerning the zoo's
12 use of certain parts of the greensward for zoo parking?

13 What was your office's involvement in monitoring that
14 activity and why? Why would you be interested in that?

15 A. Well, it was a local news story, and there was a very
16 opposing opinions about the use of the green space for
17 parking. The zoo wanted one utility use, and there was a
18 good portion of people that didn't like the zoo's point of
19 view. So that was kind of the test for the Bob Smith
20 account to see if we can anticipate if there's going to be
21 a protest or not, an unpermitted event.

22 Q. Was there a protest and were there arrests made on
23 memorial day May 30, 2016, concerning the greensward
24 incident?

25 A. Yes, sir. Fergus Nolan and Maurice Green were

1 arrested in that after they blocked the entrance to the
2 greensward.

3 Q. Well, you don't know the details of exactly what they
4 did, do you? You weren't on the scene when they got
5 arrested.

6 A. I was not there.

7 Q. But you know they were arrested at the time in
8 association with the demonstration there?

9 A. Yes, sir.

10 Q. Well, we've heard evidence of your use of the Bob
11 Smith account to get into a group, a private group
12 established by Mr. Nolan, and we heard some of that
13 yesterday. I wanted to get into that. Why were you
14 interested in seeing what Mr. Nolan and a private group was
15 having to say about the greensward incident?

16 A. I was directed by my chief, Chief Hardy.

17 Q. Who is Chief Hardy?

18 A. Chief Hardy is the --

19 Q. What's his name?

20 A. He is the chief over -- Chief Michael Hardy. I'm
21 sorry. He is the chief over special ops, which is what the
22 department I fall under.

23 **MR. WELLFORD:** Your Honor, I would like to mark
24 as the next exhibit what is Defense 107.

25 **THE COURT:** All right.

1 **MR. WELLFORD:** The series of exchanges between
2 Kessler Associates Group between Bob Smith and Fergus
3 Nolan.

4 **THE COURT:** Marked as 81.

5 **MR. WELLFORD:** June 2016.

6 **THE COURT:** Right. Marked as 81.

7 (WHEREUPON, the above-mentioned document was
8 marked as Exhibit Number 81.)

9 BY MR. WELLFORD:

10 Q. Let me make sure I get this so that we can see it.
11 Can you explain to us basically what we are looking at
12 here, Sergeant.

13 A. To put it in a little context, after I was given
14 vetting questions by Spencer Kaaz and Fergus Nolan accepted
15 my friend request, I was immediately taken to Kessler
16 Associates. And the topic in there was how to -- Mr. Nolan
17 was calling DA, direct action, how to disrupt the zoo with
18 direct action. So this was kind of interesting to me
19 because this is what I needed to report to the precinct
20 commander and the zoo that they were going to have some
21 type of protest that was going to disrupt the normal flow
22 of business for the zoo.

23 **MR. WELLFORD:** And, Your Honor, because the
24 writing is a little bit small, may I approach the witness?

25 **THE COURT:** You can blow it up. All you got to

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1 do is blow it up.

2 **MR. WELLFORD:** I'm trying to, but not sure this
3 date.

4 **THE COURT:** We'll make it as large as possible.

5 BY MR. WELLFORD:

6 Q. Do you see down here the date?

7 A. June 5 of 2016.

8 **THE COURT:** We'll show you how to use the
9 technology. Rotate the little dial there, and it will make
10 it bigger.

11 **THE WITNESS:** June 5th of 2016.

12 **THE COURT:** Just pull it down. Pull it down on
13 the screen. Pull the paper down on the screen, gentlemen,
14 and center it. Thank you.

15 BY MR. WELLFORD:

16 Q. Was June 5, 2016, the time that you friended or were
17 accepted as a friend in this group?

18 A. I was accepted to that group, yes, sir, June 5th.

19 Q. Few days after the May 30th arrest?

20 A. Yes, sir.

21 **MR. WELLFORD:** Your Honor, we redacted names of
22 individuals who were not Mr. Nolan and Bob Smith who may be
23 referenced in these exchanges.

24 **THE COURT:** There's no objection. That's fine.
25 Sure.

1 **MR. CASTELLI:** No objection.

2 **THE COURT:** No objection. Sure. That's fine.

3 BY MR. WELLFORD:

4 Q. This series of exchanges has to be sort of read from
5 the bottom up, does it not, starting with June 6th and then
6 working our way up toward the ones that would occur after
7 that --

8 A. Yes, sir.

9 Q. -- Sergeant?

10 A. Yes, sir.

11 Q. So is this the first exchange that we have with
12 Mr. Nolan on your part with respect to the Kessler
13 Associates Group and the greensward?

14 A. It is.

15 Q. And -- excuse me. Sorry.

16 A. I'm sorry.

17 Q. All right. Now let's just talk about the Bob Smith
18 persona for a minute.

19 A. Yes, sir.

20 Q. This is an undercover account?

21 A. It was.

22 Q. What is the nature of an undercover account and an
23 undercover identity? What is it that you are attempting to
24 do?

25 A. Infiltrate, infiltrate, to be a part of a group.

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1 Q. Are you playing a role?

2 A. I am playing a role.

3 Q. Are you going to truthfully and honestly answer every
4 question somebody may ask you in association with that
5 role?

6 A. No, sir.

7 Q. What is the role that you are playing when you are
8 communicating with Mr. Nolan here as a part of the Kessler
9 Associates Group?

10 A. One of the vetting questions Spencer asked me was my
11 real name.

12 Q. Spencer?

13 A. Spencer Kaaz. I'm sorry.

14 Q. What role did he have, if any, in sort of connecting
15 you with Mr. Nolan?

16 A. He wanted to know my real name, so I gave him the
17 undercover name that was given to me in narcotics, Tim
18 Ryan. So it starts off: "Welcome Tim Ryan, who is
19 recommended by" -- "whom I trust. Y'all talk among
20 yourselves. Recruit a few more and decide on the type of
21 action. I'll bring the outside resources, like attorney
22 backup, PR response, et cetera, when needed. But as I
23 can't participate due to my bail conditions, I leave the
24 decisions to you guys. We also have a bunch of guidelines
25 for direct action participants. First thing" --

1 Q. Let me ask you, what does this mean to you, direct
2 action, or DA as it's also referenced in this exchange?

3 A. Well, I'm not familiar with what direct action is, so
4 I'm learning as we're going. He's going to tell us what
5 direct actions are. So I can -- but this is information I
6 need for my knowledge on a threat assessment for the zoo,
7 if he's planning to do something over there.

8 Q. Now, is there a discussion here about the philosophy
9 behind Mr. Nolan's involvement in this issue or the pros
10 and cons of it?

11 A. No, sir.

12 Q. There's a lot of discussion about operational details
13 relating to the direct action that he is advocating for the
14 group?

15 A. Yes, sir.

16 Q. You see there near the bottom of it that the
17 statement: "The memorial day direct action got us into
18 dozens of out-of-town media and every local media outlet.
19 DA is by far our most effective tool."

20 A. Yes, sir.

21 Q. Now, if we move into the next series of exchanges,
22 Bates Stamp Page 025378, we see some more communications
23 with Mr. Nolan and with you?

24 A. Correct.

25 Q. Do we see some photographs that Mr. Nolan has taken of

1 the zoo site?

2 A. Yes, sir. Those were areas he planned to do his
3 direct action to impact the visitation to the zoo.

4 Q. And he's calling it recognizance?

5 A. Yes, sir, he is.

6 Q. As of June 7th?

7 A. Yes, sir.

8 Q. There's actually a June 5 e-mail above that where he's
9 referencing some direct of action that coming Saturday.

10 A. Yes, sir, June 11th.

11 Q. You see that that includes some vehicle-related
12 action. Do you see that?

13 A. Yes, sir. He was going to act like his cars were
14 breaking down to stop people from entering the zoo and also
15 have another group of people pay in pennies to really slow
16 down the speed in which the zoo can accept visitors.

17 Q. Is that something you would consider to be lawful
18 action to deliberately have a vehicle break down as it's
19 attempting to enter the zoo?

20 A. No, sir.

21 Q. And you see Mr. Nolan following up with you on
22 June 7th where he's describing what police procedure is at
23 Overton park?

24 A. Yes, sir.

25 Q. And as we move into July -- June 11th, which was the

1 date that Mr. Nolan had referenced for certain action, did
2 you have a follow-up communication with him about what his
3 plans were at that time?

4 A. Yes, sir. In addition to the direct action, he wanted
5 to hack into the zoo computer and crash it.

6 Q. Well, how do you know that?

7 A. He starts mentioning that he is -- oh, this part right
8 here. I'm sorry. I jumped ahead of myself.

9 **THE COURT:** You can touch the screen if you want
10 to put it out that way. Just test that and see if that
11 works for you. It should. Let's make sure screens will
12 work. There you go. You can circle and put arrows and all
13 sorts.

14 **THE WITNESS:** Thank you, Judge.

15 He's giving him kind of instructions on how to
16 act like their car is breaking down and gum up the --

17 BY MR. WELLFORD:

18 Q. Well, you're talking about this down here, this part?

19 A. Yes, sir. I'm sorry. We got kind of sidetracked.
20 What was your question?

21 Q. Well, the question was about hacking into the zoo's
22 system.

23 A. Oh, okay.

24 Q. How did -- would that be a legal action that Mr. Nolan
25 or others could take?

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1 A. Now we're talking about criminal action. No, sir.
2 That's not legal.

3 Q. And he actually says, "We'll probably take that one
4 offline as illegalities are involved."

5 A. Yes, sir.

6 Q. Were you privy to any offline discussions that
7 Mr. Nolan may have had with others about that subject?

8 A. No, sir.

9 Q. Now, what follow-up, if any, did you have on that
10 matter if he describes the criminal investigation? Let's
11 get one think out for the record. You did not take that
12 issue to the director, did you?

13 A. No, sir. I took it to the deputy director.

14 Q. Why didn't you take it to the director? Did you know
15 the consent decree, the Kendrick consent decree requires
16 the director to authorize criminal investigations that have
17 something to do with first expression of first amendment
18 protected rights as well, or did you know anything about
19 that?

20 A. I didn't consider this a political intelligence, even
21 if I had thought about that, but I was notifying my
22 supervisor in the best -- the best one to notify would be
23 the deputy director of this, because we're starting to get
24 into some criminal -- criminal -- a criminal case.

25 Q. Well, did you even know in your mind -- you know, I'm

1 supposed to have the director authorize these criminal
2 investigations? Was that a part of your decision-making
3 process at all?

4 A. No, sir. No, sir.

5 Q. All right. So what did you do as a follow-up
6 investigation into this incident?

7 A. I went to the zoo and talked to the -- their IT guy,
8 and I kind of explained myself and the purpose for my visit
9 and asked him if he had any problems with the zoo computer,
10 has anyone tried to hack it or have there been any hacking
11 attempts. He told me there hadn't been, but there had been
12 some suspicious activity on the e-commerce side. When you
13 try to buy something at the zoo on the internet, and you
14 hit the buy button, you are being redirected to anything
15 other than how to make a payment. And I took that
16 information and reported it back. And the zoo fixed the
17 problem, and this case kind of went dormant.

18 Q. Was the zoo interested in pressing the matter further
19 at that point?

20 A. No, sir.

21 Q. All right. Did you have enough at that point to try
22 to carry it forward after the conversation with the zoo and
23 their attitude so that it progressed as a criminal
24 investigation?

25 A. No, sir.

1 Q. How would you characterize that investigation as of
2 the present?

3 A. It's still dormant.

4 Q. Dormant.

5 Do you care -- did you care at any point during your
6 communications with Mr. Nolan or Mr. Kaaz or anybody else
7 about the greensward who is right or wrong on the
8 controversy?

9 A. No, sir.

10 Q. Or what the substance of their opinions were?

11 A. No, sir.

12 Q. Did it motivate any aspect of your follow-up and
13 communications with respect to the greensward issue?

14 A. No, sir.

15 Q. The substance of the opinions they were expressing?

16 A. No, sir.

17 Q. Who they want to associate with in connection with
18 those protests?

19 A. No, sir.

20 Q. You mentioned the Pulse Nightclub shooting, and that
21 subject was brought up yesterday. I think it's been
22 established that the Pulse Nightclub shooting occurred on
23 June 12, 2016.

24 A. Yes, sir.

25 Q. Now, you were asked some questions yesterday about the

1 significance of that. Did you mention that in your
2 deposition? Do you remember that?

3 A. I didn't get to mention the Pulse Nightclub because we
4 started in July at the deposition, but I did mention it
5 yesterday.

6 Q. Well, my question was to you was going to be as a part
7 of the discovery process in this case, did we produce a
8 bunch of documents from your files?

9 A. Yes, sir.

10 Q. And what was the start date of when we start --
11 produced those documents?

12 A. June 12, 2016.

13 Q. Was it July 1, 2016, or did it start in June?

14 A. Started in June.

15 Q. In June, all right.

16 Well, let me show you the first -- the JIB that you
17 mentioned yesterday on the Pulse Nightclub shooting.

18 **MR. WELLFORD:** I'm sorry, Your Honor. I want to
19 mark this as the next exhibit, please.

20 **THE COURT:** Sure.

21 **MR. WELLFORD:** The June 17 and 18 joint
22 intelligence briefing.

23 **THE COURT:** Marked as 82.

24 **MR. WELLFORD:** And it's defendant's 114.

25 **THE COURT:** No problem. Marked as 82 and

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1 received.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 82.)

4 BY MR. WELLFORD:

5 Q. Is this the joint intelligence briefing that was
6 prepared at the time concerning the Pulse Nightclub
7 shooting?

8 A. It is.

9 Q. And that was prepared at the time, pretty much at the
10 time?

11 A. Yes, sir, the day after, or relatively close.

12 Q. Did joint intelligence briefings within the Memphis
13 Police Department exist before this one that we're looking
14 at?

15 A. No. This had never been done before, and I was tasked
16 to do it.

17 Q. Who tasked you to do it?

18 A. Major Bass.

19 Q. What was the concern, the specific concern, about the
20 Pulse Nightclub shooting and how that might impact an event
21 that's described as a gay pride awareness event on June 17
22 and 18?

23 A. We were in the middle of gay pride month, and we were
24 very concerned about copycat shootings. There were a lot
25 of events planned with large public gatherings, and we

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1 wanted to get ahead of that and make sure that we didn't
2 have a similar problem like they had in Orlando.

3 Q. And were there other issues that were being addressed
4 in the JIB and concerns that were expressed sometimes by
5 members of the public such as the one that's described here
6 in the bottom paragraph of this JIB?

7 A. Yes, sir. The Memphis Jewish Community Security
8 Council. They were having an event, and they were
9 concerned about safety there.

10 Q. When you would receive reports such as this -- "you"
11 meaning the Homeland Security office and, to your
12 knowledge, the Memphis Police Department -- were they taken
13 seriously during this time frame?

14 A. Yes, sir.

15 Q. Was it always possible to verify the accuracy of these
16 reports on short notice?

17 A. It was -- it was very difficult to verify the accuracy
18 of these on such short notice.

19 Q. And so what -- if you know, what type of follow-up or
20 protection or awareness was associated with the gay pride
21 awareness week in the aftermath of the Pulse shooting?

22 A. Those significant officer presence at all of these --
23 all these events. Also, Ramadan was going on, and the
24 mosques in town had directed patrols, and the Jewish
25 community centers and Jewish properties in town, religious

1 properties.

2 Q. Let's move into July 2016. Do you see the different
3 references to the events that were occurring in July 2016
4 on the time line?

5 A. Yes, sir.

6 Q. Now, the first question is, there are references to
7 events, you've mentioned a couple of them, that occurred in
8 other jurisdictions.

9 A. Yes, sir.

10 Q. Now, why would that at all be relevant to what the
11 Office of Homeland Security is thinking about or worrying
12 about as of this time frame?

13 A. Well, the Dallas shooting was under -- at a Black
14 Lives Matter protest. Now the guy that did it wasn't with
15 the Black Lives Matter, but this is the very type of thing
16 that we're concerned about. As much as we could possibly
17 do, there's a lot of events that were claiming to be either
18 associated with or sanctioned by Black Lives Matter that's
19 all over Facebook. We first got to figure out which ones
20 are, you know, like the real events or just some people
21 just trying to be a part of a movement.

22 And then once we focus on the actual events that
23 are -- look like they're actually going to collate into an
24 actual event, in other words, jump from the social media
25 sphere into reality and into Memphis. Then we got to start

1 trying to figure out if there's going to be a kind of
2 protest or some threat to public safety or officer safety.

3 Q. You were asked a series of questions that were
4 reflected in trial Exhibits 34 through 37 yesterday
5 concerning an event at I think it was Kings Grocery Store.
6 Do you remember that?

7 A. Yes, sir.

8 Q. In July of 2016?

9 A. Yes, sir.

10 Q. And did that event -- was it an unpermitted event?

11 A. It was.

12 Q. Did it have a large turnout?

13 A. It did.

14 Q. And what was the specific driver or catalyst behind
15 that event as described by the people who were
16 participating with it?

17 A. Philando Castile was killed live on Facebook, and
18 Alton Sterling -- these are all right next to one another.
19 They're all kind of compressed in there.

20 Q. I'm not going to go through each of the exhibits, but
21 trial Exhibit 34, I'll just ask you to assume, has a
22 July 6th date. And what type of investigation or
23 monitoring were you doing within the Office of Homeland
24 Security relating to that event? Did you go on social
25 media?

1 A. Yes, sir.

2 Q. What was the purpose?

3 A. To gauge the size of these events so we can give the
4 command -- the people at the precinct level accurate or
5 what we would consider accurate gauges of how big these
6 protests are going to be, and then any signs of any counter
7 protest and how big the counter protest was going to be.
8 And then there's also discussions sometimes with comments
9 and everything, of people bringing weapons or things that
10 might be of a concern to a police officer.

11 **MR. WELLFORD:** Your Honor, I would like to mark
12 Tennessee fusion report of -- update as of July 8, 2016, as
13 the next exhibit. This is Defense 72.

14 **THE COURT:** Marked and received as 83.

15 (WHEREUPON, the above-mentioned document was
16 marked as Exhibit Number 83.)

17 BY MR. WELLFORD:

18 Q. Now, were there other law enforcement agencies that
19 were putting out sort of -- whether they were called
20 intelligence briefings or not -- similar documents to their
21 own agencies and others during this time frame?

22 A. Yes, sir. Most of the fusion centers are sending out
23 information all on Black Lives -- anything that's in the
24 news, and Black Lives Matter was the main topic post Dallas
25 was being sent by the fusion center.

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1 Q. And it's hard to read up here, but that's -- does that
2 state Black Lives Matter protest 8 July 2016?

3 A. Yes, sir.

4 Q. This is coming to the Memphis Police Department from
5 the fusion center.

6 A. It is.

7 Q. And does it actually reference an event in Memphis,
8 100 to 150 attendees present, Kings Grocery, and describes
9 it as a peaceful protest, right?

10 A. Yes, sir.

11 Q. That's an accurate description of it, wasn't it?

12 A. It was.

13 Q. Just because it was a peaceful protest, I mean, was
14 there some way for you to determine what -- whether it was
15 going to be or not in advance of the event?

16 A. No, sir.

17 Q. What's the point? What's the purpose, in your mind as
18 a law enforcement officer, to people getting a permit for a
19 large-scale event that -- whether it's on private property
20 or not, may spill out into public thoroughfares?

21 A. That's one of the -- there have been a lot of
22 terroristic type of incidents where people have driven
23 vehicles into crowds or mass shootings into crowds. And
24 getting out in public, getting out into traffic is also --
25 hampering the flow of traffic is also a kind of a concern

1 for everyone.

2 Q. This state fusion center briefing actually also
3 references an event which did -- people knew about, and
4 nobody was making a secret. And that was July 10th
5 gathering at FedExForum, right?

6 A. Yes, sir.

7 Q. Which would be on private property?

8 A. Yes, sir.

9 Q. And wouldn't require a permit, would it?

10 A. No, sir.

11 Q. Well, why would an event on private property such as
12 that warrant attention on anybody's part at all?

13 A. There seemed to be a lot of interest in the Black
14 Lives Matter protest on the FedExForum on that day, and so
15 that's why we got concerned with it.

16 Q. Well, I mean, the Tennessee Fusion Center was
17 expressing at least they wanted awareness of it as well,
18 correct?

19 A. Yes, sir. Yes, sir.

20 Q. All right. Now, under information gaps, do you see
21 where that's listed by the fusion center?

22 A. Yes, sir.

23 Q. Did you think these were legitimate concerns?

24 A. Yes, sir.

25 Q. When they reference the possibility of counter

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1 protests, how do counter protests at events such as the
2 ones we've been describing play into your motivations for
3 planning, what you're looking for on social media as you
4 are trying to investigate an event that's coming up? What
5 relevance does that have?

6 A. As to my job, the threat level of this event, if
7 there's -- especially a counter protest, the threat level
8 is going up because now you've got two opposed points of
9 view. And if you don't, you know, treat that the correct
10 way, you could have a lot of problems from both police and
11 the public.

12 Q. Trial Exhibit 43 that was introduced yesterday during
13 your testimony is a JIB -- or it is -- it's the
14 distribution list for the joint intelligence briefings at
15 the time, and it's dated July 10, 2016. Do you see that?

16 A. Yes, sir.

17 Q. By the way, at our request, after the Court's
18 August 10th summary judgment ruling indicating an interest
19 in how long the JIBs were distributed outside the confines
20 of the Memphis Police Department, did you go seek to see,
21 to determine, when this big broad distribution list, which
22 included entities outside the Memphis Police Department,
23 ended? Were you able to figure that out?

24 A. I was, but I forgot the date.

25 Q. Does your partner, Sergeant Cornwell, know the date?

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1 Do you know whether he would know the date that that larger
2 distribution list actually stopped?

3 A. He may.

4 Q. He's listed as a may call.

5 I want to the go through this JIB, joint intelligence
6 briefing, and it's multiple pages, is it not?

7 A. It is.

8 Q. Did the JIBs during this time frame tend to be
9 multiple pages talking about lots of different events?

10 A. Yes, sir. We had a lot of protesting going on.

11 Q. As time went on, did the focus of the JIBs tend to get
12 tighter and shorter?

13 A. Yes, sir. As I mentioned before, this had never been
14 done in the Memphis Police Department, so we started that
15 as the base line. So we put everything out there that we
16 thought that the might be important in there. So they were
17 lengthy communications.

18 Q. Now, one of the first things you talk about here is
19 the event, it's called the sniper event in Dallas.

20 A. Yes, sir.

21 Q. Why is it relevant?

22 A. Because it happened at a Black Lives Matter event.

23 Q. Now, you're also referencing upcoming events with high
24 LE presence. What does that mean?

25 A. High law enforcement presence.

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1 Q. You've got a reference to an event, which is not a
2 Black Lives Matter event --

3 A. No, sir.

4 Q. -- involving the Nathan Bedford Forrest and a birthday
5 celebration that is planned for Health Sciences Park.
6 That's what it was known as at the time. Do you see that?

7 A. Yes, sir. We started getting to a perfect storm.
8 Everything is downtown, and there's a lot of different
9 things that are going on that don't really go together.

10 Q. And there's obviously not just interest on the part of
11 those who want to celebrate Nathan Bedford Forrest's
12 birthday, but there's strong and vocal opposition to the
13 fact that that statue is even there at that time frame,
14 right?

15 A. Yes, sir.

16 Q. And someone had actually vandalized the statue at the
17 time?

18 A. Yes, sir.

19 Q. Now, so the Nathan Bedford Forrest event, was that a
20 permitted event?

21 A. It was.

22 Q. Were you still investigating it and paying attention
23 to it and monitoring social media traffic surrounding it?

24 A. Yes, sir. Because the year prior, that permit event
25 was kind of taken over by outlaw -- outlaw motorcycle gangs

1 and got to be very dangerous because some of the members
2 inside the motorcycle gang came armed.

3 Q. Now, when you're continuing with this joint
4 intelligence briefing, as we move into Bates Stamp
5 Page 05100, you are providing some social media postings
6 that relate to events that are associated with Black Lives
7 Matter planned events in Memphis during this time frame,
8 right?

9 A. Yes, sir.

10 Q. And you are -- are you characterizing them, or are you
11 simply posting what they are saying about themselves?

12 A. It's just a Snagit of what they say about themselves.

13 Q. And part of what they were saying, and they're making
14 it clear, Black Lives Matter does not consent or condone
15 violence against the police. This is what the social media
16 posts were saying, and this is what you were putting in the
17 joint intelligence briefing, was it not?

18 A. It was.

19 Q. Now, simply because no violence was being planned and
20 the organizers of the event had the utmost good faith and
21 simply because in the Forrest park situation a permit had
22 been pulled, does that end the inquiry from the standpoint
23 of what you do in your job in the Office of Homeland
24 Security?

25 A. No, sir.

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1 Q. Why not? Why not take people at their word,
2 everything's going to be okay?

3 A. When it's a matter of public safety, you can't take
4 that for granted.

5 Q. Was this a tense time between law enforcement and
6 particularly large segments of the African-American
7 community in Memphis in the aftermath of these shootings?

8 A. It was.

9 Q. And was there misconduct occurring within the Memphis
10 Police Department that would occasionally occur in
11 connection with those incidents?

12 A. Yes, sir.

13 Q. And when it happened, was it investigated?

14 A. It was.

15 Q. And was one such report made by a columnist who
16 captured a post -- and it's a poor quality photograph, but
17 it appeared to be someone purporting to be a Memphis police
18 officer pretending like he's aiming a gun at somebody down
19 the hall?

20 A. Yes, sir.

21 Q. And that was forwarded to the attention of the police
22 department to investigate?

23 A. It was.

24 Q. And did the police department investigate it?

25 A. They did.

CROSS-EXAMINATION OF T. REYNOLDS

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1 Q. Did the police department think that was funny, that
2 was a joke?

3 A. No, sir.

4 Q. Was the officer involved disciplined?

5 A. He was terminated.

6 Q. And was there personal information that was put in
7 about threats or concerns about activities that could occur
8 at large-scale public events, including one described at
9 Page 102 of the JIB?

10 A. Yes, sir.

11 Q. And why was personal information about this individual
12 put in the JIB?

13 **THE COURT:** Let's just make sure we have the
14 reference to the exhibit number also.

15 **MR. WELLFORD:** I'm sorry. It's Page 05102 of the
16 JIB.

17 **THE COURT:** Exhibit number?

18 **MR. WELLFORD:** The exhibit number is 43.

19 **THE COURT:** Right. We just need to be sure we
20 have that in there.

21 BY MR. WELLFORD:

22 Q. Why was this information put in the JIB at the time?

23 A. This gentleman here, we had received a crime stopper
24 tip that he was going to conduct a sniper-style attack at a
25 Black Lives Matter event in Memphis.

1 Q. Is that the kind of threat that the department took
2 seriously?

3 A. Yes, sir.

4 Q. Whether it turned out to be real or not?

5 A. Correct.

6 Q. On the next page, at Page 103, is there another
7 complaint that the Memphis Police Department received, not
8 that you found, but that the police department received via
9 Facebook post, which is referenced here?

10 A. Yes, sir. We received that one through the Real Time
11 Crime Center. I used Bob Smith to figure out who the
12 poster was. Courtney Triggs. Once I found the correct
13 identity, we sent officers out to discuss his statements
14 during this live stream that he could probably snipe these
15 officers while they're out in the cars.

16 Q. Someone saw a Facebook post, forwarded it to the
17 Memphis Police Department, about an individual during this
18 time frame who made a comment about sniper involving the
19 Memphis Police Department. And this individual posted:
20 "LOL. That's what's up." And then a little I think --
21 somebody's going to have to explain to me what they call
22 these things, memes or whatever, a gun.

23 A. Emojies.

24 Q. Emojies. All right. That shows my age.

25 So posted an emoji of a gun, right?

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1 A. Yes, sir.

2 Q. Did the Memphis Police Department and the Office of
3 Homeland Security assume that that might be a threat?

4 A. Yes, sir.

5 Q. Why not just assume it's just a joke; somebody's just
6 trying to be funny on social media?

7 A. You got to put it in the context of the time that
8 we're in.

9 Q. And did somebody go talk to that gentleman?

10 A. They did.

11 Q. Who?

12 A. The Multi-Agency Gang Unit went to visit him.

13 Q. And he made it clear that he was not serious and did
14 not intend to do anything, and it didn't go any further?

15 A. And he published a retraction.

16 Q. All right. So Exhibit 43 that we've just gone through
17 was the joint intelligence briefing that was actually
18 prepared before what's been known as the bridge incident;
19 is that right?

20 A. Yes, sir.

21 **MR. WELLFORD:** Your Honor, I'm just trying to
22 speed this up, so I'm trying to decide which exhibits I
23 don't need to get into.

24 **THE COURT:** That's fine. No problem. I tell you
25 what, why don't we take a break so you can do that.

1 **MR. WELLFORD:** Thank you.

2 **THE COURT:** This will be our morning break. It
3 will be about 12 minutes. We'll see everybody at about
4 28 minutes to the hour. Well, I'm sorry, about 10:30.

5 (Brief Recess.)

6 **THE COURT:** All right. We're ready to proceed.

7 **MR. WELLFORD:** Your Honor, I would like to move
8 into evidence e-mail exchange between Aubrey Howard at the
9 City of Memphis starting July 5, 2016, and Detective
10 Reynolds, the same date, Bates Stamp 18044.

11 **THE COURT:** Marked and received as 84.

12 (WHEREUPON, the above-mentioned document was
13 marked as Exhibit Number 84.)

14 BY MR. WELLFORD:

15 Q. Detective, this is an e-mail exchange between you and
16 Aubrey Howard at the City of Memphis. Do you know who
17 Aubrey Howard is?

18 A. Yes, sir. He's in charge of the permits office.

19 Q. And this is Exhibit 84.

20 And it's an e-mail exchange concerning whether there's
21 going to be protests at the park. Does this sound the
22 Nathan Bedford Forrest event we just talked about, the
23 birthday celebration?

24 A. Yes, sir. At Health Science Park.

25 Q. It turned out it was a permitted event. People do it

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1 every year. And they applied for a permit, didn't they?

2 A. Yes, sir.

3 Q. What was your question?

4 A. Any kind of protests scheduled around Sunday July 10,
5 2016.

6 Q. We talked about the significance of counter protests.
7 We saw a reference to it in the Tennessee fusion report.
8 Here's a reference to it with respect to your own level of
9 concern.

10 A. Yes, sir.

11 Q. What is the concern over counter protests at that
12 event or any other event during that time frame?

13 A. It's just -- it raises the level of possible threats
14 at each one of those venues. If there's large -- there was
15 a lot of interest in the one at FedExForum spillover, just
16 the protection of both parties being able to carry out
17 their events without anyone getting injured.

18 Q. Trial Exhibit 74 was introduced during your testimony,
19 and it starts with an e-mail exchange with Lieutenant
20 Stephen Chandler -- at the time that was your supervisor?

21 A. It was.

22 Q. -- with a bunch of other, and you're copied in on
23 this. And what the specific inquiries focused upon in this
24 multipage document was a bunch of social media captures
25 that have been forwarded to you by Real Time Crime Center,

1 including one with Congressman Cohen, and it references
2 Tami Sawyer being present, and the photo is of Congressman
3 Cohen. Do you remember being questioned about that?

4 A. Yes. Yes, sir.

5 Q. Okay. Now, but the multipage document is referencing
6 and is focusing upon the potential confluence between the
7 Nathan Bedford Forrest birthday celebration and the
8 scheduled event on July 10th that we've been talking about
9 for the last few minutes, right?

10 A. Yes, sir.

11 Q. At the FedExForum --

12 A. Yes, sir.

13 Q. -- a Black Lives Matter event. And Lieutenant
14 Chandler is concerned about some traffic and reports that
15 the KKK may want to show up unannounced and essentially
16 cause trouble, right?

17 A. Yes, sir. And there was even posts by Frank Gibson
18 that the Klan was coming, so regardless if they are not,
19 once it gets out there that they're coming, people are
20 going to act like they're coming, even if they're not.

21 Q. Was Congressman Cohen speaking at an event that was
22 somewhere near where all of these activities were
23 happening?

24 A. Yes, sir. That's another -- that's another --
25 Congressman Cohen gets a lot of threats. That was a

1 concern of mine also.

2 Q. Is it a specific concern of yours with the KKK and
3 Congressman Cohen?

4 A. Yes, sir. Yes, sir.

5 Q. Is there something going on in your mind when you're
6 forwarded this photograph of an event and a post from Tami
7 Sawyer's post of an event with Congressman Cohen that we
8 don't like Steve Cohen, we don't like Tami Sawyer, we need
9 to keep an eye on them?

10 A. No, sir. This focus on this e-mail is shaping up to
11 be a bad day on July 10th for all of us, busy day, too.

12 Q. And among the multipage document references, which
13 included that snapshot, are a bunch of references that
14 being picked up on social media about people wanting to
15 take their gun and their blade and going, you know -- they
16 could try if they want, all kinds of stuff like that,
17 right?

18 A. Yes, sir.

19 Q. Is this the core function of your office to try to
20 anticipate and stop problems like this from occurring?

21 A. It's a situational awareness. It's to make the
22 officer on the ground and the commanders on the ground
23 aware that this might be an issue.

24 Q. Now, in fact, was there a confrontation between these
25 groups that day? I mean, did the KKK go down and descend

1 on FedExForum? Did we have a big large-scale riot?

2 A. No, sir.

3 Q. Well, then was what you were doing just stupid and
4 unreasonable, or what, in your thought process -- how do
5 you determine what's a real threat and what's just social
6 media chatter?

7 A. It's very difficult to do that. Perception sometimes
8 is reality when it comes to social media. You have to take
9 these people at their word that they're coming down and
10 they're going to be armed, and you got to put that just out
11 to the officers at the field and the commanders at the
12 field so they will be aware that there may be armed parties
13 inside, inside these protests.

14 Q. Now, I know it wasn't even in your mind to be asking
15 the investigator -- to be asking the director to authorize
16 some type of written investigation into all this series of
17 social media chatter. That was not even in your mind, was
18 it?

19 A. We're moving way too fast for that.

20 Q. But in a scenario such as this one, is it even
21 possible to do that and still engage in good police work?

22 A. I would imagine the director's time is very limited
23 during this. Everybody's probably wanting his attention
24 for other things.

25 Q. Now, we have -- we've all -- we've heard some

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1 discussion -- I've referenced it in my opening statement --
2 about the events which occurred on July 10th, 2016, where
3 the interstate for a period of several hours was
4 essentially shut down. Do you remember that incident?

5 A. Yes, sir.

6 Q. Tell us where you were and what you did in response to
7 that incident. What was your job? What was your function
8 on that day?

9 A. I was at the Real Time Crime Center. The director did
10 show up there to see the macro view because inside the Real
11 Time Crime Center, all the cameras and the local news are
12 all playing on the screens along the wall. So the best
13 place for him he thought probably --

14 Q. Can I pause you for just a minute?

15 A. Sure.

16 Q. Were you ever at the FedExForum?

17 A. No, sir.

18 Q. Okay.

19 A. Prior to the -- prior to the event.

20 Q. I kind of want to walk all the way through the events
21 of that afternoon.

22 A. We're getting close to the time of the Black Lives
23 Matter rally. Lieutenant Chandler directed me to go down
24 there and try to get a feel of what was going on to see if
25 this is going to be a big protest or a huge protest. So I

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1 went down there in plain clothes.

2 Q. Based on what you just said -- I apologize for
3 interrupting you.

4 A. Yes, sir.

5 Q. But I want to show you one more document that relates
6 to your going down there.

7 **MR. WELLFORD:** Your Honor, this is Defense 110,
8 an e-mail exchange between Lieutenant Darren Goods and a
9 number of others within the department on July 9, 2016.

10 **THE COURT:** Marked and received as 85.

11 (WHEREUPON, the above-mentioned document was
12 marked as Exhibit Number 85.)

13 BY MR. WELLFORD:

14 Q. This is an e-mail exchange between -- who is
15 lieutenant Darren Goods?

16 A. He's a lieutenant over the Multi-Agency Gang Unit.

17 Q. And Eddie Bass is your supervisor at the department --
18 Office of Homeland Security?

19 A. He is.

20 Q. And were you aware of this report?

21 A. Vaguely, yes, sir. Yes, I was.

22 Q. And this is a summary of the anticipated event at the
23 FedExForum, and Detective Gooch had been requested to reach
24 out to one of the organizer, Mr. Frank Gotti. Frank Gibson
25 is his name.

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1 A. Yes, sir.

2 Q. Gotti, G-O-T-T-I, also?

3 A. That's his Facebook handle name.

4 Q. And had an encounter, kind of just a discussion about
5 what are you planning on doing down here, because there's
6 some Facebook chatter from Mr. Gotti about reaching out to
7 gang members and come together, et cetera, at this event,
8 true?

9 A. Yes, sir.

10 Q. But Mr. Gotti assured Lieutenant Goods that this was
11 going to be a peaceful event and that everybody was just
12 trying to get together. And Mr. Goods actually reported
13 that I believe he's sincere about finding solutions to the
14 senseless homicides that plague our city. Do you see that?

15 A. Yes, sir.

16 Q. And you have no reason to think that he wasn't sincere
17 about that, do you?

18 A. No, I do not.

19 Q. But did that stop you and others from monitoring the
20 event to see what might happen?

21 A. No, sir. Human nature is human nature.

22 Q. All right. So back to your being tasked to go down
23 there and just kind of see what's going on at this rally.
24 Walk us through that.

25 A. I get down there, and I see a lot of vehicle traffic,

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1 much more than anticipated, almost congested, and then a
2 lot of pedestrian traffic. The vehicle traffic looked --
3 was looking at the pedestrian traffic and trying to find
4 places to park. Everybody was dressed in either a similar
5 fashion or almost similar fashion, some type of black
6 clothing, and many had signs. And they were all walking
7 toward the general direction of the FedExForum.

8 I reported back to my lieutenant. I said this is
9 going to be a really big demonstration. And I was told to
10 go back to the Real Time Crime Center and make sure -- to
11 get on my Bob Smith account and make sure that there's
12 no -- if the Klan is coming, any other kind of protest,
13 that there's going to be erupting that we're not really
14 able to see at this point.

15 Q. And so describe to us what happened from your
16 perspective down at the Real Time Crime Center as the
17 events started to unfold. Walk us through it.

18 A. Okay. The Nathan Bedford Forrest event was crowded,
19 but it was -- it was not more than expected. There was no
20 obvious signs of the Klu Klux Klan coming. And then the
21 concentration -- and this was also in the Day of Rage, and
22 there's supposed to be a different protest down there.
23 That apparently did not even materialize. That was more of
24 a social media phenomenon. And even state and federal
25 agencies were more concerned about the Day of Rage on a

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1 national level. We were concerned about what was going on
2 locally.

3 And then I was in there trying to figure out if
4 there's anything that was about to go on in front of the
5 FedExForum that would disrupt the protest that's going on
6 at the FedExForum.

7 Q. And were you able -- Real Time Crime Center actually
8 have cameras mounted which would enable you to kind of see
9 what's going on in downtown Memphis, including the
10 FedExForum?

11 A. Yes, sir.

12 Q. So who is there? Who is watching this?

13 A. We have all -- a lot of the police officers and
14 analysts. The director's there. And we're watching local
15 news and also all the cameras.

16 Q. If you know, why was the director there?

17 A. There was -- I don't know. That was a good place for
18 him to be. If you wanted over -- the best possible
19 overview, that would have been the best place to be.

20 Q. Okay. So keep going. So what are you observing?

21 A. Well, we're seeing that the crowd is much bigger than
22 expected, and we have officers that are embedded in the
23 crowd in plain clothes. And we're getting directions that
24 they're taking this demonstration in front of the
25 FedExForum to 201 Poplar.

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1 Q. Time out. You got plain clothes officers embedded in
2 the crowd.

3 A. Yes, sir.

4 Q. What's the purpose of having them there?

5 A. Plain clothes officers embedded in the crowd are a
6 little safer than uniform officers. They can get in, and
7 their goal is to see any kind of evidence of something
8 erupting inside the -- inside the group, armed parties,
9 people that might be officer safety -- are potentially
10 hazardous to the demonstration that's going on.

11 Q. Were you getting any reports back from close plain
12 clothes officers as to what they were seeing?

13 A. We were. There were armed people inside the protest,
14 people with guns.

15 Q. So were you able to see any part of when the crowd
16 started to move from the FedExForum into other parts of
17 downtown Memphis?

18 A. Not too far after we had the text that they're moving
19 to 201 Poplar, the crowd started to move. And then the
20 whole crowd took a detour and went straight onto Front
21 Street and up the bridge. And we had a small contingency
22 of organized crime unit officers that were prepared to --
23 in the appropriate gear to try to stop people once they got
24 on the bridge. Or we were trying to get to them -- we
25 weren't anticipating them going on the bridge, but we tried

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1 to stop them. We didn't make it in time.

2 Once they got on the bridge, then we had a line on the
3 bridge that we were able to maintain.

4 Q. So the original social media chatter was that the
5 crowd seems headed toward 201 Poplar?

6 A. That was the information we were getting from embedded
7 officers inside the protest in plain clothes.

8 Q. But the crowd sort of shifted and moved somewhere
9 else?

10 A. Yes, sir.

11 Q. Anybody thinking they might be headed to the bridge
12 when the day started?

13 A. No, sir.

14 Q. Do you feel like you were prepared in retrospect? Do
15 you think that the Memphis Police Department was prepared
16 for an event like that to occur?

17 A. We were prepared, but not -- not like -- not for that
18 specific turn of events.

19 Q. Was the monitoring of social media and would the
20 monitoring of social media be helpful in the event of a
21 similar event?

22 A. Yes, sir.

23 Q. All right. Now, so you're at Real Time Crime Center.
24 The event starts to move in the direction that you talked
25 about. What involvement, if any, did you have in the

1 events which occurred on the bridge? Did you go down
2 there?

3 A. No, sir.

4 Q. Okay. Did you see from -- by the way, you're looking
5 at footage not just from Real Time Crime Center, but
6 there's helicopter footage from news media and real time
7 conventional media reports about this.

8 A. Yes, sir. In addition to that, on social media there
9 are a lot of people going live. And that's also another
10 on-the-ground view of what's going on.

11 Q. And are you able to monitor some of the social media
12 traffic of people posting live Facebook posts from the
13 bridge?

14 A. I was.

15 Q. And was there a phenomenon which occurred more than an
16 hour after the original group actually got onto the bridge
17 where another entire group of hundreds of people arrived on
18 the scene?

19 A. It was people that had been watching it on social
20 media wanted to be part of it, and additional people showed
21 up for the protest.

22 Q. Where were they coming from?

23 A. They were coming from the south along Front Street,
24 and they went straight on to the on-ramp.

25 Q. What impact did this event have on the activities of

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1 the Office of Homeland Security in your responsibilities as
2 directed by your superiors in the days and the weeks to
3 come?

4 A. Well, some of the stuff that I was receiving from the
5 things I was able to glean from my undercover account kind
6 of panned out. There were armed people in the crowd. The
7 crowd was going to be large. We didn't know it was going
8 to be that large. And that the -- most of the events that
9 we were able to predict we were able to do so fairly
10 accurately.

11 Q. Well, in the days and the weeks to come, how did the
12 bridge incident impact your sense of concern, awareness,
13 monitoring of social media activity?

14 A. There was additional protests that were promised right
15 after the bridge, and we were in the middle -- we were
16 coming up on Elvis week. And there was protests at the
17 bridge that they were going to disrupt Elvis week.

18 Q. You were shown a document that was marked yesterday as
19 Trial Exhibit 44?

20 A. Yes, sir.

21 Q. Which attached the joint intelligence briefing, the
22 acronym JIB --

23 A. Yes, sir.

24 Q. -- which attached that on July 12, 2016, where you're
25 transmitting it to a number of other individuals?

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1 A. Yes, sir.

2 Q. Let's walk through that. This is another one of these
3 joint intelligence briefings that's quite long, is it not?

4 A. Yes, sir. It was a lot of protesting.

5 Q. The structure of these things tended to be that you
6 might have three of them come out in the same day in a hot
7 button scenario, but maybe 80% of the information is just
8 sort of repeated, and then there's new information added to
9 it.

10 A. Yes, sir. I was directed by my boss, Major Bass.

11 Q. I mean, the first thing we see here is describing the
12 Dallas shootings, et cetera. What we saw a few minutes
13 ago, all this information was already in a JIB that was
14 prepared before the bridge, right?

15 A. Yes, sir.

16 Q. Okay. So we're looking for kind of new information
17 that is referencing events that occur after the bridge in
18 this JIB, and so Bates Stamp 55 -- 05594 reflects at least
19 some of the events that is a follow-up to the bridge, is
20 that not? Is that not true?

21 A. Yes, sir.

22 Q. All right. And so one of these events was a
23 threatened shutdown of a Piccadilly's near Graceland, and
24 there's a quote about Graceland. And they're talking about
25 something that's going to happen July 12th, right?

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1 A. Yes, sir.

2 Q. And you're tracking that information?

3 A. Yes, sir.

4 Q. Why?

5 A. Well, it's another planned protest. Piccadilly is
6 private property, and we weren't sure if that was going to
7 disrupt the business. How big is this event going to be?
8 Is there going to be armed people there? Should the
9 officers be attuned to them shutting down either Elvis
10 Presley Boulevard or any other things in the general area.
11 And they could be disrupting the business at Graceland.

12 Q. And so as we continue forward in this lengthy joint
13 intelligence briefing, which is actually prepared after the
14 bridge, there's references to other social media chatter
15 about protests that are being planned within days of that.
16 One of them being at the Kroger's at Poplar near Poplar and
17 Highland, right?

18 A. Yes, sir. As you see, there's a Black Lives Matter.
19 That's indicative of a lot of people would put Black Lives
20 Matter, even though we weren't quite sure it was really
21 part of Black Lives Matter.

22 Q. But you take all the threats and all of the reports of
23 we're going to have a protest seriously?

24 A. Yes, sir.

25 Q. Now, you mentioned this Day of Rage. Was there a lot

1 of chatter at the time about a national Day of Rage by a
2 group called Anonymous that was going to break out protests
3 that were intended to be violent, were going to be breaking
4 out in cities across the country?

5 A. Yes, sir. And Memphis was listed on the list of
6 cities that those protests were going to occur.

7 Q. And, actually, was there a fair amount of concern
8 about the possibility of something like this happening in
9 Memphis?

10 A. Yes, sir. Because a lot of the -- I mean, just about
11 every one of the federal agencies, state agencies were
12 convinced that that was going to happen, and they happened
13 to pick the area that they were going to have a protest
14 where the Nathan Bedford Forrest celebration was going on
15 adjacent to the Black Lives Matter protest that we were
16 having at the FedExForum.

17 Q. And at Bates Stamp 0557 of this document, there's
18 continued references to social media chatter about Day of
19 Rage events and relationship to Ferguson and Ferguson
20 officers being threatened, and then there's a reference to
21 a Black Lives Matter event that's scheduled for a church on
22 Saturday, July 16th, correct?

23 A. Yes, sir.

24 Q. And it references that it may have something to do
25 with a protest from last year involving Darrius Stewart.

1 No permit has been applied for or approved for this event.
2 Why are you interested in tracking the activities at this
3 event on private property?

4 A. Well, in one of the previous e-mails, Frank Gibson,
5 Frank Gotti, was encouraging people to attend some of these
6 events, and we were getting information that some of the
7 gangs may be trying to attend some of these events and that
8 any kind of gang involvement raises the threat level to
9 that event.

10 Q. And so this JIB that we're looking at, at Bates Stamp
11 Page 05605, actually does reference the event, which
12 occurred in downtown on the bridge on July 12th, does it
13 not?

14 A. Yes, sir.

15 Q. Referencing that the bridge was blocked for a period
16 of approximately five and one-half hours. Is that what
17 your recollection was?

18 A. Yes, sir.

19 Q. Is that a lawful event?

20 A. No, sir.

21 Q. Nobody got hurt, did they?

22 A. Nobody got hurt.

23 Q. No harm done?

24 A. No harm.

25 Q. Does that mean you don't have any concern about a

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1 similar event creating mass chaos and damage to property
2 and potentially life in the future if something like it
3 occurred again?

4 A. No, sir.

5 **MR. WELLFORD:** Your Honor, I would like to mark
6 as the next exhibit e-mail exchange between Major Bass and
7 Sergeant Reynolds on July 11th, the day after the bridge
8 incident, which would be Defense 111.

9 **THE COURT:** Marked and received as 86.

10 (WHEREUPON, the above-mentioned document was
11 marked as Exhibit Number 86.)

12 BY MR. WELLFORD:

13 Q. This is Exhibit 86, and it's referencing -- it starts
14 out as an e-mail chain to and from you and Lieutenant
15 Chandler on July 11th. Do you see that?

16 A. Yes, sir.

17 Q. Day after the bridge.

18 A. Yes, sir.

19 Q. And then when you go down to the bottom of the page
20 and you kind of see what the report has been, do you see
21 that?

22 A. Yes, sir.

23 Q. There's a report from a task force officer with the
24 drug enforcement administration of a potential kind of
25 copycat shut down of the bridge in West Memphis, right?

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1 A. Yes, sir.

2 Q. Did you tend to take such reports from individuals,
3 such as a drug enforcement administration agent, seriously?

4 A. Yes, sir. Especially when weapons are involved like
5 this e-mail suggested that this individual was going to
6 have an AK-47.

7 Q. Did you deploy resources, meaning were you trying to
8 track social media and other sources of information to
9 determine whether this was a real event?

10 A. I was.

11 Q. Did it turn out to happen?

12 A. No, sir.

13 Q. Did you feel like it needed to be checked out?

14 A. Yes, sir.

15 **MR. WELLFORD:** Plaintiff's 223. This next e-mail
16 I'd like to move into evidence, Your Honor, is an e-mail
17 from Major Bass, July 12, 2016, to Deputy Chief Hardy and
18 others, including Sergeant Reynolds.

19 **THE COURT:** Marked and received as 87.

20 (WHEREUPON, the above-mentioned document was
21 marked as Exhibit Number 87.)

22 BY MR. WELLFORD:

23 Q. Sergeant, is this an e-mail chain that you're included
24 on two days after the bridge? Right?

25 A. Yes, sir. Yes, sir.

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1 Q. July 12th, referencing unconfirmed information that
2 this list of private residences and businesses is possibly
3 targeted by protesters. Do you see that?

4 A. Yes, sir.

5 Q. Now, that's a lot of locations. How do you prioritize
6 and try to figure out what's real, what's not real, where
7 do we deploy our resources? What tools do you use to do
8 that?

9 A. Well, the tools at my disposal, and I went to my Bob
10 Smith account and tried to vet some of this information
11 that we're receiving. Also, the Real Time Crime Center is
12 working diligently on their side to do the same thing.

13 Q. Did these events materialize at least at the time?

14 A. No, sir.

15 Q. Did you take them seriously?

16 A. We did.

17 **MR. WELLFORD:** Plaintiff's 224. I'd like to mark
18 as the next exhibit, e-mail from Major Bass to Sergeant
19 Reynolds and others, same date, July 12, 2016, concerning a
20 threat and protest at Graceland Enterprises.

21 **THE COURT:** Marked as 87 -- I'm sorry -- 88 and
22 received, 88.

23 (WHEREUPON, the above-mentioned document was
24 marked as Exhibit Number 88.)

25 BY MR. WELLFORD:

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1 Q. Series of e-mail exchanges and follow-up from Major
2 Bass, same date, July 12th, correct?

3 A. Yes, sir.

4 Q. And this one concerns, does it not, a report from
5 another entity that more protesters are coming back to
6 Graceland and northbound to I-55. Do you see that?

7 A. Yes, sir.

8 Q. Who is -- boy, my handwriting is awful.

9 A. Shelby County sheriff --

10 Q. What is that entity we're looking at?

11 A. The Shelby County sheriff's department Office of
12 Homeland Security.

13 Q. So on Exhibit 88, the SCSD, Shelby County?

14 A. Sheriff's department.

15 Q. And OHS?

16 A. Office of Homeland Security.

17 Q. They're reporting to you that this is a threat, right?

18 A. Yes, sir. They get it from a confidential informant.

19 Q. And did you investigate it?

20 A. Yes, sir.

21 Q. Now, in point of fact, was there an unpermitted event
22 and protest at Graceland on that day?

23 A. There was.

24 Q. This turned out to have some level of legitimacy,
25 didn't it?

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1 A. It did.

2 Q. And what actually happened that day is that a group of
3 protesters, unpermitted, sat down in the street and blocked
4 traffic at Graceland, right?

5 A. Yes, sir.

6 Q. Do you happen to recall whether any of them showed up
7 down at the Piccadilly restaurant that we saw in an earlier
8 post?

9 A. No, sir, didn't.

10 Q. But they went and blocked the traffic at Graceland?

11 A. They did.

12 Q. Arrests were made?

13 A. There were.

14 Q. Unlawful to sit down in the middle of the street and
15 block traffic, is it not?

16 A. It is.

17 Q. Shortly after that event happened, were you also
18 seeing indications on social media from some of the same
19 individuals involved in the July 12th event that they
20 planned a bigger protest at Graceland during Elvis week?

21 A. Yes, sir, they did.

22 Q. And so the record's clear, although we all know what
23 we're talking about, when is Elvis week? Don't tell me you
24 don't know.

25 A. I'm not an Elvis fan. Second week in August.

1 Q. All right. And is that something that was of
2 concern --

3 A. It is.

4 Q. -- to you?

5 A. Even though I'm not an Elvis fan, there's a lot of
6 Elvis fans around here. And it's a big event citywide, for
7 the city.

8 Q. Now there continued to be --

9 **MR. WELLFORD:** Excuse me, Your Honor. I'm going
10 to mark as an e-mail from Michael R. Freeman with the FBI,
11 July 15, 2006, to Sergeant Reynolds, an e-mail concerning
12 threats of agitators of Nathan Bedford Forrest.

13 **THE COURT:** Marked and received as 89.

14 (WHEREUPON, the above-mentioned document was
15 marked as Exhibit Number 89.)

16 BY MR. WELLFORD:

17 Q. Same time frame, within days of the bridge incident,
18 you continue to receive reports of sort of bridge fallout,
19 do you not?

20 A. Yes, sir.

21 Q. This one from an agent with the FBI, federal task
22 force officer with the US Department of Justice.

23 And the nature of this threat is maybe some agitators
24 traveling to the Nathan Bedford Forrest protest in favor of
25 the Confederacy. One male may possibly be armed with an

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1 AR-15 assault rifle with one hundred rounds of ammunition
2 and plans to exercise his second right to open carry it.
3 Unfortunately, there's no other info other than this.

4 What did you do when you received this information?

5 A. I went out and saw if I could find a similar --
6 something to support that and to corroborate that
7 information.

8 Q. It's true you didn't go to the director and seek
9 written instruction to do that, did you?

10 A. No, sir.

11 Q. In your mind at this time frame still, just factually,
12 whether you should have been or not, you were unaware
13 that's what is associated with a criminal investigation if
14 it has something to do in some way with first amendment
15 rights?

16 A. Now I know. But I didn't back then.

17 Q. Do you have an opinion as to whether that, even
18 knowing now, knowing now what you know, would that be the
19 kind of thing that you would think would take you to the
20 director, or do you know?

21 A. I really don't know.

22 Q. Okay. Let's move on -- I'm not going to show you
23 exhibits.

24 Is it true that these are representative samplings of
25 social media reports and memos that exist within the Office

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1 of Homeland Security in July and well into August
2 concerning what I'll call a fallout from the bridge,
3 threats of unpermitted protests, threats of counter
4 protests or people upset at what happened at the Forrest
5 park or the bridge or Forrest statue where that was, coming
6 into town and causing trouble? Was other such activity
7 occurring during that time frame?

8 A. Yes, sir.

9 Q. All right. And was this a matter of concern within
10 the Office of Homeland Security?

11 A. It was.

12 Q. And yesterday you were shown a collective exhibit,
13 Plaintiff's 49 -- or Trial Exhibit 49, and I must have
14 written the number down wrong. Do you remember a series of
15 questions asked yesterday about a group of young men,
16 July 24th, couple of weeks after the bridge incident, where
17 there was video and follow-up and questioning because they
18 had "I am a man" written on them --

19 A. Yes, sir.

20 Q. -- kind of body paint?

21 A. At an eatery, Wendy's or something like that,
22 McDonald's.

23 Q. But what you weren't shown is the entire stream e-mail
24 of communications, and the exhibit will speak for itself.
25 But do you recall that that whole thing got started because

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1 these individuals were blocking traffic, reported to have
2 blocked traffic at Cooper and Madison?

3 A. Yes, sir.

4 Q. Were your motivations during this time frame at all
5 related to the content or the opinions themselves that were
6 being expressed by people upset on one side or the other
7 about everything going on in Memphis in July of 2016?

8 A. No, sir.

9 Q. What was your concern and your focus?

10 A. Private property, threats to the public, threats to
11 officers and public safety.

12 Q. Similarly, you were asked questions as reflected in
13 Trial Exhibit 54 yesterday about a situation where
14 Mr. Gotti, Frank Gotti, had been arrested in August
15 of 2016, and there was some chatter back and forth about
16 people who were demanding that he be let out or given bail.
17 Do you recall those questions?

18 A. I do.

19 Q. Do you recall the incident?

20 A. I do.

21 Q. And was this occurring within a short period of time
22 of the social media traffic that was threatening a complete
23 shutdown of Graceland during Elvis week?

24 A. It was.

25 Q. Was Mr. Gotti one of those who was making those posts?

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1 A. Mr. Gibson was making those posts.

2 Q. Now, what was your concern about the impact of
3 Mr. Gotti being in jail and people wanting him to be out of
4 jail? What was motivating you to even be interested in
5 that?

6 A. The same thing. A big protest in front of 201 Poplar.
7 It would disrupt traffic, or there's a lot of police
8 officers back and forth over there doing police work.
9 Officer safety was also included in that. Threats from a
10 crowd. They might be mad at the officers because
11 Mr. Gibson was arrested.

12 Q. Now, let's move on into September 2016. We talked
13 about the Bob Smith account. Did there come a time when
14 Bob Smith was asked to become involved in a criminal
15 investigation concerning a possible fake Twitter account
16 set up in the name of the police director?

17 A. I was.

18 Q. And who directed you to become involved in that
19 matter?

20 A. The director.

21 Q. Personally?

22 A. I received that from -- information from -- via my
23 boss, Colonel Bass.

24 Q. Describe what was going on in terms of what had been
25 relayed to you about that situation and what your -- your

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1 role was as Bob Smith or from using the Bob Smith account
2 in trying to assist in the investigation?

3 A. Economic crime was fielding a complaint from a
4 director and mayor about a fake Twitter account. The
5 existence of and the use of violated Tennessee state law
6 under identity theft, and the -- they had a really good
7 case with a lot of circumstantial evidence.

8 Q. You don't need to characterize it, but factually I am
9 interested in you describing what you were asked to do and
10 what the nature of the investigation was that you had
11 access to.

12 A. Yes, sir. They asked me, based on my experience with
13 my social media experience with Paul Garner, to see if some
14 of the tweets that were made under the director and the
15 mayor were consistent with some things that Paul Garner
16 would say. And after a review, I was unable to give a
17 conclusive decision.

18 **MR. WELLFORD:** Defendant's 103. I'd like to mark
19 the incident report and accompanying materials provided to
20 Sergeant Reynolds as a part of that investigation.

21 **THE COURT:** Sure. 90, marked and received.

22 (WHEREUPON, the above-mentioned document was
23 marked as Exhibit Number 90.)

24 BY MR. WELLFORD:

25 Q. So as a part that investigation, were you provided

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1 with the incident report that's reflected here in
2 Exhibit 90?

3 A. I was.

4 Q. And did it concern events that were alleged to have
5 happened --

6 **THE COURT:** Will you blow it up a little bit at
7 the top? Thank you.

8 **MR. WELLFORD:** Yes.

9 BY MR. WELLFORD:

10 Q. -- in September of 2016 --

11 A. Yes, sir.

12 Q. -- on the 8th -- well, it says from the 8th to the
13 8th, right?

14 A. That's when it was reported, yes, sir.

15 Q. That's when it was reported.

16 And at Bates Stamp 23718 was the narrative that had
17 been provided as a part of the investigation that you were
18 involved in that Mr. Rallings -- is that Director Rallings?

19 A. It is.

20 Q. -- that a Twitter account had been created and
21 activated in his name, he says, by using his personal
22 information. That he never had a Twitter account nor gave
23 anybody permission to use it, right?

24 A. Correct.

25 Q. On the following page, 23719, Bates stamp, that

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1 contains the summary of the investigation materials that
2 were made available to you?

3 A. Yes, sir.

4 Q. And what the investigation revealed at that point was
5 that subpoenas had been issued, and it reflected
6 information about a fake Twitter account and locating the
7 computer from which that information had been posted,
8 correct?

9 A. Yes, sir.

10 Q. And it included referencing a Twitter account aktion
11 kat, you've referenced that account, have you not?

12 A. I have.

13 Q. You knew that belonged to Paul Garner, did you not?

14 A. I did.

15 Q. And it references that account from 9-6 to 9-20-2016,
16 on 26 occasions that the Twitter account belonging to
17 aktion kat, Paul Garner was used at the same date, time,
18 location, and IP address that the fraudulent account for
19 the fake Twitter account was used, right?

20 A. Correct.

21 Q. Your role in that was to actually look at the
22 postings, and just from your own familiarity, you had been
23 following Mr. Garner's social media feeds with respect to
24 certain events as of that time frame?

25 A. Yes, sir. Yes, sir.

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1 Q. And you were asked to see, can you match up the tone
2 and the grammar and all of that.

3 A. Correct.

4 Q. You were -- it was inconclusive from your standpoint
5 as to your role there.

6 A. Yes, sir.

7 Q. Do you know what the status of that investigation is
8 at the present time?

9 A. It's dormant.

10 Q. All right. Is it over?

11 A. I don't think so. No, sir.

12 Q. Let's move into late September 2016, and I'm putting
13 the time line, which is Exhibit 80, back up on the screen
14 to acclimate our time frame. The second page of the time
15 line references events that start in September 2016. Do
16 you see that over there?

17 A. I do. I do.

18 Q. All right. There's a date that I've circled here on
19 that time line, September 27, 2016, DA announces no charges
20 against MPD officer involved in Stewart shooting. Do you
21 know what that references?

22 A. Those are Connor Schilling was -- the case against
23 Connor Schilling.

24 Q. And who is Connor Schilling?

25 A. He is the officer that shot and killed Darrius

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1 Stewart.

2 Q. All right. And so what was -- what was the
3 significance in your world, the Office of Homeland
4 Security, of the decision by the DA not to pursue criminal
5 charges against Officer Stewart -- I apologize -- Officer
6 Schilling?

7 A. Impromptu protests, officer safety threats, threats to
8 the attorney general and Officer Schilling specifically.

9 **MR. WELLFORD:** Your Honor, this is Defense 44,
10 Tennessee Fusion Center report, September 23, 2016. I'd
11 like to mark that as the next exhibit.

12 **THE COURT:** Marked and received as 91.

13 (WHEREUPON, the above-mentioned document was
14 marked as Exhibit Number 91.)

15 BY MR. WELLFORD:

16 Q. Now, that decision about not to indict that we talked
17 about actually occurred on September 27th, but even before
18 that, even before that decision was made, as of
19 September 23rd -- by the way, you periodically get these
20 Tennessee Fusion Center reports, the same way you were
21 distributing them for at least a period of time outside the
22 department, right?

23 A. Yes, sir. Yes, sir.

24 Q. And the -- my question is, had these threats that we
25 talked about previously, from one group or another, in the

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1 aftermath of the bridge incident, were they continuing to
2 be made?

3 A. They were.

4 Q. Including the fusion center forwarding comments made
5 on Facebook by someone calling for the blood of police
6 officers.

7 A. Yes, sir.

8 Q. And these threats taken seriously, continued to be
9 taken seriously?

10 A. Yes, sir, they are.

11 Q. So then we're into the aftermath of the decision made
12 not to proffer criminal charges against Officer Stewart.
13 What types of activity, protest, demonstration, and
14 particularly unpermitted protest or demonstration activity
15 did that generate?

16 A. So many dates. I'm not sure if there were any
17 specific ones about that. There might have been one or two
18 in front of 201 Poplar, the Criminal Justice Center, but I
19 don't think there was -- I don't think there was any other
20 ones.

21 **MR. WELLFORD:** It's Plaintiff's 314. I want to
22 move into evidence e-mails from Bradley Wilburn to the
23 department of Homeland Security mailing list, September 27,
24 2016.

25 **THE COURT:** Marked and received as 92.

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1 (WHEREUPON, the above-mentioned document was
2 marked as Exhibit Number 92.)

3 BY MR. WELLFORD:

4 Q. Exhibit 92 references an e-mail from Bradley Wilburn.
5 We've heard his name before. He was -- worked in the Real
6 Time Crime Center.

7 A. He did.

8 Q. And by the way, I'm not sure you've ever really
9 explained this, but how did you -- did Homeland Security,
10 Office of Homeland Security, work with Real Time Crime
11 Center? I'm talking about what types of information were
12 you sharing? How often were you meeting? Did you know
13 what they were doing? Did they know what you were doing?
14 That kind of thing.

15 A. We shared the same building. We shared the same
16 floor. The projects we work on together are task specific.

17 Q. And so that meant that he would periodically forward
18 you -- or Real Time Crime Center would just periodically
19 forward you things that they thought might be of interest
20 to you?

21 A. Yes, sir.

22 Q. And maybe you do the same thing back?

23 A. Yes, sir. Yes, sir.

24 Q. And they tended to focus more on the social media
25 collator tool than you do?

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1 A. They did.

2 Q. Did you use that social media collator tool? You were
3 asked a lot of questions about that too.

4 A. No. I used my -- the social -- my undercover account,
5 Bob Smith, to kind of vet the information that the social
6 media collator was getting.

7 Q. Well, Page 2 of -- I'm trying to figure out how to
8 clear this. I need some help. Thank you.

9 Page 2 of the Exhibit 92 contains a screen shot that
10 Real Time Crime Center had obtained, which Officer Wilburn
11 wanted you to be aware of, right?

12 A. Yes, sir.

13 Q. During that same -- during that time frame?

14 A. Yes, sir.

15 Q. And this included a social media exchange between
16 Keedran Franklin and others about what to do about it.
17 What was "it" on September 27th?

18 A. About the decision from Attorney General Weirich, and
19 he wanted to shut it down.

20 Q. Do you have any idea what he meant by "shut it down"?

21 A. Well, shut down the bridge is the way we took it.

22 **MR. WELLFORD:** I don't know why this is not
23 working with me, other than I'm not good with technology,
24 but I apologize for you having to clear it.

25 **THE COURT:** We'll work on it later.

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1 BY MR. WELLFORD:

2 Q. So when you and Homeland Security heard the term "shut
3 it down" in the aftermath of the July 10th incident, what
4 are you thinking?

5 A. We're going to have another bridge shutdown.

6 Q. And we mentioned the threatened event at Graceland
7 during Elvis week. Was there -- were there -- was there
8 disruption at Graceland during Elvis week that resulted in
9 arrests being made?

10 A. Yes, sir.

11 Q. All right. Were you investigating and monitoring
12 social media chatter leading up to that to try to figure
13 out what was going on?

14 A. Yes, sir. Yes, sir.

15 Q. What were you picking up about the nature and plans
16 for such a protest or a demonstration?

17 A. It was definitely plans to disrupt Elvis week, and the
18 candlelight vigil specifically.

19 Q. How?

20 A. That, we weren't sure. It was going to be some type
21 of large protest.

22 Q. Did you get some information as to whether protesters
23 were instructed to bring bullhorns or signs?

24 A. Yes, sir. There was some information that they were
25 supposed to -- well, that's kind of what they do most of

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1 the time. When the protest actually started, we got
2 information from -- during the -- that they were asking
3 participants not to bring bullhorns and signs.

4 Q. What would be the significance of a request that they
5 not bring bullhorns and signs from your world?

6 A. Well, to me it would appear like they were trying to
7 infiltrate the zoo, get into the candlelight vigil where
8 they were actually holding the vigil and then cause a
9 disruption.

10 Q. And were the arrests actually at Graceland made
11 associated with individuals who wanted to get into private
12 property and then were not allowed in, and there was some
13 type of disruption and arrest occurred?

14 A. Yes, sir.

15 Q. Now let's fast-forward to December 2016. Were you
16 involved at all in the investigation of an incident where
17 it's been stipulated in this case that the coalition of
18 concerned citizens and Keedran Franklin staged a die-in on
19 the front lawn of Mayor Jim Strickland's personal
20 residence?

21 A. Yes, sir, I was.

22 Q. Tell us about what your involvement in that incident
23 and the follow-up from it was.

24 A. Other than the e-mail from Colonel Bass much earlier
25 that the director -- that the mayor was a possible target,

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1 we didn't have a lot of advance notice of this particular
2 protest. So the day after, we were looking on Facebook,
3 after we were told that there was a die-in on his lawn.
4 And we were trying to figure out who all was involved with
5 the die-in at the mayor's house.

6 Q. And as a part of that process, were you asked to
7 review a Facebook live post that Mr. Franklin himself made
8 at the event?

9 A. Yes, sir.

10 Q. All right.

11 **MR. WELLFORD:** Your Honor, we've abridged it. We
12 have an abridged version that we've shown to counsel.

13 **THE COURT:** Sure.

14 **MR. WELLFORD:** And we have downloaded it onto a
15 CD to mark it in evidence.

16 **THE COURT:** Sure.

17 **MR. WELLFORD:** And we've talked to Mr. Castelli
18 about this.

19 **THE COURT:** Sure.

20 **MR. WELLFORD:** And he understands that we've got
21 the chain of custody established. I'd like to mark as the
22 exhibit --

23 **THE COURT:** Let's mark it as 93, a CD.

24 **MR. WELLFORD:** -- CD of an abridged version of
25 the die-in video and ask that we be allowed to play it on

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1 the monitor.

2 **THE COURT:** Sure. Sure. No problem. It's
3 marked and received as 93, the abridged version of the
4 December events at the mayor's house.

5 **MR. WELLFORD:** December 19, 2016.

6 (WHEREUPON, the above-mentioned document was
7 marked as Exhibit Number 93.)

8 **THE COURT:** Lower the lights.

9 (Exhibit No. 93 played.)

10 BY MR. WELLFORD:

11 Q. That's almost three minutes of a 24-minute video that
12 I'll ask you to assume that Mr. Franklin posted on
13 Facebook. You viewed the whole 24 minutes?

14 A. Yes.

15 Q. And you were able to determine that one of the
16 individuals was Keedran Franklin?

17 A. I was.

18 Q. Were you able to determine anybody else in the video
19 that you could identify with particularity?

20 A. Al Lewis or Aaron Lewis.

21 Q. Al Lewis and -- excuse me?

22 A. Al Lewis is the Facebook moniker. His real name is
23 Aaron Lewis.

24 Q. Is it legal to stage a protest activity such as that
25 at somebody's front lawn about at 6:00 in the morning?

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1 A. At the minimum, that's a misdemeanor.

2 Q. Legal to go walk up to somebody's window and look into
3 it where his wife and children are at about 6:00 in the
4 morning?

5 A. No, sir.

6 Q. Go up to his door?

7 A. No, sir.

8 Q. Is it a criminal act?

9 A. It is a criminal act.

10 Q. Did the director personally ask you to get involved in
11 that investigation?

12 A. No, sir.

13 Q. How did you get involved?

14 A. That was on the to-do list. As soon as we got there,
15 we were notified by the -- some of the people in the Real
16 Time Crime Center that a die-in had occurred. I think it
17 was even on a local news channel, but we started -- I went
18 to my Bob Smith account and started working on reviewing
19 this to see if we can assist with the criminal
20 investigation.

21 Q. Let's move on to the events that occurred in 2017.
22 Were you involved at all in a criminal investigation into
23 an attempted shutdown of the entranceway to the Valero
24 refinery?

25 A. I was.

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1 Q. What do you remember about that?

2 A. Prior, in November of the previous year, we started
3 getting some information -- well, the hot topic that we
4 started to fall on was the Dakota pipeline. It was a
5 regional issue and sometimes national issue. There were
6 protests all along the pipeline and also the route of the
7 projected pipeline. So we started focusing some attention
8 on those type of protests in other states.

9 Once we found out that the Valero pipeline -- the
10 Dakota pipeline was going to end in Valero, we kind of put
11 that in our -- one of the things we were looking at. We
12 received an e-mail from Valero that had been some vandalism
13 and protest activity and just reminding us that it was
14 coming to Memphis.

15 So we started looking out for potential protests
16 around Valero.

17 Q. And did an incident occur at Valero, such as the one
18 I've described, on January 17, 2017?

19 A. 17th, yes, sir.

20 Q. Might be January 16th. But you were involved in the
21 follow-up investigation of that?

22 A. Yes, sir. Yes, sir.

23 Q. Even prepared a PowerPoint for the director?

24 A. I did.

25 Q. Reviewed the videos and photographs associated with

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1 it?

2 A. Yes, sir. It was MLK day that year. MLK birthday
3 that year.

4 **MS. FLOYD:** Your Honor, we'd like to mark as the
5 next exhibit the Valero videos that detective Reynolds
6 reviewed in connection with his investigation. We had the
7 same process that we followed and would like to mark the
8 CDs of them as the next exhibit.

9 **THE COURT:** Marked and received as 94.

10 (WHEREUPON, the above-mentioned document was
11 marked as Exhibit Number 94.)

12 **MR. WELLFORD:** It is a collective exhibit, two
13 separate CDs of the same incident.

14 **THE COURT:** All right.

15 **MR. WELLFORD:** And would like authority to play
16 them now.

17 **MR. CASTELLI:** Before we play those, Your Honor.

18 **THE COURT:** Sure.

19 **MR. CASTELLI:** I just wanted to inform the Court
20 Mr. Cody is here. I know we talked about interrupting
21 testimony.

22 **THE COURT:** How close are we?

23 **MR. WELLFORD:** Ten minutes.

24 **MR. CASTELLI:** I don't know how long these videos
25 are.

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1 **MR. WELLFORD:** The videos themselves, they are a
2 total of about eight minutes. And I probably got about ten
3 minutes.

4 **THE COURT:** Why don't we do this -- if we can
5 finish the testimony, it's desirable. Or do you want to --
6 it's both of you. Do you want to interrupt and let him
7 testify, or do you want to wait a second?

8 **MR. WELLFORD:** I tell you, if Your Honor would
9 permit it, if we could play the video, and then we could
10 put Mr. Cody on and I've got cleanup.

11 **THE COURT:** And then we'll take a break, and then
12 we'll let Mr. Cody testify. We're going to finish the
13 video, and I think that's the right thing. Thank you very
14 much.

15 I'm sorry, the date of the video is January the
16 16th?

17 **MR. WELLFORD:** Of 2017.

18 **THE COURT:** Certainly.

19 (Exhibit 94 played.)

20 **MR. WELLFORD:** Your Honor, I can stop it right
21 there.

22 **THE COURT:** That's fine.

23 **MR. WELLFORD:** Just a couple of follow-up from
24 that before we stop.

25 BY MR. WELLFORD:

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1 Q. Now, the Valero refinery, is that an important part of
2 the infrastructure that supplies oil and gasoline to a lot
3 of the retail gasoline station establishments in the city?

4 A. It's not only the city. It's the region. It's a
5 regional infrastructure.

6 Q. Was the Office of Homeland Security particularly
7 concerned after the bridge shut down with threats to
8 anything involving infrastructure within the city?

9 A. Absolutely.

10 Q. Which would include locations such as the Valero
11 refinery?

12 A. Yes, sir.

13 Q. FedEx?

14 A. Yes, sir.

15 Q. Airport?

16 A. Airport.

17 Q. Things of that nature.

18 **MR. WELLFORD:** Your Honor, we can pause at this
19 time.

20 **THE COURT:** That's fine. I'm going to ask one
21 question. Would you identify the young man who is speaking
22 at the beginning?

23 **THE WITNESS:** That's -- his last name is Cohen,
24 but I can't remember his first name.

25 **THE COURT:** That's fine. We're going to take --

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1 I'm going to let you step down, if you don't mind. We're
2 not going to let you -- we're going to keep you around.
3 Unfortunately, you will have to actually go to the witness
4 room at this time.

5 **THE WITNESS:** Okay.

6 **THE COURT:** And we'll have you come back as soon
7 as practical. And I understand --

8 **MR. WELLFORD:** I'll collect my materials.

9 **THE COURT:** Mr. Castelli, we agreed that we would
10 allow you to call Mr. Cody when he was available. Who do
11 you wish to call as your next witness?

12 **MR. CASTELLI:** We'll call Michael Cody, Your
13 Honor.

14 **THE COURT:** All right. And if you'll let
15 Mr. Cody know to come in.

16 Mr. Cody, if you would step to the podium. I
17 know you've been here before, and raise your right hand --
18 in a different capacity, and so we'll let you be sworn in.

19 We will follow the same procedure every time we
20 have a witness as you know.

21

22

23

24

25

DIRECT EXAMINATION OF M. CODY

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* * *

MICHAEL CODY,

**was called as a witness and having first been duly sworn
testified as follows:**

DIRECT EXAMINATION

BY MR. CASTELLI:

Q. Could you state your name and spell your name for the
record, please?

A. WJ Michael Cody.

Q. Could you spell it for the record?

A. Oh, I'm sorry. C-O-D-Y.

Q. Thank you.

A. You'll have to speak up. The one thing I hope to
remember was to have my hearing aids, but I just brought
the batteries.

THE COURT: Don't feel bad. I've been asking him
to speak up the whole time. We're going to work on that.

Counsel, I want to make sure you speak into your
mic real carefully. And obviously if you have any
difficulty hearing --

THE WITNESS: I can hear. I can hear.

THE COURT: -- let us know.

BY MR. CASTELLI:

Q. Absolutely. Yeah, if you can't hear me, please let me

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1 know.

2 Mr. Cody, can you explain to the Court what your
3 involvement with the American Civil Liberties Union was in
4 the decade of the 1960s, please?

5 A. Yes. I graduated from the University of Virginia law
6 school in the spring of 1961 and went in the Army for six
7 months and began work with my current firm Burch, Porter &
8 Johnson in December of the '61, really basically the start
9 of the year 1962, and Mr. Burch who was the reason I came
10 with this firm had been active in the segregation matters
11 and really civil liberties matters going back many years,
12 and he had encouraged me to come here.

13 And naturally when I started working with him, I began
14 to be involved with the ACLU because with voting rights and
15 other civil liberties issues, they were active here, and so
16 in -- from 1962 until 1968, I was what I guess you would
17 call -- I think we called ourselves cooperating attorneys,
18 the national office if they got complaints or things of
19 that sort, they would find someone on a pro bono basis that
20 would represent that person. And that's what I did up
21 until 1967. And in 1967 David Caywood, who was Mr. Burch's
22 son-in-law and one of my partners, and I and Russell
23 Sugarman, apparently from what I've seen that the lawyers
24 have given me, we incorporated the ACLU of West Tennessee.
25 Prior to that time, I had worked with ACLU lawyers,

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1 cooperating lawyers like Bernie Bernstein in Knoxville on
2 cases over there, and there were also people in Nashville,
3 but it was very loose organization. I can't tell you why
4 we set up a 501c3. My guess is it was so we could raise
5 money.

6 **MR. CASTELLI:** Let me have this exhibit marked as
7 the next-numbered exhibit.

8 **THE COURT:** Yes.

9 **MR. CASTELLI:** This is the charter for the West
10 Tennessee Civil Liberties Union.

11 **THE COURT:** Certainly. Marked and received as
12 95.

13 (WHEREUPON, the above-mentioned document was
14 marked as Exhibit Number 95.)

15 BY MR. CASTELLI:

16 Q. Mr. Cody, do you recognize this document we put up on
17 the screen? Should be in front of you.

18 A. I recognize what it is. I didn't see it until y'all
19 showed it to me, but obviously I was involved in it as one
20 of the -- I'm going to read -- one of the founders, I
21 guess, or the incorporators of that group in 1967.

22 Q. And so that's your name there at the beginning of this
23 charter?

24 A. Yes, it is.

25 Q. And is that your signature there on Page 3 of the

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1 charter?

2 A. Yes, it is, April 15, 1967.

3 Q. Okay. And so how long were you involved with this
4 corporation?

5 A. I was -- I continued to sort of do the same things I
6 was doing earlier, but I guess until about April 1968,
7 which was I -- to my memory the last time I recall doing
8 anything regarding the ACLU, and that would have been when
9 the national office and the southern office asked our firm
10 to represent Dr. King in April of 1968.

11 Q. What is your recollection about the entity known as
12 the ACLU of Tennessee?

13 A. I don't know exactly the current -- the dates of
14 things right in there, but I do know that by August of 1968
15 I had learned that there was -- whether it's because the
16 national office wanted to do it or whatever, they were
17 going to have one group and no longer the three affiliates
18 in east and middle and west Tennessee. It was all going to
19 be handled by one ACLU affiliate in Tennessee, which would
20 be located in Nashville, and that would be the Tennessee
21 ACLU chapter or affiliate.

22 Q. And quickly, kind of stepping back a minute, based on
23 conversation that you and I had recently, to be clear, you
24 were scheduled to present at an ACLU of Tennessee event
25 some time in the fall?

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1 A. They called and asked if I would speak at the 50th
2 anniversary and talk about Dr. King's representation, and I
3 think that's in September or October of this year in
4 Nashville.

5 Q. Okay. And just -- but other than that, have you had
6 any formal relationship with ACLU of Tennessee?

7 A. Yes. In '68, David Caywood took my place as the
8 president of the local affiliate, and the national board,
9 which I was a member of, assumed that David was going to
10 take my place on the national board, and David wrote a
11 letter in April of 1968 saying that he wanted me to stay on
12 the national board.

13 So I was apparently on the national board sometime
14 after '68, but I think that next year Walter Bailey took my
15 place, and so that would have been as far as I know, the
16 last time that I had any kind of position or responsibility
17 with anything to do with the ACLU.

18 Q. And what's your knowledge about what activities that
19 this West Tennessee Civil Liberties Union had after the
20 ACLU, the statewide organization was formed?

21 A. I have no memory that they had any involvement. I
22 can't remember ever going to any meetings. I've never seen
23 a piece of stationery that was later than the one David
24 used on his April 10, 1968, letter. That is the 1967 ACLU
25 letterhead, and I never saw anything later than that.

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1 There may have been things that went on, but I was not
2 involved in it.

3 Q. And what's your recollection about -- or do you know
4 anything about a west Tennessee chapter of the ACLU?

5 A. Well, for that period in 1967-68, I think we referred
6 to ourselves as an affiliate or a chapter of the national
7 ACLU, and that would have been the case until the Tennessee
8 ACLU came upon the scene and the others didn't function
9 anymore, as far as I know. Now, they may have had meetings
10 and things of that sort, but I'm not aware of them.

11 Q. Okay.

12 A. I didn't have any participation.

13 Q. Okay. And as far as the 1976 Kendrick case, were you
14 involved in that case?

15 A. No. In 1976 I had been elected to the Memphis City
16 Council, and so I was on the city council then, and the
17 only -- I couldn't say it's involved in this case. I
18 remember that we were holding a hearing on a committee to
19 look at the police records from surveillance in the '60s,
20 and the mayor advised us that those records had been burned
21 up. So to that extent, I was sort of involved in this
22 issue, but only sort of to see where the records were. I
23 had no involvement with the ACLU or the lawsuit or any of
24 that business.

25 Q. And to your knowledge or recollection, did the entity

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1 that you created, this West Tennessee Civil Liberties
2 Union, did it have any involvement in that 1976 Kendrick
3 case?

4 A. I wouldn't have thought so because I don't know of
5 anything that happened between '68 and '76 down here that
6 wouldn't have been connected with the statewide
7 organization.

8 **MR. CASTELLI:** Thank you, Mr. Cody. Those are my
9 questions.

10 **THE COURT:** Cross-examination?

11 **CROSS-EXAMINATION**

12 **BY MR. WELLFORD:**

13 Q. Good morning, Mr. Cody.

14 A. Good morning.

15 Q. Don't worry. That big book is not for you. It's for
16 everything. I've got a big book.

17 A. Oh, okay.

18 Q. You and I have also spoken about this case on two or
19 three occasions, have we not?

20 A. Yes, we have.

21 Q. And just to sort of acclimate everybody to the
22 appropriate time frame. In the late '60s, this
23 organization called the West Tennessee Civil Liberties
24 Union, one that you were involved in incorporating --

25 A. Yes.

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1 Q. -- that preexisted the ACLU of Tennessee Inc., right?

2 A. I think -- I'm pretty sure it did, yes.

3 Q. And just for your benefit, we've stipulated to a
4 number of facts in the case, and among them being that -- I
5 hope I can -- among them being that this organization West
6 Tennessee Civil Liberties Union, Inc., filed its formation
7 papers with the state in 1967, and then you see on number
8 10, that the ACLU of Tennessee did not exist at that time.
9 So that's been stipulated, and it's actually in accordance
10 with your recollection?

11 A. Yes. Yes. That's right. They were getting ready to
12 do it in late '67 or early '68, and I knew about it, was
13 going to happen, but that's the last memory I have of it.

14 Q. And this West Tennessee Civil Liberties Union Inc.,
15 the organization you were involved in incorporating, was
16 known by the acronym WTCLU. Do you see that?

17 A. Yes.

18 Q. All right. Now, and so as I understand it, even
19 before you and others formed this entity known by the
20 acronym WTCLU, you personally had done some legal work for
21 the national ACLU organization, sort of as an informal
22 affiliate, you've been engaged to help them in legal action
23 before?

24 A. Just as an individual, yes, uh-huh.

25 Q. And part of what you were attempting to do and others

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1 was to form a structure for that relationship with the
2 national ACLU when you and others founded this
3 organization, WTCLU?

4 A. Like I said, I don't have any independent recollection
5 of why this organization was formed. I can only assume
6 it's because I had learned that there were other sort of
7 regional affiliates in east Tennessee and middle Tennessee,
8 and that if we were going to do any organizing or
9 fundraising we needed to have some corporation. But I'm
10 just assuming that, Bucky. I don't really remember it as a
11 fact.

12 Q. And it's okay to call me Bucky in the courtroom.

13 A. I'm sorry.

14 **THE COURT:** Well, nobody else is going to do it.

15 **THE WITNESS:** I'm sorry. Mr. Wellford.

16 BY MR. WELLFORD:

17 Q. You can get away with it.

18 Another stipulated fact in the case at number 12 is --
19 and I know you don't have personal recollection of this,
20 Mr. Cody, but it's been stipulated that this entity, the
21 WTCLU, this W was actually legally in place until 1983?

22 A. Yes.

23 Q. I'll ask you just to assume that's a stipulation.

24 A. Yes. I see that.

25 Q. You really kind of -- especially starting around 1976

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1 and afterwards, really your involvement in this entity, the
2 WTCLU or ACLU generally, it diminished considerably
3 personally?

4 A. It pretty much was gone. I don't think I had anything
5 to do with it, that I can recall.

6 Q. Right. But you have actually taken -- done me the
7 favor of sending me some of the documents that were in your
8 file such as they are relating to back in these days and
9 times, have you not?

10 A. Yes. Yes. I have the two letters that I had that
11 I've shared with you.

12 Q. Right.

13 **MR. WELLFORD:** And, Your Honor, may I approach
14 him and give him one of the letters that he --

15 **THE COURT:** That's fine.

16 **THE WITNESS:** I have it, I think.

17 BY MR. WELLFORD:

18 Q. Well, I've got one from March 27, '74.

19 A. No, I don't have that.

20 **MR. WELLFORD:** May I approach with that?

21 **THE COURT:** You may.

22 BY MR. WELLFORD:

23 Q. And the letter I've handed you, a letter to you,
24 March 27, 1974, from Delton Pickering, president ACLU in
25 west Tennessee, this is from your file?

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1 A. Is it? I don't -- did I give it to you?

2 Q. I thought you did. And if you don't recall it, that's
3 fine.

4 A. I don't -- I don't recall it, Mr. Wellford.

5 Q. All right.

6 A. The only two I remembered were the letters in '68.

7 Let me just read it --

8 Q. Okay.

9 A. -- a second. To my knowledge, I haven't seen this.
10 It certainly came to me.

11 Q. If it refreshes your recollection, I've got a few
12 questions about it as well.

13 A. Let me just -- bear with me one minute.

14 Q. I'm advised by my colleague that we obtained that from
15 the archives --

16 A. Okay.

17 Q. -- of the library.

18 A. All right. There are a probably a whole lot of other
19 stuff out there that I don't know about, but you're welcome
20 to see it. Yes, I see what they're -- I guess they're
21 telling me I'm being purged.

22 Q. Not really.

23 **MR. WELLFORD:** May I mark as the next exhibit,
24 Your Honor, the March 27, 74 letter that Mr. Cody just
25 identified?

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1 **THE COURT:** Yes. Marked and received as 96.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 96.)

4 BY MR. WELLFORD:

5 Q. Mr. Cody, what I'm particularly interested in, this is
6 during a time frame, by the way, where you're doing lots of
7 other things, including I think you ended up becoming an US
8 attorney in 1976, didn't you?

9 A. '77, I became US attorney. '75, I ran to the city
10 council and was elected and started serving '76 to '77.

11 Q. What I'm interested in in particular is the name on
12 this letterhead, West Tennessee Civil Liberties Union.

13 A. Yes.

14 Q. The address. So I mean, we've seen previously the
15 organization that you and others incorporated, the West
16 Tennessee Civil Liberties Union. This is some entity
17 that's not called by a corporate name, but it's calling
18 itself West Tennessee American Civil Liberties Union, and
19 then it's actually signed by a gentleman, Mr. Pickering,
20 ACLU in west Tennessee?

21 A. Yes.

22 Q. Did you -- did you know what either of those entities
23 were at the time? I mean, we've seen a lot of names, is my
24 point.

25 A. Right. No, I know that in April of 1968, the letter

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1 that David wrote says West Tennessee American Civil
2 Liberties Union, which is the same as this letter, West
3 Tennessee Civil Liberties Union, and the reason I said
4 earlier, the last sort of letterhead that had officers or
5 whatever that I ever saw was in '68.

6 Q. Right.

7 A. And I don't -- I don't independently recall this
8 letter in '74.

9 Q. Do you know what the entity called ACLU in west
10 Tennessee was -- or who was Mr. Pickering? That may help
11 us.

12 A. I have no idea. He says he was the president.

13 Q. Okay. And that's all right. That's all I have about
14 that.

15 Now, your -- you talked about when the state
16 organization, ACLU in Tennessee Inc. was formed. After the
17 organization you formed West Tennessee Civil Liberties
18 Union, ACLU in Tennessee Inc. was formed?

19 A. Yes.

20 Q. And but before it was formed, there were chapters
21 around the state affiliated with the ACLU, West Tennessee
22 Civil Liberties Union Inc. being one of them, right?

23 A. I think so.

24 Q. There was an east Tennessee chapter and a middle
25 Tennessee chapter, right?

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1 A. I remember working with something that I thought was
2 the east Tennessee chapter on some cases involving
3 University of Tennessee in Knoxville while we were all
4 separate and before we were part of the -- they became all
5 part of one organization.

6 Q. All right. And actually you thought it was a bad idea
7 at the time to try to centralize things in one location in
8 Nashville?

9 A. I did, and I complained about them doing it.

10 Q. But they did it anyway?

11 A. I guess, yeah, they did it anyway.

12 Q. And I think you actually predicted to them that this
13 is going to make it harder for people to be organized
14 around here to generate much activity locally on the scene,
15 right?

16 A. Yeah. My experience just being down here in Memphis
17 is any time that they created an organization and locate it
18 in Nashville, the enthusiasm of people driving to Nashville
19 to go to a Saturday morning meeting and whatever else
20 diminished the activity of the people in the various
21 regions of the state, and I thought it would be probably
22 the end of the west Tennessee operation.

23 Q. And it kind of was for a period of time, wasn't it?

24 A. Well, see, I don't know after '68 because '68 is the
25 last time that I sort of maintained my interest in what was

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1 going on.

2 Q. All right. Do you know whether there was more than
3 one -- at the time of the Kendrick case, 1977?

4 A. Kendrick case?

5 Q. The Kendrick consent decree.

6 A. Okay.

7 Q. The case that resulted in the consent decree.

8 A. 1977?

9 Q. Yes, sir.

10 A. Okay.

11 Q. I may have misspoken, but I know, for example, you
12 said you were on city council in '76?

13 A. I was US attorney in '77.

14 Q. Right. In '76 you were still on the city council?

15 A. Yes.

16 Q. I think you said I remember being on the council when
17 we were dealing with that issue?

18 A. Yes.

19 Q. At that time, '76, how many local groupings were there
20 that sort of were affiliating themselves with the ACLU of
21 Tennessee Inc., if you know?

22 A. I don't know.

23 Q. All right. There could have been more than one,
24 right?

25 A. I just -- I just have no way of -- I wasn't in the

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1 loop anymore.

2 Q. All right. That's all I have. Thank you, Mr. Cody.

3 **THE COURT:** Any redirect?

4 **MR. CASTELLI:** Briefly.

5 **REDIRECT EXAMINATION**

6 **BY MR. CASTELLI:**

7 Q. Mr. Cody, Mr. Wellford had shown you the stipulations
8 and referred to an acronym, WTCLU?

9 A. Yes.

10 Q. And I know that was up on the screen. Is that
11 something that you did -- when you were involved in the
12 West Tennessee Civil Liberties Union, was that acronym in
13 common usage?

14 A. No.

15 Q. Okay. And if we could look at the exhibit, the
16 letter, the last marked exhibit.

17 A. The one from Pickering?

18 Q. Yes. Yes, sir.

19 A. Uh-huh.

20 Q. I don't see 96 up here.

21 **THE COURT:** Exhibit 96.

22 **MR. WELLFORD:** I apologize.

23 **THE COURT:** Sure.

24 **BY MR. CASTELLI:**

25 Q. Your purge letter here, if you could confirm with me,

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1 reference here is, here -- the second paragraph there, the
2 membership that they're saying is that -- what does that
3 say, if you could read it for me?

4 A. "You will be interested" -- second paragraph?

5 Q. Beginning of the second paragraph.

6 A. "You will be interested in knowing that membership in
7 the west Tennessee chapter increased 43% this year." We're
8 really pleased with this growth.

9 Q. I don't need you to read the whole thing.

10 And the term "west Tennessee chapter" appears again in
11 the letter here, and that may be it, but do you have an
12 understanding of what west Tennessee chapter in 1974, what
13 that was referring to?

14 A. Just in looking at this letter, I suppose it would be
15 referring to the chapter here of the statewide
16 organization.

17 Q. Okay. Thank you.

18 No further questions, Your Honor.

19 Thank you, Mr. Cody.

20 **THE COURT:** All right. We appreciate your coming
21 down here.

22 **THE WITNESS:** Thank you, Judge.

23 **THE COURT:** Certainly we're going to let you be
24 excused.

25 (Witness excused.)

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1 **THE COURT:** We'll let the witness come back
2 around and hopefully we can we finish the witness before we
3 have our lunch break, and then we'll come back.

4 And I understand Mr. Kramer will be our next
5 witness; is that correct?

6 **MR. CASTELLI:** Yes. Yes, Your Honor.

7 **THE COURT:** All right. We're about set.

8 **MR. WELLFORD:** Proceed, Your Honor?

9 **THE COURT:** Yes, sir.

10 * * *

11 **SERGEANT TIM REYNOLDS,**

12 **was called as a witness and having previously been duly sworn**
13 **testified as follows:**

14
15 **CROSS-EXAMINATION (resumed)**

16 **BY MR. WELLFORD:**

17 Q. Sergeant Reynolds, moving on forward from the Valero
18 incident, have there been other hot-button topic issues in
19 2017 bleeding into 2018 that have generated activity,
20 investigative activity and concern on the part of the
21 Office of Homeland Security?

22 A. Yes, sir. The removal of the confederate statues at
23 Health Science Park.

24 Q. We'll talk about that in a minute, but a lot of time
25 and attention has been focused on the questions that have

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1 been asked you about particularly this time frame that we
2 spent a fair amount of time on this morning, this sort of
3 July through September time frame 2016. A lot of attention
4 and questions have been asked of you about Black Lives
5 Matter, protests, investigative activities.

6 In 2017 and going forward, were there other events
7 that had little to nothing to do with Black Lives Matter
8 that involved your attention and your focus?

9 A. Confederate 901 is one of them. We also do stuff for
10 big events like Memphis in May. There's always preparation
11 for that.

12 Q. Well, let me ask you this, what did the -- did the
13 election of President Trump generate much reaction in the
14 part of protests and demonstrations and planned events?

15 A. Oh, yes, sir. Thank you for -- yeah, that generates a
16 lot of protest, especially right after he got elected and
17 around inauguration.

18 Q. You used the term "situational awareness." Does the
19 Office of Homeland Security react to what's going on at the
20 time as a potentially hot topic?

21 A. Yes, sir.

22 Q. And have the hot topics, do they change in nature and
23 focus over time?

24 A. Yes, sir.

25 Q. You mentioned in particular the removal of the Nathan

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1 Bedford Forrest statue in December of 2017, right?

2 A. Yes, sir.

3 Q. Did you have advance knowledge that that statue was
4 going to be removed?

5 A. No, sir.

6 Q. But before the statue was removed, were the issues and
7 concerns surrounding the statue a matter that you in your
8 capacity as Sergeant Reynolds as well as Bob Smith
9 undercover identity, were you concerned about that and
10 tracking it?

11 A. Yes, sir.

12 Q. Did there come a time when you actually left Memphis
13 and went to another location to kind of check out white
14 supremacist type associated activity that was a level of
15 concern to you about possible bleeding over action into
16 Memphis?

17 A. Yes, sir. There was a Charlotte, North Carolina type
18 protest scheduled in Shelbyville in Murphysboro --

19 Q. When you say Charlotte, North Carolina, are you
20 talking about Charlottesville, Virginia?

21 A. Charlottesville, Virginia.

22 Q. Keep going.

23 A. That was scheduled for Memphis in Shelbyville and
24 Murphysboro. They filed permits, and I wanted to go up
25 there to see how those activities were handled and if there

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1 was any difference from how they handle those type of
2 protests and what we do.

3 Q. Was the director aware of your interest in that?

4 A. Yes, sir.

5 Q. Did he support it?

6 A. Yes, sir.

7 Q. So did you go up there and see what you could learn
8 about how to track and monitor fast moving events
9 associated with that hot-button topic?

10 A. Yes.

11 Q. And develop relationships with some of the groups that
12 were making social media posts on that topic?

13 A. Yes, sir.

14 Q. On both sides?

15 A. Yes, sir.

16 Q. Now, when the statue removal occurred in December
17 of 2017, the Nathan Bedford Forrest statue was removed,
18 what role, if any, did you have to play in the fallout from
19 that? That was a very poor question. What was the fallout
20 from that removal in terms of your world at the Office of
21 Homeland Security?

22 A. There were a lot of threats to our elected officials,
23 both the city council and the mayor specifically, that were
24 coming in after the statues had been removed.

25 Q. And some of those threats were being publicly posted

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1 on the City or the Mayor's Facebook page?

2 A. Absolutely.

3 Q. Ranging in degrees of the emphatic nature in which
4 what they were saying was communicated?

5 A. Very hostile, very hostile posts.

6 Q. Some of them being overt, "I will kill you," and some
7 of them just being more troubling?

8 A. Yes, sir. Implied and overt.

9 Q. What, if anything, was your role in connection with
10 planning for after the statue removal events in Memphis?
11 Was there a plan, a planned event in Memphis, following the
12 statue removal from some groups that were upset about the
13 removal of the statue?

14 A. Yes, sir. Right after that, the Confederate 901
15 protest or rumors of those type of protests started coming.

16 Q. And was there an operations plan developed to
17 anticipate and respond to that event if it occurred?

18 A. Yes, sir.

19 Q. Were you part of that team?

20 A. I was.

21 Q. What was your role?

22 A. Threat mitigation and to verify all the social media
23 traffic regarding threats from that group.

24 Q. And was that at the direct instruction of the police
25 director, Michael Rallings that you be involved in that

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1 investigation?

2 A. Yes, sir.

3 Q. And was there, in fact, a protest or activities in an
4 organized way that occurred following the statue removal in
5 Memphis, Tennessee?

6 A. Yes, sir.

7 Q. What happened?

8 A. Groups from out of town started threatening to come to
9 town, and we had to first familiarize ourself with those
10 type of groups because, like I said, they were from out of
11 state and we didn't -- only what we knew about them was
12 what was projected on social media. So we had to put --
13 make sure we had the right people. Social media handles
14 are not always the true person's name. So a lot of time
15 and effort was coming in to figure out who these people
16 actually are and if they posed a threat.

17 So we reached out to a lot of other law enforcement
18 agencies around there, discussed these individuals, are
19 they a threat. They're talking about coming to Memphis.
20 Do y'all have any information? And we were sharing
21 information along the lines so we can get a proper threat
22 assessment to deliver to the command staff for the
23 operational plan.

24 Q. And when these groups came to Memphis and were driving
25 around the expressway and doing other things, were they

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1 being tracked by the Memphis Police Department?

2 A. Yes. They were.

3 Q. In real time?

4 A. Yes, sir.

5 Q. Sergeant Reynolds, the activities that we've been
6 discussing and the questions that were asked to you by ACLU
7 attorney and by me, were any of those investigative
8 activities done because of an opinion or a concern over the
9 content of what the individuals were expressing in social
10 media posts or otherwise?

11 A. No, sir. It's just the fact we're trying to see if
12 that event is actually going to make its way from social
13 media into the real world, and then the threats of
14 counter-protests, our public safety or officer safety will
15 follow it if that should happen.

16 Q. In the instances of which you were aware, where there
17 was follow-up communication with individuals reported to
18 have made a threatening statement or comment or troubling
19 statement or comment or where an event organizer was
20 approached before an event and questioned, in the events
21 with which you were aware -- of which you were aware, did
22 you have as your purpose, to your knowledge, did the
23 department have its purpose an attempt to chill or
24 intimidate the free and open expression of those opinions?

25 A. No, sir.

CROSS-EXAMINATION OF T. REYNOLDS

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1 Q. The Blue Suede Shoes PowerPoint, which was marked as
2 an exhibit earlier, Plaintiff's Exhibit 76, do you recall
3 that?

4 A. Yes, sir.

5 Q. You were shown a couple of pages of it, but you were
6 not shown the introduction to it and some of the other
7 statement where your preface states what the goal of the
8 department is. Is that an accurate statement of what your
9 goal is?

10 A. Yes, sir.

11 Q. And did the department do its best to your knowledge,
12 and did you personally do your best to allow and permit the
13 free and open expression of opinions, whether a rally was
14 permitted or unpermitted?

15 A. Yes.

16 Q. Were unpermitted rallies during 2015, '16 and
17 continuing on to the present time routinely allowed to
18 occur?

19 A. Yes, sir.

20 Q. Without interference?

21 A. Yes, sir.

22 Q. Are you presently seeking legal advice with respect to
23 the appropriate parameters that you need to follow in order
24 to be in strict conformance with the Kendrick consent
25 decree in this case?

REDIRECT EXAMINATION OF T. REYNOLDS

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1 A. Yes, sir.

2 Q. And you intend to follow that legal advice going
3 forward?

4 A. I do.

5 Q. To do your job?

6 A. Yes, sir.

7 **MR. WELLFORD:** No further questions.

8 **THE COURT:** All right. Redirect?

9 **REDIRECT EXAMINATION**

10 **BY MS. FLOYD:**

11 Q. So you were asked a few questions about the
12 presentation prepared by Stuart Frisch. Am I pronounce
13 that correctly?

14 A. Yes, ma'am, Frisch.

15 Q. Frisch.

16 The investigative techniques described in that
17 PowerPoint, were those the investigative techniques that
18 you were trained on by Stuart Frisch when you came into the
19 department, into the Office of Homeland Security?

20 A. It was limited training because Stuart left the
21 department and went to the private sector, but we were --
22 we were in the process of doing that type of training, yes,
23 ma'am.

24 Q. And so was that the same type of investigative
25 techniques that you applied to your investigations of

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1 protest activities?

2 A. Somewhat. Mostly I brought my investigative
3 techniques from the organized crime unit because that was
4 more of my field of expertise and specialty.

5 Q. So one of the things you mentioned in that PowerPoint
6 was sovereign citizens. Just for the record, will you just
7 tell us very briefly what a sovereign citizens is?

8 A. Sovereign citizens do not believe that they are a part
9 of the legal system of the United States and they are free
10 people, and they don't conform to our laws. They have
11 their own set of laws that they would like to adhere to.

12 Q. Okay. And I did have one more question about the
13 undercover accounts. Did Bob Smith as -- not as an entity
14 but as a personality that you developed, was there an
15 Instagram account in operation also under the Bob Smith
16 name?

17 A. I believe there was, but I didn't -- I really
18 didn't -- it might have come with the Facebook account, but
19 I didn't really check that a whole lot.

20 Q. Okay. And are you aware of whether any data for that
21 Instagram account was pulled for this lawsuit?

22 A. I'm not aware of any.

23 Q. Okay. And moving on to the investigation -- actually,
24 I'm going to -- moving on to the investigation of Fergus
25 Nolan and with the zoo hacking incident. When in time did

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1 you conclude your investigation or decide to move that
2 into -- that investigation into a dormant status?

3 A. I don't remember the date, but that's -- the dormant
4 status is up to the zoo. If they decided they want to
5 prosecute then it won't be dormant anymore.

6 Q. About how long did the investigation last?

7 A. A few weeks.

8 Q. Okay. And did you -- did you obtain any warrants in
9 connection with that investigation?

10 A. We didn't -- if you don't have a victim that wants to
11 prosecute, I didn't -- there's no need in warrants.

12 Q. Okay.

13 Just one additional exhibit, which will be an e-mail
14 from Colonel Sanders to Major Bass on 8-10 -- and others,
15 on 8-10-2016?

16 **THE COURT:** Marked and received as 97.

17 (WHEREUPON, the above-mentioned document was
18 marked as Exhibit Number 97.)

19 BY MS. FLOYD

20 Q. And you testified that there were concerns about
21 protest and counter-protests during the Graceland
22 celebrations and the responses to the Graceland vigil?

23 A. Yes, ma'am.

24 Q. So is this an e-mail you received?

25 A. I did.

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1 Q. And does this e-mail from Colonel Sanders indicate
2 some of those concerns about growing tension between
3 Graceland fans and BLM supporters on social media?

4 A. Yes, ma'am. We're very concerned that an impromptu
5 protest in the middle of certain events inside the week.
6 Some of these fans -- I don't know if you know a lot of
7 Elvis fans, but they're pretty sincere about the week, and
8 we were concerned for the protesters' safety, that the fans
9 would be a threat to them.

10 Q. And attached is a screenshot from -- where is this
11 taken from, this screenshot? What page on the internet?

12 A. I don't -- that looks like it may have come from the
13 collator, but it came from Facebook.

14 Q. It came from Facebook. And what is -- what is this
15 interaction between Bob Williamson and the coalition?

16 A. Bob Williams -- would you like me to read that?

17 Q. If you could read -- you may read it if you'd like to
18 or you could read it and summarize it for us.

19 A. Okay. That post from Bob Williams was indicative of
20 the type of things we were watching from -- in relation to
21 a counter-protest or a threat to the protesters that would
22 disrupt the events at Graceland.

23 Q. And did you reach out to Bob Williamson?

24 A. I don't think I did. We may not have had time. I
25 don't know if I did or not.

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1 Q. And did you place any information about Bob Williamson
2 in the joint intelligence briefing?

3 A. I did not.

4 Q. Okay. Did you take his comment as "I foresee two
5 lines facing each other just as the British and the
6 Americans did so many years ago," -- is that something that
7 the Memphis police would be concerned about?

8 A. Yes.

9 Q. Okay. Do you know if you ever located the true
10 identity of Bob Williamson?

11 A. That was -- I'm going from memory. That's a very
12 common name, and it is very difficult to actually get the
13 true identity of that person.

14 Q. Did you attempt to get the identity of him?

15 A. Yes, ma'am.

16 Q. And in the documents about the Paul Garner
17 investigation for the Twitter account he set up on behalf
18 of -- under the name of the director -- of Director
19 Rallings, how did you know that Paul Garner's IP address
20 was the same as the Rallings Twitter -- as was -- let me
21 start over on my question.

22 How did you know that Paul Garner's Twitter account
23 handle was used at the same IP address as the Rallings
24 Twitter account?

25 A. That's a question for the investigator. I wouldn't

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1 know that.

2 Q. Okay. That's all I have.

3 No further questions, Your Honor?

4 **THE COURT:** All right. That concludes the
5 examination. So thanks very much. We'll let you step
6 down. We're going to take our lunch break. It will be
7 basically 55 minutes. So everyone should be back here at
8 20 after the hour, ready to proceed. That's 20 after 1:00,
9 and let me recheck just really quickly as to our sequence
10 of witnesses. I think we've gone over that a couple of
11 times, but I think we want to be sure because we probably
12 will get through a couple of witnesses, maybe some we've
13 not gotten to on the list yet.

14 **MR. CASTELLI:** Our sequence, Your Honor, will be
15 Mr. Kramer when we get back from lunch, and then Major
16 Chandler will follow him, and then depending on our time,
17 we will call Director Rallings.

18 **THE COURT:** Right. And the reason I'm going over
19 it real quickly is I think we should be able to get to the
20 director today.

21 **MR. CASTELLI:** Yes, sir.

22 **THE COURT:** That will be our goal and to let him
23 start his testimony. All right. Well, we'll see everybody
24 no later than 20 after the hour. Of course if you're not
25 early, you are late. So we'll see everybody.

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1 **MR. WELLFORD:** Your Honor, may I ask, since it is
2 the police director, can I have a little bit of leeway so I
3 can get him on quick on-call and not have him sit down
4 here.

5 **THE COURT:** Absolutely. We need to coordinate
6 and make sure we've got that ironed out. We don't want to
7 take him away from his duties anymore than necessary.
8 Absolutely. Thank you.

9 (Lunch break.)

10 (End of Volume 3.)

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C E R T I F I C A T E

I, LISA J. MAYO, do hereby certify that the foregoing 152 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the trial, on 21st day of August, 2018, in the matter of:

ACLU of Tennessee
vs.
City of Memphis, Tennessee

Dated this August 28, 2018

S/Lisa J. Mayo

LISA J. MAYO, LCR, RMR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee