

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

ELAINE BLANCHARD, KEEDRAN)	
FRANKLIN, PAUL GARNER and BRADLEY)	
WATKINS, (Dismissed per Court Order))	
Plaintiffs,)	
)	
and)	
)	
ACLU OF TENNESSEE, Inc.)	
Intervening Plaintiff,)	
)	No. 2:17-cv-02120-jpm-DKV
v.)	
)	
THE CITY OF MEMPHIS,)	
Defendant.)	
)	

PLAINTIFF’S UNDISPUTED STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 7.2(d), Plaintiff respectfully submits the following statement of material facts as to which there are no genuine issues for trial:

1. On December 19, 2016, the Coalition of Concerned Citizens (“CCC”) and Keedran Franklin, staged a protest, known as a die-in, on the front lawn of Mayor Strickland’s residence. (Bonner Dep. 24; Rallings Dep. 65, 75; Reynolds Dep. 117.)
2. The list publicly known as the City Hall Escort List was produced as a response to the die-in event. (Rallings Dep. 64-66; Exh. A: Bonner Dep., Exh. 1.)
3. The list is an Authorization of Agency (“AOA”) produced with the approval of Director Rallings. (Rallings Dep. 64-66; Exh. A: Bonner Dep., Exh. 1.)
4. An AOA is a MPD internal form that designates a list of individuals who may not

enter a particular property; individuals on an AOA are to be notified of their presence on the list and that, if they then return to the property, they are subject to arrest for criminal trespass. (Reynolds Dep. 118-19.)

5. Sergeant Tim Reynolds of OHS drafted the AOA but did not limit it to individuals who were present at the Mayor's residence on December 19, 2016. (Reynolds Dep. 122, 125-26; Rallings Dep. 67-68.)

6. Reynolds populated the list with individuals who he termed "associates in fact," who were individuals that "may have something to do with either Keedran Franklin or the CCC" as determined by "social media contacts," "previously arrested with," "often seen at unlawful assemblies with." (Reynolds Dep. 122, 125-26; Rallings Dep. 67-68.)

7. AOAs were issued for the Mayor's residence and City Hall on January 4, 2017 and January 17, 2017, respectively, and the AOA for the Mayor's residence specified that the individuals included on that list to be escorted while inside of City Hall. (Exh. A.)

8. In support of the AOAs, Reynolds prepared dossiers for the listed individuals and sent them to Albert Bonner, who instructed that they be printed and kept in a folder where officers could familiarize themselves with the list. (Bonner Dep. 9, 33-35; Exh. C: Bonner Dep. Exhs. 2-3; Reynolds Dep. 25; Exh. C, at 20796.)

9. After the AOA list became public, and in an effort to "pare the list down," Reynolds generated an additional list that provided explanations for individuals who were to remain on the list. (Exh. D: Bonner Dep. Exh. 4; Reynolds 128.)

10. OHS was "originally designed to deal with threats to the Memphis Police Department or Memphis in general," but that it had to "retool due to recent events" — such as "protests against the police" and threats against the police — and that, OHS began to focus on

“local individuals or groups that were staging protests.” (Chandler 14-15.)

11. Joint Intelligence Briefings, circulated between one and three times per day, were reports prepared by OHS that included national news stories regarding police involved shootings presented alongside local criminal activities, photographs and profiles of activists and individuals, and lists of movement meetings and events. (Exh. E: Chandler Dep. Exh. 59.)

12. The four categories of information that were to be incorporated into a JIB, according to Chandler, were: (1) Police Shootings/deaths; (2) Riots/protests; (3) Black Lives Matter (BLM); (4) Officer Safety. (Exh. E.)

13. JIBS served as “a regional guide to area law enforcement for current and historical intel in reference to the BLM encounters” that law enforcement had been “challenged to mitigate.” (Exh. F: Bass Dep. Exh. 80; Bass Dep. 55-56.)

14. JIBs initially focused on protests “that were popping up around the city” but as time progressed, OHS began “looking at more national events as opposed to anything else, how it had implications for Memphis Police Department,” targeting “any of the organizations that arose out of Ferguson,” and specifically, “Black Lives Matter” and “Take them Down 911 [sic].” (Chandler Dep. 23-24.)

15. Groups described in paragraph 14 had “made no direct threat” in Memphis. (Chandler Dep. 23-24.)

16. Within MPD, the JIB was circulated to Executive and Command Staff, Colonels, Special Ops, Special Services, Lt. Colonels, Investigative Services Command, Precinct – Traffic COs, RTCC, MPD Training Academy, Communications Supervisors, and the Public Information Office. (Exh. G: Reynolds, Exh. 14.)

17. The JIBs were also circulated outside of MPD to employees of: Shelby County

Sheriff, U.S. Military, U.S. Department of Justice, Tennessee Department of Homeland Security, Arkansas Fusion Centers, Shelby County, Germantown, West Memphis, Memphis Light, Gas, & Water, Tennessee Valley Authority, Shelby County Schools, FedEx, Autozone, and St. Jude. (Exh. G; Exh. H: Reynolds Dep. Exh. 18; Exh. I: Oct. 4, 2016 E-mail; Reynolds Dep. 54-55, 63.)

18. JIBs were forwarded beyond this initial circulation list. (*See e.g.* Exh. I; Exh. J: Reynolds Dep. Exh. 12.)

19. The JIB from July 15, 2016 1600 hours included: a report on the rumored “Day of Rage” protests, information regarding public protests, copies of permits filed for protest events (and the status of those permits), information about an event on private property, a social media post about an individual who posted about a potential protest action and subsequent retraction, a complaint filed by Frank Gibson alleging harassment. (Exh. H.)

20. From July 9 to July 15, there were “no specific threats to law enforcement on social media.” (Exh. H.)

21. JIBs regularly included information about meetings on private property; these included panel discussions, townhalls, BLM Meetings for adults and those for youth, and even “Black Owned Food Truck Sunday.” (*See, e.g.* Exhs. G, H; Exh. L: February 8, 2017 0800 JIB.)

22. JIBs regularly included photographs of and information about those involved in protest movements and those who posted about the possibility of protest action. (*See, e.g.* Exh. G, Exh. M: August 11 2016 1600 JIB; Exh. N: Reynolds Dep. Exh. 15.)

23. JIBs included “Sensitive/Classified” information, such as drivers’ license profiles, juvenile arrest records, photographs, dates of birth, addresses, mental health histories, and information from police databases. (Exhs. G, H, I, J, K, L, M.)

24. Information that is personal in nature (address, social security numbers, drivers

license information, etc.) or taken from police databases is defined as “Sensitive/Classified Media” pursuant to the CJIS Media Policy. (Exh. O.)

25. JIBs were regularly circulated between June 2016 and March 2017.

26. Rallings instructed OHS to create and maintain a database of protests, demonstrations, and flash mobs (“Database”). (Rallings Dep. 54; Exh. P; Reynolds Dep. Exh. 8.)

27. The Database spanned 2016 and 2017, and OHS began keeping the Database in the course of its work in December 2016. (Reynolds Dep. 27-28.)

28. The Database tracked the name, date, and crowd size of events, the “Group” responsible, “Key Personnel,” Arrests, “Techniques,” “Critical Infrastructure,” and “Damage.” (Exh. P.)

29. The Database tracked gatherings as small as four individuals and recorded only two events resulting in any arrests and no events resulting in damage. (Exh. P.)

30. It was “very rare” that “protests, permitted or unpermitted, or gatherings that responded in any issue where law enforcement had to do anything other than just kind of be there to keep everybody safe.” (Rallings Dep. 54-56.)

31. OHS prepared and presented Power Point presentations regarding activists and protest groups that were given at the training academy and at weekly meetings for Command Staff. (Bass Dep. 21; Reynolds Dep. 98-99.)

32. *Blue Suede Shoes* was one such presentation. (Exh. Q; Reynolds Dep. Exh. 25.)

33. The presentation included activist photographs and arrest information; it describes alleged associations and personal relationships between protestors, including individuals who were not arrested at the protests in question. (Exh. Q.)

34. *All Shook Up* was another representative presentation, dated January 8, 2017. (Exh.

R: Reynolds Dep. Exh. 26.)

35. The presentation outlined individuals who had been previously arrested, associates of those individuals, and a summary of the beliefs of the organization. (Exh. R.)

36. RTCC officers monitor live feeds of cameras, which include fixed, mobile, drone, covert, and overt types that have been used to surveil protest activity in the City. (Chandler Dep. 29; Patty Dep. 6-26, 34; Wilburn Dep. 25.)

37. RTCC officers used software referred to as a social media collator, including Geofeedia and NC4, which enabled monitoring of open source data or “chatter” regarding protest events across social media platforms. (Wilburn Dep. 24-25.)

38. RTCC officers conducted manual searches of social media accounts such as Facebook. (Wilburn Dep. 27-28.)

39. As part of their duties, RTCC officers conducted social media monitoring of protests or potential protests and reported the results of their monitoring to OHS. (Bass Dep. 58-59; see also Exh. S: Ross Dep. Exh. 65.)

40. In a representative example, Bradley Wilburn, an officer with RTCC reported to the OHS team regarding a “particular feed” he “set up to monitor MemphisPD.” (Exh. T: Wilburn Dep. Exh. 82.)

41. RTCC collected and circulated a broad swath of social media posts related to Black Lives Matter (Exh. V: Memphis 3701-02; Exh. W: Memphis 4376-77; Wilburn Dep. 40-41.)

42. RTCC officers documented its investigative work by creating a folder on the server for each investigation (named by subject). (Wilburn Dep. 21, 24-25)

43. RTCC officers referenced previous investigations in the course of investigations and used JIBs as a basis to initiate investigations into background information. (Wilburn Dep. 21,

24-25)

44. MPD has accessed private social media accounts through at least one covert social media account using the pseudonym “Bob Smith.” (*See* Reynolds Dep. 90-98; Exh. X: Bonner Exh. 6; Exh. Y: Reynolds Exh. 24; Exh. Z: ACLU 562-91; Exh. AA: Memphis 9442-44; Exh. BB: Memphis 10457-59; Exh. CC: Memphis 9316-20.)

45. Available documents indicate that someone within MPD not only had access to the Bob Smith account, but used it to communicate with individuals, to view private posts, join private groups, and otherwise to pose as a member of the activist community. (*Id.*)

46. From publicly available information, the “Bob Smith” Facebook account has been actively adding friends from the Memphis community from July 2015 to April 2018. (Exh. Z at 577, 591.)

47. OHS disseminated information to precinct commanders who typically developed the operational response to events occurring within their precincts. (Chandler Dep. 38.)

48. OHS made sure that protest events were staffed with officers “be it a uniform presence or somebody that was in a plain clothes presence.” (Chandler Dep. 48-49.)

49. At the Commercial Appeal protest that occurred on July 13, 2016, Keith Watson, Acting-Lieutenant Colonel of Uniform Division II, North Main Station, and provided regular updates to MPD Executive Staff, Command Staff, Colonels, and Lt. Colonels throughout the event regarding the identities of those in attendance, crowd size, content of the announcements made, and photographs of the event. (Exh. SS: Bass Dep. Exh. 77.)

50. Watson’s communication at the Commercial Appeal event was typical or regular communication of information from commanders back to OHS. (Bass Dep. 47-50.)

51. Plain clothes officers took photographs of the crowd at protest events to identify

participants that were there. (Chandler Dep. 47-48; Exh. GG: Chandler Dep. Exh. 63.)

52. Plain clothes officers were used to gather intelligence on protestors. (Exh. DD at 2394; Bass Dep. 52; Exh. HH: Bass Dep. Exh. 78.)

53. MPD conducted surveillance of private events. (Exh. JJ: Bass Dep. Exh. 76.)

54. In response to a Facebook post by Frank Gibson, Col. Mickey Williams, the Raines Station Commander, surveilled a church the next morning and reported back the number of vehicles present and information about the church's pastor, despite being advised by Bass that the event posed no threat. (Exh. JJ: Bass Dep. Exh. 76.)

55. Bass testified that this was a typical type of communication he would have with precinct commanders and their response to it. (Bass Dep. 46-47.)

56. Col. Marcus Worthy, the commander of Ridgeway Station, covertly surveilled a memorial service for Darrius Stewart at New Direction Church from across the street and provided status reports and identifying individuals in the crowd. (Exh. KK: Chandler Dep. Exh. 60.)

57. Reynolds obtained an undercover cell phone from the Organized Crime Unit to contact activists; Reynolds used the number to contact Spencer Kaaz and to enter the cell phone's number into an online form for updates on an Elvis Week protest. (Exh. LL: Reynolds Dep. Exh. 32.)

58. Reynolds requested that an OCU officer be sent to a "civil disobedience training" that he had learned about through the undercover phone number. (Exh. MM: Reynolds Dep. Exh. 33.)

59. MPD officers regularly contacted individuals who were organizing free speech events. (Exh. HH.)

60. In the case of a community meeting at New Life in Christ Church, Bass instructed

OHS officers to “[m]ake inquiries and find out the event organizer, contact number and what is on the agenda.

61. Chandler spoke with a Bishop of the New Life in Christ Church who assured him that the purpose of the event was not to disparage law enforcement, that it would be a “pro-police dialogue.” (Exh. HH.)

62. Staff of the Memphis Permit Office were instructed to record all anonymous calls asking about protest permits. (Exh. NN: Howard Dep. Exh. 71.)

63. Protest events were held to a strict adherence to the 14-day notice requirement, that requirement was not enforced for non-protest events. (Exh. OO: Jan. 19, 2017 E-mail.)

64. Protest permit applications were circulated to Command Staff or OHS, while non-protest permit applications were circulated only to Special Events. (Howard Dep. 24-25, 39-40.)

65. One of the tools available to RTCC officers and analysts is the i2 Analyst’s Notebook, “program that can help correlate certain events” and, upon inputting large amounts of data can help a user “determine correlations.” (Wilburn Dep. 46-47.)

66. In 2016, a RTCC officer used the i2 Analyst’s Notebook, along with social media data and a police database, to create a map of associations between individuals and events entitled “Black Lives Matter.” The map included certain members of the AOA, a BLM Bridge Protest, Town Hall Meeting, and Protest, and a Back to School Community Carnival. (Exh. PP: Sept. 19, 2017 E-mail.)

67. The Decree is located on the MPD’s Kiosk, which is a forms and links page available to officers online. (Rallings Dep. 26-28; Exh. QQ: Rallings Dep. Exh. 49.)

68. Rallings and Reynolds were informed about the Decree in the course of their employment. (Rallings Dep. 28-29; Reynolds Dep. 139-40.)

69. Rallings has not conducted reviews and authorizations for criminal investigations as specified in Section G of the Decree or DR 138, its implementing policy. (Rallings Dep. 92-93; Exh. RR: Reynolds Exh. 30.)

Respectfully submitted,

/s/ Thomas H. Castelli
Mandy Strickland Floyd (BPR# 31123)
Thomas H. Castelli (BPR#24849)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TENNESSEE
P.O. Box 120160
Nashville, Tennessee 37212
Phone: (615) 320-7142
Fax: (615) 691-7219

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on June 18, 2018 the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and served via electronic mail to:

Buckner Wellford, Esq.
Mark Glover, Esq.
Jennie Vee Silk, Esq.
BAKER, DONELSON, BEARMAN,
CALDWELL, & BERKOWITZ, P.C.
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103

Attorneys for Defendant

/s/ Thomas H. Castelli
Thomas H. Castelli