

**GREENBERG TRAUIG, LLP'S  
APD.SOP 20.20 § 3.4.1 FINAL REPORT REGARDING THE PLANNING, EXECUTION,  
AND SUBSEQUENT CONDUCT RELATED TO THE "EAGLE RAID"**

**Appointed by The City of Atlanta Law Department**

**Presented on June 27, 2011**

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## INTRODUCTION

On December 8, 2010, the Honorable Timothy C. Batten, Sr., United States District Judge for the Northern District of Georgia, approved a settlement agreement negotiated by the parties in the matter of Calhoun v. Pennington, No. 1:09-cv-03286 (N.D. Ga. Dec. 8, 2010). The Settlement Agreement and the Court's accompanying Order, in part, required the Atlanta Police Department ("APD") to conduct a thorough and meaningful investigation into the individual conduct of each officer involved in the planning, execution, and aftermath of the "Eagle Raid," and any proceeding arising therefrom, with regard to APD Work Rule 4.1.03 (Truthfulness), 4.1.05 (Obey the Law), 4.2.02 (Courtesy), 4.2.03 (Responsibilities of Supervisor), 4.2.05 (Unlawful Orders), 4.2.12 (Discrimination), 4.2.13 (Discriminatory References), 4.2.33 (Conformance to Directives), 4.2.49 (Abuse of Authority), 4.2.50 (Maltreatment or Unnecessary Force), 4.6.09 (Use of Firearms), and 30.20 (Search and Seizure).

On March 7, 2011, pursuant to APD.SOP 20.20 § 3.4.1,<sup>1</sup> the City Attorney formally commissioned Greenberg Traurig, LLP ("GT") as "duly appointed investigators" to supplement the APD's investigation of the Eagle Raid.<sup>2</sup> In this role, GT was tasked with "facilitat[ing] the City of Atlanta's factual investigation to ensure that federal, state and local law, as well as APD policies were followed at the Atlanta Eagle."<sup>3</sup> GT accepted this appointment on the express condition that the investigation would not be limited nor directed by the City Law Department or the APD, and that GT would receive full cooperation from the same. GT also confirmed that, although appointed by the City Law Department, this investigation and report would be independent and unbiased, and any conclusions drawn would be GT's alone. The City of Atlanta has agreed to make this report a public record and to make it available to the public upon request at no more than the actual cost of the electronic media on which it is provided.

## **ACKNOWLEDGEMENTS**

We would like to commend and acknowledge Daniel J. Grossman, Esq., in bringing the issues addressed in this report to light and providing useful information relating to this report. We would also like to commend and acknowledge Mayor Kasim Reed, City Attorney Cathy Hampton, and Chief of Police George Turner and the APD for providing complete access without impeding this investigation in any way. Further, we commend and acknowledge the Atlanta Citizens Review Board (“ACRB”) for their important work and earlier investigation into this matter. Finally, this report would not have been possible without the substantial assistance of Investigator Don Haff of the APD’s Office of Professional Standards. Investigator Haff served not only as a guide through the nuances of APD history, operations, and nomenclature, but also as a true partner to GT during this investigation. Investigator Haff is a credit to his Department and, more broadly, the dedicated employees who work for the City of Atlanta.

## **METHODOLOGY**

In conducting this investigation and preparing this report, GT has relied on materials including, but not limited to: (1) all underlying pleadings, filings and discovery in the matter of Calhoun v. Pennington, No. 1:09-cv-03286 (N.D. Ga. filed Nov. 24, 2009); (2) the APD citizen complaint investigation file; (3) the City Law Department’s non-privileged litigation file in the Calhoun case;<sup>4</sup> (4) documents provided by the APD, including personnel files of officers present at the Raid; (5) the ACRB’s complaint investigation file; (6) police reports regarding the Eagle Bar investigation and the Raid conducted on September 10, 2009; and (7) media reports. This and all other evidence was reviewed according to a preponderance of the evidence standard.

In addition, GT conducted more than fifty interviews, including, but not limited to: (1) the former Commander of the Special Enforcement Section (Major Debra Williams), the highest



ranking APD officer with direct responsibility for the Vice and Red Dog Units; (2) the former Commanders of the Vice Unit (Lieutenants Dan Rasmussen, William Trivelpiece, and Tony Crawford), the Red Dog Unit (Lieutenant Scott Pautsch), and the License and Permits Unit (Lieutenant Barbara Cavender); (2) current APD Command Staff; (3) the Red Dog officers assigned to the Eagle Raid detail; (4) the Vice Unit officers assigned to the Eagle Raid detail; (5) Zone 5 officers who supported the Eagle Raid detail; (6) the APD officers that assisted with the discovery process in the Calhoun litigation; (7) various members of APD and related organizations; (8) plaintiffs from the Calhoun litigation; and (9) non-party witnesses to the Eagle Raid on September 10, 2009. In some cases, more than one interview was conducted of a witness.<sup>5</sup>

GT has done its best, given the time and resource constraints, to conduct a careful and impartial investigation. We have prepared a report that explains the facts surrounding the Eagle Raid and highlights the violations of law and policy that we have been able to reasonably identify. In light of the City's expressed desire for a prompt explanation of the facts relating to the Eagle Raid and the deadlines established by the Court, we provide this Report without further delay. However, we recognize that additional review and analysis may be requested by the City of Atlanta at a later date. That said, this Report in its current form should be seen as a Final Report.

There were some practical limitations on the information available to GT in preparing this report. For example, we had no power to compel third parties, such as patrons who may have been present at the Eagle, to submit to interviews, produce documents or otherwise provide information. While some Eagle patrons agreed to cooperate, others declined to be interviewed. Further, although some former APD officers who were involved in the Eagle operation

cooperated with our investigation, other former APD officers who may have played substantial roles declined to be interviewed or were not allowed to be interviewed by their current employers. Finally, it is noted that a totally exhaustive investigation of all potential sources of information relating to the Eagle Raid would require time and resources beyond those available to GT and the City of Atlanta.

### **EXECUTIVE SUMMARY**

GT is aware that its investigation and conclusions may not offer complete comfort to the patrons and employees that were involved in or witness to the Eagle Raid on September 10, 2009, to the important gay, lesbian, bisexual and transgender community that resides in or visits the City of Atlanta, or to other citizens of Atlanta. Nor may this report serve to repair the damage to the reputations of officers associated with this incident and litigation who committed no wrongdoing, especially those who were named as defendants but were never present at the Eagle Raid.<sup>6</sup> That said, and as set forth below, we find that (1) inadequate planning and training, (2) a failure in command staff oversight and involvement, (3) a breakdown in communication between the command staff and the officers, (4) potential prejudice and bias, (5) inappropriate decision-making by the command staff on the scene, and (6) lack of effective coordination between the City Law Department and the APD, all contributed to the commission of Fourth Amendment and APD Standard Operating Procedure (“SOP”) violations against the employees and patrons of the Eagle on the night of September 10, 2009.

## **SECTION 1: FINDINGS OF FACT**

### **1.1 The Special Enforcement Section (SES)**

The APD Special Enforcement Section provides proactive enforcement of technology, homeland security and drug investigations.<sup>7</sup> The SOP for the Section states:

SES is responsible for identifying, controlling, and reducing or preventing criminal activity through intelligence or enforcement activities in areas which include but are not limited to: gambling, major frauds, illegal pornography, prostitution, liquor violations, loan sharking, extortion, bribery, racketeering, corruption, Racketeer Influenced and Corrupt Organization (RICO) violations, criminal gangs, arson, counter-terrorism, bias (hate) crimes, subversive activities, infiltration of legitimate businesses for criminal purposes, money laundering, narcotics violations, trafficking, civil disorders and terrorism. Additionally, SES will control and enforce the licensing and permitting of those businesses and persons so required under City ordinance.<sup>8</sup>

The units comprising SES include: the Vice Unit, the License and Permits Unit, the Red Dog Unit, the Homeland Security Unit, the Cyber Crimes Unit, the Gangs and Guns Squad, the Intelligence Squad, and the Narcotics Enforcement Unit.<sup>9</sup> At the time of the Eagle investigation and Raid, Major Debra Williams was the commander of SES.

#### **1.1.1 The Vice Unit**

The Vice Unit is responsible for investigating all forms of vice activities involving liquor, drugs, prostitution, gambling, scalping, and pornography.<sup>10</sup> The Vice Unit was comprised of approximately twelve officers during the Eagle investigation and Raid.<sup>11</sup> This number was evenly split between permanently assigned investigators and temporarily loaned officers.<sup>12</sup> During the relevant time period, Lieutenant Tony Crawford was the commander of the Vice Unit. Directly below Lieutenant Crawford, the unit supervisors were Sergeant John Brock and Sergeant Kelley Collier. Although both Sergeants Brock and Collier were equal in rank and shared supervisory responsibilities, Brock was more senior in time and grade and led the daily

roll call meetings for the Vice Unit.<sup>13</sup> The lead investigator from the Vice Unit assigned to the Eagle case was Investigator Bennie Bridges.<sup>14</sup>

### **1.1.2 The License and Permits Unit**

The License and Permits Unit investigates applicants for a wide variety of licenses, most notably, liquor licenses.<sup>15</sup> This unit staffs the City’s License Review Board. The SOP for the unit states: “The Atlanta Police Department will process all requests for licenses and/or permits in an efficient and effective manner in accordance with the City of Atlanta Code of Ordinances and State Law. The Department seeks to ensure that each licensed and permitted business or individual operates in a manner consistent with these laws and regulations.”<sup>16</sup> Approximately six officers are assigned to the unit, with three investigators and a supervising sergeant working the evening shift.<sup>17</sup> At the time of the Eagle investigation and Raid, the unit was commanded by then-Lieutenant Barbara Cavender.<sup>18</sup>

### **1.1.3 The Red Dog Unit**

In June of 1989, the Atlanta Police Department established the Red Dog Unit.<sup>19</sup> Red Dog was named for Police Commissioner George Napper’s favorite football play—a “red dog blitz”—because the unit would devote most of its time to surveillance and planning and then “blitz” the target area, running surprise raids, primarily in Atlanta’s drug-infested projects.<sup>20</sup>

The SOP for the unit states:

The Police Department will provide a high profile and aggressive police presence in areas of the City that have a high incidence of street drug sales, drug use, and drug-related violent crimes. The function of the Red Dog Unit is to arrest street-level narcotics dealers and to confiscate contraband drugs, weapons, and drug-related assets.<sup>21</sup>

Red Dog officers received specialized training to perform their duties, including the execution of high-risk warrants.<sup>22</sup>

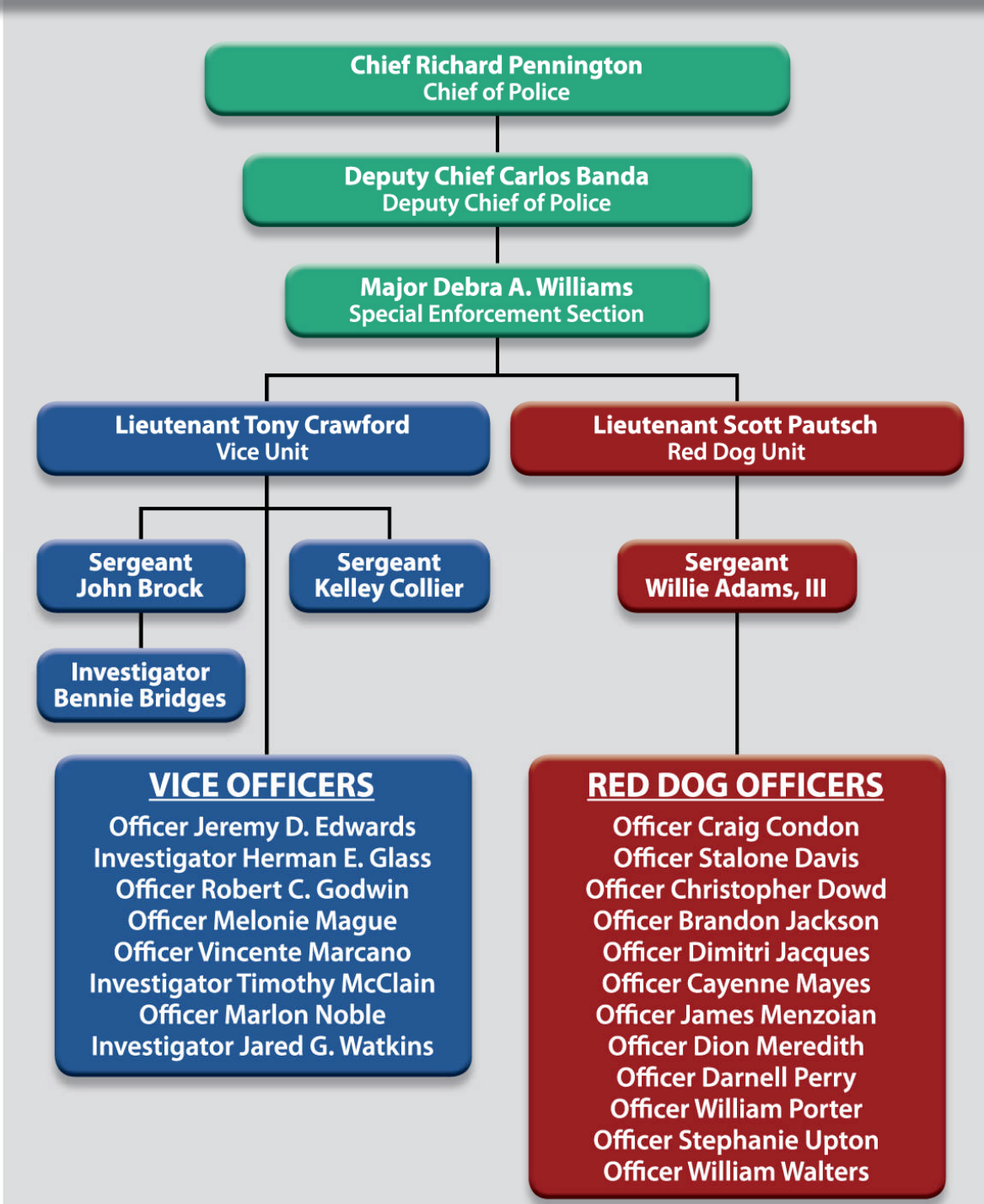
Sometime after 1989, the Red Dog Unit's purpose expanded and Red Dog became an alternative to S.W.A.T.<sup>23</sup> to assist other APD units with the execution of search warrants.<sup>24</sup> In certain circumstances where S.W.A.T. was not available to assist with standard warrant execution details, the SES units, along with other units of the APD, would routinely use Red Dog.<sup>25</sup> After the 2006 Neal Street Incident,<sup>26</sup> Red Dog was one of only three units within APD, along with the Narcotics Enforcement Unit and S.W.A.T., permitted to effectuate high-risk warrant entries because of their specialized training and experience.<sup>27</sup>

At the time of the Eagle Raid, Red Dog was comprised of approximately 30 officers, making it the largest unit in SES.<sup>28</sup> Because of its size, Red Dog was often called in by smaller units throughout APD to provide additional manpower.<sup>29</sup> Two Red Dog teams, totaling twelve officers, assisted with the Eagle Raid. The commander of the Red Dog Unit during the relevant time period was Lieutenant Scott Pautsch. The Red Dog supervisor at the Eagle Raid was Sergeant Willie Adams, III.<sup>30</sup>

1.1.4 Chain of Command as of September 10, 2009

# APD Chain of Command

(on September 10, 2009)



## **1.2 306 Ponce De Leon Avenue, NE**

### **1.2.1 The Atlanta Eagle**

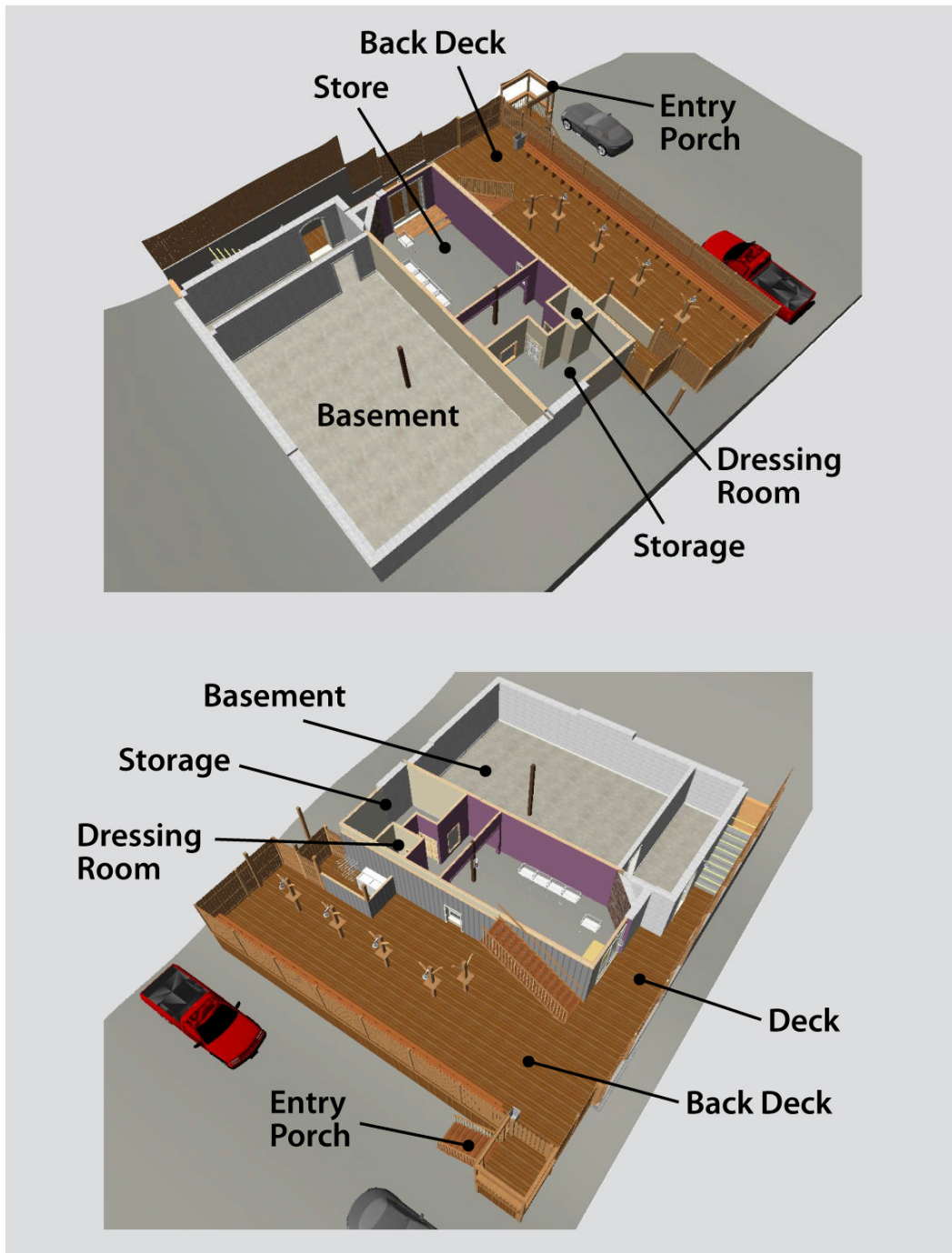
Located on the edge of a Midtown neighborhood in Atlanta, Georgia, at 306 Ponce De Leon Avenue, NE, the Atlanta Eagle (“Eagle”) has been in operation since 1987.<sup>31</sup> It is owned and operated by Ramey & Kelley, Inc. d/b/a Atlanta Eagle, a Georgia corporation, which took over from the previous ownership in 1996.<sup>32</sup> The Eagle advertises itself as “Atlanta’s Premiere Levi & Leather Bar”<sup>33</sup> and caters primarily to homosexual men. The Eagle was in operation on the night of the APD Raid on September 10, 2009.

### **1.2.2 Rawhide Leather**

Rawhide is a retail store owned by Rawhide Leather, Inc. (“Rawhide”), a Georgia corporation. Rawhide is located on the premises of the Eagle and is situated near the back entrance to the Eagle. Rawhide subleases its space from the Eagle and has been operated by its current ownership since approximately 2007.<sup>34</sup> Rawhide was open for business on the night of the APD Raid.

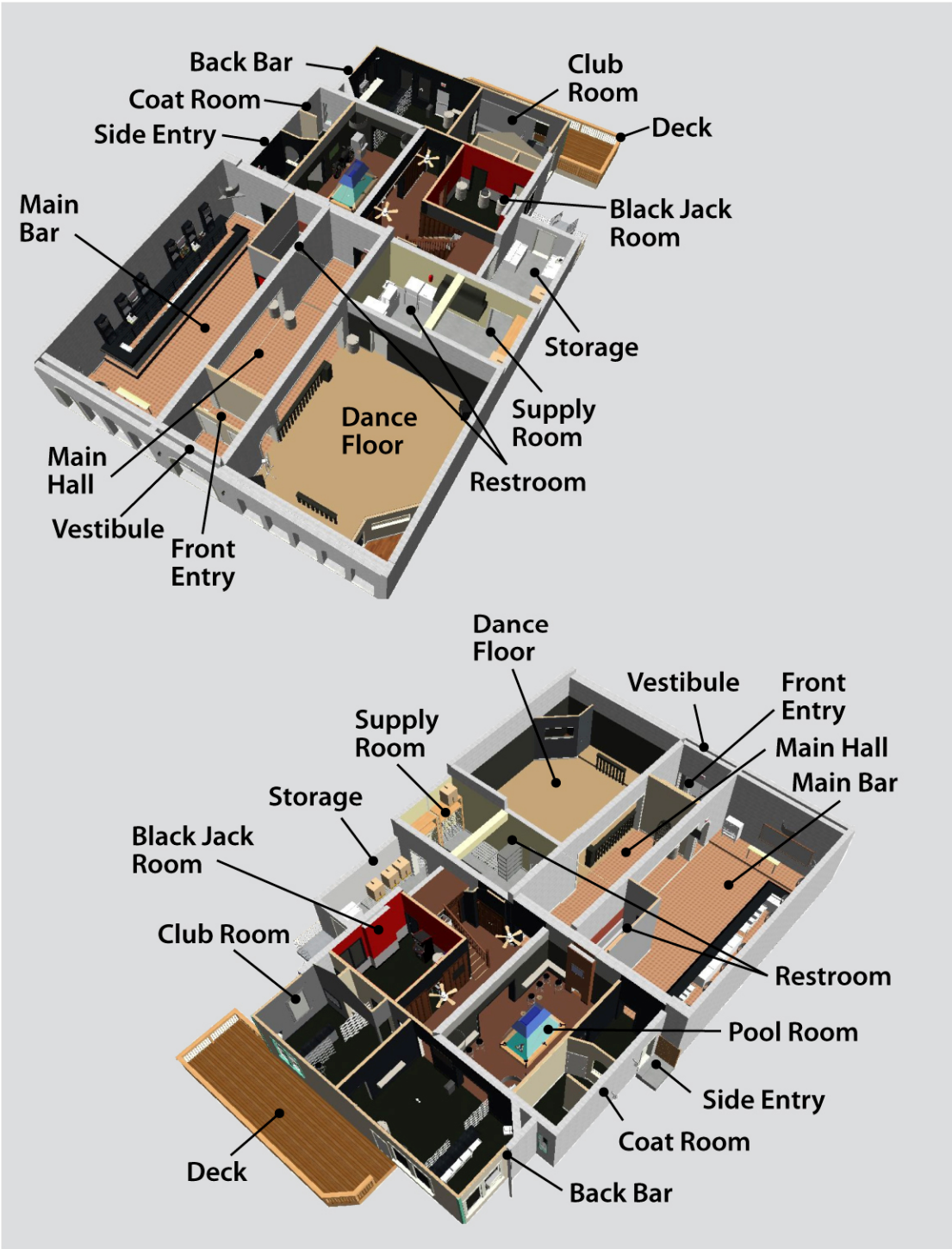
### 1.2.3 3 Dimensional Layout of the Eagle

#### 1.2.3.1 Deck/Lower Level

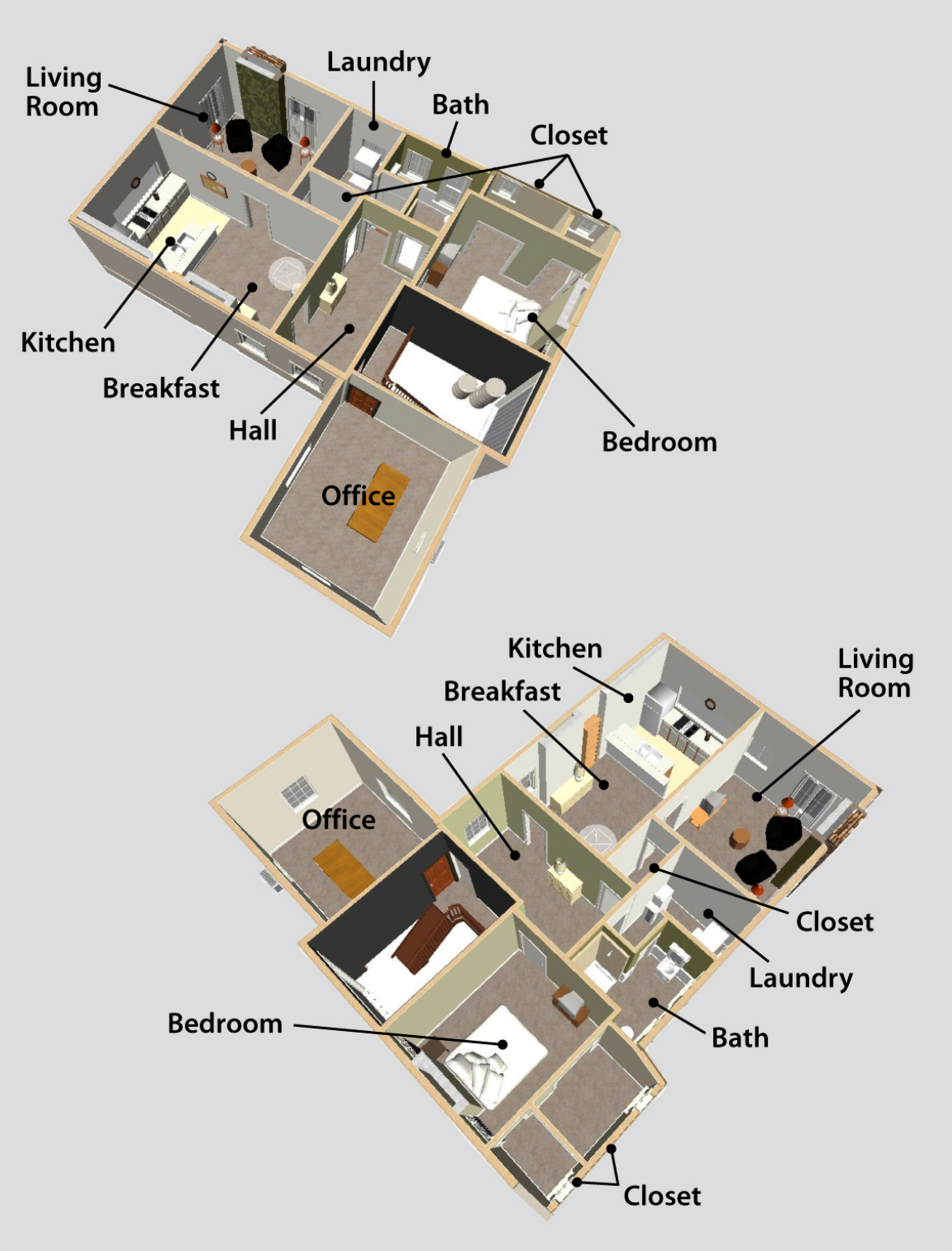




1.2.3.2 Main Level

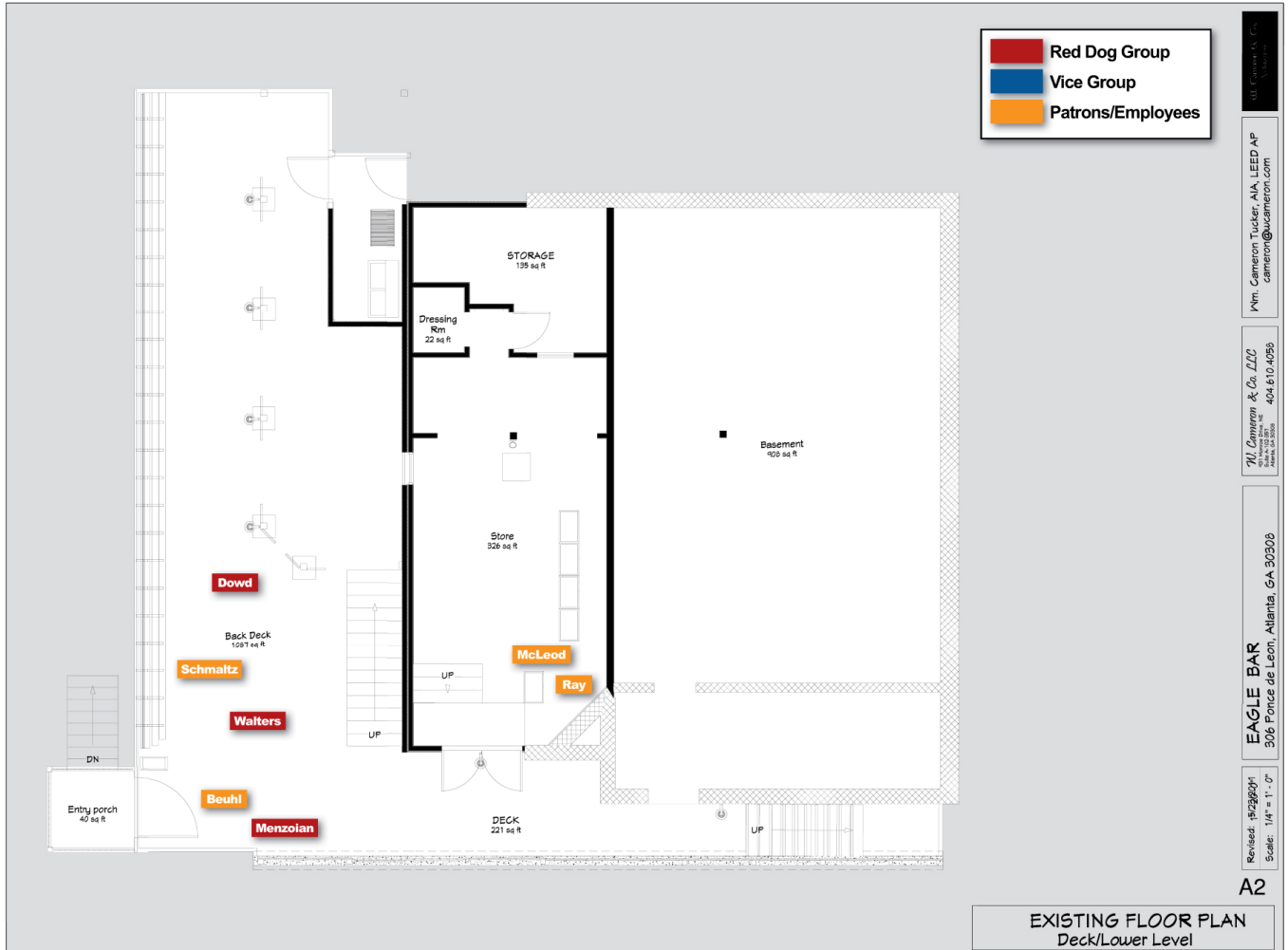


1.2.3.3 Upper Level



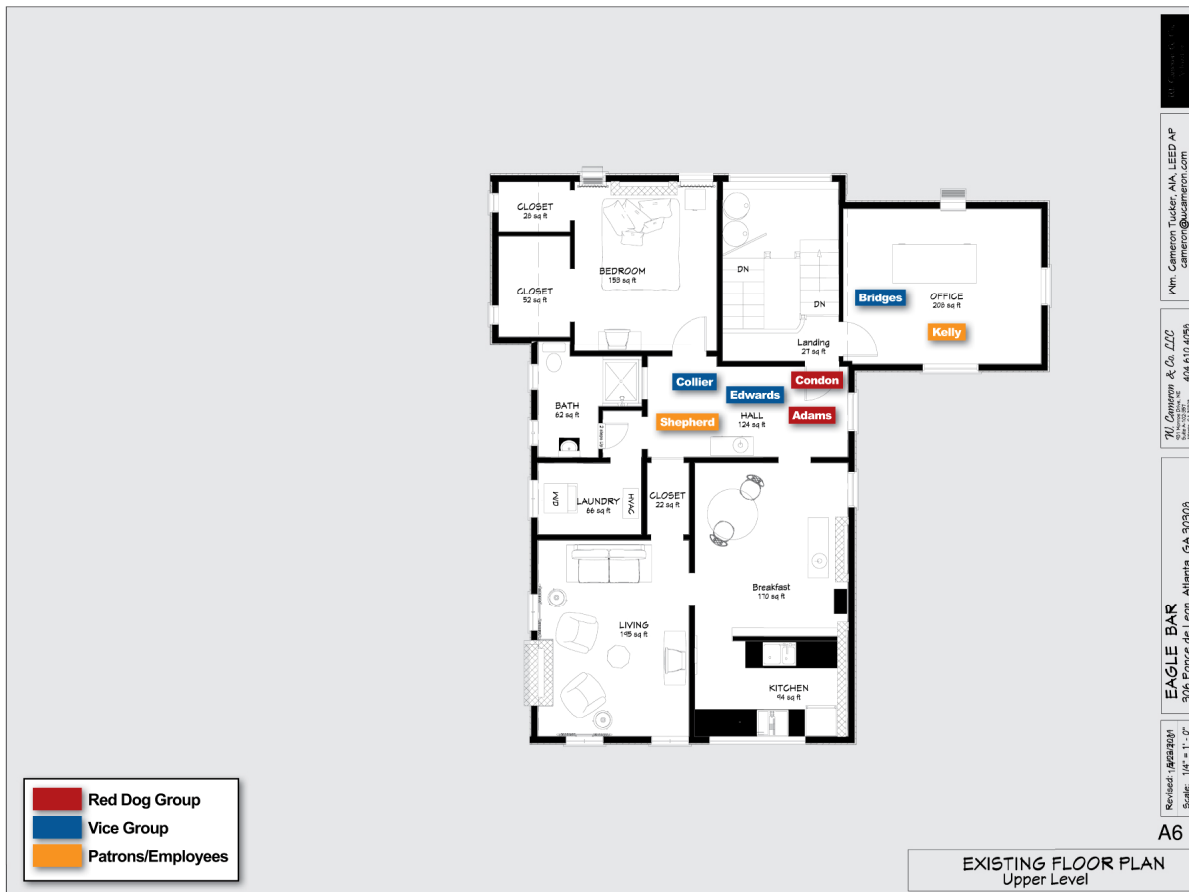
## 1.2.4 Officer/Patron/Employee Locations

### 1.2.4.1 Deck/Lower Level





### 1.2.4.3 Upper Level



### 1.3 The Initial Complaint

On Friday, May 15, 2009, an anonymous email complaint about the Eagle was sent to former Mayor Shirley Franklin's Office:<sup>35</sup>

Mayor Franklin:

The Atlanta Eagle, a bar that is situated next to one of your old campaign offices (306 Ponce De Leon, Atlanta, GA 30308) continues to have sex parties on Thursday nights that spills [sic] out into the neighborhood. Witnesses (including myself) in the neighborhood have seen men in various stages of undress performing sexual acts on each other including oral and anal sex. Mayor Franklin, your assistance in this matter is desperately needed as people in this neighborhood are concerned about the neighborhood being turned into a brothel. Bags of what appears [sic] to be drug residue are found strewn around a one block radius of the bar and drunk bar patrons scream and create disturbances. The neighbors I have spoken to are scared to report anything as the bar owner has

been known to retaliate against neighbors by pointing a speakers [sic] with sounds of men having sex and blasting it to the residential building next to the bar.

Mayor, we need your help. I have copied news organizations<sup>36</sup> on this email as the neighborhood is extremely fed up with this situation and an investigative report into what happens at this bar might help.

I am remaining anonymous for fear of retaliation. Thank you in advance for your assistance in this matter.<sup>37</sup>

Four days later, this email was forwarded from the Mayor's Office of Communications to the Public Affairs Unit of the APD, which in turn referred the complaint to the Commander of Zone 5 where the Eagle is located.<sup>38</sup> On May 20, 2009, the Zone 5 Commander referred the complaint to Major Williams, Commander of SES, who stated her section would "look at this ASAP."<sup>39</sup>

#### **1.4 The Investigation**

Upon receiving the citizen complaint, Major Williams determined that the primary criminal activity raised in the complaint was public sex.<sup>40</sup> Accordingly, Major Williams forwarded the email to the Vice Unit, which has primary responsibility for related crimes such as prostitution.<sup>41</sup> The commander of the Vice Unit at the time, Lieutenant Tony Crawford, was initially cc'd on Major Williams' email response to the Zone 5 Commander on the Eagle complaint and told to "investigate it and handle it."<sup>42</sup> Also included on Major Williams' email were the two sergeants for the Vice Unit, Sergeant John Brock and Sergeant Kelley Collier.<sup>43</sup> Lieutenant Crawford also passed along Major Williams' message to Sergeants Brock and Collier,<sup>44</sup> and designated Sergeant Brock as his lead supervisor.<sup>45</sup> Sergeant Brock originally responded to Crawford that the complaint should be reassigned because no vice-specific crimes were implicated.<sup>46</sup> Despite Brock's protests, Sergeant Collier was sent on a drive-by reconnaissance detail that night by Crawford, but observed no illegal activity.<sup>47</sup> Collier promised

to run a detail inside the Eagle the following night, at which point Brock assumed the lead supervisory role.<sup>48</sup>

On Thursday, May 21, 2009, between approximately 10:30 and 11:00 P.M.,<sup>49</sup> eleven members of the Vice Unit, including Sergeants Brock and Collier, entered the Eagle for an undercover operation to investigate the citizen complaint.<sup>50</sup> Thursday nights were advertised as “Underwear Night” at the Eagle.<sup>51</sup> During the undercover operation, police observed males “wearing only g-strings dancing on top of the bar receiving tips.”<sup>52</sup> One officer observed two dancers on the bar “pull[ing] down the front of their underwear, exposing their penis[es].”<sup>53</sup> As advertised, police also reported seeing “patrons inside of the club walking around in only there [sic] underwear.”

While mingling with the patrons, one of the officers was informed that “on Thursday nights in the rear of the location a large group of patrons gather to participate/watch lewd sex acts between other patrons during club hours and in an area which is open to the general patron [sic] inside of the club.”<sup>54</sup> Several of the officers present for the operation investigated the Back Rooms at the Eagle. They observed three men openly engaging in anal and oral sex as other patrons watched and masturbated.<sup>55</sup>

Despite witnessing the illegal acts complained of, no arrests were made that night by the Vice Unit. The officers were “caught off guard” by this behavior happening openly in the Eagle and decided to leave around midnight to “regroup and reassess the course of the investigation.”<sup>56</sup> Specifically, the Vice Unit officers thought it necessary to gain clarification on how the Eagle was registered with the City for its license and permits and if this behavior might be permitted at a private club.<sup>57</sup> If it was not allowed, the officers also wanted to do a more thorough

investigation to establish a pattern of behavior condoned by the Eagle so that its liquor license could be revoked.<sup>58</sup>

Immediately following the detail, Investigator Bennie Bridges was assigned to serve as the lead investigator of the complaint.<sup>59</sup> Investigator Gregory Dabney recalled having a conversation with Bridges at that time suggesting the use of cameras in future visits to the Eagle to record illegal activity observed.<sup>60</sup> Shortly thereafter, Bridges reviewed the Eagle's liquor license and determined that it was not a private club.<sup>61</sup> Investigator Bridges also contacted attorney Larry Gardener,<sup>62</sup> a prosecutor in the City Solicitor's Office, to review the possible charges that could be brought at the conclusion of the investigation.<sup>63</sup> Specifically, Bridges and Gardener discussed indecency charges against any individuals identified as having public sex in the bar, and license and permit violations against the establishment and its managers because the Eagle was not licensed to serve alcohol in conjunction with the adult entertainment provided by its dancers.<sup>64</sup> Further, Gardener told Bridges that a warrant was not necessary because it was a public establishment.<sup>65</sup>

The Vice Unit returned to the Eagle on another Thursday night, June 11, 2009, for a second undercover operation beginning at approximately 9:00 P.M.<sup>66</sup> This was a smaller operation with only three officers present. Bridges recalls Sergeant Collier bringing a camera for the second operation inside the Eagle, but that the lighting conditions were too poor for it to record.<sup>67</sup> On June 11, police reported witnessing two males dancing on top of the bar,<sup>68</sup> one in "a very short pair of dark color shorts."<sup>69</sup> While dancing in front of a couple, the male would "place his hands inside of his shorts, touching himself."<sup>70</sup> "Then he would turn around, while still on the bar, [and] start to pull down his short [sic] showing a little of his rear end."<sup>71</sup> "[T]hey all exposed either their buttocks or groin area by pulling down on their briefs trying to entice



patrons to place money in their briefs.”<sup>72</sup> The dancer would repeat this routine in front of other patrons at the bar.<sup>73</sup> While officers investigated the two Back Rooms where sexual activity had been observed during the first visit, but the lighting conditions were too dark to see what was happening during the second visit.<sup>74</sup> Vice officers left that night at approximately 11:00 P.M.<sup>75</sup>

Over the summer of 2009, the Vice Unit ceased investigative activity related to the Eagle, as well as all other crimes traditionally within its mission, as all APD resources were focused on an outbreak of “smash-and-grab” robberies plaguing Atlanta.<sup>76</sup> Command staff communicated that solving the “smash-and-grab” robberies was the top priority for the entire Department and reallocated many resources, including the Vice Unit, as a response.<sup>77</sup> It was asserted that because of this shift in priorities, another anonymous citizen complaint of illegal activity at the Eagle filed with the Atlanta Crime Stoppers tipline on July 1, 2009 was not addressed.<sup>78</sup> The tip filed through the Crime Stoppers web site stated:

The Atlanta Eagle (306 Ponce de Leon Ave.) is advertising that they will close Sunday morning July 5th at 3 A.M., and then reopen at 3:15 A.M. for an afterhour’s [sic] party benefiting the Southern Bears ([www.southernbears.org](http://www.southernbears.org)) Atlanta Bear Fest bear run circuit party. They will be charging \$20.00 admission to those attending and alcohol will be sold inside the bar. They have hired nude dancers to dance on the bars; sex will be permitted as at most circuit parties, drugs will be sold freely. They plan on using the back entrance for admission that is located off the rear Patio. They will be running a shuttle bus to and from the host hotel which is the Courtyard by Marriott Northlake on Lavista Road in Tucker, GA. John Beck is chairman of the Atlanta Bear Fest and 2009 President of Southern Bears, INC and knows this is highly illegal. The Atlanta Eagle sent out an email advertising the event yesterday and Robby Kelley’s profile on Bear411 (RKBearATL) ([www.bear411.com](http://www.bear411.com)) also is promoting the after hour’s [sic] event.<sup>79</sup>

This report was emailed minutes after it was received by the APD officer detailed at Crime Stoppers to Sergeant Collier of the Vice Unit and Lieutenant Barbara Cavender, Commander of the License and Permits Unit.<sup>80</sup> However, Crime Stoppers records give no further indication of how this tip was handled.<sup>81</sup> Again, no evidence suggests that this July 1, 2009 tip was ever

followed up on. However, a second complaint about the Eagle, presumably the July 1, 2009 Crime Stoppers tip, was referred to by Sergeant Collier in communications with Major Williams, Lieutenant Crawford, and Sergeant Brock the day after the Raid.<sup>82</sup>

Three months later, the Vice Unit resumed the Eagle investigation. Although Sergeant Brock could not recall specifically how the Eagle investigation was reinitiated, his common practice would have been to contact the lead investigator, in this case Bridges, about any Vice investigation open for more than a couple of weeks to ascertain what additional resources or evidence were required to close it.<sup>83</sup>

On Thursday, September 3, 2009, four officers from the Vice Unit performed another undercover operation at the Eagle. The Vice Officers entered at approximately 10:30 P.M.<sup>84</sup> Officers reported observing “a[n] over weight white male and a slender short African American male on the bar dancing [in] their under wear.”<sup>85</sup> Additionally, officers “walked to the rear room in the club and witnessed several me[n] receiving and giving oral sex.”<sup>86</sup> Vice officers left the Eagle between approximately 11:00 and 11:15 P.M.<sup>87</sup>

## **1.5 Planning for the Raid**

Following this operation, on Wednesday, September 9, 2009, Sergeant Brock determined that Vice had enough evidence to establish a pattern of illegal activity and conclude its investigation of the Eagle.<sup>88</sup> Brock did not apply for a search warrant because he viewed it as unnecessary given the types of crimes being investigated and the fact that the Eagle was a public establishment.<sup>89</sup> Sergeant Brock requested the assistance of the Gangs Unit in conducting a raid on the Eagle for the following day.<sup>90</sup> Because they were unavailable, Sergeant Brock decided to request help from the Red Dog Unit.<sup>91</sup> At approximately 11:15 A.M. on September 10, 2009, Sergeant Brock approached Lieutenant Crawford of the Vice Unit on the elevator at police

headquarters after the weekly COBRA<sup>92</sup> meeting.<sup>93</sup> Brock informed Crawford that the Vice Unit was “going to hit the Eagle Bar tonight” and that “we’re going to use Red Dog.”<sup>94</sup> According to his testimony, Crawford did not discuss tactics or ask to review the Tactical Plan.<sup>95</sup> Despite many factors, including the high profile nature of this operation, the sensitivity concerns presented by dealing with a gay establishment, the lengthy investigation preceding it, the presence of an assisting APD unit, and the use of Red Dog for a non-high-risk detail, Lieutenant Crawford did not believe his presence was warranted on the scene that night because he thought it was “no different than any other case [Vice] handled in the past.”<sup>96</sup> He simply responded “okay” and instructed Brock to update him by email after the Raid.<sup>97</sup>

Sergeant Brock then spoke with Lieutenant Scott Pautsch, Commander of the Red Dog Unit, and requested Red Dog teams (twelve officers), which Lieutenant Pautsch understood as necessary to “cover the perimeter, so when they went in, in case someone tried to run out of the back, they would have the area secured.”<sup>98</sup> However, Brock believed the request for assistance with the “perimeter” could also include assistance inside the Eagle where the majority of patrons and employees would be located.<sup>99</sup> Pautsch approved the request and at approximately 5:00 P.M. directed Sergeant Willie Adams, III, of Red Dog to coordinate with Brock.<sup>100</sup> Adams then briefly talked to Brock and was given the time and location to meet for the pre-Raid briefing.<sup>101</sup>

## **1.6 The Raid**

### **1.6.1 Pre-Raid Briefing**

At 9:30 P.M. on September 10, 2009, the Vice and Red Dog Unit officers gathered in the parking lot behind a church near the Eagle for the pre-Raid briefing.<sup>102</sup> The Tactical Plan discussed had been drafted by Investigator Bridges<sup>103</sup> and approved by Sergeant Brock.<sup>104</sup>

Sergeant Adams of Red Dog arrived to the meeting location early in order to review the Tactical Plan.<sup>105</sup> The “Plan of Action” section stated in its entirety, as follows:

Undercover officers Will [sic] go into the location and spot illegal activities, and upon seeing the illegal activities call in awaiting red dog units to detain, lock down the location. The Vice units inside, and [sic] will be marked with badges on their chest and BLUE LANYARDS around their necks. They will identify suspects while red dog and Vice unit [sic] identify subjects that are to be arrested.  
\*U/C’s [Undercovers] authorized to drink alcohol per SOP.<sup>106</sup>

Though Bridges arranged the briefing, “a lot of people spoke”<sup>107</sup> including Bridges,<sup>108</sup> Brock,<sup>109</sup> and Adams.<sup>110</sup> Bridges led the briefing, but Brock added additional information throughout.<sup>111</sup> The briefing began with a discussion of the background of the investigation, how Vice had been working the case, the number of patrons and employees usually in the establishment, the time of night illegal activity had been observed before, and the type of illegal activity suspected (i.e., public sex and dancing without permits).<sup>112</sup> They walked officers through the Tactical Plan.<sup>113</sup> Officers were instructed on what their specific assignments for the operation were.<sup>114</sup>

Red Dog officers were shown a hand-drawn map of the layout of the Eagle attached to the Tactical Plan.<sup>115</sup> Per the Tactical Plan, it was explained that undercover Vice officers would enter the bar first to observe and make cases. Bridges as the lead investigator would float through the bar checking in with the undercover officers at their various positions throughout the bar to find out what they had observed and if cases could be made.<sup>116</sup> If criminal activity was observed, Bridges would make the call to bring in Red Dog.<sup>117</sup> Officer Mague of Vice would then lead Red Dog officers into the bar since she had been inside the Eagle previously and was familiar with the layout.<sup>118</sup>

There was also discussion during the briefing regarding what to do with patrons who were not suspected of committing any crime. Brock made the decision to put these patrons on the ground because of: (1) the potential that patrons could have weapons in the establishment, (2)

the belief that patrons of a gay establishment are inherently more violent, and (3) the anticipated large number of patrons.<sup>119</sup> Officers were also instructed that anyone arrested would be placed in handcuffs. Those not suspected of committing a crime would be separated from that group and not handcuffed.<sup>120</sup> Before releasing the detained patrons, Brock instructed officers to run these patrons' names and identification on GCIC.<sup>121</sup> Sergeant Brock had made it his common practice to run names and identification of individuals at crime scenes in GCIC following criticisms of similar operations by former Chief Richard Pennington.<sup>122</sup> At the conclusion of the briefing, all of the Vice officers except for Officer Mague, drove to the Eagle while the Red Dog teams remained in the church parking lot awaiting the call to come in and secure the bar.<sup>123</sup>

### **1.6.2 Undercover Operation**

Between 10:00 and 10:45 P.M., undercover Vice officers entered the Eagle as they had on previous operations.<sup>124</sup> After making a staggered entry and purchasing beverages at the Main Bar to blend in, undercover Vice officers assumed their assigned positions throughout the Eagle as detailed in the Tactical Plan.<sup>125</sup> Several officers reported seeing dancers on the Main Bar dancing in underwear and exposing their genitals or buttocks for tips.<sup>126</sup> Investigator Bridges, per the Tactical Plan and briefing, walked throughout the Eagle checking in with officers to see if any illegal activity had been observed.<sup>127</sup> From his assigned position in the Club Room, Investigator Watkins saw what appeared to be a male receiving oral sex, but was unable to make out exactly what was happening because of the dim lighting.<sup>128</sup>

Officer Edwards, who was assigned to the adjacent Back Bar, observed two couples engaged in anal sex in the Back Bar area.<sup>129</sup> Additionally, Officer Godwin, the other Vice officer assigned to the Club Room, recalls seeing two men making out in this room against the back wall while one of them had their pants down, but did not observe any sexual acts.<sup>130</sup>

Watkins recalls checking in with Brock and Bridges periodically that night and commenting that “things were starting to get going.”<sup>131</sup> Edwards left his area to locate Investigator Bridges and Sergeant Brock to let them know he had made cases against four individuals, and then returned to his post.<sup>132</sup> After receiving this information from Watkins and Edwards, Bridges consulted with Brock.<sup>133</sup> At 11:04 P.M., Bridges called Officer Mague from his cell phone to give the signal for Red Dog to come into the Eagle.<sup>134</sup> Bridges then made a circuit of the bar telling the officers that Red Dog had been called in.<sup>135</sup> By the time he had completed the loop and returned to the Main Bar area, Red Dog was just beginning to enter the Eagle.<sup>136</sup>

### **1.6.3 Red Dog Secures the Eagle**

At approximately 11:05 P.M., the doorman taking the cover charge at the Eagle, Ernest Buehl, saw three police paddy wagons approach the establishment, with two turning into the rear parking lot and one pulling in front of the entrance along Ponce de Leon Avenue.<sup>137</sup> Bridges also recalled Red Dog arriving “less than three minutes” after his call to Officer Mague.<sup>138</sup>

#### **1.6.3.1 Patron/Employee Version of Events**

*In recounting the recollections of the patrons, employees, and police officers in the Eagle on the night of the Raid, we have chosen to divide up many of their accounts into the physical space in which events took place. The Eagle is comprised of numerous rooms in which different patron, employee, and police conduct occurred such as the Main Bar, Lower Deck, Pool Room, Game Room and Kitchen. Oftentimes, this method of describing the events as they unfolded in the Eagle resulted in repetition and overlaps in the accounts of the patrons and police officers during this intense and fleeting period of time in which the Raid occurred. To assist the reader, we have developed three reference tools. First, is a “Cast of Characters” that lists all of the relevant officers and Eagle employees. Second, is a “Timeline” that may help the reader with the moment-to-moment events happening in the course of the evening when 24 APD officers conducted a raid of the Eagle that was populated by some 60 patrons and employees. Finally, we have received the assistance of an architect, commissioned by the counsel for the patrons, in the generation of three-dimensional maps and floorplans that depict the Eagle’s structure and furnishings on the night of the Raid. (Reader’s Note: The following summary is a collection of witness assertions that may be disputed.)*

#### 1.6.3.1.1 Lower Deck and Rawhide Leather

From Buehl's position at the top of the stairs from the Lower Deck leading to the parking lot, the only operating entrance to the Eagle premises that night,<sup>139</sup> Buehl was very likely the first employee or patron to interact with Red Dog. Buehl recalls Officer Mague and approximately six Red Dog officers running up the stairs to where he was.<sup>140</sup> Mague instructed two Red Dog officers to secure Buehl while Mague and the other officers made the customers on the Lower Deck sit on the Deck, despite the presence of a nearby bench.<sup>141</sup>

Approximately three minutes later, Buehl remembers seeing another six to eight Red Dog officers running up the stairs from the Deck to the Main Bar entrance.<sup>142</sup> Buehl was then handcuffed and put down next to detained patrons on the Deck.<sup>143</sup> When Buehl asked why he was being handcuffed, he was told that it was "none of his business."<sup>144</sup> After he had been handcuffed, Buehl was separated from the cash box containing cover charges paid by patrons.<sup>145</sup> After this period of separation, officers then placed the cash box beside Buehl on the Deck.<sup>146</sup> Buehl recalled that officers then went into Rawhide and brought the patrons and employees out onto the Lower Deck.<sup>147</sup>

The manager of the Rawhide store, M. Du-Wayne Ray, remembered two Red Dog officers entering the store at the start of the Raid. He also saw Red Dog officers led by Mague run past his storefront and up the stairs to the Main Bar entrance.<sup>148</sup> Three to four customers, one of which was Ray's roommate (Jeffrey McLeod), were also present in the store when Red Dog entered.<sup>149</sup> McLeod recalls seeing Officer Mague pause on her way up to the Main Bar entrance and direct Red Dog officers to cover the area and check for any exits.<sup>150</sup> Ray later identified Red Dog Officers William "Brian" Walters and Christopher Dowd as the officers who entered Rawhide.<sup>151</sup> According to Ray, Officer Walters remained in the doorway to the store with his

weapon drawn pointed into the store and at Ray's head.<sup>152</sup> Dowd then entered the store, went behind the counter and asked Ray if he worked there.<sup>153</sup> Ray replied "yes" and was immediately handcuffed by Dowd with a pair of flexicuffs.<sup>154</sup> Ray stated in his transcript that he did not feel any discomfort from the flexicuffs and joked with officers that if they ran out of them that night, his store had them on sale, which produced a chuckle from Dowd.<sup>155</sup> As Ray recalled, Walters, per Mague's instructions, conducted a sweep of the store to look for any exits, including opening a closed door to a back storage room.<sup>156</sup> While Walters was searching for a back door, Dowd asked Ray, McLeod, and the other customers if they had any weapons. He then conducting a frisk of each, followed by reaching into and searching their pockets.<sup>157</sup>

Ray, McLeod and the Rawhide customers were then escorted to the Lower Deck with the other patrons.<sup>158</sup> McLeod remembers seeing three individuals seated on the Lower Deck as they approached: Buehl in handcuffs and two patrons (one African American, one Latino) handcuffed together.<sup>159</sup> Ray and the customers from Rawhide were seated beside them.<sup>160</sup> Watching over the approximately seven patrons and employees on the Lower Deck were three Red Dog officers — Walters, Dowd, and a tall, African American Red Dog officer who was guarding the entrance to the Deck from the parking lot.<sup>161</sup>

McLeod recalls Walters and Dowd telling the African American and Latino patrons on the Lower Deck to "shut the fuck up" and "sit down" just before they were handcuffed together.<sup>162</sup> On the other hand, Ray does not recall anyone being told to shut up and described officers' responses to inquiries on the Lower Deck as "friendly."<sup>163</sup> Shortly after the Rawhide group had been moved onto the Lower Deck, officers made the other patrons in the area and Buehl stand up to be patted down and searched.<sup>164</sup> Specifically, Ray recalls the handcuffed patrons having their pockets reached into by officers, but uncuffed patrons were allowed to



empty their pockets and show officers their contents.<sup>165</sup> The African American Red Dog officer turned away would-be patrons that were still trying to enter the Eagle.<sup>166</sup> There was also a patron on the Upper Deck that had not been secured and had gone unnoticed by officers for approximately 20-30 minutes.<sup>167</sup> The patron on the Upper Deck was discovered when he laughed aloud.<sup>168</sup> Officers hurriedly brought him down from the Upper Deck, seated him next to Ray and the other patrons, and then patted him down.<sup>169</sup>

At approximately 11:10-11:15 P.M., Buehl was moved from the Lower Deck, up the stairs and into the Main Bar where the other arrestees were being held on the Dance Floor.<sup>170</sup> Before anyone from inside the bar had been released, Dowd was overheard by Ray and McLeod saying to Walters that “This is more fun than raiding niggers with crack.”<sup>171</sup> At around this same time, McLeod heard an officer from the Main Bar entrance shout down to the officers on the Lower Deck and let them know they were going to start releasing people.<sup>172</sup>

At approximately 11:21-11:25 P.M., McLeod recalls seeing the first patrons released from inside the Main Bar.<sup>173</sup> Several minutes later, a few more patrons came out from the Main Bar entrance.<sup>174</sup> At that time, officers ordered the patrons on the Lower Deck to produce their IDs so they could be checked for outstanding warrants.<sup>175</sup> McLeod had to be escorted back into Rawhide to retrieve his ID from his wallet because it had been left on the counter when he was initially detained.<sup>176</sup> Dowd was in charge of collecting the IDs on the Lower Deck from the patrons who would hand them to him.<sup>177</sup> However, Ray’s ID was not collected at that time as the officers were still unclear on his status as an employee.<sup>178</sup>

After approximately fifteen minutes, Dowd returned, called the Lower Deck patrons by name to collect their IDs, and then released them.<sup>179</sup> The two patrons who had been handcuffed together were uncuffed when they were called up and released.<sup>180</sup> Before leaving, McLeod had

to be escorted again into Rawhide to retrieve his wallet and keys.<sup>181</sup> He then left the premises and had no further interaction with police.<sup>182</sup>

Ray recalls still being detained and handcuffed after the last of the Lower Deck patrons were released.<sup>183</sup> Ray's ID was not collected at that time as the officers were still unclear on his status as an employee.<sup>184</sup> Ray was never asked for an ID and never had his information run through GCIC.<sup>185</sup> He was eventually asked to turn around, at which point Dowd cut off the flexicuffs.<sup>186</sup>

Ray asked if he could go into Rawhide to close up the store, which he was allowed to do. While inspecting the store, he noticed that the register looked like it had been searched.<sup>187</sup> He also noticed that a key to the store had been extracted from the register and placed on a ledge.<sup>188</sup> After doing an accounting, however, he was able to determine that no money was missing.<sup>189</sup>

Ray closed up the store and went down to the parking lot area where he called the off-duty owners of Rawhide and the Eagle to let them know what happened.<sup>190</sup> Ray also asked the undercover officers in the parking lot if anyone had been in his store, but was told they had not.<sup>191</sup>

#### **1.6.3.1.2 Main Bar, Hallway and Dance Floor**

From his vantage point in Rawhide, McLeod remembers seeing approximately nine Red Dog officers following Mague up the stairs into the Main Bar entrance.<sup>192</sup> The first person inside the Eagle Bar who noticed the police was bartender Chris Lopez. When Buehl spotted the police vehicles arriving at the Eagle, he asked a nearby patron to inform the employees inside the bar.<sup>193</sup> Lopez recalled seeing a patron running into the bar screaming at him, "The police are at the door!"<sup>194</sup> Before Lopez could do anything, Sergeant Brock approached him and placed a handcuff on one of his wrists.<sup>195</sup>

Just before Mague and Red Dog entered, Robert Kelley, one of the co-owners of the Eagle, was attending to patrons at the other end of the Main Bar.<sup>196</sup> Lopez called down to Kelley to let him know that the police were there and that he needed help.<sup>197</sup> When Kelley got to the end of the bar, Sergeant Brock and Investigator Bridges questioned him.<sup>198</sup> Kelley identified himself as the co-owner and manager, at which point he was handcuffed to Lopez and told that the bar was being raided.<sup>199</sup>

Almost immediately after Kelley and Lopez were handcuffed together, at approximately 11:10 P.M.,<sup>200</sup> Red Dog entered the bar. They ordered patrons onto the ground, in some cases using profanity and telling patrons to “lay down on the fucking floor” and to “shut the fuck up.”<sup>201</sup> Several patrons and employees recalled being confused as the Red Dog officers quickly entered the bar. Kelley testified because Red Dog officers were in black fatigues and shining flashlights in patrons’ faces, many patrons in the dimly lit bar did not immediately recognize that the command to get down on the ground was coming from police officers.<sup>202</sup> Very few patrons recalled hearing the APD officers identifying themselves by announcing “police.”<sup>203</sup> At the start of the Raid, some patrons believed the bar was “being robbed or invaded by criminals or gay-bashers who might kill or injure them.”<sup>204</sup>

Moreover, the loud music played by the DJ prevented some patrons from initially hearing any commands. Some patrons recalled being pushed to the ground for not moving fast enough, but most patrons went down onto the ground within a few seconds.<sup>205</sup> One patron remembers being grabbed off a bench by his collar and thrown to the floor.<sup>206</sup> Additionally, though not pushed, other patrons experienced severe discomfort getting onto or rising from the ground because of pre-existing medical conditions.<sup>207</sup>

After Red Dog entered, the music was turned off and the bar became extremely quiet.<sup>208</sup> Patrons and employees were not allowed to talk and were told to shut up if they tried to speak to either officers or their fellow patrons. One patron who was crying was threatened with a nightstick by an officer who told him to be quiet.<sup>209</sup>

The Eagle lighting was turned up after the patrons were all on the ground.<sup>210</sup> According to patrons, a broken bottle from earlier in the night made the floor wet and left shards of glass near some of the patrons.<sup>211</sup> Two patrons were injured from being ordered down onto the ground near this glass. One patron reported minor cuts on his forearms,<sup>212</sup> while another patron had cut his knee.<sup>213</sup> Neither requested medical treatment.<sup>214</sup>

According to a witness, a Red Dog officer in the Main Bar had his semi-automatic firearm drawn while entering the bar and kept it unholstered when trying to turn on the lights.<sup>215</sup> According to witness testimony, an older officer who appeared to be in charge (white, slightly overweight, 50's, dark hair) told the Red Dog officer to "put that away" while patrons were on the ground.<sup>216</sup> Another patron observed a Red Dog officer, Officer Stalone Davis,<sup>217</sup> with an unholstered weapon as he entered the Main Bar area.<sup>218</sup>

After the patrons were prone on the floor of the bar, Red Dog officers moved throughout the rooms frisking for weapons.<sup>219</sup> In some cases, officers began the encounter by asking the patron if they had any weapons or sharp objects in their pockets.<sup>220</sup> In other instances, the officers began with a frisk and then proceeded to empty a patron's pockets by reaching into them. Some patrons reported receiving a "heavy nudge" from officers using their boots.<sup>221</sup> According to their testimony, none of the patrons believed they were free to refuse the officers' commands.<sup>222</sup> Many patrons had their cell phones and wallets removed and placed on top of the Main Bar when searched.<sup>223</sup>

Very early in the Raid after Red Dog entered and secured the patrons, the two bartenders Lopez and Kelley were escorted by Sergeant Brock from behind the Main Bar to the Dance Floor where the other arrestees were being placed.<sup>224</sup> As they were being escorted by Sergeant Brock, Kelley stated that he Officer Brandon Jackson<sup>225</sup> kicking in the Kitchen door<sup>226</sup> near the Dance Floor.<sup>227</sup> Kelley shouted, “You don’t have to kick it! I have the code! I can just punch it in and you can walk in!”<sup>228</sup> Kelley said Officer Jackson ignored his pleas.<sup>229</sup>

After the Kitchen door was open, Officer Jackson entered the Kitchen with another Red Dog officer and briefly looked around before returning to the Dance Floor.<sup>230</sup> At that time Jackson spotted Lopez with his left thumb in his pocket.<sup>231</sup> Jackson proceeded to unclip his holster and place his hand on his gun.<sup>232</sup> Jackson then told Lopez that “if he did not take his hand out of his pocket that he would shoot Lopez.”<sup>233</sup> Lopez complied.<sup>234</sup> Immediately after this confrontation, Kelley and Lopez were told to sit on the Dance Floor.<sup>235</sup> According to Kelley, he asked Jackson what was going on, but was told repeatedly to “sit down and shut the fuck up”<sup>236</sup> throughout the night whenever he made inquiries. Kelley also said Jackson used gay slurs.<sup>237</sup>

At 11:14 P.M., Officers Mague and Noble of the Vice Unit began to run searches for outstanding warrants of the patrons based on their IDs. In some cases the IDs were retrieved from patrons’ pockets by officers throughout the bar.<sup>238</sup> Because of technical difficulties with the computers and/or the GCIC<sup>239</sup> system that night, some IDs had to be run multiple times on both Mague and Noble’s terminals.<sup>240</sup>

As the patrons’ IDs were run, officers made anti-gay remarks to the crowd asking “who all was in the military so we can call your sergeant and tell him where you’re at”<sup>241</sup> and “who all was married so they could call their wives and tell them what kind of bar they were at.”<sup>242</sup> When one patron tried to reposition himself, he was observed being pushed down by officers.<sup>243</sup>

At approximately 11:10-11:15 P.M.,<sup>244</sup> Buehl was moved from the Lower Deck, up the exterior stairs and into the Main Bar area where the other arrestees were being held on the Dance Floor.<sup>245</sup> Again, as noted earlier, Buehl was separated from the cash box that he was responsible for.<sup>246</sup> When Buehl asked about the cash box as he was being moved, he was told that it “was not [his] concern” by an APD officer.<sup>247</sup> Ray recalled seeing the cash box moved inside the bar behind Buehl some time later.<sup>248</sup> The cash box and its contents were never located after the Raid was concluded.<sup>249</sup>

As officers moved him through the Main Hallway area, they asked Buehl what was upstairs.<sup>250</sup> He responded that the weekend manager’s residence and the Office were located were located in the upstairs level.<sup>251</sup> Next, Buehl was placed in a sitting position on the Dance Floor, where he and others could hear a loud banging noise from above.<sup>252</sup> Shortly after the banging noise, the off-duty weekend manager, David Shepherd, was brought down from his Apartment, placed in handcuffs, and seated on the Dance Floor with the other arrestees.<sup>253</sup>

At approximately 11:15-11:20 P.M., Investigator Bridges shouted to Kelley from behind the Main Bar asking Kelley how to open the cash registers.<sup>254</sup> Kelley instructed Bridges and did not voice any opposition.<sup>255</sup> After Shepherd was brought down by another officer, Bridges then asked Kelley how to get into the Office upstairs, whereupon Kelley informed him that there were keys in the register he had just opened.<sup>256</sup> Bridges retrieved keys from the cash register, walked over to Kelley, and asked him to indicate which one opened the Office.<sup>257</sup> Kelley complied.<sup>258</sup> According to Kelley, Bridges proceeded upstairs and went into the Office for “a little while.”<sup>259</sup>

At approximately 11:40 P.M., Kelley saw Bridges and Jackson re-enter the Kitchen and heard what he thought was the sound of officers searching through the locked cages containing

liquor and the coolers containing beer.<sup>260</sup> At this same time, one of the detained dancers, Leandro Apud, also saw officers going in and out of the Kitchen, including Officer Jacques.<sup>261</sup>

At approximately the same time, from his seated position on the Dance Floor, Buehl recalls hearing a patron in the Main Hallway, Robert Treutel, asking several times why he was being detained.<sup>262</sup> Officers responded each time by telling him to “shut the fuck up.”<sup>263</sup> Observers recall an officer telling Treutel that “if he did not put his head back down and shut the fuck up, that he was going to take a fucking bar stool and knock him down.”<sup>264</sup> However, Treutel did not recall the use of any profanity by officers or mention physical threats made by officers against him.<sup>265</sup> Kelley also asked officers around this same time why they were being held and was told to “shut up,” and that “when [officers] needed to talk to him, they would ask him.”<sup>266</sup>

After another ten minutes, Buehl started experiencing shortness of breath, and pains in his right arm and chest.<sup>267</sup> Kelley alerted officers to Buehl’s discomfort and informed them that Buehl had a history of panic attacks.<sup>268</sup> Upon learning of Buehl’s poor health, officers asked Buehl if he would like an ambulance, to which he responded affirmatively.<sup>269</sup>

By this time, all of the patrons except for Treutel had been released.<sup>270</sup> After seeing Mague watching the football game on TV, Treutel spoke up again and said, “I’m sure glad you’re having a good time because I’d like to get the hell out of here.”<sup>271</sup> Officers responded that Treutel would be staying where he was and not going anywhere.<sup>272</sup> Treutel stated, “Oh, you’re teaching the guy with the attitude a lesson. I guarantee you someone will hear about this.”<sup>273</sup> At that point, a Vice officer approached Mague and asked about an ID sitting next to her computer.<sup>274</sup> She told the other Vice officer that someone had told her to hold it.<sup>275</sup> The Vice officer then told Treutel to get up and escorted him to Mague who proceeded to run his

ID.<sup>276</sup> The GCIC report that evening indicated that Treutel had his ID run that night at 11:49 P.M.<sup>277</sup> He was the last patron in the entire bar released that night upon the receipt of the GCIC report at 11:52 P.M.<sup>278</sup>

At that point, employees were asked to shout out their social security numbers across the bar so that officers could run their information on GCIC to look for any outstanding warrants.<sup>279</sup> Kelley remembers having his ID run after Bridges retrieved it from his wallet in the Office, but does not appear on the GCIC report for that night.<sup>280</sup> The seven other Eagle employees had their information run through GCIC.<sup>281</sup>

Some recall that after all of the patrons were released, the Red Dog officers remaining in the Main Bar area began celebrated by high-fiving and jumping on top of each other like they were “football players that [had] just won a game.”<sup>282</sup> Kelley recalls in this group of five Red Dog officers, four African American men and one white female, the comment being made that “This was so much fun. We should do this to a faggot bar every week.”<sup>283</sup>

Around this time, a tall, African American officer saw that Buehl’s condition had worsened and told him to stand up and come with him into the Main Hallway so that he could sit on the steps outside where he could get fresh air.<sup>284</sup> The officer tried to comfort Buehl and tell him that this was “not as bad as it seemed,” “not to worry,” and that “what [they] were charged with was not that bad.”<sup>285</sup> He also said the police were there that night because “top brass had told them to make an impact.”<sup>286</sup> Buehl was then taken back to the Dance Floor.<sup>287</sup>

Approximately ten minutes later, the arrestees were told they would be going to jail.<sup>288</sup> When asked why, officers replied they had strippers performing without a permit.<sup>289</sup> According to Kelley, when employees stated that no one was naked, officers told them they were lying.<sup>290</sup> The dancers, who were only wearing underwear throughout the Raid, were allowed to retrieve



their clothing from the Coat Room and get dressed.<sup>291</sup> Shepherd, who was brought down from his Apartment barefoot, was also allowed to retrieve shoes from his Apartment.<sup>292</sup>

Bridges removed Kelley's handcuffs and escorted him to lock up and place the money from the cash registers in the Office safe.<sup>293</sup> Money that had been left on top of the desk by Kelley appeared to have been rearranged.<sup>294</sup> While upstairs, Kelley was allowed to make a call from his cell phone to the other owner of the Eagle, Richard Ramey, to let him know of the circumstances.<sup>295</sup>

While Kelley locked up the bar, officers departed the Eagle and escorted the other arrestees outside, where everyone but Buehl was placed in a paddy wagon.<sup>296</sup> On his way out of the Eagle, Kelley heard a Red Dog officer on the Lower Deck telling another officer that "this was much more fun than busting a nigger with crack."<sup>297</sup>

#### **1.6.3.1.3 Upstairs Apartment and Office**

The Eagle bar manager, David Shepherd, was upstairs in his Apartment watching television and eating dinner when the Raid began.<sup>298</sup> Shepherd's normal work hours at the time were 10:00 A.M. - 3:00 P.M., Monday through Friday.<sup>299</sup> Shepherd only had nighttime duties on Friday and Saturday.<sup>300</sup> Because the Raid occurred on a Thursday night, he was off duty.<sup>301</sup>

Shepherd's Apartment interior was easily identifiable as a residence with a kitchen, bathroom, laundry, and bedding. However, unlike a typical Apartment, there was no separate entrance other than the one from within the bar.<sup>302</sup> The Apartment door was somewhat indistinguishable from the entrance to the Office located upstairs. Shepherd did not pay rent to the Eagle owners, but instead understood the Apartment to be part of his compensation as a salaried employee.<sup>303</sup>

At approximately 11:15 P.M., Shepherd heard a loud banging at the Apartment door.<sup>304</sup> He answered the door and saw two Red Dog officers, Sergeant Adams and Officer Condon, on the upstairs landing.<sup>305</sup> He did not immediately recognize them as police officers.<sup>306</sup> As he opened the door, Adams and Condon stepped into the foyer area of his Apartment without identifying themselves.<sup>307</sup> They asked him what he was doing upstairs.<sup>308</sup> He responded that he was the bar manager and that he lived there.<sup>309</sup> The officers asked if there was a bed in the Apartment with sheets.<sup>310</sup> Shepherd confirmed that there was.<sup>311</sup> Shepard informed the officers that he was alone.<sup>312</sup> The officers then said, “Sir, you need to come downstairs right now.”<sup>313</sup> Shepherd asked why, but the officers merely repeated their command.<sup>314</sup> Because Shepherd was barefoot, he asked if he could put on his shoes, which were located nearby.<sup>315</sup> The officers denied his request.<sup>316</sup> He was then escorted downstairs to the Dance Floor and placed with the other arrestees.<sup>317</sup>

#### **1.6.3.1.4 Pool Room/Coat Room**

Patrons in the Pool Room would have been among the first in the bar to see Red Dog officers coming in through the side entrance. According to some patrons in this area, they heard the police officers commanding them to “Get on the fucking ground!”<sup>318</sup> Because the officers were moving so fast, they pushed down a dancer near the entrance as they fanned out through the bar and also directed other patrons to the ground with a firm push.<sup>319</sup> One witness observed an officer push a patron in the Pool Room who was slow getting down to the ground due to a recently broken leg.<sup>320</sup> Initially, some patrons were unable to tell that the commands were being given by the police who did not identify themselves as they entered.<sup>321</sup> One patron noticed that a Red Dog officer, Officer Cayene Mayes, commanded another patron to get down<sup>322</sup> with his gun drawn together with a shining flashlight.<sup>323</sup>

One of the dancers, Leandro Apud, had just arrived and was in the process of getting changed in the Coat Room by the side entrance when he heard yelling.<sup>324</sup> As Apud opened the door, Officer Mague pointed a gun at him and commanded him to get down on the floor.<sup>325</sup> Apud went to the ground on a step in the entryway between the Pool Room and the side entrance through which the Red Dog officers had earlier entered the Eagle.<sup>326</sup> After ten to fifteen minutes on the Pool Room floor, Apud was handcuffed and escorted to the Dance Floor with the other arrestees.<sup>327</sup>

After the Pool Room patrons complied with the officers' commands and went to the ground in the Pool Room, they could hear "police" being announced in other rooms.<sup>328</sup> While on the Pool Room floor, patrons were ordered to keep their hands behind their backs.<sup>329</sup> Minutes later, a Red Dog officer, Officer Stephanie Upton, went through the Pool Room asking if patrons had any weapons before frisking and then searching their pockets.<sup>330</sup> Upton's demeanor was described by patrons as non-hostile.<sup>331</sup> One Pool Room patron, Kenneth Keck, had an eyeglass case removed from his sock by Upton and believes that she opened it without his permission.<sup>332</sup> Upton did not search Keck's pockets,<sup>333</sup> however, other Pool Room patrons reported having their pockets searched.<sup>334</sup> After the pat and frisks, the Pool Room patrons were told by Vice officers moving through the nearby Main Hallway to place their wallets by their heads and to pull out their IDs.<sup>335</sup>

According to Kelley, one of the patrons in the Pool Room, "David," was deaf and could not hear the commands given by officers upon entry.<sup>336</sup> This fact was unknown to the officers, as well as the other patrons in the Pool Room that night.<sup>337</sup> As a result, bar patron Elton Burkes observed that David initially did not comply with verbal commands from the officers.<sup>338</sup> As noted, even the other patrons were unaware of David's impairment. It appeared to them that

David was “really giving . . . a hard time” to officers by being non-responsive to their commands.<sup>339</sup> Some patrons observed that the officers were being “really . . . forceful” with David, “looking like [they were] kicking him” in the legs.<sup>340</sup> A patron in the adjacent Back Bar could hear Upton becoming noticeably agitated with David as he tried to inform officers near him of David’s hearing impairment.<sup>341</sup> Eventually the situation was resolved when officers searched David’s pockets and retrieved his ID.<sup>342</sup>

IDs were also collected by officers from the other Pool Room patrons.<sup>343</sup> During the ID collection process, one of the Pool Room patrons tried to speak; he was told to shut up and lay still.<sup>344</sup> After more time had passed, the Pool Room patrons were called up by their last names to retrieve their IDs from Officer Noble and told they could leave.<sup>345</sup>

#### **1.6.3.1.5 Back Bar/Club Room**

The patrons in the Back Bar said they saw and heard Red Dog officers shining flashlights as they entered through the Pool Room area and ordered everyone to get down.<sup>346</sup> Other patrons in the adjacent entryway between the Club Room and Back Bar saw Vice officers approaching from the Main Hallway and also commanding patrons down to the ground.<sup>347</sup> No patrons in these two rooms recalled hearing profanity used by officers giving the command to get down.<sup>348</sup> Nor did any patrons hear officers identify themselves as police when entering the room and commanding them to the ground.<sup>349</sup> There also were no drawn guns observed by patrons in these rooms.<sup>350</sup> A patron in the adjacent Pool Room recalled that one of the Back Bar patrons “looked like he was doing [something] sexual because I seen [sic] they had to pull up his pants.”<sup>351</sup> The Pool Room patron also heard officers in the Back Bar use the slur “fag” when interacting with the patron that possibly had been engaged in sexual activity.<sup>352</sup>

Once on the ground, patrons in these rooms were frisked and had their pockets searched by officers.<sup>353</sup> One of the patrons in the Back Bar was an off-duty police officer from Tennessee.<sup>354</sup> When Red Dog officers searched his wallet, they saw his badge. They then handed the badge to Vice Officer Jeremy Edwards, alerting Edwards to the fact that this patron was a police officer.<sup>355</sup> Edwards then told the off-duty Tennessee officer to get up and follow him to Officer Mague's terminal.<sup>356</sup> Edwards told Mague the patron was an off-duty police officer and that she could "run him or not, and let him go."<sup>357</sup> As Edwards later described it, "I pretty much walked him to the door and cut him loose."<sup>358</sup> Edwards' rationale for releasing the off-duty police officer was that he had not seen him involved in any illegal activity and no other officer had pointed him out as a suspect.<sup>359</sup> Edwards did not consult a supervisor before releasing the off-duty police officer.<sup>360</sup> GCIC reports indicate that the off-duty police officer was the fifth patron ID run that night, at 11:21 P.M., a time when only patrons in the Main Bar area were having their IDs run.<sup>361</sup> Both APD officers and the off-duty Tennessee officer believe, however, that he was the first patron released.<sup>362</sup>

One of the patrons between the Back Bar and Club Room, Scott Schneider, spoke up after the patrons were waiting on the ground "for a while" and stated "I assume someone's going to tell us what's going on."<sup>363</sup> An officer responded by explaining, "Don't worry, you guys weren't doing anything. We're going to run your licenses. As long as they're clean, you'll be able to go. This won't even show up on your record."<sup>364</sup> Before Schneider's ID was collected and run, he and another patron in the Club Room were moved to the Back Bar area to consolidate the patrons being watched by officers.<sup>365</sup>

After he had been moved, Schneider recalls seeing Sergeant Brock<sup>366</sup> enter the Back Bar and commenting, "Mmm, mmm, mmm, look at all this loving going on."<sup>367</sup> Brock also was

searching for a patron in a “red hat” who had been observed committing sexual acts earlier and stated that “nobody was leaving until somebody admitted they traded favors with the guy in the red hat.”<sup>368</sup> Schneider also observed Sergeant Willie Adams<sup>369</sup> intimidating patrons on the ground by kicking their feet, telling them to put their hands on their head, and shining a flashlight in their eyes.<sup>370</sup> Eventually, Schneider saw officers asking for IDs in the Pool Room and releasing patrons before they came to the Back Bar and repeated the procedure.<sup>371</sup> A few minutes after he handed over his ID to police, he was told that he could go.<sup>372</sup> GCIC reports indicate he was released shortly after 11:34 P.M.<sup>373</sup>

#### **1.6.3.1.6 Game Room**

The only patron present in the Game Room at the time of the Raid who has made statements regarding that night is Alan Dale. Dale recalls seeing flashlights shining in his face<sup>374</sup> and then being ordered to “get down on the ground.”<sup>375</sup> He immediately went to the ground, face down, as two Red Dog officers entered the room.<sup>376</sup> From his vantage point, he did not hear any profanity.<sup>377</sup> Because the Kitchen is adjacent to the Game Room, Dale could hear the Kitchen door being kicked in, followed by officers announcing “police.”<sup>378</sup> While on the ground, he was searched by an officer who emptied his pockets without addressing him.<sup>379</sup> He could not see what the officer looked like because he was facing the ground in an attempt to fully comply with the earlier order.<sup>380</sup> After some time had passed, an officer asked for Dale’s ID, which he retrieved from his own wallet and produced to the officer.<sup>381</sup> His ID was returned and placed on the small of his back, but then an officer came back a second time and retrieved the ID.<sup>382</sup> Dale then heard his last name called by an officer, stood up, retrieved his ID, and was told he could go.<sup>383</sup> Based on his phone records and a call he made when he got home that night, Dale

believes he was released at approximately 11:25 P.M. and was home by 11:30 P.M.<sup>384</sup> However, the GCIC report indicates that Dale's ID cleared at 11:41 P.M., when he was likely released.<sup>385</sup>

### **1.6.3.2 APD Officer Version of Events and Disputed Facts**

On September 10, 2009, officers were briefed that patrons no suspected of committing any wrongdoing at the Eagle would be detained on the floor and their IDs run. Several officers also admit to frisking and searching the detained patrons. To this day, many officers, especially within the Red Dog Unit, are still under the impression that they were told by their supervisors that there was a search warrant for the Eagle and conducted themselves as they normally would under such circumstances. Notwithstanding the officers' belief, even if the Raid was conducted pursuant to a search warrant, the wholesale detentions, frisks and searches of the Eagle's patrons violated the Fourth Amendment of the U.S. Constitution.<sup>386</sup> In total, the facts support the Calhoun court's finding that "each of the . . . Plaintiffs was unlawfully searched, detained, and/or arrested on September 10-11, 2009, at the Atlanta Eagle . . . and that none of the Plaintiffs was personally suspected of any criminal activity."<sup>387</sup> However, with respect to many of the other grievances raised by patrons and employees of the Eagle, officers at the Eagle detail offer a significantly different version of events that occurred that night.

#### **1.6.3.2.1 General Denials of Inappropriate Behavior**

No officer present has ever acknowledged using or hearing other officers use abusive language, including profanity, racial slurs, and gay slurs that night. With regard to gay slurs or derogatory comments, several officers pointed to the fact that Red Dog Officer Stephanie Upton was present that night in the Pool Room. Upton was<sup>388</sup> a well-respected and liked member of her unit, who also happened to be openly gay.<sup>389</sup> Officers indicated that they would not use gay slurs or derogatory language in any professional setting, but especially one where Upton was present.

Red Dog officers believed that Upton would have alerted supervisors if such language had been used. Similarly, officers believe the use of racial slurs was unlikely because of the large percentage<sup>390</sup> of African American officers on both Red Dog and Vice present at the Eagle.

No officer admitted using or observing other officers employing excessive force at the Eagle. As corroborating evidence, officers point to the lack of any requests for medical attention at the scene other than Buehl's anxiety attack, or any complaints to the supervisors on the scene. Moreover, no damages in the form of physical injury were ever specified in the Calhoun litigation by plaintiffs,<sup>391</sup> and no patron or employee has identified in any statements a physical injury caused from the use of force by police that night.<sup>392</sup> Finally, no officer has admitted unholstering or observing other officers brandishing their weapons during the Raid.

#### **1.6.3.2.2 Lower Deck and Rawhide Store**

Officer Mague recalls leading Red Dog directly to the entrance into the Main Bar without stopping at the Lower Deck or Rawhide store.<sup>393</sup> She also does not recall giving any orders to Red Dog officers that night as she was not a supervisor.<sup>394</sup> Officer Porter stated he accidentally went into Rawhide where he saw two officers and some store patrons.<sup>395</sup> He does not recall whether anyone was handcuffed at that point in time.<sup>396</sup> Officer William "Brian" Walters denies entering Rawhide.<sup>397</sup> Officer James Menzoian also denies entering Rawhide and he does not remember any employees coming out of the store.<sup>398</sup>

Officers Menzoian and Walters from Red Dog were assigned by their supervisor, Sergeant Adams, to detain the Eagle employee collecting the cover charge at the door (Buehl) and to clear the entryway so that the rest of the Red Dog officers could go in.<sup>399</sup> Because of this assignment, Menzoian and Walters were two of the first Red Dog officers to go up the stairs and



onto the Lower Deck.<sup>400</sup> In addition to Menzoian and Walters, Officer Christopher Dowd was assigned to the Lower Deck.<sup>401</sup>

Menzoian used his handcuffs to secure Buehl and seated him on the bench to the left of the stairs.<sup>402</sup> Specifically, Menzoian used two sets of handcuffs because Buehl was a larger individual.<sup>403</sup> Walters and Menzoian made sure that the cash box was placed next to him on the bench so that Buehl could keep track of it.<sup>404</sup>

The other patrons detained on the Deck were also seated on the bench against the fence surrounding the Lower Deck.<sup>405</sup> Menzoian recalled patrons on the back Deck that were detained down on the bench as well.<sup>406</sup> Dowd stated he, along with Menzoian and Walters, detained the patrons and ordered them to sit on the bench.<sup>407</sup> However, Officer Menzoian stated that his assignment and Officer Walters' assignment was limited to detaining Buehl and that he does not recall who secured the Deck patrons.<sup>408</sup> Menzoian does not recall any one else other than Buehl being handcuffed on the Lower Deck.<sup>409</sup> Dowd has no recollection of multiple patrons being handcuffed together on the Lower Deck that night.<sup>410</sup> Walters also stated that none of the Deck patrons were handcuffed.<sup>411</sup> Menzoian also has no recollection of the Deck patrons being handcuffed.<sup>412</sup> None of the officers has any memory of patrons being handcuffed on Deck.

After approximately twenty minutes on the Deck with the detained patrons, Dowd briefly went into the Main Bar entrance to see if he could find Sergeant Adams for a status update, but was unsuccessful.<sup>413</sup> In hindsight, Dowd believes that the length of time the patrons were held outside was excessive, and questions whether any detention was even necessary because none of the patrons on the Deck were involved with any of the illegal activities being investigated inside the club.<sup>414</sup>

According to Dowd, about ten minutes later, the first patrons from inside the bar started being released.<sup>415</sup> Shortly thereafter, a vice officer informed the officers on the Deck that the patrons there could start to be released.<sup>416</sup> After everyone from the Deck was released, a Vice officer informed Menzoian that he could leave the scene.<sup>417</sup> Dowd, Menzoian and Walters left the Deck at the same time the other Red Dog officers were departing.<sup>418</sup> However, Walters stated that there were a few patrons on the Deck who went upstairs with Vice rather than staying on the Patio, leaving him, Menzoian and Dowd by themselves on the Deck for the majority of time.<sup>419</sup>

#### **1.6.3.2.3 Main Bar, Hallway and Dance Floor**

Sergeant Brock, Sergeant Collier and Investigator McClain were undercover with Vice in the Main Bar area when Red Dog entered the Eagle.<sup>420</sup> Investigator McClain recalls seeing dancers on the bar and states that one of the dancers placed his penis on the top of a patron's head and then received a tip from the patron.<sup>421</sup> Brock also recalls seeing dancers on the bar receiving tips but he did not see any other illegal activity that night.<sup>422</sup> Collier observed men in tight underwear dancing on the bar but he did not observe any patrons engaging in illegal activities.<sup>423</sup> McClain reported the aforementioned events to Bridges after the Raid and provided Bridges with a description of both the dancers and patrons involved in the aforementioned acts.<sup>424</sup> Upon entering the Eagle and proceeding to the Main Bar, Investigator Glass also observed dancers in their underwear.<sup>425</sup> Additionally, Glass also stated that there was a dancer on a side table<sup>426</sup> and that a patron was placing money in the dancer's underwear.<sup>427</sup> However, Glass did not see any dancers exposing themselves.<sup>428</sup> Officer Watkins also witnessed a dancer in a g-string place his crotch area onto another man's head.<sup>429</sup> Watkins believes that the dancer was also receiving tips,<sup>430</sup> but does not remember whether the dancer was exposing himself.<sup>431</sup>

Sergeant Brock was instructed by Investigator Bridges to call in Red Dog.<sup>432</sup> Sergeant Brock believes he called Sergeant Adams.<sup>433</sup> Thereafter Sergeant Brock turned on the lights, handcuffed bartender Chris Lopez and Eagle co-owner Robbie Kelley, who was also bartending that night.<sup>434</sup> Brock stated Lopez and Kelley were in their underwear as it was underwear night at the Eagle.<sup>435</sup> Brock allowed Lopez and Kelley to put their pants on before handcuffing them and escorting them to the Dance Floor.<sup>436</sup> According to Collier, when Red Dog entered, Kelley instructed a person sitting at the bar to “go back and tell them the police are coming.”<sup>437</sup> Collier pulled out his badge and instructed the person to stay seated, which he did.<sup>438</sup> Collier also ordered Kelley and the other individual to place their hands on the bar.<sup>439</sup>

Red Dog secured the premises in less than two minutes.<sup>440</sup> Vice officers isolated the Eagle employees for arrest in less than five minutes.<sup>441</sup> When Red Dog officers entered, they moved patrons to the Center Bar area and then ordered them to the floor.<sup>442</sup> Red Dog Officers Cayenne Mayes, Stalone Davis, Brandon Jackson and Dimitri Jacques were assigned to secure the Main Bar and Dance Floor.<sup>443</sup> When Officer Mayes entered the establishment, not everyone was on the floor; however, they complied after being instructed one or two more times.<sup>444</sup> Officers Davis, Jackson and Jacques stated that the patrons were already on the floor when they entered the establishment.<sup>445</sup> McClain estimated that thirty individuals were ordered to the floor in the Main Bar area.<sup>446</sup>

As McClain overheard complaints that individuals were being stepped on,<sup>447</sup> he proceeded to arrange individuals into rows so as to create walk ways and to prevent officers from having to step over people.<sup>448</sup> Officer Mayes stated he was able to walk around the patrons but that it was possible that he bumped into them.<sup>449</sup> Officer Jackson stated the area was crowded and it was possible that someone could accidentally step on a patron.<sup>450</sup> Officer Jacques stated

he did not bump or rub against any patrons while they were on the floor.<sup>451</sup> McClain recalled one of the dancers and a patron complaining of back problems.<sup>452</sup> McClain told them that they did not have to get on the floor but rather could remain sitting on a stool but that they could not have anything in their hands.<sup>453</sup> Despite McClain's instructions, one of the individuals laid on the floor while the other sat on the bar foot rest.<sup>454</sup> McClain states that although some individuals were hesitant to get on the floor, no officer used physical force to place anyone on the ground.<sup>455</sup>

Collier's understanding of the Tactical Plan and Briefing was that patrons who were not involved in any illegal activities would be let go or whisked out of the Eagle.<sup>456</sup> Collier states there was no discussion at the briefing about whether the patrons would be frisked.<sup>457</sup> He believed the goal was to detain the individuals suspected of engaging in illegal activity, not everyone in the establishment.<sup>458</sup> He was surprised when he saw patrons on the ground and believes it constituted an illegal detention.<sup>459</sup> However, he took no action to confront or remedy the constitutional violations.

Next, Red Dog requested IDs from the patrons, whereupon the patrons would inform the officer where the ID was, and the officer would retrieve it. According to McClain, this was normal procedure.<sup>460</sup> Officer Mayes frisked three patrons and asked them to hand him their ID.<sup>461</sup> He did not search any pockets for IDs, but allowed patrons to retrieve them and hand them to him.<sup>462</sup> Officer Davis stated he did not search or frisk any patrons, nor go into their pockets for ID.<sup>463</sup> Jackson stated he patted down patrons, which was Red Dog's normal procedure.<sup>464</sup> Jackson also asked each patron, one-by-one, to hand him their ID, which he then gave to Officer Mague for processing.<sup>465</sup> McClain claims that he did not frisk anyone nor did he reach into any pockets that night.<sup>466</sup> He also denies handling any IDs.<sup>467</sup> Sergeant Collier also

denies searching anyone or any place within the Eagle.<sup>468</sup> As IDs were processed and patrons released, the crowd thinned and patrons began to sit on the floor rather than lie on it.<sup>469</sup> No officer recalls any patron being held longer for speaking up and questioning officers.

Vice Officer Mague led Red Dog into the Eagle because she was familiar with its layout.<sup>470</sup> She denies she directed Red Dog to enter Rawhide and stated they followed her into the Eagle.<sup>471</sup> Once the Eagle was secured, Officer Mague set up her Mobile Data Terminal (“MDT”) at the Main Bar and began processing patron IDs for outstanding warrants.<sup>472</sup> She received groups of IDs from different officers.<sup>473</sup> Due to problems with the GCIC system, some IDs had to be run more than once.<sup>474</sup> Officer Mague ran IDs for about half an hour.<sup>475</sup>

During the Raid, McClain recalls an African American Red Dog Officer asking several times for the key to open the door which led from the Dance Floor to the Kitchen.<sup>476</sup> An Eagle employee who was behind the bar responded that no one was back in that room, however, McClain knew someone had been back there as the door had been open all night and was now closed.<sup>477</sup> McClain states that after the officer kicked in the door, one of the bartenders responded that he had a key.<sup>478</sup> Brock acknowledges that door was “probably” kicked in when Red Dog secured the area.<sup>479</sup> Officer Mayes is unsure whether he saw officers entering and exiting the Kitchen.<sup>480</sup> Officer Jacques does not know if anyone secured the Kitchen.<sup>481</sup> Officer Jackson denies kicking in the door and stated that he did not know who was to secure the Kitchen.<sup>482</sup> Officer Jackson failed a computer voice stress analysis exam regarding the forced entry into the Kitchen.<sup>483</sup>

As he was leaving the club, McClain encountered some patrons who wanted to return to the Eagle.<sup>484</sup> He informed them that they could wait, but that he could not let them in then.<sup>485</sup>

#### 1.6.3.2.4 Upstairs Apartment and Office

Sergeant Adams learned from a Vice investigator that an Eagle manager lived in an Upstairs Apartment.<sup>486</sup> Condon, together with Adams and (potentially) one or two additional investigators<sup>487</sup> went upstairs to Shepherd's Apartment.<sup>488</sup> Adams stated only he and Condon went upstairs.<sup>489</sup> Condon understood that there was an owner or manager that resided up there and they needed him to come downstairs.<sup>490</sup> Adams knocked on the door and announced that he was police.<sup>491</sup> Shepherd answered the door and Adams believes he stepped "half way" through the doorway.<sup>492</sup> Either Adams, or Condon, or both, stepped into the Apartment at some point.<sup>493</sup> Shepherd was instructed to come downstairs.<sup>494</sup> Condon walked Shepherd downstairs to the Dance Floor but he did not handcuff Shepherd.<sup>495</sup> Shepherd was handcuffed by Investigator Bridges and charged with violating an ordinance.<sup>496</sup>

Before the Eagle's employees were transported to jail, Investigator Bridges accompanied Kelley to the upstairs Office to secure the night's receipts.<sup>497</sup> Bridges believes Investigator Glass also may have accompanied them to the Office.<sup>498</sup> However, Investigator Glass denies that he went upstairs at any time during the Raid.<sup>499</sup> Collier stated he accompanied Bridges and Kelley upstairs; however, he did not enter the Office and instead stayed at the top of the stairs.<sup>500</sup> Officer Edwards also states he accompanied Investigator Bridges and Kelley upstairs and stood at the edge of the doorway.<sup>501</sup> Investigator Bridges allowed Kelley to retrieve the keys to the Office from the register behind the bar.<sup>502</sup> Investigator Bridges entered the Office with Kelley.<sup>503</sup> Kelley handled and secured the money himself.<sup>504</sup> Investigator Bridges stated he did not search any area of the Eagle.<sup>505</sup>

#### 1.6.3.2.5 Pool Room/Coat Room

Vice Investigator Glass, Vice Officer Marciano, Red Dog Officer Condon, Red Dog Officer Porter and Red Dog Officer Upton were assigned to the Pool Room on the night of the Raid.<sup>506</sup> Marciano did not witness any illegal activity in the Pool Room.<sup>507</sup> Vice Officer Edwards informed Marciano that Red Dog was about to enter the bar.<sup>508</sup> During the entry, Marciano does not recall seeing any Red Dog officers with their guns drawn.<sup>509</sup> The patrons in the Pool Room all cooperated with Marciano's instructions to get on the floor.<sup>510</sup> Glass did not give any patrons instructions to get on the ground.<sup>511</sup> Glass states that the patrons were quiet and he did not hear any complaints<sup>512</sup> nor did he witness any patrons in the Pool Room being searched.<sup>513</sup>

When Officer Condon entered the Pool Room, everyone was already on the ground.<sup>514</sup> He recalls ordering two individuals in the hallway to the floor.<sup>515</sup> Upon entering the Pool Room, Porter recalls patrons already being on the floor.<sup>516</sup> Porter recalls Officers Upton and Condon in the Pool Room<sup>517</sup> and a patron in his underwear.<sup>518</sup> None of these officers were asked about encountering a deaf patron in the Pool Room.<sup>519</sup> Investigator Glass was in the Pool Room, in an undercover capacity, when the Red Dog officers entered.<sup>520</sup> He pretended to be one of the patrons and complied with Red Dog's orders to get on the floor.<sup>521</sup> Glass was neither kicked nor stepped on while he was on the ground.<sup>522</sup> After about ten minutes, Investigator Glass identified himself as a Vice officer and stood up.<sup>523</sup> Officer Porter, however, does not recall Investigator Glass identifying himself.<sup>524</sup>

Porter estimates six to ten patrons were in the Pool Room.<sup>525</sup> Investigator Glass, however, believes that there were just two patrons in the Pool Room with him.<sup>526</sup> Marciano recalled four patrons, two of whom were playing pool and two of whom were watching a football game on television.<sup>527</sup> After the premises were secured, Officer Noble set up his MDT

by the Coat Room to run patron IDs for outstanding warrants.<sup>528</sup> Officer Porter does not believe he frisked or searched any patrons,<sup>529</sup> instead, Porter asked the Pool Room patrons for their IDs<sup>530</sup> and handed them to Officer Noble.<sup>531</sup> Officer Marciano also stated that, when requested, patrons would retrieve IDs from their pockets<sup>532</sup> and Marciano took the IDs to Officer Noble.<sup>533</sup> Although Officer Upton also stated that she did not conduct any searches or frisks on the patrons in her OPS statement,<sup>534</sup> Upton stated she frisked one patron in her ACRB statement.<sup>535</sup> Officer Marciano, however, stated that Red Dog officers frisked the patrons for weapons.<sup>536</sup> Both Marciano and Glass deny performing any searches or frisks on the patrons.<sup>537</sup>

Once the ID checks were complete, Porter and Marciano returned the licenses to the patrons who were then released.<sup>538</sup> Thereafter, Porter watched the football game,<sup>539</sup> but does not recall officers cheering loudly<sup>540</sup> or high-fiving each other.<sup>541</sup> When Sergeant Adams informed him it was time to leave<sup>542</sup> he returned to his vehicle.<sup>543</sup> When exiting, Porter doesn't recall seeing anyone on the Deck<sup>544</sup> or in Rawhide.<sup>545</sup>

#### **1.6.3.2.6 Back Bar/Club Room**

On the night of September 10, 2009, Investigator Watkins was aware that no search warrant for the Eagle existed, but believed it was unnecessary because the Eagle was a public establishment.<sup>546</sup> The night of the Raid, Officer Godwin was assigned to the Club Room with Investigator Watkins.<sup>547</sup> Upon entering the Eagle, Watkins and Godwin went to the bar<sup>548</sup> and both ordered a beer.<sup>549</sup> After leaving the bar, Godwin states that they<sup>550</sup> walked to the Club room.<sup>551</sup>

Godwin recalls witnessing a couple making out against the wall in the Club Room.<sup>552</sup> The man who was facing away from Godwin and Watkins had his pants down and his buttocks exposed, but Godwin did not believe that any sexual acts were occurring.<sup>553</sup> Officer Watkins,



however, believed he saw an individual receiving oral sex, but he was not able to clearly see due to the poor lighting in the bar.<sup>554</sup> At one point prior to Red Dog's entry, Glass also went to the Club Room where he witnessed three patrons standing around a man on his knees.<sup>555</sup> Glass could not see what was happening because of the dim lighting. However, from Glass's extensive experience in the Vice Unit, he believed it was the beginning of a sexual act.<sup>556</sup> Glass recalls briefly speaking with Bridges and informing him of what he saw in the Club Room.<sup>557</sup>

Godwin did not want to raise suspicion by remaining in one area for too long, so they floated between the Club Room and the Game Room.<sup>558</sup> Watkins was unable to remain in the Back Rooms for very long as it gave patrons the impression that he was there to engage in sexual activities.<sup>559</sup> Indeed, while Watkins was in the Back Room, both he and Godwin were groped by a patron.<sup>560</sup>

Godwin was standing in the Club Room when Red Dog entered the bar.<sup>561</sup> Godwin pulled out his badge,<sup>562</sup> identified himself as a police officer and told the patrons to get down on the ground.<sup>563</sup> By the time Red Dog entered, he had ordered the three patrons in the Club Room to the floor.<sup>564</sup> None of the patrons in the Club Room resisted.<sup>565</sup> Officer Watkins believes he was in the hallway when Red Dog entered<sup>566</sup> and he proceeded to take out his blue lanyard with his police identification.<sup>567</sup> When Red Dog entered the bar, Watkins heard them say "Atlanta Police"<sup>568</sup> and recalls that they were instructing people to get on the ground.<sup>569</sup> He does not remember whether he gave instructions for patrons to get on the ground, but thinks he probably said "police, just to let everybody know you're not getting robbed."<sup>570</sup>

Although Godwin did not use force to get any of the patrons of the floor, he did help one of the patrons back onto his feet.<sup>571</sup> Godwin frisked one<sup>572</sup> patron because he was wearing loose fitting clothing.<sup>573</sup> However, he did not perform anything in excess of a frisk.<sup>574</sup> When Godwin

asked the patrons for their IDs, they complied.<sup>575</sup> Godwin recalls collecting IDs and then passing them off for processing.<sup>576</sup> Godwin did not go into any of the patrons' pockets to retrieve their IDs.<sup>577</sup> Godwin states that the patrons detained in the Club Room were on the ground for 10-15 minutes<sup>578</sup> and then were moved to another location.<sup>579</sup>

Godwin then moved to the Dance Floor where he helped fill out citations.<sup>580</sup> Specifically, he recalls writing a citation for a Robert Klein.<sup>581</sup> After writing the citation, Godwin states that he waited with an Eagle employee who appeared to be having a panic attack and that he asked the patron whether he needed an ambulance.<sup>582</sup> The patron stated that an ambulance was unnecessary, but the officers requested one in an abundance of caution.<sup>583</sup>

Watkins does not recall patting down any employees or patrons<sup>584</sup> nor does he recall taking any IDs.<sup>585</sup> Watkins also did not conduct any searches on any patrons or employees.<sup>586</sup> Watkins also said he did not search any other areas of the Eagle the night of the Raid.<sup>587</sup> Sometime after the area was secured, Watkins proceeded to the Main Bar<sup>588</sup> where he assisted with writing citations.<sup>589</sup>

Edwards believed that the Raid was related to illegal sex parties on Thursday nights.<sup>590</sup> Edwards was familiar with the Eagle before the Raid because he was a part of Vice's initial investigation.<sup>591</sup> Officer Edwards was the only Vice officer assigned to the Back Bar of the Eagle.<sup>592</sup> According to Edwards, the number of patrons in the Back Room varied from approximately 10-30 people coming in and out.<sup>593</sup> He saw a couple engaging in public anal sex while other patrons watched and masturbated.<sup>594</sup> One of the sex participants was wearing a red Under Armour shirt.<sup>595</sup> Edwards left the room and told Bridges and Brock that he had "made" some cases in the Back Room, and they told him to go back and keep watching.<sup>596</sup> According to

Edwards, when Red Dog later entered the club, the persons engaged in the sex act could not be arrested because only one of them could be identified and located.<sup>597</sup>

Edwards was in the club for about 30-45 minutes before Red Dog came in the club.<sup>598</sup> When they came in, Edwards made sure to make eye contact and to show his badge to identify himself as police.<sup>599</sup> Edwards says that the patrons in the Back Room went down voluntarily, with no resisting or complaining.<sup>600</sup> Marcano also states that he ordered patrons to the ground in the Back Bar from his post adjacent to the Pool Room.<sup>601</sup> Edwards did not frisk or search anyone, though he did observe frisks by Red Dog.<sup>602</sup> Following a frisk of a patron by Red Dog, Edwards was handed a knife and a wallet with a Tennessee police officer badge inside.<sup>603</sup> Edwards asked the Tennessee officer to follow him and passed his ID over. Edwards told whoever was at the computer, to “run him or not” and “let him go.” And I pretty much walked him to the door and cut him loose.”<sup>604</sup> Edwards made this decision because he did not see that particular patron involved in illegal activity.<sup>605</sup> Officer Mague recalls running a Tennessee police officer’s license.<sup>606</sup> Mague stated she did not cut him loose as she ran all the licenses handed to her.<sup>607</sup>

#### **1.6.3.2.7 Game Room**

On September 10, 2009, Officer Noble was assigned to the Game Room.<sup>608</sup> That night, he entered the establishment with Investigator McClain.<sup>609</sup> Upon entering, he went to the bar.<sup>610</sup> Although the undercover officers were permitted to drink alcohol that night,<sup>611</sup> Noble did not consume any alcohol.<sup>612</sup> After leaving the bar, Noble proceeded to the Game Room<sup>613</sup> where he saw two male patrons.<sup>614</sup> The Game Room was fairly quiet.<sup>615</sup> Noble recalls being told that if he witnessed any illegal activity, he was to remain with the individuals engaged in the illegal

activity and follow them until Red Dog entered.<sup>616</sup> However, Noble did not witness any illegal activity in the Game Room that night.<sup>617</sup>

When Red Dog entered, Noble moved from the Game Room to the hallway by the stairs<sup>618</sup> to prevent anyone from going up or down to the stairs to the second floor.<sup>619</sup> Noble took out his badge and blue lanyard<sup>620</sup> but claims he did not identify himself as a police officer because he was not “interacting with anyone.”<sup>621</sup> Sometime during Red Dog’s entry, Noble heard numerous Red Dog officers ordering patrons to get on the ground.<sup>622</sup> However, Noble does not specifically recall which Red Dog officers were giving the orders.<sup>623</sup> Noble did not ask any individuals to get on the ground.<sup>624</sup>

After the area was secure, Noble was sent to the Cloak Room to perform ID checks on a MDT.<sup>625</sup> The IDs were brought to him by Officer Marcano.<sup>626</sup> Once he was finished with a patron’s ID, Marcano would return that ID and the patron was allowed to leave.<sup>627</sup> As Mague was also running ID checks at the Main Bar,<sup>628</sup> the processing was split between the two with Mague handling the processing of patrons and employees located in the front half of the Eagle and Noble handling the processing of patrons and employees located in the back half of the Eagle.<sup>629</sup>

Red Dog Officer Don Meredith was one of the last officers to enter the Eagle bar.<sup>630</sup> Upon entering, Meredith proceeded to the Main Bar area<sup>631</sup> where he witnessed people lying on the ground.<sup>632</sup> As the Main Bar area was secured by more than one officer,<sup>633</sup> Meredith left and proceeded down the hallway.<sup>634</sup> While in the hallway, he does not recall encountering any patrons or officers.<sup>635</sup> Meredith ultimately came to the Game Room where he recalls witnessing patrons lying on the ground<sup>636</sup> because other officers<sup>637</sup> had arrived ahead of him.<sup>638</sup>

Meredith did not have any interaction with any of the detained patrons in the Game Room.<sup>639</sup> Meredith did not recall asking anybody for ID,<sup>640</sup> nor does he remember taking anyone's wallet to retrieve ID.<sup>641</sup> Meredith also did not pat down or frisk anyone<sup>642</sup> and did not enter the Back Bar room nor the Club Room.<sup>643</sup> After some time, Meredith recalls someone informing him it was time to leave.<sup>644</sup> Meredith then walked through the Main Bar area and out of the Eagle<sup>645</sup> where he met his team at the car.<sup>646</sup>

#### **1.6.4 Outside the Eagle Afterward**

When the first patrons were released, the large number of police vehicles at the location prevented those patrons with vehicles in the rear parking lot from exiting.<sup>647</sup> Depending on how early a patron was released, they could have waited for up to twenty minutes for an officer to move a vehicle and let them out.<sup>648</sup> By approximately 11:43 P.M., the exit was unblocked.<sup>649</sup> While waiting, some of the patrons discussed the events they had just witnessed in the bar, including the alleged use of gay and racial slurs.<sup>650</sup>

Others waited across the street from the Eagle along Ponce de Leon after they were told by officers that they could not stay on the Eagle property. Some patrons were waiting for friends in the bar to be released, while others were hoping to get back inside the Eagle to retrieve wallets and/or cell phones that had been taken by officers and placed on the Main Bar.<sup>651</sup> Still others among this group were the co-owner of the Eagle, Richard Ramey, and off-duty employees waiting to come in and examine the condition of the bar.

At approximately 12:30 A.M. on September 11, 2009, officers called for a Zone 5 paddy wagon to transport the arrestees to the Atlanta City Detention Center.<sup>652</sup> No one was immediately transported while officers waited for the ambulance that had been requested for Buehl.<sup>653</sup> After the E.M.T. arrived and gave Buehl a clean bill of health, Kelley suggested that

Buehl should not be put in the paddy wagon because of his health concerns.<sup>654</sup> A separate squad car to transport Buehl was then requested by officers at approximately 12:40 A.M., which arrived at 12:50 A.M., further delaying the departure of the arrestees.<sup>655</sup> A picture taken by Officer Edwards from his personal cell phone at 12:51 A.M. shows the arrestees in the paddy wagon with Buehl sitting on the fender awaiting treatment and/or transportation in the squad car. Shortly thereafter, Buehl was then placed in the requested squad car that left at the same time as the paddy wagon.<sup>656</sup>

Within ten minutes of the paddy wagon and squad car leaving, all APD officers had left the premises of the Eagle.<sup>657</sup> Immediately afterward, Ramey, Ray, and off-duty employees of the Eagle re-entered the bar to assess any damage. While inside, they heard knocking on the door and greeted several patrons that asked to search for wallets and cell phones that officers had taken, but not given back during the Raid. Ramey let them in and allowed them to take their possessions from the counter of the Main Bar.<sup>658</sup>

### **1.6.5 Booking at Jail**

Between approximately 1:20 and 1:25 A.M. on September 11, 2009, the arrestees arrived at the Atlanta City Detention Center.<sup>659</sup> Beginning at 1:32 A.M., the arrestees were booked.<sup>660</sup> After being processed, the eight employees of the Eagle who were cited for either dancing without a permit or operating an adult entertainment business without a permit,<sup>661</sup> were placed in the general holding cell. After twenty minutes in the holding cell, Buehl was transported to Grady Memorial Hospital because of continued health concerns, resulting in a three-day stay.<sup>662</sup> Because no bond was listed on the ticket and the offenses cited do not commonly result in arrest, the “Eagle 8” were held for fifteen-and-a-half hours without bail, until two concerned citizens

intervened on their behalf and called a judge to set bail.<sup>663</sup> At 5:25 P.M. on September 11, 2009, they were released.<sup>664</sup>

## **1.7 Aftermath**

### **1.7.1 APD Public Statements**

At 1:36 a.m. on September 11, 2009, Sergeant Collier informed Lieutenant Crawford via email that the investigation into the Eagle had concluded and that eight arrests were made of employees at the bar and that the Vice Unit's reports would be forwarded to the License and Permits Unit in an effort to get the Eagle's liquor license revoked.<sup>665</sup> At 8:05 A.M., Lieutenant Crawford responded that he would follow up with the License and Permits Unit and cc'd Major Williams to let her know about the operation.<sup>666</sup> By that time, however, Major Williams had already heard about the Raid over the radio and realized that this was a "newsworthy event."<sup>667</sup> She called her supervisor, Deputy Chief Carlos Banda, and instructed Crawford to meet her at her office to discuss the Raid so that she could get up to speed.<sup>668</sup> At this time, Williams also began receiving inquiries about the Raid via email from the APD's public affairs officer, Sergeant Lisa Keyes, and the APD LGBT Liaison at the time, Officer Darlene Harris.<sup>669</sup>

During the meeting with Crawford that morning, Major Williams asked if he knew the Raid was going to take place in advance and also asked why she was not told about it ahead of time.<sup>670</sup> Because the email from Sergeant Collier indicated that Crawford was not present for the Raid, Williams also wanted to find out why he was not there to supervise.<sup>671</sup> Despite being alerted by Sergeant Brock at the elevator after the COBRA meeting less than twenty-four hours before, Crawford responded that he had no advance warning.<sup>672</sup> He also indicated that he believed the presence of Brock and Collier on the scene was sufficient, but Williams expressed

her concern that not only should a Lieutenant have been present, but likely someone higher in the chain of command.<sup>673</sup>

Shortly after Williams' initial meeting with Crawford, Brock arrived at headquarters and briefed Major Williams on the operation including what illegal acts were investigated and who was arrested.<sup>674</sup> A summary of the Eagle investigation and Raid was also provided to the Command Staff by Sergeant Collier that day at 6:11 P.M. stating:

Last night we concluded our ongoing investigation into the Atlanta Eagle. As you know, we received a complaint from a citizen about loud noise and illicit sex acts which was forwarded from the Mayor's office. We also received a separate complaint about nude dancers, sex and drugs. During our investigation we observed illicit sex acts that took place in which management was aware of and allowed.<sup>675</sup> We also observed permit violations. Last night we entered the club and observed several violations, at which time we called in the Red Dog unit to assist with detaining everyone in the club until we could isolate the ones with charges. Everyone was place [sic] on the ground for our safety and the safety of all patrons. This was done because we did not know if anyone in the club was armed with a weapon. The club does not search its patrons. Only the individuals going jail [sic] were handcuffed.<sup>676</sup> The other patrons were released. I personally spoke with the manager, Ernest Buehl, in a separate area from everyone else and informed him about the complaints we've received about illegal activity going on at the club. I also informed him that we've been in the club on several occasions prior to last night. During the operation Sergeant Brock, Sergeant Adams and I were in the location supervising the officers and investigators. Everyone conducted themselves in a professional manner and no one complained to any of the supervisors or requested a supervisor.<sup>677</sup>

In turn, Brock, Crawford, and Williams briefed Deputy Chief Carlos Banda.<sup>678</sup> Finally, the Eagle Raid worked its way up to Chief Pennington's desk that morning when Williams and Banda briefed him.<sup>679</sup> At that time, a determination was made to have a press release issued that day by Sergeant Keyes. The press release stated in its entirety:

The Atlanta Police Department conducts routine inspections of city businesses with valid alcohol permits. The City received several complaints with descriptive information about alleged criminal conduct at the Atlanta Eagle Club located at 306 Ponce De Leon.

In an effort to ensure compliance with the law, the Police Department investigated the complaints and during the investigation police observed criminal behavior taking place at the Club on September 10, 2009. While the Police were conducting a compliance check it lead to the arrests of eight employees. The Department views all complaints of criminal



conduct as serious and will utilize resources to investigate and deter criminal activity in order to create a safe environment.

While there have been allegations of improper behavior by police officers conducting the investigation, there have not been any official complaints filed with the Atlanta Police Department.<sup>680</sup>

Over that weekend, the controversy surrounding the Raid intensified, resulting in a press conference held on Monday, September 14, 2009 at 3:30 P.M. by Chief Pennington, Deputy Chief Banda, Major Williams, and Officer Harris.<sup>681</sup> While the press conference was intended to inform the public by sharing facts about the Eagle Raid, there were several misstatements made by the command staff:

Chief Pennington began the press conference emphasizing the value APD placed on the Crime Stoppers tip program, implying that the Crime Stoppers tip for the Eagle was followed up on. As previously mentioned, the Crime Stoppers tip was never followed up on because of the “smash and grab” details.

Both Pennington and Banda stated that there were “several complaints”<sup>682</sup> and that they would release the “first two complaints” to reporters at the press conference in a packet that APD had prepared. These statements implied that there were more than two complaints about the Eagle leading to the investigation and Raid. As previously mentioned, the only two complaints received relevant to the Raid were the May 15, 2009 complaint forwarded by the Mayor Franklin’s office and the July 1, 2009 complaint received by Crime Stoppers.

Banda stated that there was no public sex observed by officers during the undercover operation on September 10, 2009.<sup>683</sup> As noted, Officer Edwards reported observing four individuals engaged in sex acts that night. One of those four was identified by Edwards and admitted to officers while detained that he had been engaging in sexual activity in the club just prior to the Raid.

When asked why three paddy wagons were needed that night, Pennington responded that there were over 100 people in the Eagle that night. The actual number detained was closer to sixty. Pennington stated that Red Dog was present to “help secure the establishment,” implying that there was a search or arrest warrant that night. However, no warrant of any kind existed for the Eagle Raid. Pennington stated that ten citizen complaints were filed that day with APD, but there were actually thirteen.<sup>684</sup>

As noted by Plaintiffs in the Calhoun litigation,<sup>685</sup> Pennington also declared during the press conference that it was “normal procedure” for officers to perform ID checks for outstanding warrants on all persons located at the scene of a raid.<sup>686</sup> Further, Plaintiffs noted that Pennington stated with regard to the patrons present that “each person would have had to be frisked for the police officers’ safety.”<sup>687</sup> In his remarks, Pennington also suggested because of concerns raised by the Eagle Raid that future raids should include the use of video cameras by officers to document the operation,<sup>688</sup> and that the APD LGBT Liaison should be involved in any APD operation believed to affect the LGBT community.

On October 5, 2009, Deputy Chief Banda and Major Williams continued to attempt to address public concerns over the Eagle Raid by speaking at a community forum hosted at the Virginia-Highland Church.<sup>689</sup> Regarding Red Dog’s training and use, Banda stated the following about Red Dog operates: “by the numbers. They do it all the same way. They don’t vary in how they do it.”<sup>690</sup> Banda also described the APD policy for running IDs: “We do criminal history checks on everybody when we hit an establishment, no matter what it is. . . . At this point, that’s the policy.”<sup>691</sup> Williams also confirmed this policy: “Once we’re inside a location based on any illegal activity, for the safety of not only the citizens of the City of Atlanta but for the safety of the patrons and the officers, we conduct warrant checks on all the patrons, on everyone.”<sup>692</sup>

When asked what probable cause justified the search of running an ID, Williams responded that the reason officers initially were present combined with safety concerns established the justification.<sup>693</sup> Banda followed up by stating that once probable cause was established at a location, it applied to “the whole body. It’s not just one individual.”<sup>694</sup>

### **1.7.2 Internal Affairs Complaints and Investigation**

On September 14, 2009, the same day as the APD press conference, thirteen patrons and employees at the Eagle filed citizen complaints with the APD’s Office of Professional Standards (OPS). The content of these complaints largely tracks Plaintiffs’ pleading in the Calhoun litigation.<sup>695</sup> To initiate the complaint process, the complainants submitted to an interview with an APD investigator and in some cases supplemented their complaint with prepared written statements or photographs of alleged injuries sustained during interactions with police that night. These complaints, together with an additional complaint filed two days later,<sup>696</sup> were combined for the purposes of APD’s investigation of officers as Complaint # 09-C-0387-MISC.<sup>697</sup> Because OPS’s investigation is required to be concluded on the same date GT’s independent report is to be finalized,<sup>698</sup> GT is unable to comment on and is unaware of what conclusions OPS may independently reach in its investigation. Further, the timeliness of OPS’s handling of its own investigation of the Eagle Raid complaints may implicate Paragraph 7 of the Settlement Agreement,<sup>699</sup> which is beyond the scope of this report. However, as required under Paragraph 8 of the Settlement Agreement, GT has reviewed and considered all statements made by officers about the Eagle Raid to OPS during its investigation, as cited and incorporated herein.

### **1.7.3 ACRB Complaints and Investigation**

Beginning on October 17, 2009 through March 9, 2010, the ACRB received twelve complaints from patrons and employees of the Eagle related to the Raid on September 10,

2009.<sup>700</sup> ACRB staff investigated these complaints by interviewing complainants and officers, as well as reviewing documentation related to the Raid. Initially, many officers refused to give statements to the ACRB as it was not a compelled statement under Garrity v. New Jersey, 385 U.S. 493 (1967), and therefore provided less protection from potential criminal liability than statements given to OPS per SOP.<sup>701</sup> After the ACRB subpoenaed officers to give statements via the City Council, officers complied with the ACRB's requests and submitted to interviews.<sup>702</sup> These officer statements have been reviewed and considered in GT's investigation as required under the Settlement Agreement.

The ACRB complaints resulted in the production of five reports similar to this one with factual findings and analysis of violations of the law and SOPs.<sup>703</sup> The ACRB sustained all citizen complaints but one<sup>704</sup> alleged against the officers, including those for abusive language where the ACRB's investigation could positively identify only one offending officer, Officer Brandon Jackson.<sup>705</sup> Notably, the sustained allegations of abusive language by the ACRB Board was against the advice of its own investigators who recommended that the allegations not be sustained because of insufficient evidence to identify the culpable officers.<sup>706</sup> These ACRB investigations culminated in the January 20, 2011 letter from the ACRB to Chief Turner recommending discipline of every officer involved in the Eagle Raid ranging from written reprimands and remedial training to 30-day suspensions without pay. Because the Police Chief must accept or reject the ACRB's recommendations within 30 days of submission,<sup>707</sup> on January 25, 2011, Chief Turner rejected all ACRB recommendations related to the Eagle pending the conclusion of the IAU investigation.<sup>708</sup>

#### **1.7.4 “Eagle 8” Criminal Trial**

On March 11, 2010, seven of the “Eagle 8” defendants either had the charges against them dismissed or were acquitted at trial after being defended by Atlanta attorney Alan Begner. One of the dancers charged, Antonio Benitez, did not appear for the trial and had a bench warrant issued for his arrest. During the trial, Sergeant Brock and Investigator Bridges testified on behalf of the prosecution. Investigator McClain was also present in the courtroom, but the City Solicitor’s office chose not to have him testify. Brock and Bridges’ testimony has been reviewed and considered in GT’s investigation.<sup>709</sup>

#### **1.7.5 Calhoun v. Pennington Federal Civil Litigation**

On November 24, 2009, twenty-four patrons, one employee (Shepherd), and the Atlanta Eagle corporation filed a federal civil rights lawsuit pursuant to 42 U.S.C. § 1983 against the City of Atlanta, the officers involved in the Eagle Raid, and command staff who commented on APD policy following the Raid. Additionally, several officers who had nothing to do with the Eagle Raid were included as defendants but wrongly named in the suit. Discovery did not begin in the Calhoun litigation until March 15, 2010, shortly after the “Eagle 8” criminal trial ended. In the course of discovery, twenty-three depositions of patrons and employees were taken by the City Law Department, which have been reviewed and considered by GT in its investigation. Additionally, Major Williams gave a partial 30(b)(6) deposition where she commented on APD policy and the law as relates to the Eagle Raid, which has been reviewed and considered by GT in its investigation. No depositions of the officers were taken during discovery by Plaintiffs’ counsel before the settlement of the case. However, all officers named as defendants responded to interrogatories and requests for production, which have been reviewed and considered by GT in its investigation and incorporated herein.

On October 6, 2010, Plaintiffs' counsel alleged that officers involved in the Eagle Raid had intentionally destroyed evidence mentioned on their work and personal cell phones related to the Raid. These allegations and GT's analysis are provided at Section 1.9, *infra*.

On December 8, 2010, the Court approved a Settlement Agreement between the parties, part of which required the APD to conduct and conclude a thorough and meaningful investigation in the individual conduct of each officer involved in the planning, execution, and aftermath of the "Eagle Raid" and any proceeding arising therefrom . . . ."<sup>710</sup>

## **1.8 Facts Relating to Record Retention and Preservation**

### **1.8.1 The Calhoun Lawsuit**

As indicated above, the Calhoun lawsuit was filed on November 24, 2009.<sup>711</sup> In addition to Chief of Police Richard Pennington and the City of Atlanta, three officers who participated in the Eagle Raid, Marlon Noble, Jared Watkins and Bennie Bridges, were named as individual defendants. On December 17, 2009, Attorney Graham Lee, Esq. of Lamda Legal sent a letter ("December 17 Preservation Letter") to the following individuals requesting preservation of all records related to the Calhoun lawsuit: Deputy Chief of Police Carlos Banda; the Honorable Shirley Franklin, Mayor of Atlanta; the Honorable Lisa Borders, City Council President of Atlanta; Chief of Police Richard Pennington; Officer B.E. Bridges; City of Atlanta Police Department; Major Darryl Tolleson; City of Atlanta Police Department; Deputy City Attorney Jerry DeLoach; City of Atlanta Department of Law; and Major Debra Williams, City of Atlanta Police Department.<sup>712</sup>

The City of Atlanta Department of Law ("Atlanta Law Department") received Graham's letter on December 18, 2009. GT is not aware of any dispute as to whether the addressees on this letter received it. The December 17 Preservation Letter requests preservation of "all

evidence in your possession, custody or control relevant to the claims and defenses in the [Calhoun] matter.”<sup>713</sup> Of the identified recipients, only Investigator Bridges was present during the Eagle Raid.

On December 21, 2009, Attorney Jerry DeLoach of the Atlanta Law Department issued a document entitled “Litigation Hold - Eagle Incident of September 10-11, 2009” (“December 21 Litigation Hold”) to the following individuals: the Honorable Shirley Franklin, Mayor of Atlanta; the Honorable Lisa Borders, City Council President of Atlanta; Chief of Police Richard Pennington; Deputy Chief George Turner; Deputy Chief Carlos Banda; Deputy Chief Peter Andresen; Major Debra Williams; Major Darryl Tolleson; Major Lane Hagin; Major Welcome Harris; Sergeant Lisa Keyes; Officer B.E. Bridges; and Tkeban X.T. Jahannes.<sup>714</sup>

The December 21 Litigation Hold requests that the recipients “preserve all internal and external documents that could be relevant to the case” and specifically incorporates the categories of records identified in the December 17 Preservation Letter.<sup>715</sup> Although the Calhoun lawsuit had already been filed, the December 21 Litigation Hold states that “the Office of the City Attorney anticipates that a lawsuit will be filed on behalf of occupants who were at the establishment at the time . . . .” GT is not aware of any dispute with respect to the receipt of this letter by any of the recipients.

On or about January 7, 2010, Attorney Dennis M. Young of the Atlanta Law Department issued a document entitled “Litigation Hold - Eagle Incident of September 10-11, 2009” (“Supplemental Litigation Hold”).<sup>716</sup> The Supplemental Litigation Hold states that it is “a follow-up to the Litigation Hold Letter sent to you or your predecessor on December 21, 2009.”<sup>717</sup> The Supplemental Litigation Hold was issued to the following individuals: Mayor M. Kasim Reed; Council President Ceasar Mitchell; Acting Police Chief George Turner; Assistant

Chief Peter Andresen; Deputy Chief Ernest Finley; Deputy Chief Calvin Moss; Major Darryl Tolleson; Major Lane Hagin; Major Moses Perdue; Major Khirus Williams; Lieutenant Christopher Leighty; Lieutenant Ericka Shields; Sergeant Lisa Keyes; Investigator B.E. Bridges; Officer M.O. Noble; Officer J.G. Watkins; and Tkeban X.T. Jahannes.

The Supplemental Litigation Hold references and attaches the December 21 Litigation Hold and reminds recipients to “continue to hold all internal and external documents which may be relevant to this case.”<sup>718</sup> In addition to the revised recipient list, the Supplemental Litigation Hold specifically references the Calhoun lawsuit and states: “The parties involved in the Eagle Incident of September 10-11, 2009 have filed the above-referenced lawsuit.”<sup>719</sup>

On March 17, Plaintiffs’ First Amended Complaint was filed, adding thirty-one (31) officers<sup>720</sup> as individual defendants.<sup>721</sup> In an email dated April 13, 2010, the Atlanta Law Department requested that the individual officer defendants on the Vice and Red Dog Units come to the Atlanta Law Department offices to “receive a copy of the complaint and to sign a representation agreement.”<sup>722</sup> The email also advised that discovery in the form of interrogatories and requests for production of documents have been served on the individual officer defendants and that the officers will need to “schedule a time to come in and go over their discovery responses.”<sup>723</sup> On April 28, 2010, the Atlanta Law Department advised Lieutenant Pautsch and Sergeant Brock that “there are a few Vice Unit and Red Dog Unit officers who have not yet come up to our office to sign there[sic] representation agreements and to be interviewed.”<sup>724</sup> Beginning on or about April 5, 2010, Plaintiffs began serving formal discovery, including interrogatories and requests for production of documents, on defendants.<sup>725</sup>

On August 26, 2010, the Atlanta Law Department held a meeting with all members of the Red Dog and Vice Units who participated in the Raid. On September 1, 2010 the Atlanta Law



Department issued a memorandum to the individual officer defendants regarding an agreement reached with plaintiffs' attorney over discovery of cell phone data. The letter states "[This] means that each of you must be completely forthright in producing the information."<sup>726</sup> Individual officer defendants testified that this meeting was likely the first time they were advised that they were to preserve documents relating to the case.<sup>727</sup>

### **1.9 Preservation of Cellphone Data**

On September 3, 2010, twenty-six (26) cell phones from twenty-two (22) officers were surrendered to the Homeland Security Unit of the APD for forensic examination. On September 24, nine (9) additional phones from eight (8) officers were processed. The Homeland Security Unit utilized a Cellbright UFED device (Uniform Forensics Extraction Device), version V1.1.4.7, to process the cell phones. Upon completion of the forensic processing, reports were generated for each cell phone.

The reports contain largely uniform and consistent information about each cell phone, such as the brand, model, telephone number, IMEI number and serial number, among other things. The Homeland Security Unit also attempted to extract contacts, text messages, call logs, images, ringtones, audio data and video data from each cell phone device, but sixteen (16) of the phones experienced some processing errors and/or compatibility issues during processing.<sup>728</sup> It does not appear that the Homeland Security Unit attempted to use any other devices or applications to recover data from these sixteen (16) phones. Also, it does not appear that the Homeland Security Unit attempted to capture data that may have been stored on SIM cards or other removable storage devices such as Micro SD memory expansion cards.<sup>729</sup>

## **1.9.1 Individual Officer Cell Phone Use and Preservation**

### **1.9.1.1 Major Deborah Williams**

Major Williams was not present at the Eagle Raid. Major Williams testified that she was not aware of any officers deleting cell phone data created during the Raid.<sup>730</sup> Major Williams stated that, after she received notice from the Atlanta Law Department about the duty to preserve, she communicated with the commanders who were involved in the Raid about the duty not to delete anything.<sup>731</sup> Major Williams stated that she has personally preserved all her materials related to the Eagle Raid and segregated all such materials into a folder on her computer to facilitate collection.<sup>732</sup>

The Homeland Security Unit extracted data from Major Williams' Apple iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Major Williams' phone: four hundred thirty-one (431) text messages dated between June 10, 2010 and September 3, 2010; an incoming call log reflecting nineteen (19) calls from August 26, 2010 to September 3, 2010; an outgoing call log reflecting fifty-nine (59) calls from August 24, 2010 to September 3, 2010; a missed call log reflecting twenty-two (22) calls from August 25, 2010 through September 3, 2010, and one hundred twenty-eight (128) photographs dated between January 8, 2008 and July 12, 2010.

Examination of cell phone records provided by the City of Atlanta indicate Major Williams made or received calls from the following individuals on September 11, 2009:

<b><u>Date/Time</u></b>	<b><u>Call Type</u></b>	<b><u>To/From</u></b>
9/11/09/10:32	Outgoing	Sergeant Brock
9/11/09/11:43	Outgoing	Sergeant Brock
9/11/09/12:08	Incoming	Sergeant Brock
9/11/09/15:36	Outgoing	Sergeant Brock

9/11/09/16:09

Outgoing

Sergeant Brock

On September 3, 2010 the Homeland Security Unit also extracted data from Major Williams' city-issued BlackBerry 8330 Curve. The BlackBerry was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Major Williams' BlackBerry: four hundred forty-five (445) text messages dated between August 4, 2010 and September 3, 2010; two hundred eighty-six (286) incoming calls between August 4, 2010 and September 3, 2010; four hundred ninety-seven (497) outgoing calls between August 4, 2010 and September 3, 2010; and one hundred forty-six (146) missed calls between August 4, 2010 and September 3, 2010.<sup>733</sup> Images, audio data and video data were not extracted due to processing failure.

#### **1.9.1.2 Lieutenant Tony Crawford**

Lieutenant Crawford was not present at the Eagle Raid. Lieutenant Crawford testified that he has never heard of any officers or investigators involved in the Eagle Raid, whether Red Dog Unit or Vice Unit, deleting anything from cell phones with respect to that evening.<sup>734</sup> Lieutenant Crawford testified that he did not delete any text messages, e-mail, or any other documents related to the Eagle.<sup>735</sup>

The Homeland Security Unit extracted data from Lieutenant Crawford's city-issued BlackBerry 8330 Curve on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Lieutenant Crawford's phone: three (3) text messages dated between August 11, 2010 and August 23, 2010; an incoming call log reflecting twenty-two (22) calls from August 4, 2010 through September 3,

2010; an outgoing call log reflecting eighty-two (82) calls from August 4, 2010 through September 3, 2010; a missed call log reflecting fifty (50) calls from January 8, 2010 through September 1, 2010; and one hundred twenty-six (126) photographs dated between April 16, 2009 through October 29, 2009

### **1.9.1.3 Lieutenant Scott Pautsch**

Lieutenant Pautsch was not present at the Eagle Raid. Lieutenant Pautsch testified that Red Dog Unit officers do not have city-issued cell phones or BlackBerrys.<sup>736</sup> Lieutenant Pautsch testified that he has never given officers instructions that they are allowed to use their personal cell phones for police work.<sup>737</sup> Lieutenant Pautsch testified that he is not aware of anyone in the Red Dog Unit who deleted or destroyed information relevant to the Eagle Raid that was on their personal or city-issued phones or BlackBerry phones.<sup>738</sup> From the examination of cell phone records and data from other officers, Lieutenant Pautsch received at least one call from Sergeant John Brock on September 10, 2009 at 9:18 P.M.

The Homeland Security Unit extracted data from Lieutenant Pautsch's city-issued BlackBerry 8330 Curve on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Lieutenant Pautsch's phone: five (5) text messages dated between August 26, 2010 and September 3, 2010; an incoming call log reflecting two hundred sixty-three (263) calls from August 4, 2010 through September 3, 2010; an outgoing call log reflecting two hundred forty (240) calls from August 4, 2010 through September 3, 2010; and a missed call log reflecting four (4) calls from September 2, 2010 to September 3, 2010. No photographs were recovered.

The Homeland Security Unit also extracted data from Lieutenant Pautsch's personal LG VN250 cell phone. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Lieutenant Pautsch's personal phone: two (2) pictures dated May 15, 2010 and August 2, 2010, respectively. No call logs were identified.

#### **1.9.1.4 Sergeant John Brock**

Sergeant Brock testified that he did not see any Red Dog officers using cell phones during the Eagle Raid. He was aware that Officer Godwin had received a text message about the Raid from another APD Officer.<sup>739</sup> He also believed that Sergeant Collier may have texted his Lieutenant to communicate that the Raid had been completed.<sup>740</sup> At the time of the Eagle Raid, Sergeant Brock only had a city-issued BlackBerry.<sup>741</sup> Sergeant Brock stated that he frequently uses text messaging to communicate but does not have any normal routines or habits with respect to the deletion of text messages.<sup>742</sup> He believes that his BlackBerry phone automatically purges messages after a period of time.<sup>743</sup> Sergeant Brock testified that he has not intentionally deleted any data relating to the Eagle Raid.<sup>744</sup> Sergeant Brock testified that he was first notified of the duty to preserve documents shortly before the City took the officers' cell phones to be examined.<sup>745</sup> Sergeant Brock does not recall receiving written litigation holds.<sup>746</sup>

An examination of cell phone records provided by the City of Atlanta indicates that he made or received at least thirty-six (36) phone calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009. Nineteen (19) of these calls were made to or received from APD officers involved in the Eagle Raid:

<u>Date/Time</u>	<u>Call Type</u>	<u>To/From</u>
09/10/09/17:54	Incoming	Officer Godwin
09/10/09/18:05	Incoming	Inv. Glass
09/10/09/18:09	Incoming	Inv. Bridges
09/10/09/20:38	Outgoing	Officer Mague
09/10/09/20:38	Outgoing	Officer Mague
09/10/09/20:50	Incoming	Inv. Bridges
09/10/09/21:15	Outgoing	Inv. Glass
09/10/09/21:16	Incoming	Inv. Glass
09/10/09/21:18	Outgoing	Lieutenant Pautsch
09/11/09/10:32	Incoming	Major Williams
09/11/09/11:43	Incoming	Major Williams
09/11/09/11:48	Outgoing	Inv. Bridges
09/11/09/12:06	Incoming	Officer Godwin
09/11/09/12:08	Outgoing	Major Williams
09/11/09/12:44	Outgoing	Officer Godwin
09/11/09/13:09	Outgoing	Officer Godwin
09/11/09/15:36	Incoming	Major Williams
09/11/09/16:09	Incoming	Major Williams
09/11/09/16:56	Incoming	Inv. Glass

The Homeland Security Unit extracted data from Sergeant Brock's city-issued BlackBerry 8330 Curve on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. Incoming and outgoing call logs reflect activity from August 4, 2010 through September 3, 2010. Text data reflecting three hundred ninety-four (394) text messages from August 4, 2010 through September 3, 2010 was found in the phone's memory, including these three (3) messages sent on August 6, 2010 relating to the Eagle Raid:

```

sms_message>
id>7</id>
number>4785500066</number>
name>Bridges Bennie</name>
internal_name>1</internal_name>
timestamp>2010-08-06T09:58:23-05:00</timestamp>
status>Sent</status>
folder>Outbox</folder>
storage>Phone</storage>
type>Outgoing</type>
text>Maj Williams needs to meet with you all TODAY at 1615 Hrs. in

```

**the 4th floor Conference room regarding the Eagle case for the City's response on Tuesday.</text>**

smsc />

</sms\_message>

<sms\_message>

id>8</id>

number>4045763157</number>

name>Watkins 6626 Jared</name>

internal\_name>1</internal\_name>

timestamp>2010-08-06T09:58:23-05:00</timestamp>

status>Sent</status>

folder>Outbox</folder>

storage>Phone</storage>

type>Outgoing</type>

text>Maj Williams needs to meet with you all TODAY at 1615 Hrs. in the 4th floor Conference room regarding the Eagle case for the City's response on Tuesday.</text>

smsc />

</sms\_message>

sms\_message>

id>9</id>

number>7062179234</number>

name>Edwards Jeremy</name>

internal\_name>1</internal\_name>

timestamp>2010-08-06T09:58:23-05:00</timestamp>

status>Sent</status>

folder>Outbox</folder>

storage>Phone</storage>

type>Outgoing</type>

text>Maj Williams needs to meet with you all TODAY at 1615 Hrs. in the 4th floor Conference room regarding the Eagle case for the City's response on Tuesday.</text>

No text message data prior to August 4, 2010 was identified, and only seventy-six (76) photographs were found on Sergeant Brock's phone dated between February 2, 2009 and February 2, 2010.

#### 1.9.1.5 Sergeant Kelley Collier

Sergeant Collier testified that he did not see any Red Dog officers using cell phones during the Eagle Raid.<sup>747</sup> Sergeant Collier had both a personal cell phone and a city-issued phone.<sup>748</sup> Sergeant Collier stated that he did not send or receive any text messages on either

phone on the night of the Eagle Raid.<sup>749</sup> Sergeant Collier stated in response to discovery in the Calhoun litigation that he did not use a personal communication device between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009.<sup>750</sup> Sergeant Collier did not see any other officers documenting the Raid with their cell phones.<sup>751</sup> Sergeant Collier had his city-issued phone with him during the Eagle Raid but did not use it to take pictures or send or receive text messages.<sup>752</sup>

Sergeant Collier recalls attending a meeting in 2010 at the Public Safety Headquarters where preservation of records was discussed.<sup>753</sup> Sergeant Collier may have deleted information prior to receiving the notice:

Q. Do you know if you had deleted information prior to that notice?

A. Probably had. Probably had because I try not to let my e-mails get too, you know, bogged down.<sup>754</sup>

However, Sergeant Collier also stated that prior to the criminal trial of the Eagle employees, he did not delete any information related to the investigation:

Q. Let me ask you this: Before the criminal trial of the employees, did you delete any information related to the investigation?

A. No. No. I didn't really have any information relating to the investigation.<sup>755</sup>

Sergeant Collier testified that he provided his personal and city-issued cell phones to the Homeland Security Unit for inspection.<sup>756</sup> Sergeant Collier testified that he often used his cell phones for text messaging and would typically delete text messages at the end of every day.<sup>757</sup> Sergeant Collier testified that he did not delete any messages or photographs relating to the Eagle Raid because "I never took any. I never sent any."<sup>758</sup>

The Homeland Security Unit extracted data from Sergeant Collier's iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones,



audio data and video data. No data relevant to the Eagle Raid was identified. Incoming, outgoing and missed call logs reflect cell-phone activity between August 31, 2010 and September 2, 2010. The iPhone memory also contained thirty-one (31) text messages dated between September 1, 2010 and September 3, 2010 and one hundred eighty-one (181) pictures with dates ranging between June 12, 2009 and August 29, 2010. Seven (7) pictures taken between August 29, 2009 and October 15, 2009 were not present in the iPhone's memory. Absent additional forensic testing, we cannot definitively conclude whether these missing pictures were related to the Eagle Raid. Further, with the information presently available, we cannot definitively conclude when these pictures may have been deleted.

The lack of call logs and text messages prior to August 31, 2010 suggests that Sergeant Collier may have deleted call log data from his iPhone on or about August 31, 2010. Absent further forensic study of Sergeant Collier's cell phone, we are unable to determine the nature of the information that was deleted.

#### **1.9.1.6 Sergeant Willie Adams**

Sergeant Adams testified that he has both a personal (iPhone) and a city-issued (MetroPCS) cell phone.<sup>759</sup> Sergeant Adams testified that he used his city-issued phone after the Raid to inform his Lieutenant about the Raid.<sup>760</sup> Sergeant Adams testified that he did not send or receive text messages or take pictures during the operation.<sup>761</sup> Sergeant Adams did not witness any of the other officers present using their cell phones to take pictures.<sup>762</sup> Sergeant Adams testified that he did not delete anything related to the investigation.<sup>763</sup> Sergeant Adams is not aware of any documents or other information relating to the Eagle Raid that may have been destroyed.<sup>764</sup>

Sergeant Adams testified that he was first notified of the duty to preserve documents shortly before the City took the officers' cell phones to be searched.<sup>765</sup> Sergeant Adams thinks he may have received the litigation hold shortly before the Homeland Security Unit searched his phone, but he could not specifically recall.<sup>766</sup> Sergeant Adams provided both of his phones to the Homeland Security Unit for examination.<sup>767</sup>

The Homeland Security Unit extracted data from Sergeant Adams' iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. Incoming, outgoing and missed call logs reflect cell-phone activity between August 30, 2010 and September 3, 2010. The iPhone memory also contained one thousand, two hundred sixty (1,260) text messages dated between January 19, 2010 and May 1, 2010 and one hundred forty-one (141) pictures with no date range reflected.

The lack of call logs prior to August 30, 2010 suggests that Sergeant Adams may have deleted information from his iPhone on or about August 30, 2010. Absent further forensic study of Sergeant Adams' phone, we are unable to determine the nature of the information that was deleted.

In addition to Sergeant Adams' iPhone, the Homeland Security Unit also searched his city-issued MetroPCS Samsung phone. The examination on September 3, 2010 did not reveal any information relevant to the Eagle Raid. No SMS text message or call log data was recovered. Pictures dated variously between November 7, 2009 and August 20, 2010 were found on the camera's storage. None, however, were related to the Eagle Raid.

### 1.9.1.7 Investigator Bennie Bridges

Investigator Bridges testified that he has both a city-issued and a personal cell phone.<sup>768</sup> Investigator Bridges stated that he no longer has the personal cell phone that was in use during the Eagle Raid.<sup>769</sup> On the night of the Eagle Raid, Investigator Bridges used his city-issued cell phone to call either Sergeant Adams or Officer Mague to signal the Red Dog Unit.<sup>770</sup> Investigator Bridges does not recall sending any texts the night of the Raid.<sup>771</sup> Investigator Bridges testified that it would be very unusual for him to use his personal phone to send text messages during an operation.<sup>772</sup>

Investigator Bridges was aware that Officer Godwin received a text message about the Raid from another APD Officer.<sup>773</sup> Investigator Bridges testified that he did not notice any Red Dog officers using their cell phones while they were inside the Eagle.<sup>774</sup> Investigator Bridges was not aware of any officers using a cell phone the night of the Eagle Raid to take pictures of the scene.

An examination of cell phone records provided by the City of Atlanta indicates that Investigator Bridges made or received at least fifteen (15) phone calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009. Nine (9) of these calls were made to or received from APD officers involved in the Eagle Raid:<sup>775</sup>

<u>Date/Time</u>	<u>Call Type</u>	<u>To/From</u>
9/10/09/20:50	Outgoing	Sergeant Brock
9/10/09/21:37	Outgoing	Officer Glass
9/10/09/23:04	Outgoing	Officer Mague
9/10/09/23:06	Incoming	Officer Mague
9/11/09/00:34	Outgoing	Officer Mague
9/11/09/07:44	Outgoing	Officer Glass
9/11/09/11:48	Incoming	Sergeant Brock
9/11/09/11:52	Outgoing	Officer Glass
9/11/09/12:01	Outgoing	Officer Thurman

Data extracted from Sergeant Bridges's phone indicates that Investigator Bridges received at least one (1) text message relating to the Eagle Raid on August 6, 2010:

```
sms_message>
<id>7</id>
<number>4785500066</number>
<name>Bridges Bennie</name>
<internal_name>1</internal_name>
<timestamp>2010-08-06T09:58:23-05:00</timestamp>
<status>Sent</status>
<folder>Outbox</folder>
<storage>Phone</storage>
<type>Outgoing</type>
<text>Maj Williams needs to meet with you all TODAY at 1615 Hrs. in the
4th floor Conference room regarding the Eagle case for the City's response
on Tuesday.</text>
<smsc />
</sms_message>
```

#### 1.9.1.8 Investigator Gregory Dabney

Investigator Dabney conducted undercover work at the Eagle on May 21, 2009 and was not present during the Eagle Raid.<sup>776</sup> Investigator Dabney testified that he had two phones: a personal phone (iPhone) and a city-issued phone (Motorola V860 Barrage PTT). During undercover work at the Eagle on May 21, Investigator Dabney testified he used his phone to send text messages.<sup>777</sup> Investigator Dabney testified he did not text anything about what he was seeing that night and he did not take any photographs or video recordings.<sup>778</sup> Investigator Dabney also testified that he did not send any instant messages or emails that evening.<sup>779</sup> Investigator Dabney testified that he did not make any postings about the Atlanta Eagle on Facebook, YouTube, Twitter, MySpace or any other social media site.<sup>780</sup>

Investigator Dabney testified that he never received the litigation hold notice and that no one had ever instructed him to preserve documents.<sup>781</sup> Investigator Dabney further testified that no one had ever advised him of his obligation not to destroy any documents, recordings or cell phone data that may have related to the Eagle.<sup>782</sup>

According to cell phone records produced by the City of Atlanta, Investigator Dabney received two (2) calls from Lieutenant Brock on his city-issued Motorola phone on September 10, 2009. The first call came in at 1:27 p.m. and the second at 1:56 p.m.<sup>783</sup> The times of these calls do not correspond with activity associated with the Eagle Raid. No other calls are identified on either September 10 or September 11.

The Homeland Security Unit extracted data from Investigator Dabney's iPhone on September 24, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. Incoming, outgoing and missed call logs reflect cell-phone activity only for September 24, 2010. No pictures were identified in the iPhone memory. Six (6) text messages all dated September 24, 2010 were identified. The lack of call logs and text messages prior to September 24, 2010 suggests that Investigator Dabney may have deleted information from his phone on or about September 24, 2010.

The Homeland Security Unit also extracted data from Investigator Dabney's Motorola CDMA Motorola V860 Barrage PTT phone. The Homeland Security Unit attempted to extract all contacts, SMS text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The analysis reflects that Investigator Dabney received twenty-four (24) incoming calls on unspecified dates. The analysis further reflects fifty-five (55) outgoing calls on unspecified dates and eighteen (18) missed calls on unspecified dates. The report further reflects three (3) photographs unrelated to the Eagle. The extraction also yielded eleven (11) audio files, all of which appear to be ringtones.

### 1.9.1.9 Officer Jeremy Edwards

Officer Edwards testified that he only has a personal cell phone and was never issued a cell phone by the City.<sup>784</sup> Officer Edwards testified that he initially did not recall having his phone with him on the night of the Raid but has since learned that he used his phone for text messaging during the Eagle Raid.<sup>785</sup> Officer Edwards testified that the Atlanta Law Department provided him with a copy of his text messages from the night of the Eagle Raid.<sup>786</sup> He stated that he exchanged text messages with Officer Dimitri Jacques, a Red Dog Unit officer.<sup>787</sup> The following text exchange was recovered from Officer Jacques' phone:

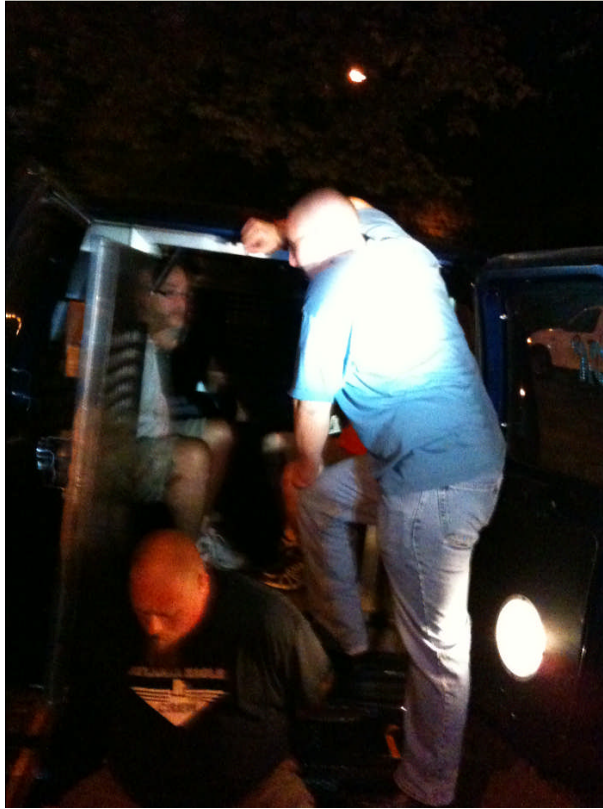
4844	17062179234	* Edwards Z2	11/09/09 02:53:20 (GMT)	Read	Inbox	Phone	Incoming	It's just now getting busy
4845	17062179234	* Edwards Z2	11/09/09 02:53:33 (GMT)	Read	Inbox	Phone	Incoming	The actions just begining
4846	17062179234	* Edwards Z2	11/09/09 02:53:59 (GMT)	Read	Inbox	Phone	Incoming	Our Sgt is wanting to make as many cases as possable
4847	17062179234	* Edwards Z2	11/09/09 02:54:30 (GMT)	Sent	Sent	Phone	Outgoing	What the eta
4848	17062179234	* Edwards Z2	11/09/09 02:59:08 (GMT)	Read	Inbox	Phone	Incoming	Don't know..... Soon

Officer Edwards testified that he did not take any pictures on the night of the Eagle Raid.<sup>788</sup>

Q But if you did take a picture would you have e-mailed it?

A I didn't, so obviously not.<sup>789</sup>

The following picture, date- and time-stamped September 11, 2009 at 12:51 a.m., however, was recovered from Officer Edwards' iPhone. The photo appears to capture Officer Godwin standing at the rear of an APD vehicle, with his back turned and with several patrons from the Eagle in custody both inside and outside of the vehicle.<sup>790</sup>



Officer Edwards' testimony and use of his personal cell phone is inconsistent with his discovery responses in the Calhoun litigation. For example, when asked to produce billing records "showing all activity from 1800 on September 10, 2009 to 1800 on September 11, 2009 for any cell phones, mobile phones, pagers PDA's (Personal Digital Assistants), and any other portable communication devices you own," Edwards responded:

Defendant does not use portable communication devices. Defendant does not have a city issued cell phone. Defendant uses the APD radio for all calls.<sup>791</sup>

Further examination of Edwards' personal cell phone revealed the following:

- Fifty-seven (57) text messages dated between August 24, 2010 and September 3, 2010;
- Incoming and outgoing call logs reflecting cell phone activity between September 1, 2010 and September 3, 2010;

- A missed call log reflecting cell phone activity between August 31, 2010 and September 3, 2010; and
- One hundred thirty-one (131) pictures with dates ranging between July 6, 2009 and August 12, 2010. Two (2) pictures taken between August 29, 2009 and September 11, 2009 were not present in iPhone memory. Absent additional forensic analysis, we cannot draw any conclusions as to whether these missing pictures were related to the Eagle Raid or when these pictures may have been deleted.

The lack of call logs and text messages prior to August 31, 2010 suggests that Officer Edwards may have deleted information from his iPhone on or about August 31, 2010. Absent further forensic study of Officer Edwards' phone, we are unable to determine the nature of the information that was deleted.

#### **1.9.1.10 Investigator Herman Glass**

Investigator Glass is retired and no longer working for the APD. Investigator Glass testified that, if he did use a cell phone the night of the Eagle Raid, it would have been a city-issued Verizon cell phone and not a personal phone.<sup>792</sup> Investigator Glass stated that he does not recall using his cell phone during the operation.<sup>793</sup> Investigator Glass further testified that he did not take any photographs or video recordings with the city-issued cell phone on the night of the Raid.<sup>794</sup> After the Raid concluded, Investigator Glass testified he did not use his cell phone to communicate about the Raid, never sent any texts, email, or instant messages, and never created any documentation regarding the Eagle.<sup>795</sup>

Investigator Glass testified that he attended a meeting at headquarters with a number of supervisors, Red Dog officers and Vice investigators about the preservation of documents.<sup>796</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Investigator Glass made or received at least sixteen (16) phone calls with his city-issued phone between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009. At least four (4) of these calls were made to or received from APD officers involved in the Eagle Raid.<sup>797</sup>



<u>Date/Time</u>	<u>Call Type</u>	<u>To/From</u>
09/10/09/21:07	Outgoing	Sergeant Brock
09/10/09/21:15	Incoming	Sergeant Brock
09/10/09/21:16	Outgoing	Sergeant Brock
09/10/09/21:37	Incoming	Inv. Bridges

Based on the timeline of events outlined in Section 1.6 supra, these calls occurred around the time of the briefing for the Eagle Raid. Evidence of these calls conflict somewhat with the testimony from Investigator Glass that he could not recall using a cell phone to communicate during the operation.<sup>798</sup>

The Homeland Security Unit extracted data from Investigator Glass' Samsung M-540 phone on September 24, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Investigator Glass' phone: thirteen (13) text messages dated between January 23, 2010 and September 24, 2010; nine (9) incoming calls dated between September 7, 2010 and September 24, 2010; twenty-nine (29) outgoing calls dated between September 1, 2010 and September 24, 2010; and seven (7) missed calls on September 23, 2010 and September 24, 2010. Investigator Glass testified that the Samsung phone provided to the Homeland Security Unit was not the personal phone he had at the time of the Eagle Raid.

The lack of call logs prior to September 1, 2010 suggests that Investigator Glass may have deleted call log data from his phone on or about September 1, 2010. Absent further forensic study of Investigator Glass' phone, we are unable determine the nature of the information that was deleted.

### 1.9.1.11 Officer Robert Godwin

Officer Godwin testified that he often carries his cell phone on police details with him.<sup>799</sup>

Officer Godwin testified that he may have communicated with officers on the night of the Raid and that it would not be out of the ordinary in a loud club to send a text back and forth to other team members.<sup>800</sup> Officer Godwin testified that he did not take any pictures the night of the Eagle Raid.<sup>801</sup> Officer Godwin testified that, during the Eagle Raid, he received a text message from Officer Stacey Mueller, another APD Officer. Officer Godwin testified:

A. Yes. I got a text message, actually, from a friend of mine in zone 1 who -- whose friend works the Rawhide store downstairs, and she asked me if we were at the Eagle. I said yes, why? She said, well, my friend works downstairs. Is he in trouble? I was like, not that I know. I said, he should be fine. I said, how did you hear? She said, a friend of mine went to go to the Eagle and called and said they were up there.

Q. And so you had kind of an exchange of texts?

A. Uh-huh.

Q. And who was that with?

A. Mueller. Stacey.<sup>802</sup>

Officer Godwin further testified that this was the only time he used his cell phone that evening to communicate.<sup>803</sup> Officer Godwin further testified that he did not recall making any notes or sending any texts or e-mails during the briefing prior to the Raid.<sup>804</sup> Officer Godwin testified that he learned “after the fact” that Officer Edwards and Officer Jacques corresponded:

Q. Are you aware of anybody else that night using their cell phones to text or take pictures?

A. Yeah, after the -- after the fact I learned that there was correspondence between Edwards and Jacques.

Q. But that night you didn't see anybody specifically?

A. No.<sup>805</sup>

Officer Godwin recalls Officer Edwards taking a photo of him that evening:

- A. I think Edwards took a picture of me with my back turned.
- Q. Do you know when that -- when in the night that would have been?
- A. I think it was towards the end.
- Q. Did you see the picture?
- A. Yeah. It was me with my back turned.<sup>806</sup>

Officer Godwin testified that he did not notice if any other officers were also using their cell phones during the Raid.<sup>807</sup>

Officer Godwin testified that his normal habit is to immediately delete text messages within minutes of a text conversation ending.<sup>808</sup> Officer Godwin testified that, when he received the preservation notice, he did not have anything in his possession related to the Eagle.<sup>809</sup> Officer Godwin recalls being called into a conference room with an attorney at headquarters and being instructed not to delete any e-mails or material on his Facebook accounts or phones related to the Eagle Raid.<sup>810</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Godwin made or received at least thirty-two (32) calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009. At least seven (7) of these calls were made to or received from APD officers involved in the Eagle Raid, including two (2) calls received from Officer Noble at 11:15 p.m. and 11:17 p.m. on September 10, 2010:<sup>811</sup>

<b><u>Date/Time</u></b>	<b><u>Call Type</u></b>	<b><u>To/From</u></b>
9/10/09/06:12PM	Incoming	Officer Edwards
9/10/09/11:15PM	Incoming	Officer Noble
9/10/09/11:17PM	Incoming	Officer Noble
9/11/09/12:05PM	Outgoing	Sergeant Brock
9/11/09/12:44PM	Incoming	Sergeant Brock
9/11/09/01:09PM	Incoming	Sergeant Brock

Based on the timeline of events outlined in Section 1.6 supra, the calls with Officer Noble occurred shortly after Red Dog entered the Eagle. Evidence of these calls conflicts with testimony from Officer Godwin that, aside from receiving a text message from Officer Mueller, he could not recall using a cell phone to communicate during the operation:

Q. Are you aware of whether you used your cell phone for any other communications during that night?

A. No, that was the only one.<sup>812</sup>

The Homeland Security Unit extracted data from Officer Godwin's HTC 6850 Touch Pro/Fuze on September 3, 2010.<sup>813</sup> The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Officer Godwin's phone: an incoming call log reflecting eighty-nine (89) incoming calls covering the time period of August 7, 2010 through September 3, 2010; one hundred seventy-one (171) outgoing calls covering the time period of August 7, 2010 through September 3, 2010; forty (40) missed calls covering the time period of August 7, 2010 through September 3, 2010; one hundred nineteen (119) text messages covering the time period of August 9, 2010 through September 2, 2010; and twenty-six (26) photographs covering the time period of November 11, 2008 through August 18, 2010.

The lack of call logs prior to August 7, 2010 suggests that Officer Godwin may have deleted information from his HTC 6850 Touch Pro/Fuze on or about August 7, 2010. Absent further forensic study of Officer Godwin's phone, we are unable to determine the nature of the information that was deleted.

#### **1.9.1.12 Officer Melonie Mague**

Officer Mague is no longer employed by the Atlanta Police Department or the City of Atlanta. Officer Mague was not interviewed. Upon review of Officer Mague's ACRB Statement, dated March 18, 2010, and her OPS Statement, dated October 8, 2009, no relevant information was identified. Officer Mague's cell phone was not submitted for forensic analysis to the Homeland Security Unit.

#### **1.9.1.13 Officer Vincente Marciano**

Officer Marciano stated that he was not aware of any officers using their personal cell phones or city-issued cell phones while working undercover at the Eagle on May 21, 2009.<sup>814</sup> Officer Marciano testified that he did not use his cell phone to communicate, text or email during or after the Eagle operation.<sup>815</sup> Officer Marciano testified that the cell phone he turned over to the Homeland Security Unit was not the cell phone he had on the night of the Raid.<sup>816</sup> Officer Marciano stated that the phone that was in use at the time of the Raid was replaced and recycled.<sup>817</sup>

Officer Marciano testified that he did not receive any of the legal hold notices.<sup>818</sup> Officer Marciano testified that he did not participate in any briefing with either the City Law Department or the supervisors from the police department at which the contents of the legal hold notices were discussed.<sup>819</sup> Officer Marciano testified that he heard of the legal hold notice from Sergeant Brock a few months after the Raid.<sup>820</sup>

#### **1.9.1.14 Investigator Timothy McClain**

Investigator McClain testified that the City issued him a cell phone "at some point" during the investigation.<sup>821</sup> He also testified that the personal cell phone he currently has is not the same phone he had on the night of the Raid and that he did not take any photos or send any

text messages about the Eagle investigation or Raid.<sup>822</sup> He further testified that he did not use his cell phone during the Eagle Raid but that he did receive phone calls after the Raid that were unrelated to the Raid.<sup>823</sup> He testified:

No, I didn't send messages, didn't call nobody to talk about it, nothing. That wasn't a high point for me.<sup>824</sup>

The Homeland Security Unit extracted data from Investigator McClain's Kyocera CDMA K312 on October 5, 2010. No data relevant to the Eagle Raid was identified. No photographs were recovered. No text messages, call logs, audio data or video data were retrieved.

#### **1.9.1.15 Officer Marlon Noble**

Officer Noble testified that he did not use his cell phone to communicate with any other officers about the Eagle investigation.<sup>825</sup> Officer Noble also stated that he did not create any SMS text messages, email or instant messages or make any cell phone calls related to the undercover work conducted at the Eagle on September 3, 2009.<sup>826</sup> Officer Noble testified that he did not use a cell phone to communicate during the operation:

Q. Did you use a cell phone to communicate during the operation?

A. No, sir.

Q. Did you send any text e-mails instant messages that night?

A. No, sir.

Q. Did you send or receive any messages during the operation?

A. No, sir.<sup>827</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Noble made at least two calls to Officer Godwin at 11:15 p.m. and 11:17 p.m. on September 10, 2010.<sup>828</sup>

<u>Date/Time</u>	<u>Call Type</u>	<u>To/From</u>
09/10/09/11:15PM	Outgoing	Officer Godwin
09/10/09/11:17PM	Outgoing	Officer Godwin

Based on the timeline of events outlined in Section 1.6 supra, these calls occurred shortly after Red Dog entered the Eagle. Evidence of these calls conflicts with testimony from Officer Noble that he did not use his phone during the operation.<sup>829</sup> In addition, in response to a request for cell phone billing records for the September 10, 2010-to-September 11, 2010 period, Officer Noble stated that he “did not use a personal communication device during these times.”<sup>830</sup> This response is inconsistent with records provided by the City of Atlanta.

Officer Noble recalled seeing and receiving the two (2) litigation hold notices. Officer Noble testified that he thinks he received one (1) of the litigation hold notices in the mail and the other via interoffice envelope.<sup>831</sup> Officer Noble testified that he does not recall anyone ever explaining what the litigation hold meant or why they were asking for it<sup>832</sup>. Officer Noble testified that his understanding of the litigation hold was:

That they don’t want us to get rid of anything involved. Anything.<sup>833</sup>

The Homeland Security Unit extracted data from Officer Noble’s iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio and video. No data relevant to the Eagle Raid was identified. Incoming, outgoing, and missed call logs reflect cell-phone activity between August 30, 2010 and September 3, 2010. The iPhone memory also contained three thousand, nine hundred eighty (3,980) text messages dated between December 28, 2009 and September 2, 2010, as well as seventy-eight (78) images with dates ranging between February 13, 2010 and August 21, 2010.

The lack of call logs prior to August 30, 2010 suggests that Officer Noble may have deleted information from his iPhone on or about August 30, 2010. Absent further forensic study

of Officer Noble's phone, we are unable to determine the nature of the information that was deleted.

#### 1.9.1.16 Officer Jared Watkins

Officer Watkins testified that he does not remember if he had his personal cell phone or his city-issued cell phone with him on the night of the Eagle Raid.<sup>834</sup> Officer Watkins does not remember communicating at all the night of the Eagle by either cell phone or text message.<sup>835</sup> Officer Watkins could not recall receiving emails during the initial undercover detail.<sup>836</sup>

Officer Watkins could not remember specifically if he received the litigation hold notices.<sup>837</sup> Officer Watkins testified that he recalls finding out they wanted to collect data from his cell phone two (2) or three (3) days before they were needed. Officer Watkins further testified that he thinks it was about one (1) year after the Eagle Raid because he remembers getting a new phone in July of 2010.<sup>838</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Watkins received at least one (1) text message from Sergeant Brock relating to the Eagle operation:

```
sms_message>
  <id>8</id>
  <number>4045763157</number>
  <name>Watkins 6626 Jared</name>
  <internal_name>1</internal_name>
  <timestamp>2010-08-06T09:58:23-05:00</timestamp>
  <status>Sent</status>
  <folder>Outbox</folder>
  <storage>Phone</storage>
  <type>Outgoing</type>
  <text>Maj Williams needs to meet with you all TODAY at 1615 Hrs. in the
4th floor Conference room regarding the Eagle case for the City's response
on Tuesday.</text>
  <smsc />
</sms_message>
```



No other calls or text messages relevant to the Eagle Raid were identified in cell phone records produced by the City of Atlanta for Officer Watkins' phone.

#### **1.9.1.17 Officer Craig Condon**

Officer Condon testified that he does not usually carry a cell phone when he is conducting an operation and testified that he did not have his cell phone with him during the Eagle Raid.<sup>839</sup> Officer Condon stated that he did not send or receive any text messages during the Raid because the phone "wasn't on me."<sup>840</sup> Officer Condon did not notice any other officers using their cell phones or taking pictures.<sup>841</sup> Officer Condon testified that he has no recollection of receiving any text messages or jokes relating to the Eagle Raid.<sup>842</sup>

Officer Condon does not have a city-issued cell phone.<sup>843</sup> Officer Condon provided a Palm cell phone to the Homeland Security Unit for inspection.<sup>844</sup> The phone was searched by the Homeland Security Unit on September 3, 2010, but due to technical errors, no data was retrieved. Officer Condon does not remember whether the Palm cell phone was the phone he was using around the time of the Raid.<sup>845</sup> To the best of Officer Condon's knowledge, however, any cell phone in use at the time of the Eagle Raid would not contain any information related to the Eagle Raid.<sup>846</sup>

#### **1.9.1.18 Officer Stalone Davis**

Officer Davis is no longer employed by the APD or the City of Atlanta. Officer Davis was not interviewed by GT. No relevant information regarding cell phone use is identified in Officer Davis' ACRB Statement, dated March 19, 2010, or his OPS Statement, dated February 25, 2010. Officer Davis's cell phone was not submitted for forensic analysis to the Homeland Security Unit.

#### **1.9.1.19 Officer Christopher Dowd**

Officer Dowd testified that, at the time of the Eagle Raid, he had an older model Nextel two-way phone but stated that he did not utilize the phone for texting at the time.<sup>847</sup> Officer Dowd testified that he currently has a BlackBerry.<sup>848</sup> Officer Dowd testified that he did have a cell phone with him on the night of the Raid.<sup>849</sup> When asked about cell phone use the night of the Raid, Officer Dowd testified, “I know I didn’t use it.”<sup>850</sup> Officer Dowd testified that he does not recall receiving any text messages from anyone regarding the Eagle Raid or the operation.<sup>851</sup>

Officer Dowd testified that he “absolutely” does remember receiving a litigation hold notice, perhaps, in November or December 2010.<sup>852</sup> Officer Dowd testified that he did not receive his first hold notice until April of 2010.<sup>853</sup> Officer Dowd stated that he knows for a fact that they were not advised not to destroy communications until at least five (5) or six (6) months later.<sup>854</sup>

The Homeland Security Unit extracted data from Officer Dowd’s Motorola 502 Buzz phone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The analysis revealed forty (40) incoming calls on unspecified dates, twenty (20) outgoing calls on unspecified dates, and twenty (20) missed calls on unspecified dates. The extraction yielded no image files and two (2) undated audio files.

#### **1.9.1.20 Officer Brandon Jackson**

Officer Jackson testified that he did not have his personal cell phone on him on the night of the Eagle Raid.<sup>855</sup> Officer Jackson testified that he did not use his cell phone at any time after the Raid to communicate about the Raid.<sup>856</sup> When asked if there was any joking going on

between either Red Dog or Vice officers related to the Eagle Raid afterward, Officer Jackson testified:

No, we just did the Raid, left it where it was at. Especially since we worked with [ ], you didn't want to, you know, make no type of jokes . . . .<sup>857</sup>

Officer Jackson testified that he did not know why Officer Jacques sent him a text message warning about jokes associated with the Eagle Raid.<sup>858</sup>

4954	14042015691	* Red dog jackson	15/09/09 13:28:43 (GMT)	Read	Inbox	Phone	Incoming	Did u c the news about the gay bar we was n with vice
------	-------------	----------------------	----------------------------	------	-------	-------	----------	--

4980	14042015691	* Red dog jackson	15/09/09 22:18:33 (GMT)	Sent	Sent	Phone	Outgoing	Bro no more fuckin gay jokes. For rear for real .
------	-------------	----------------------	----------------------------	------	------	-------	----------	--

Officer Jackson testified that he does not recall receiving these messages.<sup>859</sup> Officer Jackson denied making any gay jokes around the time of the Raid to Officer Jacques.<sup>860</sup> Officer Jackson stated that he did not have additional conversations with Officer Jacques regarding this text exchange.<sup>861</sup> Officer Jackson testified that he did not delete any text messages related to homosexual or gay jokes from his phone.<sup>862</sup>

Officer Jackson testified that he does not remember seeing litigation hold notices issued by the City Law Department.<sup>863</sup> Officer Jackson testified that meetings regarding the obligation to preserve materials occurred sometime in 2010.<sup>864</sup> Officer Jackson testified that shortly after the briefing, he turned his phone over to the Homeland Security Unit to be examined.<sup>865</sup>

The Homeland Security Unit extracted data from Officer Jackson's Samsung CDMA SPH-M800 Instinct on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Officer Jackson's phone:

fifty-one (51) text messages dated between August 30, 2010 and September 1, 2010; sixty-one (61) incoming calls dated between August 25, 2010 and August 30, 2010; eighty-four (84) outgoing calls dated between June 11, 2010 and September 2, 2010; and eighty-two (82) missed calls between May 26, 2010 and September 2, 2010. Five (5) images, all dated June 2, 2010, were also identified.

### 1.9.1.21 Officer Dimitri Jacques

Officer Jacques acknowledged using his personal cell phone to send text messages to Officer Edwards regarding the Raid.<sup>866</sup> The following text messages were recovered from Officer Jacques' personal phone:

4844	17062179234	* Edwards Z2	11/09/09 02:53:20 (GMT)	Read	Inbox	Phone	Incoming	It's just now getting busy
4845	17062179234	* Edwards Z2	11/09/09 02:53:33 (GMT)	Read	Inbox	Phone	Incoming	The actions just begining
4846	17062179234	* Edwards Z2	11/09/09 02:53:59 (GMT)	Read	Inbox	Phone	Incoming	Our Sgt is wanting to make as many cases as possable
4847	17062179234	* Edwards Z2	11/09/09 02:54:30 (GMT)	Sent	Sent	Phone	Outgoing	What the eta
4848	17062179234	* Edwards Z2	11/09/09 02:59:08 (GMT)	Read	Inbox	Phone	Incoming	Don't know..... Soon

Officer Jacques testified that there were no further messages sent to Officer Edwards that evening.<sup>867</sup> Officer Jacques testified that he is certain that those are the only text messages sent that evening because he did not erase any text messages.<sup>868</sup>

Following the Raid, Officer Jacques testified that he never had any text exchanges regarding anti-gay slurs.<sup>869</sup> Officer Jacques recalls receiving the following text message from Officer Jackson regarding the Eagle Raid:<sup>870</sup>

4954	14042015691	* Red dog jackson	15/09/09 13:28:43 (GMT)	Read	Inbox	Phone	Incoming	Did u c the news about the gay bar we was n with vice
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In response, Officer Jacques stated that he sent a “mass text” to the Red Dog team:<sup>871</sup>

4980	14042015691	* Red dog jackson	15/09/09 22:18:33 (GMT)	Sent	Sent	Phone	Outgoing	Bro no more fuckin gay jokes. For rear for real.
------	-------------	----------------------	----------------------------	------	------	-------	----------	---

Officer Jacques explained that “there was a lot of stuff going on in the news about [Red Dog]” and he wanted to “put that out to everybody.”<sup>872</sup>

Officer Jacques testified that he does not recall receiving a notice from either a supervisor or the City Law Department requesting the preservation of documents related to the Eagle.<sup>873</sup> Officer Jacques testified that he never deletes his text messages.<sup>874</sup> The iPhone he currently has is not the phone he had on the night of the Raid.<sup>875</sup>

The Homeland Security Unit extracted data from Officer Jacques’ iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. Aside from the text messages identified above, no data relevant to the Eagle Raid was identified. Incoming, outgoing and missed call logs reflect cell-phone activity between September 1, 2010 and September 3, 2010. The iPhone memory contained nineteen thousand, nine hundred six (19,906) text messages dated between June 19, 2009 and August 15, 2010, twenty-seven (27) incoming calls dated between September 2, 2010 and September 3,

2010, sixty-five (65) outgoing calls between September 1, 2010 and September 3, 2010, and eight (8) missed calls between September 2, 2010 and September 3, 2010.

The lack of call logs prior to September 1, 2010 suggests that Officer Jacques may have deleted information from his phone on or about September 1, 2010. Absent further forensic study of Officer Jacques' phone, we are unable to determine the nature of the information that may have been deleted.

#### **1.9.1.22 Officer Cayenne Mayes**

Officer Mayes testified that he does not recall using his cell phone the night of the Eagle Raid.<sup>876</sup> He stated that he has not sent or received any messages related to the Eagle operation.<sup>877</sup>

Officer Mayes testified that it is his normal practice to delete text messages when his inbox is full to create more space.<sup>878</sup> Officer Mayes recalled a large meeting during which the officers involved in the Eagle Raid were told that they needed to preserve any and all materials related to the Eagle.<sup>879</sup> Officer Mayes testified that he does recall receiving an e-mail referencing a litigation hold.<sup>880</sup> Officer Mayes testified that he would not have been aware that he should not delete text messages from his phone in December of 2009 if he had not received the litigation hold.<sup>881</sup>

The Homeland Security Unit extracted data from Officer Mayes' Samsung CDMA, SCH-R450 Messenger (MetroPCS) Model SCH-R450/00 cell phone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. Incoming, outgoing, and missed call logs reflect cell-phone activity between August 27, 2010 and September 3, 2010. In addition, the following were retrieved: one hundred twenty (120) text messages covering the

time period of August 17, 2010 through September 3, 2010, ninety (90) incoming calls dated between August 27, 2010 and August 31, 2010, ninety (90) outgoing calls dated between August 30, 2010 and September 2, 2010, ninety (90) missed calls dated between August 20, 2010 and August 30, 2010, and thirty-five (35) images sporadically covering a time period of August 5, 2009 through September 2, 2010.

The lack of information regarding call activity prior to August 20, 2010 suggests that Officer Mayes may have deleted information from his phone on or about August 17, 2010, but because of the presence of exactly ninety (90) incoming, outgoing and missed calls, the lack of information regarding call activity is most likely due to the phone's ability to store information for only ninety (90) calls. Absent further forensic study of Officer Mayes' cell phone, we are unable to determine the nature of the information that may have been deleted.

The Homeland Security Unit also extracted data from Officer Mayes' Samsung CDMA SCH-U750 Alias 2 Model SCH-U750/215 on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio and video. No data was recovered.

#### **1.9.1.23 Officer James Menzoian**

Officer Menzoian stated that he did not have a city-issued cell phone the night of the Eagle Raid.<sup>882</sup> Officer Menzoian testified that he does have a personal cell phone.<sup>883</sup> Officer Menzoian testified that his personal cell phone is the same model (just a different phone) as the one he had at the time of the Eagle Raid; he disposed of the previous phone because it ceased functioning.<sup>884</sup> Officer Menzoian testified that he does not recall using his cell phone the night of the Raid and that, due to distraction, he typically leaves his cell phone in his vehicle.<sup>885</sup> Officer Menzoian testified that he does not remember one way or the other whether he sent or

received any text messages the night of the Eagle Raid.<sup>886</sup> He also does not remember taking any photographs that evening.

Officer Menzoian testified that he does remember receiving a litigation hold notice and/or a document preservation notice, informing him not to destroy documents, e-mails or data related to the Eagle.<sup>887</sup> Officer Menzoian testified that he thinks he received the litigation hold notice via interoffice mail.<sup>888</sup> Officer Menzoian testified that he understood that he was supposed to preserve emails or text messages from the evening of the Raid.<sup>889</sup> Officer Menzoian testified that he was not aware of anybody being concerned that they might have deleted e-mails, text messages or phone calls from that night.<sup>890</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Menzoian made or received at least thirty-three (33) phone calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009.<sup>891</sup> Two (2) of the calls, on September 11, 2009 at 11:12 a.m. and 12:44 p.m., were with Officer Stephanie Upton. No calls appear to have been made between 8:31 p.m. on September 10, 2009 and 11:09 a.m. on September 11, 2009.

#### **1.9.1.24 Officer Dion Meredith**

Officer Meredith testified that he did not send or receive any text messages from anybody that he worked with related to the Eagle.<sup>892</sup> Officer Meredith testified that he does not recall ever seeing the retention notice but acknowledged that one may have been given to him.<sup>893</sup> Officer Meredith testified that he knew at some point that he needed to not delete text messages or anything else of that nature.<sup>894</sup>

The Homeland Security Unit extracted data from Officer Meredith's T-Mobile myTouch 3G phone on September 24, 2010.<sup>895</sup> The cell phone was searched for contacts, text messages,



call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following was retrieved: three thousand, three hundred twenty-five (3,325) text messages covering the time period of July 11, 2010 through September 24, 2010 were retrieved, one hundred sixty (160) incoming calls covering the time period of September 14, 2010 through September 24, 2010, two hundred forty-seven (247) outgoing calls covering the time period of September 14, 2010 through September 24, 2010, ninety-three (93) missed calls covering the time period of September 14, 2010 through September 24, 2010, one hundred fifty-one (151) photographs covering the time period of June 21, 2010 through September 18, 2010, eight (8) audio recordings covering the time period of July 20, 2010 through August 11, 2010, and two (2) videos dated June 21, 2010 and September 9, 2010.

The lack of call logs prior to September 14, 2010 suggests that Officer Meredith may have deleted information from his phone on or about September 14, 2010. Absent further forensic study of Investigator Meredith's cell phones, we are unable to draw any conclusions regarding the nature of the information that may have been deleted.

#### **1.9.1.25 Officer Darnell Perry**

Officer Perry testified he may have had his personal cell phone on him the night of the Raid.<sup>896</sup> He also testified that he did not take any cell phone pictures the night of the Eagle Raid.<sup>897</sup>

Officer Perry stated that he has never seen the litigation hold notices.<sup>898</sup> He also stated that he was not told at any time after the Eagle Raid not to destroy any evidence related to the operations that night.<sup>899</sup> When asked if he had been told not to destroy any communications or statements related to the Eagle, Officer Perry testified he and his colleagues had been told. Officer Perry testified:

We were told, you know, to the effect to where they said don't erase any messages from your phone or any digital images from your phone, things of that nature.<sup>900</sup>

Officer Perry testified that he does recall a briefing by the City Law Department for those officers who participated in the Eagle Raid.<sup>901</sup> During this meeting, the officers were told that they would eventually need to turn over cell phones and that they were not allowed to delete any text messages or digital images from the phones.<sup>902</sup> Officer Perry testified that he regularly in the course of his cell phone use deletes old text messages and pictures.<sup>903</sup>

Officer Perry testified that the phone he submitted for analysis was the same phone he had at the time of the Eagle incident.<sup>904</sup> Officer Perry testified that any information created around the time of September 2009 when the Eagle incident took place, would have already been deleted per his normal practice.<sup>905</sup>

#### **1.9.1.26 Officer William Porter**

Officer Porter testified that his current cell phone is not the one he owned as the time of the Raid.<sup>906</sup> Officer Porter further testified that, as members of the Red Dog Unit, he and his colleagues were trained to leave their cell phones in their cars.<sup>907</sup> Officer Porter recalled calling a few people prior to the Raid in order to give them directions.<sup>908</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Porter made or received seven (7) phone calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009.<sup>909</sup> Two (2) of the calls, on September 10, 2009 at 9:37 p.m. and 9:45 p.m., were with Officer William Walters. Based on the timeline of events outlined in Section 1.6 supra, these calls occurred around the time of the briefing for the Eagle Raid. Officer Porter could not recall the content of these calls.<sup>910</sup> On September 11, 2009 at 12:43 a.m., Officer Porter called Officer Brandon Jackson, but Officer Porter testifies that he

does not recall the subject matter of the call.<sup>911</sup> Based on the timeline of events outlined in Section 1.6 supra, this call occurred near the end of the Eagle operation.

Evidence of these calls conflicts with Officer Porter's response to discovery requests seeking cell phone billing records for the September 10, 2010-to-September 11, 2010 period. In response, Officer Porter stated that he "did not use a personal communication device during these times."<sup>912</sup>

The Homeland Security Unit extracted data from Officer Porter's iPhone on September 24, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. The following information was recovered from Officer Porter's cell phone: eight hundred seventy-one (871) photographs dated April 28, 2009 through August 24, 2010 and two (2) undated video files. It is unclear why no call logs or text message data was identified.

#### **1.9.1.27 Officer Stephanie Upton**

Officer Upton is no longer employed by the APD or the City of Atlanta. Officer Upton's current employer, the United States Department of Justice Drug Enforcement Administration, refused permission for interviews with Officer Upton. No relevant information regarding cell phone use was identified in Officer Upton's ACRB Statement, dated March 18, 2010, or her OPS Statement, dated October 8, 2009. Officer Upton's cell phone was not submitted for forensic analysis to the Homeland Security Unit.

In response to requests seeking all records relating to the Eagle Raid, Officer Upton stated that she was "not in possession of any documents responsive to this request."<sup>913</sup> In response to a request for cell phone billing records for the September 10, 2010-to-September 11,

2010 period, Officer Upton stated that she “did not use a personal communication device during these times.”<sup>914</sup>

An examination of cell phone records provided by the City of Atlanta indicates that Officer Upton made or received sixteen (16) phone calls between 18:00 hours on September 10, 2009 and 18:00 hours on September 11, 2009. Two (2) of the calls, on September 11, 2009 at 11:12 a.m. and 12:44 p.m., were with Officer James Menzoian.<sup>915</sup> Five (5) text messages were exchanged with Officer William Walters on the day of the Raid.<sup>916</sup> One (1) text message was sent to Officer Menzoian.<sup>917</sup> Two (2) of the text messages received by Officer Upton contained multi-media files.<sup>918</sup> We are unable to any conclusions as to whether these text messages were related to the Eagle Raid.

#### **1.9.1.28 Officer William Walters**

Officer Walters testified that he only has a personal cell phone and was never issued a cell phone by the City.<sup>919</sup> Officer Walters also testified that he did not send or receive text messages relating to the Eagle Raid on the night of the operation or thereafter.<sup>920</sup> In response to requests seeking all records relating to the Eagle Raid, Officer Walters stated that he was “not in possession of any documents responsive to this request.”<sup>921</sup> In response to a request for cell phone billing records for the September 10, 2010-to-September 11, 2010 period, Officer Walters stated that he “did not use a personal communication device during these times.”<sup>922</sup>

Officer Walters currently has an Apple iPhone but did not have this phone at the time of the Eagle Raid.<sup>923</sup> Officer Walters believes he used either an LG Dare or a Motorola Droid phone at the time, but he no longer possesses those phones.<sup>924</sup> Officer Walters testified that he was notified of the duty to preserve documents approximately one year after the Eagle Raid at a meeting with the Atlanta Law Department.<sup>925</sup> Officer Walters provided his Apple iPhone to the

Homeland Security Unit for examination. The examination conducted on Officer Walters' iPhone on September 3, 2010 did not reveal any information relevant to the Eagle Raid.

The Homeland Security Unit extracted data from Officer Walters' iPhone on September 3, 2010. The cell phone was searched for contacts, text messages, call logs, images, ringtones, audio data and video data. No data relevant to the Eagle Raid was identified. Incoming, outgoing and missed call logs reflect cell-phone activity between August 24, 2010 and September 3, 2010. The iPhone memory also contained one hundred twenty-four (124) text messages dated between August 14, 2010 and September 3, 2010 and one hundred ninety-three (193) pictures with dates ranging between June 2, 2010 and August 8, 2010.

The lack of call logs and text messages prior to August 24, 2010 suggests that Officer Walters may have deleted information from his iPhone.

### **1.9.2 Patterns of Cell Phone Data Deletion**

It is apparent that certain officers made little or no effort to preserve material relevant to the Eagle Raid. Moreover, it appears that officers engaged in active deletion of cell phone data. By way of illustration, numerous officers attended a meeting with the Atlanta Law Department on August 26, 2010. During this meeting, the officers were told to preserve all documents relating to the case.<sup>926</sup> Beginning on September 3 and continuing on September 24, 2010, the Homeland Security Unit began collecting cell phones from involved officers. Based on the Homeland Security Unit's examination, the following officers may have deleted call log and/or text message data from their phones shortly before their phones were examined on September 3:

- Sergeant Collier -- No call log or text message data recovered earlier than August 31, 2010. iPhone memory contained image files dating to June 12, 2009.
- Officer Walters -- No call log data recovered earlier than August 24, 2010. No text message data recovered earlier than August 14, 2010.

- Sergeant Adams -- No call log data recovered earlier than August 30, 2010.
- Officer Noble -- No call log data recovered earlier than August 30, 2010. iPhone memory contained image files dating to February 13, 2010 and image files dating to December 28, 2009.
- Officer Jacques -- No call log data recovered earlier than September 1, 2010. iPhone memory contained image text message files dating to June 19, 2009.
- Officer Edwards -- No call log data recovered earlier than August 31, 2010. No text message data recovered earlier than August 24, 2010.
- Officer Jackson -- No incoming call log or text message data prior to August 25, 2010.

The following officers may have deleted call log and/or text message data from their phones shortly before their phones were examined on September 24, 2010:

- Investigator Dabney -- No call log or text message data recovered earlier than September 24, 2010.
- Officer Meredith -- No call log data recovered earlier than September 14, 2010.
- Investigator Glass -- No call log data recovered earlier than September 1, 2010.

### **1.9.3 Additional Forensic Testing**

We have considered the utility of conducting additional forensic testing on cell phones that may have been in use during the Eagle Raid. It is possible that data could exist in phone memory (or SIM card memory) that would not have been captured by the Cellbright device utilized by the Homeland Security Unit. For the reasons set forth below, however, we believe the cost and burden associated with conducting additional testing significantly outweighs the unlikely benefit of additional data recovery.

First, the cost associated with comprehensive forensic testing by a third-party forensic expert on the cell devices is likely to exceed \$10,000 per phone, a considerable cost when measured against the likelihood of recovering relevant data. Second, considerable time has passed since the Eagle Raid and the events that followed, and as more time passes, the likelihood

of finding relevant data recovery diminishes. Third, from the officers' testimony, we understand that at least 6 officers no longer have (or use) the cell phone in use at the time of the Eagle Raid. It is unlikely that any phone that came into use after the Eagle Raid would have relevant information. Fourth, as discussed above, numerous officers appeared to engage in a practice of deleting phone data shortly before their phones were collected for testing. This practice further reduces the likelihood of data recovery. Finally, we are cognizant of the disruption and inconvenience associated with having the officers turn over cell phones for additional testing.

#### **1.9.4 Application of Cell Phone Analysis to Officers**

We have considered all reasonably available information relating to the individual officers' cell phone use before, during and after the Eagle Raid. Based on records produced by the City of Atlanta and forensic testing conducted by the Homeland Security Unit, it is apparent that numerous Vice and Red Dog officers used their cell phones to communicate during the relevant period. Although some of these communications were specifically related to the Eagle operation, based on the passage of time and the lack of confirming testimony, we are unable to reach any definitive conclusions as to the scope and nature for the majority of the communications that have been identified. As indicated above, if unlimited time and resources were available, it is possible, though unlikely, that additional relevant information relating to the Eagle Raid could be recovered.

The APD does not currently have an SOP relating to cell phone use.<sup>927</sup> We recognize that cell phones are an important augmentation to the APD's communication system, especially in undercover operations such as those conducted at the Atlanta Eagle. Significantly, many of the "smart" phones (e.g. iPhone, BlackBerry, Droid) utilized by the involved officers have features that allow the creation and storage of a wide-range of data, including email, text

message, photographs, video and audio files. These factors underscore the need to promptly identify, collect and preserve cell phone data created during police operations when the duty to preserve arises.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Willie Adams, Sergeant Kelley Collier, Investigator Gregory Dabney, Officer Jeremy Edwards, Investigator Herman Glass, Officer Brandon Jackson, Officer Dimitri Jacques, Officer Dion Meredith, Officer Marlon Noble, and Officer William Walters violated the above-referenced standard operating procedure, particularly in light of the circumstantial evidence surrounding mass deletion of cell phone data.

Truthfulness (4.1.03)<sup>928</sup>

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Officer Jeremy Edwards violated the above-referenced standard operating procedure with regard to cell phone data.

**SECTION 2: CONCLUSIONS AS TO LAW AND POLICY**

**2.1 Constitutional protections**

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. The protections of the Georgia Constitution against searches and seizures closely mirror the language of the Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures



shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized.

GEORGIA CONST. art. I, § I, para. XIII (1983).

## **2.2 Searches Under The Fourth Amendment**

### **2.2.1 Searches Based On Reasonable Suspicion**

In Terry v. Ohio, the Supreme Court of the United States held that a peace officer's "frisk" of a person for weapons based on a reasonable belief that the person is armed and presently dangerous did not violate the Fourth Amendment. 392 U.S. 1, 30-31, 88 S. Ct. 1868, 1884-1885 (1968). Such a frisk is reasonable and justified where "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Id. at 27. As the sole purpose of a frisk is to protect the officer and the surrounding public, the search must be reasonably designed to discover guns, knives, clubs, and other hidden weapons. Id. at 29. Accordingly, an officer's reasonable belief that a person is armed and dangerous must be based on specific reasonable inferences that the officer is entitled to draw from the facts in light of his experience and not on "inchoate and unparticularized suspicion[s] or 'hunch[es].'" Id. A reasonable belief to frisk a person may be based on credible and reliable information supplied by another person. Adams v. Williams, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924 (1972). The City of Atlanta's Standard Operating Procedure for searches and seizures is in concordance with Terry and its progeny. See Atlanta Police Department, Atlanta Policy Department Policy Manual, Standard Operating Procedure 3020 Search and Seizure ("APD.SOP.3020") ¶ 4.3.3 (2009).

Ybarra v. Illinois is instructive in the present matter. 444 U.S. 85, 100 S. Ct. 338 (1980). The law enforcement agents in Ybarra obtained a search warrant for the Aurora Tap Tavern and

a bartender named “Greg.” 444 U.S. at 88. When the officers arrived to execute the warrant, they announced their presence and informed all the patrons that they were going to conduct a “cursory search for weapons.” Id. Each of the patrons in the tavern, including Ybarra, were frisked. Id. Illegal drugs were found on Ybarra, who moved to suppress the drugs as the fruit of an unconstitutional search. Id. at 89.

The Supreme Court held the frisk of Ybarra contravened the Fourth Amendment. Id. at 96. The record indicated there was no reasonable suspicion to frisk Ybarra; the police did not recognize Ybarra as a known criminal. Id. at 90-91. There was no reason to believe he had committed, was committing, or was about to commit a crime, and he did not act in a suspicious or threatening manner Id. at 91. The Supreme Court said, “[t]he ‘narrow scope’ of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place.” Id. at 94.

Similarly, in U.S. v. Glenn, the United States District Court of the Southern District of Georgia held that a “systematic patdown search of everyone present in the establishment was not warranted on these facts.” No. CR609-027, 2009 WL 2390353, at \* 4 (S.D. Ga. July 29, 2009). Although the officers in Glenn had a search warrant for the premises, they were not authorized to frisk every patron for weapons without a reasonable belief that the specific individual to be frisked was armed and presently dangerous. Id. at \*5. A generalized belief that some of the patrons “might possibly have a weapon” is insufficient to justify a frisk of everyone present, especially where no resistance was encountered. Id. The Glenn Court recognized that the frisks were not for safety reasons but constituted a “shakedown of a large number of citizens in order to conduct an *evidentiary* search for narcotics, weapons, and other contraband.” Id. at \*6. A

“[g]eneral shakedown[] of citizens - even those who patronize shady bars, nightclubs, and Game Rooms - *has* never been permitted under our Constitution.” Id. at \*7.

“The authority to detain or stop does not automatically include the authority to frisk or pat down.” APD.SOP.3020 ¶ 4.3.3(4).

## **2.2.2 Searches Based On Probable Cause**

### **2.2.2.1 Search Pursuant to a Warrant**

The Fourth Amendment requires a lawful search warrant to: (1) be issued by a neutral and detached magistrate; (2) be based on an adequate showing of probable cause to search; (3) be supported by an oath or affirmation; and (4) describe with particularity the places to be searched and the persons or things to be seized. U.S. CONST. amend. IV; see also Groh v. Ramirez, 540 U.S. 551, 557-58, 124 S. Ct. 1284, 1289-90, 1300 (2004). Georgia’s search warrant statute<sup>929</sup> is inconsistent with the Fourth Amendment’s requirements, and the Atlanta Police Department’s SOP reflects the U.S. Constitution’s and Georgia’s statutory requirements. See generally APD.SOP.3020 ¶ 4.2. Search warrants are strongly preferred. See U.S. v. Rabinowitz, 339 U.S. 56, 83, 70 S. Ct. 430, 443 (1950) (Frankfurter, J., dissenting), overruled in part by Chimel v. California, 395 U.S. 752, 760-61, 768, 89 S. Ct. 2034, 2038-39, 2042-43 (1969)(but upholding Frankfurter’s dissent in Rabinowitz); see also Mincey v. Arizona, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412 (1978); APD.SOP.3020 ¶ 4.3.1(1) (“There is a constitutional preference for searches to be conducted pursuant to a warrant rather than without one.”).

Even when the police are armed with a search warrant for an establishment, however, it is well established that generalized, broad-based Terry frisks of that establishment’s patrons constitute improper searches. Indeed, in Ybarra, the seminal case for this proposition, the Court states, “a person’s *mere propinquity* to others independently suspected of criminal activity does

not, without more, give rise to probable cause to search that person.” Ybarra, 444 U.S. at 91 (emphasis added) (citing Sibron v. New York, 392 U.S. 40, 62-63, 88 S. Ct. 1889, 1902 (1968)).

The search warrant in Ybarra authorized the officers to search for evidence of possession of illegal controlled substances, money and drug paraphernalia within the tavern and on the body of a certain “Greg.” 444 U.S. at 88. The warrant, however, was void of any mention of the tavern’s patrons. Id. “Although the search warrant, issued upon probable cause, gave the officers authority to search the premises and to search ‘Greg,’ it gave them no authority whatever to invade the constitutional protections possessed individually by the tavern’s customers.” Id. at 92; see also Swint v. City of Wadley, 51 F.3d 988, 997 (11th Cir. 1995) (a search and seizure of one suspect in a public place cannot be bootstrapped into probable cause for a broad-based search of the business establishment and its patrons); Glenn, 2009 WL 2390353, at \*4. (“Even assuming that the officers were executing a valid warrant . . . the systematic patdown search of everyone present in the establishment was not warranted on these facts.”) (discussing Ybarra, 444 U.S. 85). Georgia law is in accord. Clark v. State, 235 Ga. App. 569, 573, 510 S.E.2d 319, 323 (1998).

Again, the Fourth Amendment favors searches pursuant to a warrant. See Rabinowitz, 339 U.S. at 83; see also Mincey, 437 U.S. at 390; see also APD.SOP.3020 ¶ 4.3.1(1). A search warrant alone does not bestow an unlimited right to search every individual or place. The warrant must be valid and the officers must execute the search within the strict confines of the warrant. APD.SOP.3020 ¶ 4.2.8(10). In certain limited circumstances, as set out in the next Section 2.2.2.2, warrantless searches are permissible.

### 2.2.2.2 Warrantless Searches

The Fourth Amendment protects persons against *unreasonable* searches. In certain circumstances, warrantless searches supported by probable cause may be reasonable and proper under the Fourth Amendment. For example, such warrantless searches are constitutional when: (1) exigent circumstances exist; (2) a warrantless search is conducted incident to arrest; or (3) consent is obtained.<sup>930</sup> See e.g. Payton v. New York, 445 U.S. 573, 587-88, 100 S. Ct. 1371, 1381 (1980) (exigent circumstances); Chimel, 395 U.S. at 762-63 (search incident to arrest); Ohio v. Robinette, 519 U.S. 33, 39-40, 117 S. Ct. 417, 421 (1996) (consent).

Georgia courts have routinely applied the Fourth Amendment's warrantless search rulings to actions by state police officers. See State v. Brannan, 222 Ga. App. 372, 373, 474 S.E.2d 267, 270 (1996) (holding warrantless search of defendant's home by state police officer justified by substantial risk of harm); see also Judkins v. State, 282 Ga. 580, 582, 652 S.E.2d 531, 540 (2007) (holding a warrantless search of defendant's Apartment was pursuant to defendant's valid consent). Further, the Atlanta Police Department SOP reflects these rules of law. See generally, APD.SOP.3020 ¶ 4.3.4.

#### 2.2.2.2.1 Exigent Circumstances

“Probable cause, *without more*, would be insufficient to justify the warrantless entry onto the [] property” without a showing that the exigencies of the situation prevented the agents from securing a search warrant from a magistrate judge. U.S. v. Blasco, 702 F.2d 1315, 1325 (11th Cir. 1983) (emphasis added). Exigent circumstances excuse the search warrant requirement because “the societal costs of obtaining a warrant, such as danger to law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate.” Blasco, 702 F.2d at 1325 (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 2590

(1979)). Exigent circumstances include “danger of flight or escape; danger of harm to police officers or the general public; risk of loss, destruction, removal, or concealment of evidence; and ‘hot pursuit’ of a fleeing suspect.” Id. Each exception must be carefully applied to the unique facts and circumstances of each scenario. Id.; see also APD.SOP.3020 ¶ 4.3.1.

#### **2.2.2.2.1.1 Danger of Flight or Escape**

An exigent circumstance of danger of flight or escape does not exist (1) when there is no indication that the suspect was armed, (2) there is no suggestion of danger to anyone in the building, and (3) the police have the building surrounded such that the suspect could have been apprehended upon leaving the building. See Minnesota v. Olson, 495 U.S. 91, 101, 110 S. Ct. 1684, 1690 (1990).

#### **2.2.2.2.1.2 Danger of harm to police officers or the general public**

A warrantless and contemporaneous search is justified when an officer may be harmed. Chimel, 395 U.S. at 764. The Eleventh Circuit has held that “when exigent circumstances demand an immediate response, particularly where there is danger to human life, protection of the public becomes paramount and can justify a limited, warrantless intrusion into the home.” U.S. v. Holloway, 290 F.3d 1331, 1334 (11th Cir. 2002). In Holloway, the Court held a warrantless search of a residence was justified where continued gunshots and arguing emanated from a residence and the officers reasonably believed human lives were in danger. Id. at 1338.

#### **2.2.2.2.1.3 Risk of loss, destruction, removal, or concealment of evidence**

When a realistic expectation exists that any delay will result in the destruction of evidence, a warrantless entry and search does not violate the Fourth Amendment. U.S. v. Santana, 427 U.S. 38, 41-43, 96 S. Ct. 2406, 2409-2410 (1976) (holding where an individual

reasonably believed to have heroin and marked bills from an undercover operation saw the officers and immediately retreated into her house, the officers were justified in entering and searching the premises when a delay could result in the destruction of the evidence).

#### **2.2.2.2.1.4 Hot pursuit of a fleeing suspect**

In Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 298-99, 87 S. Ct. 1642, 1645-46 (1967), the Supreme Court recognized the right of the police, who had probable cause in believing that an armed robber had entered a house a few minutes before, to make a warrantless entry to arrest the robber and search for weapons. “Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that [the suspect] was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.” Id. at 299.

#### **2.2.2.2.2 Search Incident to Arrest**

Georgia’s “Search without warrant” statute provides, in pertinent part:

When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within the person’s immediate presence for the purpose of:

- (1) Protecting the officer from attack;
- (2) Protecting the person from escaping;
- (3) Discovering or seizing the fruits of the crime for which the person has been arrested; or
- (4) Discovering or seizing any instruments, articles, or things which are being used or which may have been used in the commission of the crime for which the person has been arrested.

O.C.G.A. § 17-5-1(a) (2010). The Atlanta Police Department’s SOP regarding searches incident to arrest is based, almost verbatim, on O.C.G.A. § 17-5-1. See APD.SOP.3020 ¶ 4.3.2(1). Both the statute and the SOP comport with the Fourth Amendment’s limitations on a search incident

to arrest, which provides that a law enforcement agent may, upon lawful arrest of a person, reasonably search the person arrested and the area within the person's immediate control to: (1) remove any weapons that the arrestee may use to resist arrest or effect his escape; and (2) seize any evidence on the arrestee's person in order to prevent its concealment or destruction. Chimel, 395 U.S. at 763.

In Chimel, the Supreme Court reaffirmed the appropriate scope of a search incident to a proper arrest. Id. at 763. In that case, officers investigating a burglary obtained an arrest warrant for an individual but did not obtain a warrant to search his home. Id. at 753-54. Upon arrest, the officers asked for permission to "look around." Id. Although the arrestee objected, the officers conducted a search under the rubric of a search incident to a lawful arrest. Id. at 753-54. The officers looked through the entire three-bedroom house, including the attic, garage, and a small workshop. Id. at 754. In some of the rooms, the officers instructed the arrestee's wife to open drawers and move the contents of the drawers to better view the items. Id. The search took between 45 minutes to an hour. Id.

The Supreme Court held the warrantless search violated the Fourth Amendment. Id. at 768. The search incident to arrest exception to the Fourth Amendment exists for the limited purpose of preventing evidence destruction or protecting an officer from an attack by the arrestee or preventing his escape. Id. at 763. Therefore, the search incident to arrest must be limited to a search for weapons or contraband on the arrestee and the area within the arrestee's reach that may contain a weapon or destructible evidence. Id. A search incident to arrest may not extend to rooms well beyond where the arrest occurred or desk drawers or other closed or concealed areas. Id.; see also U.S. v. Sunkett, 95 F. Supp. 2d 1367, 1376 (N.D. Ga. 2000) (search of bedroom incident to arrest was improper where arrestee was apprehended in area far from



bedroom). Further, a search incident to arrest may not be premised on an improper arrest. Brown v. Illinois, 422 U.S. 590, 600-604, 95 S. Ct. 2254, 2260-262 (1975); U.S. v. Bailey, 691 F.2d 1009, 1012-13 (11th Cir. 1982); Kelly v. State, 129 Ga. App. 131, 133, 198 S.E.2d 910, 913 (1973).

### **2.2.2.3 Protective Sweep**

A corollary to a search incident to arrest is a “protective sweep” performed incident to an arrest. A protective sweep is a quick and limited search of the premises conducted to protect the safety of police officers or others. Maryland v. Buie, 494 U.S. 325, 327, 110 S. Ct. 1093, 1094 (1990). This type of search is not a full search of the premises but is narrowly confined to a cursory visual inspection of those places where a person might be hiding. Id. at 335. The Fourth Amendment permits protective sweeps if the officer “possesse[d] a reasonable belief based on ‘specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed]’ the officer in believing that the area swept harbored an individual posing a danger to the officer or others.” Id. at 327 (internal citations omitted); accord U.S. v. Tobin, 923 F.2d 1506, 1513 (1991) (protective sweep incident to arrest was proper where three cars were parked in the driveway and the officers observed more than one person in the home); U.S. v. Cole, No. 1:09-CR-0412-ODE-RGV, 2010 WL 3210963, at \*21 (N.D. Ga. August 11, 2010) (protective sweep of entire home incident to defendant’s arrest was proper where the officers heard a woman’s voice coming from upstairs); U.S. v. Parker, 600 F. Supp. 2d 1251, 1260-61 (M.D. Fla. 2009) (officers’ entry into unit next door to defendant’s Apartment under pretext of protective sweep was improper because there were no facts indicating there was a person inside who posed a threat to the officers). The sweep may not last longer than is necessary to dispel the

reasonable suspicion of danger and in any event may not last longer than it takes to complete the arrest and leave the premises. Buie, 494 U.S. at 335.

In the absence of specific and articulable facts showing that another individual, who poses a danger to the officers or others, is inside the premises, an officer's lack of information cannot justify a protective sweep incident to an arrest. Sunkett, 95 F. Supp. 2d at 1372-73 (the fact that someone else "might be" present is not a strong enough basis on which to justify a protective sweep); State v. Charles, 264 Ga. App. 874, 875-76, 592 S.E.2d 518, 520 (2003) (sweep of motel room was not authorized where nothing indicated that a person was hiding in the motel room or that the officers were in danger). Forced entry into a locked room is not within the scope of a protective sweep when the arrestee does not have access to the room and the room's occupant is not present. See, U.S. v. Schwinn, No. 2:07-cr-119-FtM-29SPC, 2008 WL 782518, at \*7 (M.D. Fla. Feb. 7, 2008) (protective sweep and search was proper as agents only swept rooms to which the defendant had access). Further, a protective sweep incident to an unlawful arrest is not valid. See, e.g., Galindo-Eriza v. State, 306 Ga. App. 19, 25, 701 S.E.2d 516, 518, 522-23 (2010) (reversing the trial court's denial of defendant's motion to suppress and defendant's convictions based on defendant's argument that police arrested him without probable cause and conducted an unlawful protective sweep of the residence).

Finally, whether a search occurs with or without a warrant, (1) "[t]he scope of a search must be strictly tied to and justified by the circumstances that rendered its initiation permissible; (2) "[o]fficers must not exceed their authority and should be considerate of the comfort, convenience, and feelings of the occupants," and (3) "[o]fficers are obligated to avoid unnecessary damage to the premises . . ." APD.SOP.3020 ¶ 4.1.1-4.1.3.

## **2.3 SEIZURES UNDER THE FOURTH AMENDMENT**

### **2.3.1 Seizures Based On Reasonable Suspicion**

A person is “seized” within the meaning of the Fourth Amendment, whenever a police officer accosts an individual and restrains his freedom to walk away even if the encounter does not result in an arrest. Terry, 392 U.S. at 16. Although an investigative stop of an individual by an officer may not rise to the level of an arrest, the stop is subject to the protections of the Fourth Amendment. Id. As such, the stop must be based on reasonable suspicion, i.e., specific and articulable facts which, taken together with rational inferences from those facts, support the suspicion that a person has committed a criminal offense. Hiibel v. Nevada, 542 U.S. 177, 186, 124 S. Ct. 2451, 2458 (2004). If reasonable suspicion exists, an officer is permitted to stop the person for a brief time and take additional steps to investigate further. Brown v. Texas, 443 U.S. 47, 51, 99 S. Ct. 2637, 2641 (1979). The seizure, however, cannot continue for an excessive period of time or resemble a traditional arrest. Hiibel, 542 U.S. at 185-86; see, also, U.S. v. Sharpe, 470 U.S. 675, 682-684, 105 S. Ct. 1568, 1573-74 (1985) (an investigative detention must last no longer than is necessary to effectuate the purpose of the stop); U.S. v. Gil, 204 F.3d 1347, 1350-51 (11th Cir. 2000) (detention of 75 minutes was reasonable as the detention was no longer than necessary for officers to complete their investigation of the residence); Courson v. McMillian, 939 F.2d 1479, 1492 (11th Cir. 1991) (detention of 30 minutes was reasonable length of time for officer to determine person’s involvement in the events of the evening). If the officer does not learn of any facts rising to the level of probable cause during the Terry stop, the individual must be allowed to go on his way. Illinois v. Wardlow, 528 U.S. 119, 126, 120 S. Ct. 673, 677 (2000). A state law requiring a suspect to disclose his name in the course of a valid Terry stop is consistent with the Fourth Amendment. Hiibel, 542 U.S. at 188. In the absence of

reasonable suspicion, however, arresting a person for failure to provide ID violates the Fourth Amendment. Brown, 443 U.S. at 53

## **2.3.2 Arrests**

### **2.3.2.1 Definition of Arrest**

In California v. Hodari D., the United States Supreme Court defined an arrest as “requir[ing] *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority.” 499 U.S. 621, 626, 111 S. Ct. 1547, 1551 (1991) (emphasis in original). When an arrest is not based on physical force, the legal test of whether an arrest occurred is whether, “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” U.S. v. Hammock, 860 F.2d 390, 393 (11th Cir. 1988) (quoting U.S. v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980) (Stewart and Rehnquist, JJ., concurring)); see, also, 5 Am. Jur 2D Arrest § 4 (2007) (“Police detention constitutes an ‘arrest’ if a reasonable person in the suspect’s position would understand the situation to be a restraint on freedom of the kind that the law typically associates with a formal arrest.”). Additional circumstances where an arrest has occurred include: (1) blocking of an individual’s path or the impeding of his progress; (2) the retention of a ticket or piece of identification; (3) an officer’s statement that the individual is the subject of an investigation, or that a truly innocent person would cooperate with the law enforcement officer; (4) the display of weapons; and (5) the number of officers present and their demeanor; and (6) the length of the detention. Id. at 393 (citing Mendenhall, 446 U.S. at 544-55 ; U.S. v. Berry, 670 F.2d 583, 597 (5th Cir. 1982)).

Georgia has codified what constitutes an arrest. “An actual touching of a person with a hand is not essential to constitute a valid arrest. If the person voluntarily submits to being

considered under arrest or yields on condition of being allowed his freedom of locomotion, under the discretion of the officer, the arrest is complete.” O.C.G.A. § 17-4-1 (2010); see also Atlanta Police Department, Atlanta Police Department Policy Manual, Standard Operating Procedure 3030 Arrest Procedures (“APD.SOP.3030”) ¶ 4.1.1 (2009) (adopting, verbatim, O.C.G.A. § 17-4-1). The mere fact that an officer testifies that he placed the person under arrest at a subsequent point in time does not alter the fact that prior to the announcement of arrest, the person voluntarily submitted to being considered under arrest. Clements v. State, 226 Ga. 66, 67, 172 S.E.2d 600, 601 (1970). As such, Georgia’s arrest statute, case law and the APD’s Arrest SOP comport with the Fourth Amendment’s definition of arrest.

### **2.3.2.2 Arrests With Warrant**

Like a search warrant, a neutral and detached magistrate must issue an arrest warrant. The arrest warrant must be supported by probable cause, i.e., facts and circumstances that connect the suspect to specific criminal activity. See Kirk v. Louisiana, 536 U.S. 635, 638, 122 S. Ct. 2458, 2459 (2002). The suspect must be particularly identified in the warrant by name or with sufficient specific detail so that the officers may locate him with reasonable effort. Georgia law requires an arrest warrant to describe the offense, including the time and date, place of occurrence, against whom the offense was committed, a statement describing the offense, and the county in which the offense was committed. O.C.G.A. § 17-4-41(a) (2010). The APD incorporates the requirements of O.C.G.A. § 17-4-41. See APD.SOP.3030 ¶ 4.1.5.

“The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” Welsh v. Wisconsin, 466 U.S. 740, 748, 104 S. Ct. 2091, 2097 (1984) (quoting United States v. United States District Court, 407 U.S. 297, 313, 92 S. Ct. 2125, 2134 (1972)). Thus, to arrest an individual in his own home, in the absence of any exigent

circumstances, an arrest warrant is required. Payton, 445 U.S. at 583-90, 603. A proper arrest warrant carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Id. at 603. Arrests inside a home without a warrant are presumptively unreasonable. Welsh, 466 U.S. at 749; Payton, 445 U.S. at 586.

### **2.3.3 Warrantless Arrests**

Warrantless arrests in public buildings and public areas are permitted provided there is probable cause to believe the suspect has committed a crime. A warrantless arrest in public is acceptable even if an officer has ample time to obtain an arrest warrant. U.S. v. Watson, 423 U.S. 411, 422, n. 12 -423, 96 S. Ct. 820, 827-28 (1976). Georgia allows warrantless arrests if, inter alia, an offense is committed in the officer's presence or within the officer's immediate knowledge, or if the offender is endeavoring to escape. O.C.G.A. § 17-4-20 (2010); see also APD.SOP.3030 ¶ 4.1.4.

Warrantless arrests of persons inside their homes, however, presumptively violate the Fourth Amendment. "Warrantless entry into the home is therefore unreasonable, subject only to a few 'jealously and carefully drawn' exceptions." McClish v. Nugent, 483 F.3d 1231, 1240 (11th Cir. 2007) (quoting Georgia v. Randolph, 547 U.S. 103, 109, 126 S. Ct. 1515, 1520 (2006)). Those limited exceptions include consent (Illinois v. Rodriguez, 497 U.S. 177, 181, 110 S. Ct. 2793, 2797 (1990)) and exigent circumstances such as the need to break up a violent fight (Brigham City v. Stuart, 547 U.S. 398, 405 126 S. Ct. 1943, 1948-49 (2006)), to prevent destruction of evidence (U.S. v. Mikell, 102 F. 3d 470, 476 (11th Cir. 1996)), and to pursue a fleeing suspect (Santana, 427 U.S. at 42-43).

Even with probable cause, a warrantless home arrest for nonfelonious crimes violates the Fourth Amendment. Welsh, 466 U.S. at 752-54 (holding home arrest without a warrant for

criminal misdemeanor of drunk driving was improper); Hamrick v. State, 198 Ga. App. 124, 125, 401 S.E.2d 25, 27 (1990) (holding home arrest without a warrant was improper where crimes charged were misdemeanors, there was no risk that evidence would be destroyed, and the exigent circumstance of danger to public had ended when the defendant entered his home). In such circumstances, the “presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.” Welsh, 466 U.S. at 750.

Further, an officer may not cross the threshold of a person’s home and forcibly remove him without an arrest warrant absent an exigency or consent. In Payton, the Supreme Court set forth a bright-line rule that the entrance to a house may not reasonably be crossed without a warrant. McClish v. Nugent, 483 F.3d at 1242 (citing Payton, 455 U.S. at 590). Indeed, no part of an officer’s body may cross the threshold into a person’s home. Id. at 1241, 1248 (arrest violated Fourth Amendment where officer physically pulled person, who at the time was completely inside his house, across the doorway of the home and arrested him outside). The mere fact that a person voluntarily opens his door to an officer does not vitiate the warrant requirement where the person remains entirely within his home. Id.; accord New York v. Harris, 495 U.S. 14, 15-17, 110 S. Ct. 1640, 1642 (1990); Kirk, 536 U.S. at 638; Bashir v. Rockdale County, 445 F.3d 1323, 1328 (11th Cir. 2006); Shepard v. Davis, 300 F. App’x. 832, 841-42 (11th Cir. 2008). An arrest that occurs when uninvited officers cross the threshold and arrest an individual presumptively violates the individual’s clearly established Fourth Amendment rights. Shepard, 300 F. App’x. at 841-42 (explaining warrantless arrest made six feet into the home without consent or exigent circumstances violated the Fourth Amendment).

## 2.3.4 Civil Causes Of Action Arising From An Arrest

### 2.3.4.1 Use of Excessive Force During Arrest

In 1989, the Supreme Court held that, “*all* claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach.” Graham v. Connor, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871 (1989). Some force in effecting an arrest or investigatory stop is allowed. Vinyard v. Wilson, 311 F.3d 1340, 1347 (11th Cir. 2002). Whether the force used during a seizure was reasonable requires “a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing government interests at stake.” Id. (quoting Lee v. Ferraro, 284 F.3d 1188, 1197-98 (11th Cir. 2002)). A Court must examine “(1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted.” Id. The use of force must be reasonably proportionate to the need for that force, which is measured by the severity of the crime, the danger to the officer, and the risk of flight. Id.; see also APD.SOP.3030 ¶ 4.1.6(1)-(3) (use of reasonable force and treatment of arrestees); see also APD.SOP.3020 ¶ 4.1.3 (obligation to avoid unnecessary damage to premises).

*De minimus* force used in effecting a stop or arrest is not unreasonable. In Jones v. City of Dothan, officers slammed a suspect against a wall, kicked his legs apart, required him to raise his arms above his head, and pulled his wallet from his pants. 121 F.3d 1456, 1460 (11th Cir. 1997). In the process, the suspect’s pants were ripped, he experienced pain from lifting his arms as he had recently suffered a stroke, and pain in his arthritic knee from having his legs kicked apart for which he subsequently received minor medical treatment. Id. at 1458, 1460. The



suspect was held for 13 minutes and released after the officers determined they had the wrong person. Id. at 1459.

The Eleventh Circuit in City of Dothan held that “[w]hile use of force against [the suspect] may have been unnecessary, the actual force used and the injury inflicted were both minor in nature” and did not violate the Fourth Amendment. Id. at 1460-61; see also Gold v. City of Miami, 121 F.3d 1442, 1446-47 (11th Cir. 1997) (explaining where suspect suffered only skin abrasions from handcuffs for which he did not seek medical treatment only a minor injury occurred demonstrating that minimal force was used to apply the handcuffs).

Therefore, when the injuries inflicted in effecting an arrest are *de minimus*, a court likely will find that the application of force did not violate the reasonableness requirement of the Fourth Amendment.

### **2.3.5 False Imprisonment**

“False imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty.” O.C.G.A. § 51-7-20 (2010). An individual is “imprisoned” when such person’s movement is restrained. Ferrell v. Mikula, 295 Ga. App. 326, 329, 672 S.E.2d 7, 10-11 (2009). False imprisonment requires an unlawful detention. White v. Traino, 244 Ga. App. 208, 211, 535 S.E.2d 275, 277 (2000) (holding no claim for false imprisonment exists when plaintiffs were detained briefly during the execution of a valid search warrant ). A false imprisonment claim against law enforcement officers for violations of the Fourth Amendment arises when an arrest is made without probable cause. Case v. Eslinger, 555 F.3d 1317, 1330 (11th Cir. 2009).

While neither a Georgia court nor the Eleventh Circuit has held that a Terry stop that was unsupported by reasonable suspicion constitutes false imprisonment, the definition of

“imprisonment” under Ferrell is arguably similar to the definition of “seizure” under Terry. See Terry, 392 U.S. at 16 (defining a seizure as restraining a person’s freedom to walk away). Therefore, it is possible that a claim for false imprisonment lies where an individual is wrongfully detained under Terry even if the Terry stop does not result in or amount to an arrest.

## 2.4 APD SOPS

Section 8 of the Settlement Agreement requires in part that the APD investigate “the individual conduct of each officer involved in the planning, execution, and aftermath of the ‘Eagle Raid’ and any proceeding arising therefrom with regard to each of the following Work Rules in effect on the date of the conduct under investigation”.<sup>931</sup>

- |        |                                |  |
|--------|--------------------------------|--|
| 4.1.03 | Truthfulness <sup>932</sup>    | “Employees will be truthful in their written and spoken words at all times.”   |
| 4.1.05 | Obey the Law <sup>933</sup>    | “Employees will uphold the Constitutions of the United States and the State of Georgia, obey all applicable federal, state, and local laws, and comply with all applicable court decisions and orders of the courts.”  |
| 4.2.02 | Courtesy                       | “A. Employees will be civil, orderly and courteous to the public, co-workers, and supervisors and should not use coarse, insensitive, abusive, violent, or profane language.”  |
| 4.2.03 | Responsibilities of Supervisor | “A. Supervisory employees will enforce the rules and regulations of the Department and will ensure the proper conformity to Department policies and procedures. B. Supervisors will take immediate, appropriate action(s) when the conduct of any employee is contrary to the public interest or the good reputation or proper operation of the Department.” |
| 4.2.05 | Unlawful Orders                | “Supervisors are prohibited from issuing any order which is in violation of any law or Department rule, regulation, directive, or procedure.”  |
| 4.2.12 | Discrimination                 | “Employees will not allow any of their actions or decisions to be affected by prejudice of gender, race, color, religion, sexual orientation, social class, position or standing in the community, or political belief.”   |
| 4.2.13 | Discriminatory References      | “Employees will not refer to any person in a derogatory manner because of their gender, race, color, religion, sexual orientation, social class, position or standing in the community, or political preference.”  |
| 4.2.33 | Conformance to Directives      | “Employees are required to familiarize themselves with, and conform to, the rules, regulations, directives, and Standard   |

- Operating Procedures of the Department.”
- 4.2.49 Abuse of Authority “Employees will not use their authority to abuse, harass, oppress, or persecute any person.”
  - 4.2.50 Maltreatment or Unnecessary Force “A. Employees are expressly prohibited from the unnecessary or unreasonable use of force against any person or property. B. Employees will only use that force which is reasonable and necessary to affect an arrest, prevent an escape, necessarily restrict the movement of a prisoner, defend himself or another from physical assault, or to accomplish other lawful objectives. The reasonableness inquiry refers to whether the employees actions are “objectively reasonable” in light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split second decisions about the amount of force necessary in a particular situation (Graham v. Connor, 490 U.S. 386, 396-97 (1989)).”
  - 4.6.09 Use of Firearms “B. Employees will not point firearms at persons in circumstances unless the discharge of that firearm would be justifiable. Employees who find it necessary to point a firearm at a person should not interpret this necessity as an obligation to discharge the weapon.”

Additionally, the investigation is required to “include a specific inquiry into whether each officer present at the Eagle Raid used his authority to unlawfully detain, frisk, and/or search persons or premises in violation of SOP.3020 [Search and Seizure] and the laws of Georgia and the United States.”<sup>934</sup>

The GT investigation team has used these terms of the Settlement to guide the interviews of witnesses and officers, as well as the review of other evidence. However, not all of these policies are applicable to each officer investigated. For example, Command Staff were not present at the Raid and would not have been able to violate policies related to interactions with patrons and employees. Similarly, rank-and-file officers with the Vice Unit and Red Dog Unit could not have violated policies related to supervisory responsibilities and the giving of orders if they did not serve in a supervisory capacity with regard to the Eagle investigation and Raid. The

following chart displays the applicable policies by type of officer, with inapplicable policies shaded.<sup>935</sup>

### **SECTION 3: APPLICATION OF THE LAW TO OFFICERS**

*It should be noted that the following officer specific analyses track as closely as possible the individual officer's understanding of events. When the preponderance of the evidence dictates a finding against the officer's version of events, then we have made every effort to substitute those facts.*

#### **3.1 Command Staff**

##### **3.1.1 Major Deborah Williams**

**Commander Special Enforcement Section since October 2007<sup>936</sup>  
APD since October 14, 1983**

Major Deborah Williams was the highest ranking APD officer responsible for the Eagle investigation. On Friday, May 15, 2009, an anonymous email complaint about the Eagle was sent to the Mayor's Office.<sup>937</sup> Four days later, this email was forwarded to Williams, Commander of SES, who stated that her section would "look at this ASAP."<sup>938</sup> Williams then forwarded the email to the Vice Unit, which has primary responsibility for related crimes such as prostitution.<sup>939</sup> Williams received sporadic updates on the Eagle investigation thereafter.

The Eagle Raid occurred on the evening of September 10, 2009. Major Williams was not informed about the Raid until the following morning, when Crawford responded to an email sent by Sergeant Collier which copied Major Williams and informed her of the completed operation.<sup>940</sup> By that time, however, Major Williams had already heard about the Raid over the radio and realized that it was a "newsworthy event."<sup>941</sup>

Major Williams called her supervisor, Deputy Chief Carlos Banda, and instructed Lieutenant Crawford to meet her at her office to discuss the Raid so that she could get briefed.<sup>942</sup>

At this time, Williams also began receiving inquiries about the Raid via email from the APD's public affairs officer and the APD LGBT Liaison.<sup>943</sup> During the meeting, Williams asked if Crawford knew that the Raid was going to take place in advance and asked why she was not previously informed.<sup>944</sup> Williams also wanted to find out why Crawford did not supervise the Raid.<sup>945</sup> Crawford responded that he had no advance warning of the Raid.<sup>946</sup> Crawford also indicated that he believed the presence of Brock and Collier on the scene was sufficient. Williams disagreed and stated that a Lieutenant or someone higher in the chain of command should have been present.<sup>947</sup>

As the controversy surrounding the Raid intensified, a press conference was held on September 14, 2009, by Chief Pennington, Deputy Chief Banda, Major Williams, and Officer Harris.<sup>948</sup> Another public statement was given on October 5, 2009, where Deputy Chief Banda and Major Williams continued to address public concerns over the Eagle Raid by speaking at a community forum hosted at the Virginia-Highland Church.<sup>949</sup>

#### Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

#### Use of Fire Arms

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

#### Maltreatment

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Courtesy

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor (4.2.03)

Major Williams, as the highest ranking SES official failed to adequately supervise the Eagle Investigation. In addition, Major Williams presented an inaccurate statement to the public regarding APD policies and procedures.

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Williams violated the above-referenced Standard Operating Procedure.

Unlawful Orders (4.2.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Major Williams violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

Although there are inconsistencies in Major Williams' statements regarding whether she had knowledge that sergeants were signing off on tactical plans, we conclude that these inconsistencies are *not* sufficient to support a finding of an intent to deceive. In her GT interview, Major Williams stated that lieutenants are required to sign tactical plans,<sup>950</sup> and that the Eagle Tactical Plan was the first instance that she was aware of in which a lieutenant or higher did not sign.<sup>951</sup> This statement is corroborated by Sergeant Brock who stated that Major Williams would not have known that sergeants were signing Tactical Plans until after the Raid

when she asked Crawford about this practice.<sup>952</sup> On the other hand, Major Williams stated in her ACRB statement that it was standard practice or procedure for sergeants to sign off on tactical plans. There she stated sergeants signed tactical plans in the “[lieutenant’s] absence, but not without the knowledge of the lieutenant.”<sup>953</sup>

However, after reviewing the context of the surrounding statements in Major Williams’ GT Interview, she provides sufficient qualifying language utilizing the term “sign off” which could be interpreted to mean mere “approval” without requiring an actual signature.<sup>954</sup> This reading is logical in light of the fact that a lieutenant may not always be available to physically sign a tactical plan for every detail due to the significant number of undercover details conducted by a unit such as Vice. In addition, there appears to be a distinction drawn between Tactical Plans for a warrant detailed as compared to Tactical Plans utilized during a routine investigation by Vice.

### **3.1.2 Lieutenant Tony Crawford**

**Vice Unit since Summer 2009  
APD since July 29, 1988**

Lieutenant Tony Crawford was the Commander of the Vice Unit for the duration of the Eagle Investigation and Raid. He first became aware of the Eagle complaint when Major Williams copied him on a response to an email from the Mayor’s Office.<sup>955</sup> Crawford then responded and copied Sergeant Brock and likely Sergeant Collier as well.<sup>956</sup> At that time, Crawford did not provide any direction to Brock and Collier as to how the investigation should be conducted.<sup>957</sup> Crawford did receive updates during the investigation<sup>958</sup> and was confident in the manner in which the investigation was proceeding.<sup>959</sup> Crawford was informed in advance of the scheduled Raid by Sergeant Brock.<sup>960</sup> Brock and Crawford decided to utilize Red Dog for assistance with the detail. Crawford allowed Sergeant Brock to sign the Tactical Plan unseen.<sup>961</sup>



Crawford chose not to be present at the Raid and admittedly did not see the Tactical Plan, and whether it was prior to the Raid.<sup>962</sup>

The day after the Raid, Major Williams instructed Lieutenant Crawford to brief her on the Raid.<sup>963</sup> During the meeting, Williams asked if Crawford knew that the Raid was going to take place in advance and inquired as to why she was not provided advance notice of the Raid.<sup>964</sup> Williams also asked why Crawford did not supervising the Raid.<sup>965</sup> Crawford stated that he had no advance warning of the Raid.<sup>966</sup> Crawford also indicated that he believed the presence of Brock and Collier on the scene was sufficient. Williams disagreed and stated that a Lieutenant or someone higher in the chain of command should have been present.<sup>967</sup>

Numerous individuals within the Vice Unit expressed dissatisfaction with Crawford's management style. During his GT Interview, Sergeant Brock stated "[Crawford] should not have been a lieutenant in my book."<sup>968</sup> Brock describes Crawford as "absentee"<sup>969</sup> and further states that Crawford would show up one day a week, only staying long enough to hold a team meeting.<sup>970</sup> Other officers expressed similar sentiments. Bridges stated that the Vice Unit ran smoother under Rasmussen;<sup>971</sup> and that while Crawford was a lieutenant, Brock was the one *actually* running the unit.<sup>972</sup>

#### Search and Seizure (3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Crawford violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor (4.2.03)

APD policy requires a Lieutenant or higher to approve tactical plans. As a supervisor, Crawford should have reviewed, and approved Tactical Plans. However, Crawford allowed Brock to sign the Eagle Tactical Plan and further, provide inconsistent testimony regarding whether he reviewed the Tactical Plan until after the Raid. Crawford did not comply with this APD policy. Moreover, there is evidence of insufficient supervision provided by those within the Vice Unit and under his chain of command.

Unlawful Orders (4.2.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Crawford violated the above-referenced Standard Operating Procedure.

Unsatisfactory Performance (4.2.37)<sup>973</sup>

Lieutenant Crawford did not provide the Vice Unit with an adequate level of supervision. As previously stated, Crawford rarely, if at all, attended details and was generally unavailable to the Vice Unit. By all accounts, during Crawford's tenure, Sergeant Brock was handling the day-to-day operations of the Vice Unit, including supervising the vast majority of evening

undercover details. After a review of all accessible and relevant information, there is sufficient evidence to find that Crawford violated the above-referenced Starting Operating Procedures.

Truthfulness (4.1.03)

There are numerous statements throughout the transcripts and documents wherein Crawford gives inconsistent statements regarding his prior knowledge of and his supervision over the Raid. Crawford initially stated to OPS that he reviewed the Tactical Plan prior to the Raid.<sup>974</sup> Eight months later, after being called to give a follow up statement to OPS, Crawford admitted with certainty that he did not review the Tactical Plan, but he did have a conversation with Brock after the COBRA meeting on September 10, 2009 regarding the Raid.<sup>975</sup> There appear to be other inconsistent statements regarding whether he admitted to Major Williams that he had this conversation with Sergeant Brock the day of the Raid. Thus, the evidence supports a finding that Crawford was untruthful with regard to material issues and violated APD SOP 4.1.03.

**3.1.3 Lieutenant Scott Pautsch**

**Red Dog Unit approximately 2 years**

Lieutenant Pautsch was Commander of the Red Dog Unit at the time of the Eagle Raid. Prior to the Raid Sergeant Brock informed Lieutenant Pautsch of citizen complaints of illegal activity at the Eagle.<sup>976</sup> Brock requested Red Dog assistance to secure the perimeter of the Eagle.<sup>977</sup> Pautsch understood that Red Dog was only to secure the perimeter and would not enter the Eagle.<sup>978</sup> Even Brock admits that they did not decide whether Red Dog would enter the bar until that night.<sup>979</sup> Based upon Pautsch's understanding, and because it was a minor operation, Pautsch delegated responsibility to Sergeant Adams.<sup>980</sup> Pautsch never reviewed the Tactical Plan prior to the Raid.<sup>981</sup> As Pautsch was not present at the scene, he cannot be held accountable for any violations that may have occurred. Additionally, per APD Policy, when multiple units are

involved in the same operation, the unit with the primary responsibility (Vice Unit) shall be responsible for the overall supervision of all employees engaged in that operation.<sup>982</sup> Accordingly, Pautsch also bears no supervisory responsibility because Red Dog was not the lead unit and was merely assisting the Vice Unit in the Eagle investigation and Raid.<sup>983</sup>

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Courtesy (4.2/02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor (4.2.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Unlawful Orders (4.2.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Lieutenant Pautsch violated the above-referenced Standard Operating Procedure.

**3.2 Sergeants at the Eagle**

**3.2.1 Sergeant John Brock**

**Vice Unit approximately 4 years  
APD since July 29, 1992  
Photo Array ID No. 4245**

The Vice Unit was assigned to “investigate [] and handle” the Eagle detail.<sup>984</sup> Sergeant Brock of the Vice Unit was designated as the lead supervisor.<sup>985</sup>

On Thursday, May 21, 2009, Sergeants Brock and Collier, and eleven members of the Vice Unit conducted an undercover operation to investigate the citizen complaint.<sup>986</sup> As part of the undercover detail, Brock recalls ordering a beer to blend in with the crowd.<sup>987</sup> During the undercover detail, police observed males “wearing only g-strings dancing on top of the bar receiving tips,”<sup>988</sup> two dancers on the bar “pull[ing] down the front of their underwear, exposing their penis[es],” and three men openly engaging in anal and oral sex as other patrons watched and masturbated.<sup>989</sup> Despite witnessing these illegal acts, no arrests were made that night by the Vice Unit. Brock states that his officers were “caught off guard” by this behavior happening openly in the Eagle and made the decision to leave and “regroup” reassess the course of the investigation.<sup>990</sup>

Following the initial visit to the Eagle, Bennie Bridges was assigned to be the lead investigator of the complaint.<sup>991</sup> There were two subsequent investigative visits to the Eagle bar on June 11, 2009 and September 3, 2009.<sup>992</sup> However, Brock was not present during those visits.<sup>993</sup>

On Wednesday, September 9, 2009, Sergeant Brock determined that Vice had enough evidence to establish a pattern of illegal activity and to conclude its investigation.<sup>994</sup> Brock viewed a search warrant unnecessary given the types of crimes investigated and because the Eagle was a public establishment.<sup>995</sup> Because the Gangs Unit was unavailable to assist with the raid, which was scheduled for the following day,<sup>996</sup> Lieutenant Crawford and Brock sought assistance from the Red Dog Unit.<sup>997</sup> On the morning of September 10, 2009, Brock informed Crawford that the Vice Unit was “going to hit the Eagle Bar tonight” and that “we’re going to use Red Dog.”<sup>998</sup> Crawford instructed Brock to update him by email after the Raid.<sup>999</sup> Brock then spoke with Lieutenant Scott Pautsch, Commander of the Red Dog Unit, and requested Red Dog teams to cover the perimeter.<sup>1000</sup> Brock believed his request for assistance with the “perimeter” also included assistance inside the Eagle where the majority of patrons and employees would be located.<sup>1001</sup> Pautsch approved the request and directed Sergeant Willie Adams, III, of Red Dog to coordinate with Brock.<sup>1002</sup> Adams briefly talked with Brock regarding the pre-Raid briefing.<sup>1003</sup>

On September 10, 2009, the Vice and Red Dog Unit officers gathered for the pre-Raid briefing.<sup>1004</sup> Brock was the officer in command of the detail on the night of the Eagle Raid.<sup>1005</sup> The Tactical Plan drafted by Investigator Bridges was approved by Brock.<sup>1006</sup> Though Bridges arranged and led the briefing, Brock and others added additional information throughout.<sup>1007</sup> The briefing included a background of the investigation,<sup>1008</sup> and walked officers through the Tactical Plan.<sup>1009</sup>

Officers were given specific assignments.<sup>1010</sup> Per the Tactical Plan, it was explained that undercover Vice officers would enter the bar first to observe and make cases. There was also discussion during the briefing about what to do with patrons who were not suspected of



committing any crime. Brock made the decision to put the patrons on the ground upon entry. The decision to place the patrons on the ground was based upon Brock's designation of the detail as "high risk" because: (1) there existed the potential that patrons possessed weapons in the bar (especially since the undercover officers themselves were able to enter the establishment while possessing weapons);<sup>1011</sup> (2) the gay community in his experience presented the potential for increased violence;<sup>1012</sup> and (3) of the anticipated large number of patrons.<sup>1013</sup>

Officers were instructed that anyone to be arrested would be placed in handcuffs.<sup>1014</sup> Brock instructed officers to run these patrons' names and ID on GCIC Before releasing the detained patrons.<sup>1015</sup> Brock's common practice was to run names and IDs of individuals at crime scenes in GCIC (following criticisms of operations by former Chief Richard Pennington where this practice was not followed).<sup>1016</sup> At the conclusion of the briefing, all Vice officers except for Officer Mague, drove to the Eagle while the Red Dog officers remained in the church parking lot.<sup>1017</sup>

Brock and several other undercover Vice Unit officers entered the Eagle as they had on previous undercover details.<sup>1018</sup> Sergeant Brock also recalls seeing dancers on the bar receiving tips but he did not see any other illegal activity that night.<sup>1019</sup> Although Brock did not see any other illegal activity that night, Bridges informed Brock that cases had been made. With Brock's approval, Bridges called Officer Mague to give the signal for Red Dog to come into the bar.<sup>1020</sup>

Immediately before Red Dog entered, Brock approached and handcuffed Chris Lopez and Robert Kelley to one another.<sup>1021</sup> Lopez and Kelley were escorted by Brock from behind the Main Bar to the Dance Floor where arrestees were to be placed.<sup>1022</sup> As they were being escorted, Brock witnessed a Red Dog officer kicking in the Kitchen door.<sup>1023</sup>

According to a witness, a Red Dog officer had his semi-automatic firearm drawn while entering the bar and kept it unholstered when trying to get the lights turned on.<sup>1024</sup> According to witness testimony, an older officer who appeared to be in charge (white, slightly overweight, 50s, dark hair) told the Red Dog officer to “put that away” while patrons were on the ground.

A patron recalls seeing Sergeant Brock<sup>1025</sup> enter the Back Bar and commenting, “Mmm, mmm, mmm, look at all this loving going on.”<sup>1026</sup> Patrons claim Brock was also searching for a patron in a “red hat” who had been observed committing sexual acts earlier and stated that “nobody was leaving until somebody admitted they traded favors with the guy in the red hat.”<sup>1027</sup>

Subsequent to the Eagle Raid, eight of the employees arrested were charged and went to trial on the issues. On March 11, 2010, seven of the “Eagle 8” defendants either had the charges against them dismissed or were acquitted at trial. During the trial, Brock testified on behalf of the prosecution. At the hearing Brock answered as follows with respect to the events on the evening of September 10, 2009:

Gardner: Could you see how to -- how to get about?

Brock: Yes, you could see the (indiscernible).

Gardner: All right, did you make certain observations in that club on that particular night?

Brock: Yes.

Gardner: Well, let’s talk about what you saw. What did you see?

Brock: It seemed to be going on as a previous time I had been in the location.

Gardner: Let’s just talk about this night.

Brock: This night, there was a couple guys dancing on the bar, two bartenders. It was a couple people dancing on --

Gardner: Can you speak up for me?

Brock: A couple of people dancing on the Dance Floor. There was some guys playing pool. There were guys walking back and forth to the Back Room. In that Back Room there were several people paired up involved in some sort of sexual act.

Search and Seizure (.3020)

Sergeant Brock's search of the Eagle's bartenders did not violate APD.SOP.3020 ¶ 4.3.2, which allows officers to search the person and the area within his immediate presence for weapons, contraband and to prevent escape. APD.SOP.3020 ¶ 4.3.2(1). Further, the arrest generally preceded or was substantially contemporaneous with the search. APD.SOP.3020 ¶ 4.3.2(2). Sergeant Brock complied with APD's Standard Operating Procedures for a search incident to arrest.

The frisks of the patrons, however, violated APD.SOP.3020 ¶ 4.3.3(4), which only allows frisks based on an officer's belief that the person may be armed. Based on the absence of facts showing the officers reasonably believed they were concerned for their safety or the safety of others, the order to frisk all patrons violated APD.SOP.3020 ¶ 4.3.3(4).

Sergeant Brock's broad directive to detain all patrons also clearly violated APD's Standard Operating Procedures. To detain someone, "officers must have a particularized and objective basis for suspecting the particular person detained [was or is involved in] criminal activity." APD.SOP.3020 ¶ 4.3.3(3). When Sergeant Brock issued the directive, he was unaware of any particularized and objective basis for suspecting all the patrons were involved in criminal activity. Further, during the Raid, he did nothing to allow patrons who were not suspected of criminal activity to leave the premises. Therefore, Sergeant Brock clearly violated APD's Standard Operating Procedure for detentions.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Brock violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Brock violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

Brock was positively identified as making inappropriate comments to Scott Schneider and Leandro Apud.<sup>1028</sup> These witnesses appeared to be truthful, and these statements were further corroborated by the fact that Brock was placed in or around the areas in which he was present. Finally, these facts, when considered with a finding of violation of APD SOP 4.2.12 (below) are sufficient to conclude that Brock violated APD SOP 4.2.02 regarding courtesy.

Discrimination (4.2.12)

The following exchange took place during GT's interview of Sergeant Brock:

MR. NAGELBERG: Did you consider this to be a high-risk operation?

SERGEANT BROCK: Okay. We went through the high-risk thing --

MR. NAGELBERG: Sure.

SERGEANT BROCK: -- before. Now, as far as a dynamic entry, no. But high risk, we had guns. And it seems like everybody shies -- sides against that. But I'm not going to bury a police officer. When we have guns in there, anybody else could have guns in there. It happens in the news all the time. People go into bars, just shoot it up. I mean, officers at a freaking doughnut shop get shot up. It's just retarded. So, yeah, **there is a risk factor involved when you deal with people you don't know anything about. S&M, that -- that has a stigma of some sort of violence. In the past I have as a patrol officer handled calls where there are gay couples living in residence where one is mad at the other, and they**

**slash clothes, furniture, anything they can do. They're very violent. So, no. I definitely do think there was a high risk there. I think the only safe way -- and I think you're getting towards why I had everybody put on the ground.** And it was -- it was between Sergeant Adams and me and Sergeant Collier during the briefing, and I made the suggestion I think it's safer everybody on the ground. We're going to have undercovers in there. And that -- and we came to a common agreement.

MR. NAGELBERG: Do you think that the gay community is more violent than other citizen groups, based on your experience?

SERGEANT BROCK: My experience, yes. Yeah. Yeah. I mean, when they're -- when they get mad, they get really mad. So . . .

MR. NAGELBERG: **And I just -- I don't want to put words in your mouth. I'm just trying to make sure I understand what you're saying.** And based on those experiences, you also thought that Red Dog was a more appropriate unit -- not more appropriate -- was an appropriate unit to use?

SERGEANT BROCK: No. Based on the number of folks in there --

MR. NAGELBERG: Okay.

SERGEANT BROCK: -- **Red Dog was appropriate.** But that was hindsight. I didn't know there was going to be 60 people in there. The previous nights we went in there, I wouldn't have thought there would have been 60 people in there. I wouldn't even have thought there would have been 60 people in there that night after the fact. There was a lot of people in there.<sup>1029</sup>

Upon review of this transcript, it is apparent that three safety factors influenced Sergeant Brock's decision to detain all the patrons in the Eagle on the floor regardless of whether they were suspect of committing a crime: (1) the possibility that patrons could have guns because Vice officers had not been searched when entering the bar on previous undercover operations; (2) the belief that the patrons of a gay establishment are inherently more violent than similarly situated non-gay establishments; and (3) the anticipated large number of patrons. Per APD.SOP. 4.2.12 (Discrimination), officers are not allowed to have any of their actions or decisions be affected by prejudice of sexual orientation. The second safety factor in Brock's decision to detain patrons on the ground violates this SOP. By allowing the sexual orientation of the patrons

influence tactical decisions of the Raid, Brock allowed his preconceived notions of a class of persons to dictate the treatment of individuals. Although the presence of other safety factors might mitigate the role that sexual orientation played in Brock's decision, the SOP creates an absolute prohibition on prejudice in the performance of an officer's duties.

*Discriminatory References (4.2.13)*

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Brock violated the above-referenced Standard Operating Procedure.<sup>1030</sup>

*Conformance to Directives (4.2.33)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Brock violated the above-referenced Standard Operating Procedure.

*Responsibility of Supervisor (4.2.03)*

Sergeant Brock admits to seeing officers performing frisks and kicking the Kitchen door. As a sergeant, Brock was responsible for ensuring that the officers at the Eagle that night complied with the rules, regulations and Standard Operating Procedures. Brock did not take "immediate, appropriate action" when the officers' conduct was contrary to these requirements, and thus, there is sufficient evidence to find that he violated the above-referenced Standard Operating Procedure.

*Unlawful Orders (4.2.05)*

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Brock violated the above-referenced Standard Operating Procedure.<sup>1031</sup>

*Abuse of Authority (4.2.49)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Brock violated the above-referenced Standard Operating

Procedure. Instead, Brock's conduct is appropriately addressed within the context of APD SOP 4.2.02, 4.2.12, and 4.2.13.

Obey the Law (4.1.05)

I. EAGLE EMPLOYEES

A. Warrantless Searches - Search Incident to Arrest

The arrest of the bartenders was lawful because they committed offenses in the presence of Sergeant Brock, therefore, any search of their persons and the area within their immediate reach was also lawful. Although the bartenders' pants were searched prior to handcuffing, the arrest was effected when Sergeant Brock flashed his badge, identified himself, and detained the bartenders. At that time, it was reasonable for the bartenders to believe they were under arrest and they submitted to Sergeant Brock's authority before the handcuffs were applied. Therefore, the search was incident to a lawful arrest and did not violate the Fourth Amendment.

B. Warrantless Seizures - Arrest

Sergeant Brock properly arrested the Eagle bartenders. A warrantless arrest in a public building is permitted provided there is probable cause to believe the suspect has committed a crime.<sup>1032</sup> If an offense is committed in the officer's presence or within his immediate knowledge, a warrantless arrest in a public area does not violate the Fourth Amendment.<sup>1033</sup> In the present matter, Sergeant Brock personally observed adult entertainment and alcohol being served in violation of Atlanta's adult entertainment ordinance. Therefore, the arrest of the bartenders was proper.

II. EAGLE PATRONS

A. Warrantless Searches - Terry Frisk

Sergeant Brock knowingly violated the patrons' Fourth Amendment rights when he instructed that all patrons to be frisked for weapons.<sup>1034</sup> Even where a bar is searched pursuant to

a valid warrant, officers may not frisk all of the bar's patrons absent reasonable suspicion that each patron is armed and presently dangerous.<sup>1035</sup> In the absence of a warrant, such a frisk is altogether more unreasonable under the Fourth Amendment. Although Sergeant Brock recognizes that APD does not have the right to pat down every person at a crime scene unless they were involved with the crime,<sup>1036</sup> Sergeant Brock instructed Vice officers to frisk each and every patron for weapons. There are no facts indicating that Sergeant Brock had an individualized, articulable suspicion that each of the patrons was armed and presently dangerous. Indeed, he testified that he was not aware of any complaints of violence in or around the Eagle before the Raid.<sup>1037</sup> Further, there are no facts indicating illegal narcotics were present in the Eagle. During previous undercover investigations, the officers were never solicited for drugs and they never saw any drug dime bag wrappers.<sup>1038</sup> Therefore, the order to frisk all patrons in the Eagle violated the Fourth Amendment's protection against unreasonable searches.

B. Warrantless Seizures - Terry Stop

Sergeant Brock's broad directive ordering all patrons to be placed face down on the floor until their drivers' licenses were cleared through the GCIC system violated the Fourth Amendment.<sup>1039</sup> Based upon our investigation, we find that neither the detentions nor the requests for IDs was voluntary; in other words, we find that, under the circumstances, (1) none of the patrons believed they had a right to refuse to comply with the officers' directives and (2) the officers intended demands and commands rather than mere requests.

Although Sergeant Brock may not have placed any patrons or obtained their IDs, himself, he was present when these actions occurred and he did not stop the Fourth Amendment violations. Indeed, he was directing the violations. While it seems that Brock's directive was made, at least in part, to secure the premises so that arrests could be made, which, indeed is a



legitimate motive, there were constitutional ways to do this. Instead, Brock and the officers on the scene chose to hold patrons much longer than necessary for ID checks.

The wholesale detentions of the Eagle patrons were not valid under Terry.<sup>1040</sup> A Terry stop must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably support the suspicion that a person has committed a criminal offense.<sup>1041</sup> Under such circumstances, an officer may stop the individual for a brief time and take additional steps to investigate further.<sup>1042</sup> If certain patrons were suspected of engaging in illicit activity, those few patrons should have been identified and detained. The remaining patrons should have been released immediately thereafter. Instead, all patrons were held illegally for an inordinate period of time.

Pretermitted whether running identification for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all of the patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention.<sup>1043</sup> In this instance, however, the across-the-board Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

### C. Warrantless Seizures - Arrest

Further, the prolonged Terry detention may have led to improper, constructive arrests.<sup>1044</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1045</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron

believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1046</sup> may have led to unlawful, constructive arrests.

#### D. False Imprisonment

Sergeant Brock's directive to detain patrons and keep them until their IDs were cleared through GCIC constituted false imprisonment. A person is falsely imprisoned when he or she is unlawfully detained *for any length of time* and deprived of personal liberty.<sup>1047</sup> Here is it undisputed that the patrons were unlawfully detained and their movement was restrained. The duration of the imprisonment differed for each patron - each patron's imprisonment ended when they were handed their IDs and told that they were free to leave the premises. Although police vehicles may have blocked the driveways exiting the Eagle, the patrons' personal liberties to move about freely were no longer restrained even though they could not leave in their own vehicles.

#### Truthfulness (4.1.03)

Sergeant Brock provided inconsistent statements with regard to whether he witnessed patrons engaged in sexual activities the night of the Raid. Sergeant Brock admits that the only illegal activity he witnessed the night of the Raid was dancers on the bar receiving tips. Sergeant Brock also admits that he was posted in the Main Bar, and did not go to any of the Back Rooms in the Eagle prior to Red Dog making entry. Despite this, on March 11, 2010, he testified in the Municipal Court trial of the "Eagle 8" that he witnessed sexual activity inside the Eagle the night of the Raid. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Brock violated the above-referenced Standard Operating Procedure.

### 3.2.2 Sergeant Kelley Collier

**Vice Unit approximately 1 year (currently assigned to Weed & Seed)  
APD since March 3, 1998  
Photo Array ID No. 4258**

During the Eagle investigation, Collier was a Sergeant in the Vice Unit and attended multiple undercover operations.<sup>1048</sup> Collier initially learned of the Eagle by way of an email sent from Major Williams.<sup>1049</sup> Prior to conducting any undercover operations at the Eagle, Sergeant Collier was sent on a drive-by reconnaissance detail by Crawford, but observed no illegal activity.<sup>1050</sup> Although no illegal activity was witnessed, Collier agreed to run a detail inside the Eagle the following night, at which point Brock assumed the lead supervisory role.<sup>1051</sup> During the first undercover operation on May 21, 2009, Collier did not drink any alcohol that night<sup>1052</sup> and aside from payment for the cover charge, no other money was spent on his behalf.<sup>1053</sup> Upon entry, Collier proceeded to the Main Bar to observe.<sup>1054</sup> Collier recalls Godwin informing him that sexual activities were occurring in either the Club Room or the Game Room.<sup>1055</sup> Collier went to the back of the bar and witnessed a man having anal sex with another man and also witnessed a man performing oral sex on a third man.<sup>1056</sup>

On the second visit to the Eagle, which occurred on June 11, 2009, Collier was in charge as Brock was not present.<sup>1057</sup> Collier states that he would have reviewed and signed the Tactical Plan for this visit because Brock was not present.<sup>1058</sup> This operation was strictly for observation purposes.<sup>1059</sup> Collier did not drink any alcohol on this undercover visit.<sup>1060</sup> Upon entering, Collier again went to the Main Bar area, he doesn't recall whether anyone was dancing that night.<sup>1061</sup> Collier does not specifically recall what other rooms he entered that night.<sup>1062</sup> He does not recall witnessing any illegal activity that night nor does he remember being told by any other officers that they had seen any illegal activity.<sup>1063</sup> Collier does not recall being present for the third detail at the Eagle.<sup>1064</sup>

Collier recalls attending the briefing that occurred prior to the Raid on September 10, 2009.<sup>1065</sup> Collier does not recall any discussion at the briefing regarding pat-downs but does recall Sergeant Brock mentioning something about running IDs.<sup>1066</sup> Collier states that there was no mention of a warrant at the briefing, but he knew that no warrant existed.<sup>1067</sup> Collier was surprised when it was discussed that everyone was going to be put on the ground.<sup>1068</sup>

That night, Collier was assigned to the Main Bar.<sup>1069</sup> He was surprised at his assignment because he thought he would be given a supervisory capacity.<sup>1070</sup> He also saw dancers in G-Strings and states that one or two patrons had their pants pulled down.<sup>1071</sup> He did not purchase nor drink any alcoholic beverages.<sup>1072</sup> When Red Dog entered, Collier recalls seeing flashlights,<sup>1073</sup> and recalled Robert Kelley telling another Eagle employee that the police had arrived.<sup>1074</sup> Collier assumed that the Kelley was telling the other employee to go to the Back Room because that is normally where the sex acts occur.<sup>1075</sup> Collier states that at some point, patrons and employees were put on the ground.<sup>1076</sup> He recalls that Red Dog officers were the ones to give the order to put people on the floor and that Vice officers were given orders not to put hands on anyone because they were not wearing uniforms.<sup>1077</sup>

Collier did not witness any officer use force to put anyone on the floor.<sup>1078</sup> Collier did not witness any officers conducting any pat-downs.<sup>1079</sup> He does not recall whether patrons were searched for IDs; he states that he learned that people were searched after the Raid from the complaints.<sup>1080</sup> Collier denies conducting any searches.<sup>1081</sup> Collier does not recall hearing any officers calling Eagle patrons or employees names, but at a later date, he learned that complaints of that nature were made.<sup>1082</sup>

Finally, Collier admits to going upstairs at some point during the night of the Raid.<sup>1083</sup> Collier denies using any profanity or abusive language on the night of the Raid.<sup>1084</sup>

### Search and Seizure (.3020)

Sergeant Collier violated APD's Standard Operating Procedures for detentions. To detain someone, "officers must have a particularized and objective basis for suspecting the particular person detained [was or is involved in] criminal activity." APD.SOP.3020 ¶ 4.3.3(3). Sergeant Collier did not see any illegal activity from his position in the Eagle.<sup>1085</sup> As such, he did not have a particularized and objective basis for detaining the patrons in the Main Bar.

Collier did not conduct any searches of patrons or employees nor did he conduct any pat-downs. It is also clear that he did not search any areas of the Eagle nor did he open any drawers or look in any closets. Although he accompanied Bridges and Kelly upstairs, he did not enter the upstairs room. As such, there is no evidence that Collier violated APD.SOP.3020 ¶¶ 4.3.2, 4.3.3(4) or 4.3.4.

### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

### Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor (4.2.03)

Collier's assignment was in the Main Bar, where there is overwhelming evidence from officers and patrons alike, that the patrons were frisked by Red Dog officers. As a sergeant, Collier was responsible for ensuring that the officers at the Eagle that night complied with the rules, regulations and Standard Operating Procedures. By his own admission, Collier failed to properly observe and supervise the officers, including during the time they were conducting improper frisks. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Unlawful Orders (4.2.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard

Operating Procedure. It should be specifically noted that there is no evidence to indicate that Sergeant Collier “issued” an unlawful order on the night of the Raid.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures

Sergeant Collier’s detention of Mr. Kelley was proper. When the Raid began, Mr. Kelley was behind the bar, therefore, it was reasonable for Sergeant Collier to believe that Mr. Kelley was an employee of the Eagle. Based on his personal knowledge of City of Atlanta ordinance violations in the Eagle, the detention of Mr. Kelley did not violate the Fourth Amendment.

Sergeant Collier wrongfully detained the patrons.<sup>1086</sup> Although Sergeant Collier believed the plan was to allow non-suspect patrons to leave, he did nothing when he saw patrons ordered to the ground detained despite his belief that such a detention was illegal. The wholesale detentions of the Eagle patrons were not valid under Terry v. Ohio.<sup>1087</sup> A Terry stop must be based on specific and articulable facts which, taken together with rational inferences from those facts, support the suspicion that a person has committed a criminal offense.<sup>1088</sup> Under such circumstances, an officer may stop the individual for a brief time and take additional steps to investigate further.<sup>1089</sup> If certain patrons were suspected of engaging in illicit activity, those few patrons should have been identified and detained. The remaining patrons should have been released immediately thereafter. Instead, all patrons were held illegally for an inordinate period of time.

Pretermitted whether running an ID for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all of the patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention.<sup>1090</sup> In this instance, however, the across-the-board Terry detentions were not valid because the officers did not have any specific and articulable facts that support a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning IDs, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1091</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1092</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1093</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Sergeant Collier's adherence to Sergeant Brock's directive to detain patrons and keep them on the floor until their licenses were cleared through GCIC constituted false imprisonment. Indeed, Sergeant Collier's failure to intervene during the constitutional violation renders him liable even if he did not personally participate in the violations. A person is falsely imprisoned when he or she is unlawfully detained *for any length of time* and deprived of personal liberty.<sup>1094</sup>



Here is it undisputed that the patrons were unlawfully detained and their movement was restrained. The duration of the imprisonment differed for each patron - each patron's imprisonment ended when they were handed their IDs and told that they were free to leave the premises.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Collier violated the above-referenced Standard Operating Procedure.

**3.2.3 Sergeant Willie Adams, III**

**Red Dog Unit approximately 5 years  
APD since July 28, 1991  
Photo Array ID No. 4182**

Adams was not involved in the Vice Unit's investigation leading up to the night of September 10, 2009.<sup>1095</sup> On September 10, 2009, Lieutenant Pautsch instructed Adams to have the Red Dog Unit assist the Vice Unit for the Eagle Bar Raid.<sup>1096</sup> Pautsch directed Adams to coordinate the detail with Sergeant Brock from the Vice Unit.<sup>1097</sup> Adams talked with Brock and was given the time and location to meet for the pre-Raid briefing.<sup>1098</sup>

Adams and the Red Dog Unit officers gathered at the staging area for the pre-Raid briefing.<sup>1099</sup> Adams arrived to the meeting location early to review the Tactical Plan.<sup>1100</sup> Adams was the only supervisor from Red Dog on the scene that evening, and therefore was Red Dog's commanding officer for the Raid.<sup>1101</sup> Brock, Investigator Bridges and Adams discussed the details of the Raid prior to briefing the other officers.<sup>1102</sup> Adams was the only Red Dog officer to be provided with a copy of the Tactical Plan, because, as the commanding officer of that unit, he "was the only one that needed it."<sup>1103</sup> Adams was not aware as to whether the Vice Unit had obtained a warrant for the detail, and only reviewed the Tactical Plan.<sup>1104</sup> If a warrant had

existed Adams knew that he would have been obliged to review the warrant and file a copy within Red Dog's records.<sup>1105</sup> On Brock's suggestion, a joint decision was made by Brock and Adams, with input from Bridges (a non-supervisor) to put all patrons on the ground because of the officer safety issue.<sup>1106</sup> The majority of the Red Dog officers witnessed Adams' pre-briefing review of the paperwork and pre-briefing discussions with the Brock and Bridges. Based upon the discussion with Brock and Bridges and his review of the Tactical Plan, Adams understood that Red Dog's primary mission that evening was to secure the scene and support the Vice Unit.<sup>1107</sup>

Bridges led the pre-Raid briefing to the officers, but Brock added additional information throughout.<sup>1108</sup> Adams understood that his primary role pursuant to the briefing was to supervise and patrol all areas to verify that Red Dog officers complied with the Tactical Plan and all APD SOPs.<sup>1109</sup> Adams gave a specific order to the Red Dog officers to place all patrons on the ground once called into the Eagle, so as to secure the location.<sup>1110</sup> Red Dog officers were also instructed that anyone to be arrested would be placed in handcuffs, while those not suspected of committing a crime would be separated from that group and not handcuffed.<sup>1111</sup> The Red Dog officers recognized Adams as the highest officer in the chain of command at the detail with respect to their duties.<sup>1112</sup> At the conclusion of the briefing, all the Vice officers, except for Officer Mague, drove to the Eagle, while the Red Dog teams remained at the staging area.

Bridges gave the signal for Red Dog to come into the Eagle.<sup>1113</sup> Officer Mague led the Red Dog officers in multiple vehicles from the staging area to the Eagle. As the vehicles were individually parked, the officers exited the vehicles and began entering the Eagle. Adams says he was at the back of the line of officers entering the Eagle because he was the supervising officer verifying that each officer was positioned at his designated post.<sup>1114</sup> Upon entering the

Eagle, Adams states that all of the patrons were already on the floor and were being cooperative.<sup>1115</sup> Once in the Eagle, Adams began walking throughout the Eagle because he did not have a post, and was focused primarily on officer compliance and conduct.<sup>1116</sup>

Adams states that he did not witness any Red Dog officer using cell phones, using abusive or profane language or using force during his patrol.<sup>1117</sup> Adams states that using a cell phone to text or for other personal reasons would be inappropriate during a detail.<sup>1118</sup> Adams provides inconsistent statements as to whether he witnessed police officers patting down the patrons during the Raid.<sup>1119</sup> Although Adams knew officers were collecting IDs, he claims he did not know how the officers were doing so.<sup>1120</sup> Adams provided inconsistent testimony as to how long the patrons of the Eagle were kept on the floor. In certain statements he indicates that the patrons were all sitting at the time of his entry,<sup>1121</sup> in other statements, he alleges he started sitting patrons up quickly after the scene was secure.<sup>1122</sup>

Adams states that during his patrol he overheard an investigator speaking with a patron and the patron made reference to an owner or manager that was upstairs in the Eagle. Adams did not discuss the information he learned with Brock or Bridges.<sup>1123</sup> Instead, upon hearing that information, Sergeant Adams instructed Officer Condon to go to the second floor of the Eagle with him to retrieve the manager/owner.<sup>1124</sup> Once upstairs, Adams attempted to open the closed and locked door of the Apartment of the off-duty weekend manager, David Shepherd.<sup>1125</sup> Adams and Condon knocked on the door. Shepherd answered and was instructed by Adams to come with the officers down to the Eagle.<sup>1126</sup> Either Sergeant Adams, or Condon, or both, stepped into the Apartment at some point.<sup>1127</sup> Shepherd was escorted downstairs to the Main Bar and handed off to the Vice investigators.<sup>1128</sup> Adams asked a Vice investigator to secure the upstairs area.<sup>1129</sup> Adams states he did not conduct a search of any other *locked* area of the bar that night.<sup>1130</sup> That

said, it appears that Adams did search unlocked areas of the Eagle looking for potential patrons or employees.<sup>1131</sup>

Adams states that running all the patrons through the GCIC system was a Vice Unit decision.<sup>1132</sup> Adams believes he was in the Eagle for approximately forty five minutes to an hour.<sup>1133</sup> After leaving the scene Adams called Lieutenant Pautsch from his City-issued cell phone to inform him that the Raid had ended.<sup>1134</sup>

#### Search and Seizure (.3020)

As the Red Dog supervisor, Adams is responsible for all Red Dog officers at the detail. Red Dog's frisks of the Eagle's patrons also violated APD.SOP.3020 ¶ 4.3.3(4), which only allows frisks based on an officer's belief that the person may be armed. "The authority to frisk or pat down must not be driven by an investigatory motive, but propelled by the officer's concern for their safety or the safety of others." APD.SOP.3020 ¶ 4.3.3(4). Based on the absence of facts showing the officers reasonably believed they were concerned for their safety or the safety of others, the order to frisk all patrons violated APD.SOP.3020 ¶ 4.3.3(4).

Red Dog officers' search of the patrons' pockets violated SOP.3020 ¶ 4.3.2 because the search incident to arrest doctrine does not authorize a search of all patrons within an establishment based on the arrest of some individuals.<sup>1135</sup> As none of the patrons were properly arrested, the search of their pockets violated Standard Operating Procedures.

Further, Red Dog's act of kicking in the Kitchen door violated APD's Standard Operating Procedure regarding searches, as it was neither a valid protective sweep or search incident to arrest.<sup>1136</sup>

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor (4.2.03)

The Red Dog officers recognized Adams as the highest officer in the chain of command at the detail with respect to their duties. Adams did not meet the responsibilities of the commanding officer of the Red Dog Unit on the night of September 10, 2009. Adams was not aware as to whether the Vice Unit had obtained a warrant for the detail, yet instructed the Red Dog officers to place the patrons on the ground and to detain them unnecessarily.<sup>1137</sup> Adams should have known to request a warrant or additional supporting facts prior to giving such a command. Shortly after the Raid, Adams could not provide accurate facts or details of the Red Dog officers' conduct during to the event. This is so notwithstanding the fact that Adams admits that his primary role was to supervise the officers and ensure compliance with the Tactical Plan. Adams did not appear to have sufficient control over his officers (*i.e., Kitchen door kicked in*) or the scene on the evening of September 10, 2009. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Unlawful Orders (4.2.05)

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Adams violated the above-referenced Standard Operating Procedure.<sup>1138</sup>

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Sergeant Adams violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE EMPLOYEES

A. Warrantless Seizures - Arrest

While the arrests of other Eagle employees were lawful, Sergeant Adams violated the Fourth Amendment when he effected the warrantless arrest of off-duty Eagle manager Mr. Shepherd in his home for the violation of a nonfelonious crime, assuming that he was in a home or residence within the meaning of the Fourth Amendment.<sup>1139</sup> Sergeant Adams and Officer Condon also violated the Fourth Amendment when they entered into Shepherd's Apartment without a warrant and in the absence of any exigencies.<sup>1140</sup> The entry of the officers into the home, the presence of the officers in the home and their instruction to accompany them downstairs would lead a reasonable person to believe that he was not free to walk away.<sup>1141</sup> As such, a warrantless arrest occurred before Shepherd was taken downstairs and given formal charges.

No exigent circumstances existed which would excuse the warrant requirement. Sergeant Adams was not aware of any facts indicating Shepherd was a flight risk. Indeed, Shepherd appeared not to know that the Eagle had been raided and Red Dog had officers stationed outside to secure the premises. Adams Tr. pp. 59-60; 155. Shepherd was cooperative and, as such, there were no facts indicating he posed an immediate danger to the officers or the public. Adams Tr. pp. 159. The record is void of any facts indicating Shepherd was destroying evidence or about to destroy evidence and the officers clearly were not in hot pursuit of Shepherd. Therefore, the warrantless arrest of Shepherd in his home violated the Fourth Amendment.

B. False Imprisonment

Sergeant Adams falsely imprisoned Shepherd when he was improperly arrested without a warrant. The false imprisonment continued until Shepherd was released from jail.

## II. EAGLE PATRONS

### A. Warrantless Searches - Terry Frisk

Sergeant Adams violated the Fourth Amendment when he allowed his officers to frisk the Eagle's patrons indiscriminately without a reasonable articulable belief that each and every patron was armed and presently dangerous. Even where a bar is searched pursuant to a valid warrant, officers may not frisk all of the bar's patrons absent reasonable suspicion that each patron is armed and presently dangerous. In the absence of a warrant, such a frisk is altogether more unreasonable under the Fourth Amendment. Thus, Sergeant Adams knowingly violated the Fourth Amendment's prohibition against unreasonable searches.

### B. Warrantless Searches - Search Incident to Arrest

Many patrons stated that their pockets were searched by Red Dog officers while they were prone on the floor. Their wallets, IDs, cell phones and other items were taken out of their pockets. This search violated the Fourth Amendment's protections against unreasonable searches as the officers did not have probable cause to believe any of the patrons had committed or were about to commit crimes. Indeed, Sergeant Adams recognized that even when a search is conducted pursuant to a warrant, all the individuals in an establishment cannot be *frisked* without probable cause. As a search into an individual's pocket is more intrusive than a frisk of their outer clothing, Red Dog officers' search of patrons without a warrant and without reasonable suspicion or probable cause was even more egregious.

The search cannot be legitimized as a search incident to lawful arrest because none of the patrons were lawfully arrested. The only individuals arrested were the owners and employees of the Eagle. Under the search incident to arrest doctrine, only the arrestee and the area within the



arrestee's control may be searched. The search incident to arrest doctrine does not authorize a search of all patrons within an establishment in the absence of probable cause.

C. Warrantless Seizures - Terry Stop

Sergeant Adams' directive to the Red Dog Unit to detain all patrons violated the Fourth Amendment. The detentions of all the Eagle's patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity. If certain patrons were suspected of engaging in illicit activity, those few patrons should have been identified by Vice and detained by Red Dog while the remaining patrons should have been released immediately thereafter. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

D. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1142</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1143</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to

identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1144</sup> may have led to unlawful, constructive arrests.

E. False Imprisonment

Sergeant Adams and the Red Dog Unit falsely imprisoned the patrons when they were detained without reasonable suspicion or probable cause. The patrons were restrained by the Vice officers with the assistance of Red Dog until their licenses were scanned and they were informed that they were free to go. The false imprisonment only lasted until each patron was instructed to leave.

III. EAGLE PREMISES

A. Search Incident to Arrest

Red Dog's warrantless entry and search of the Eagle's Kitchen violated the Fourth Amendment. Nothing in the record indicates consent was provided for the search. Additionally, no exigent circumstances excused the warrant requirement.<sup>1145</sup> The Eagle's patrons were compliant and did not offer any resistance.<sup>1146</sup> There are no facts indicating anyone attempted to flee or hide in the Kitchen, which was locked from the outside. There are no facts indicating a danger of harm to the officers or the public. As the Kitchen was locked from the outside, there was no danger that any alleged contraband in the Kitchen would be destroyed. Indeed, Red Dog could easily have secured the Eagle and returned the following day with a search warrant for the contraband they believed was in the Kitchen. Therefore, Red Dog's warrantless search of the Kitchen was unreasonable.

The search cannot be justified as a search incident to the arrest of the Eagle's employees.<sup>1147</sup> The search incident to arrest doctrine may not extend to rooms other than where the arrest occurred.<sup>1148</sup> Although the Kitchen is adjacent to the Dance Floor where the arrestees were taken, the search incident to arrest doctrine does not permit Red Dog to search other rooms that are not within the immediate reach of the arrestees. It certainly does not permit Red Dog to open drawers and containers in the Kitchen.

B. Protective Sweep

The search of the Kitchen/supply area cannot be justified as a protective sweep. The record lacks any facts based on which a reasonable officer could believe the Kitchen harbored an individual who might have posed a threat to the officers. An officer's lack of information cannot justify a protective sweep.<sup>1149</sup> The key fact here is that the Kitchen was locked from the *outside*. No reasonable officer would believe that any person would be able to enter or exit the Kitchen without opening the outside lock. The fact that someone "might be" inside the room is not a strong enough basis to justify a protective sweep. Further a protective sweep generally does not allow officers to open containers and drawers as it is limited to discovering the presence of an armed individual. Therefore, the warrantless search and entry of the Kitchen constituted an improper search.

Truthfulness (4.1.03)

There are inconsistencies in reviewing Adams' various statements and interrogatory responses on certain material issues.

First, Adams provides inconsistent statements as to whether he witnessed police officers patting down patrons during the Raid. In his statement to the ACRB on October 21, 2009, Adams states as follows:

MS. BEAMUD: Did you see any of your officers' pat down any of the patrons?

SERGEANT ADAMS: No, ma'am. I just saw them -- I saw them standing over them asking them for their ID.<sup>1150</sup>

Later, in Adams' Interrogatory responses, he states, "Patrons were only patted down for weapons - no one was searched."<sup>1151</sup> Likewise, in his later ACRB interview he states as follows:

Q: Okay. And do you recall if the employees or patrons were searched?

A: No, I don't think anybody was searched. I think everybody was patted down from *what I was able to observe*.<sup>1152</sup>

Then, in his most recent statement provided for this investigation Adams responds as follows:

MR. VALLADARES: Did you see any officers patting any of the patrons down during the raid?

SERGEANT ADAMS: No.

Adams' statements regarding whether his officers patted down patrons were wholly inconsistent. The majority of Red Dog officers have admitted to patting down the more than fifty patrons at the Eagle on the night of September 10, 2009. Adams, as the Red Dog commanding officer, admits that his duties that evening were to move through the Eagle to ensure compliance by his officers with the Tactical Plan. This further supports that he would have observed at least one of his officers engaged in pat down.

Second, Adams provides inconsistent statements as to whether the patrons were laying face down on the floor as opposed to sitting on the floor for the duration of the event. During the Calhoun litigation, within his interrogatory responses, Adams states that *all* the patrons were sitting at the time of his entry:

Please describe in detail all duties assigned to you, and all duties which you performed, during the Atlanta Eagle Raid.

Response: Defendant supervised all Red Dog officers present at the raid to ensure compliance with all APD SOP's. Defendant made sure all Red Dog officers were in compliance with Tactical PLAN provided by APD Vice unit. ***By the time Defendant entered the Club, all patrons were sitting on the floor.***<sup>1153</sup>

This is in direct contravention with other statements wherein Adams' alleges he only started sitting patrons up after the scene was secure:

Q: Approximately how long were the employees and patrons of the Atlanta Eagle kept on the floor without being allowed to get up?

A: I think about fifteen minutes if that long because once everyone was secured and had been checked for weapons I instructed several officers to let them sit up, ***the ones*** that I saw were still laying down.<sup>1154</sup>

Moreover, both statements suggest that ***all*** patrons, within minutes, were sitting up rather than face down on the floor prior to the conclusion of the ID checks of patrons. This statement is not factually supported by the record developed in this investigation. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Sergeant Adams violated the above-referenced Standard Operating Procedure.

### **3.3 Vice Officers**

#### **3.3.1 Investigator Bennie Bridges**

**Vice Unit approximately 8 years  
APD since July 16, 1991  
Photo Array ID No. 4399**

As the lead investigator, Bridges attended all three undercover details that occurred prior to the Raid<sup>1155</sup> and was assigned as lead investigator following the first detail.<sup>1156</sup> His practice during the undercover operations was to order a vodka on the rocks.<sup>1157</sup>

The undercover details culminated in the September 10, 2009 detail where Brock and Bridges decided to make arrests and close the case.<sup>1158</sup> Sometime prior to the Raid, Bridges

created the Tactical Plan and gave it to Brock for approval.<sup>1159</sup> Although they discussed involving the Gangs Unit,<sup>1160</sup> Brock and Bridges ultimately decided to use Red Dog.<sup>1161</sup>

Prior to the Raid, a briefing was held where the background of the investigation was discussed.<sup>1162</sup> The Tactical Plan was reviewed,<sup>1163</sup> and officers were instructed on what their specific assignments for the operation were.<sup>1164</sup> Brock made the decision, with Adams and Collier's approval to put these patrons on the ground.<sup>1165</sup>

Upon arriving at the Eagle, Bridges walked throughout checking in with officers to see if any illegal activity had been observed.<sup>1166</sup> That night, Bridges describes witnessing a heavy-set white male, a Hispanic male, and a thin African American male dancing.<sup>1167</sup> The dancers were wearing G-string or bikini type underwear but one was wearing boxer briefs.<sup>1168</sup> He does not remember the color of any of the underwear.<sup>1169</sup> Bridges describes the skinny African American male as dancing in the cage and that he was also on the bar exposing himself.<sup>1170</sup> He also is the dancer that placed his penis on top of a patron's head.<sup>1171</sup> Bridges also recalls the heavy-set white male exposing himself.<sup>1172</sup> Regarding the Hispanic dancer, Bridges recalls him dancing on a pole that had a blue light on it.<sup>1173</sup> Bridges does not recall any details about the fourth dancer.<sup>1174</sup>

Edwards was the first individual to report to Bridges that he had witnessed sexual activity and Bridges then informed Brock.<sup>1175</sup> Bridges called Officer Mague from his cell phone to give the signal for Red Dog to come into the Eagle.<sup>1176</sup> Bridges recalls Red Dog quickly entering and securing the club.<sup>1177</sup> He witnessed Red Dog officers conducting pat-downs of everyone in the Main Bar.<sup>1178</sup> The individuals being charged with crimes were separated and placed on the Dance Floor.<sup>1179</sup> Bridges claims he did not pat any one down nor did he search anyone.<sup>1180</sup> He

did not witness any other officer conduct a search of patrons or employees.<sup>1181</sup> Bridges gives inconsistent statements with regard to whether he entered the kitchen.<sup>1182</sup>

Among the multiple citations that were issued, Bridges cited Apud for dancing on the bar.<sup>1183</sup> After the citations were written, Bridges allowed Robert Kelley to secure money in the office upstairs.<sup>1184</sup> There are allegations that \$700 was missing from the Eagle after the Raid.<sup>1185</sup> Kelley speculates that Bridges was going through the cash registers in the Main Bar area.<sup>1186</sup> Kelley's statement implies that that Bridges is the cause of the missing money. However, Richard Ramey, co-owner of the Eagle, believes that the missing money was from a cash box (as opposed to a cash register) that was never located after the Raid.<sup>1187</sup> Further, Bridges contends that the only money Kelley secured upstairs was the money from the tills.<sup>1188</sup>

Subsequent to the Raid, Bridges testified at a Municipal Court Trial for the charges made on the night of the Raid. At the hearing, Bridges identified Robert Kelly<sup>1189</sup> and also identified Thadeus Johnson<sup>1190</sup> and Leandro Apud<sup>1191</sup> as dancers. He further testifies that Johnson was dancing in bikini underwear, exposing his penis and dancing in a.<sup>1192</sup> He also testifies Apud (a Hispanic dancer) was dancing on the bar and was exposing his genitals.<sup>1193</sup> However, Apud never danced at the Eagle that night because he arrived around 11:00 PM and had not yet changed into his dancing attire when Red Dog entered.<sup>1194</sup>

#### Search and Seizure (.3020)

The detentions of all the patrons were not valid under Terry because the officers did not have “a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.” SOP.3020 ¶ 4.3.3(3).

Investigator Bridges did not violate SOP.3020 when he performed inventory searches on the bartenders, dancers and co-owner Kelly as they were properly arrested for violating Atlanta

City Ordinances. However, SOP.3020 ¶¶ 4.3.2 and 4.3.3(4) were violated when Investigator Bridges conducted a search of Shepherd because he was not properly arrested. As such, that search was not incident to an arrest and was also not based on a reasonable suspicion that Shepherd was armed and dangerous.

*Use of Firearms (4.6.09)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

*Maltreatment or Unnecessary Force (4.2.50)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

*Courtesy (4.2.02)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

*Discriminatory References (4.2.13)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.



Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Bridges violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE EMPLOYEES

A. Warrantless Searches - Search Incident to Arrest

Investigator Bridges did not violate the Fourth Amendment when he performed an “inventory” search of the dancers, bartenders, and owner Kelly because they were lawfully arrested for violating City of Atlanta ordinances in plain view of the Vice Unit. As the search followed the arrest, it constituted a proper search incident to arrest. However, Investigator Bridges violated the Fourth Amendment when he performed an “inventory” search on Shepherd, because Shepherd’s arrest was unlawful, assuming that Shepherd was in a home or residence within the meaning of the Fourth Amendment.

B. Warrantless Seizures - Arrest

Although Investigator Bridges may believe that he formally placed Mr. Shepherd under arrest, Mr. Shepherd had already been wrongfully arrested by Sergeant Adams and/or Officer Condon. As such, Investigator Bridges’ act of placing handcuffs on Mr. Shepherd in a public area does not “cure” the unlawful warrantless arrest.

C. False Imprisonment

Investigator Bridges falsely imprisoned Mr. Shepherd when he was unlawfully detained and deprived of his personal liberty. Mr. Shepherd was wrongfully arrested without a warrant in his home for a nonfelonious crime and transported to jail. Mr. Shepherd was falsely imprisoned until he was released from jail.

II. EAGLE PATRONS

A. Warrantless Seizures - Terry Stop

Investigator Bridges and the Vice Unit, acting as a whole, wrongfully detained the patrons. During the Raid, Vice officers instructed Red Dog to place the patrons on the floor and keep them there even after the Eagle's owners and employees were identified and isolated. The across-the-board detentions of all the patrons were not valid under Terry v. Ohio because the officers did not have "a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity." APD.SOP.3020 ¶ 4.3.3(3). Although Officers Watkins and Edwards witnessed sex acts prior to the Raid, they were unable to identify the individuals involved. Once it was determined that the participants could not be identified, the patrons should have been released. And patrons suspected of no wrongdoing whatsoever should have been released immediately. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By

taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1195</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1196</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1197</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

The Vice Unit falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by the Vice officers until their IDs were scanned and they were informed that they were free to go. The false imprisonment only lasted until each patron was instructed to leave. Although police vehicles may have blocked the driveways exiting the Eagle, the patrons' personal liberties to move about freely were not longer restrained even though they could not leave in their own vehicles.

Truthfulness (4.1.03)

Based on a cumulative review of all statements, discovery responses and other documents, it appears there are inconsistencies in statements made by Bridges. Bridges gives inconsistent statements with regard to whether he entered the kitchen. In his ACRB statement, Bridges states

he does not recall entering the kitchen.<sup>1198</sup> In his GT Interview, Bridges admits he entered the kitchen to ensure no one was in there.<sup>1199</sup> In his testimony provided at the Municipal Court Trial,

Bridges states:

SPEAKER: You had no search or arrest warrant with you, did you?

BRIDGES: No.

SPEAKER: Yes, you searched the office, did you not?

BRIDGES: I didn't search the offices.

SPEAKER: Or had your officers do it under your direction?

BRIDGES: No.

SPEAKER: The kitchen?

BRIDGES: No.

SPEAKER: An Apartment attached to the club -- a private Apartment?

BRIDGES: No, we did no searches.

No conclusions can be drawn from these statements because: (1) recollections change over time; (2) the questions asked at the Municipal Court Trial were ambiguous as to whether Bridges performed searches or directed officers to do so; and (3) the term search could arguably require a legal conclusion as opposed to a statement of fact.

As stated above, Bridges cited Apud for dancing on the bar. Bridges testified that he witnessed Apud dancing on the bar in the Municipal Court Trial and also made this representation in his discovery responses.<sup>1200</sup> As previously stated, Apud was not dancing at the Eagle that night because he arrived shortly before the Raid occurred and was in the process of changing when Red Dog entered. Accordingly, both Bridges sworn testimony presented in front a Court of Law as well as his discovery responses are untruthful. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Bridges violated the above-referenced Standard Operating Procedure.

### 3.3.2 Officer Dimitrio O. Caldwell

Vice Unit  
Photo Array ID Not Applicable

Officer Caldwell was incorrectly named as a defendant in this lawsuit. On the night of the operation, he was off duty and out of town in Fort Lauderdale, Florida.<sup>1201</sup>

#### Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

#### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

#### Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Caldwell violated the above-referenced Standard Operating Procedure.

### 3.3.3 Investigator Gregory D. Dabney

Vice Unit approximately 1 year  
APD approximately 15 years

#### Search and Seizure (.3020)

Investigator Dabney was not present the night of the Raid.

#### Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

#### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

#### Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dabney violated the above-referenced Standard Operating Procedure.



### 3.3.4 Officer Jeremy D. Edwards

**Vice Unit approximately 2 years  
APD since April 19, 2005  
Photo Array ID No. 4270**

Officer Jeremy Edwards was a member of the Vice Unit at the time of the Raid. He was present on the May 21, 2009 undercover operation.<sup>1202</sup> That night, although officers were allowed to drink alcohol, Edwards stated he did not have any drinks.<sup>1203</sup> Edwards recalls seeing someone stripping on top of the bar and also in a bird cage.<sup>1204</sup> He elaborated that stripping means that they “were in their underwear pulling their dick [sic] out playing with it their hand on that night.”<sup>1205</sup> Edwards recalls walking around the various rooms, but spent the majority of the night in the bar area.<sup>1206</sup> He does not remember seeing any illegal activity in the club room or in the back bar area.<sup>1207</sup> When asked why he did not include seeing men playing with themselves in his report, Edwards responds that “[i]t’s just something I didn’t put in the report.”<sup>1208</sup>

On the night of the Raid, Edwards recalls dancers in G-Strings playing with themselves.<sup>1209</sup> Edwards spent the majority of the night standing in the back bar area.<sup>1210</sup> Edwards claimed to have witnessed “a white male in a red Under Armour shirt having sex, anal sex with another man bent over in camouflage shorts on.”<sup>1211</sup> He further stated, “[t]hat has most of my memory. With people standing around him jacking off.”<sup>1212</sup> Additionally, he recalls seeing two other men having sex, but he was unable to describe their appearances.<sup>1213</sup>

After witnessing these sexual activities, Edwards informed the supervisors and was told to keep watching and stand-by for Red Dog.<sup>1214</sup> Edwards stated that the couple finished their sexual act and then left the room.<sup>1215</sup> When asked if there was a reason his report did not mention this second couple in the Back Bar, Edwards responded, “[n]o.”<sup>1216</sup> When asked whether he witnessed any illegal activity that he considered violent the night of the Raid, Edwards responded, “[s]eeing another man have sex with another man in the ass, I would

classify that as very violent. With a weapon, no.”<sup>1217</sup> He saw nothing that night that made him fear for his safety.<sup>1218</sup>

According to Edwards, he consumed half of a beer and then threw it away when Red Dog entered.<sup>1219</sup> Edwards claimed that when Red Dog entered, patrons tried to leave through the door leading to the Back Deck, which was allegedly locked.<sup>1220</sup>

At the point that Red Dog entered, Edwards stated that none of the individuals that he witnessed earlier in the night engaging in criminal conduct were present.<sup>1221</sup>

Sometime after individuals in the Back Bar were patted down, a Red Dog officer handed Edwards a large pocket knife and a wallet containing a badge.<sup>1222</sup> Edwards directed the off-duty police officer to follow him.<sup>1223</sup> Edwards proceeded to hand the ID to Officer Mague who was processing IDs; Edwards stated to Officer Mague, “[H]e’s police, you know, run him or not, and let him go.”<sup>1224</sup> Edwards claimed that when he saw the badge inside the wallet, he “just tried to be discreet about it.”<sup>1225</sup>

After that, Edwards walked out front to try to identify individuals he witnessed engaging in sexual acts, but he was only able to identify one man.<sup>1226</sup> According to Edwards, Bridges made the decision not to arrest that man because they could not find his partner.<sup>1227</sup> Edwards eventually assisted in writing citations for the individuals being arrested.<sup>1228</sup> Edwards recalled going into the Apartment upstairs with another member of Vice to allow Shepherd to secure items or put on shoes at the end of the night.<sup>1229</sup>

#### Search and Seizure (.3020)

Edwards violated APD operating procedures for seizures. Officers may detain an individual “when they have articulable facts that lead them to believe criminal activity is occurred....officers must have a particularized and objective basis for suspecting the particular

person detained [was or is involved in] criminal activity.” APD.SOP.3020 ¶ 4.3.3(3). Edwards stated he witnessed some patrons performing illicit sex acts prior to the Raid. According to SOP.3020 ¶ 4.3.3(3) Edwards was justified in detaining the patron in the red Under Armour shirt until the officers could establish that there was insufficient evidence to make a case in the municipal courts of the City of Atlanta. However, any further detention of the patron in the red Under Armour shirt after it was determined that no case could be made, violated SOP.3020 ¶ 4.3.3(3). Additionally, the remaining patrons, who were not suspected of criminal activity should have been immediately released. The failure to release the innocent patrons violated SOP.3020 ¶ 4.3.3(3).

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Edwards violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Edwards violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Edwards violated the above-reference standard operating procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Edwards violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

Although there is no evidence that Edwards made any discriminatory comments during the Raid, during the investigation, when asked whether he witnessed any illegal activity that he considered violent the night of the Raid, Edwards responded, “[s]eeing another man have sex with another man in the ass, I would classify that as very violent. With a weapon, no.”<sup>1230</sup> Thus, after a review of all accessible and relevant information, sufficient evidence to find that Edwards violated the above-referenced Standard Operating Procedure during this investigation.

Conformance to Directives (4.2.33)

Officer Edwards provided preferential treatment to a patron who was an off-duty police officer, when he escorted the officer to Mague so that he could be released more quickly. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Edwards violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Edwards violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Edwards wrongfully detained the patrons. The wholesale detention of all the patrons was not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity. Once any suspects had been identified, including the individual Officer Edwards saw engaging in public sex, the remaining patrons should have been released. And, the patron he observed engaging in public sex should have been released as soon as the determination was made that

Vice could not make a case against him under Georgia law. Instead, all patrons were detained illegally for an inordinate period of time for ID checks.

Pretermitted whether running an ID for criminal history constitutes an illegal search under the Fourth Amendment, subjecting patrons not suspected of criminal activity to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the Terry detentions of such patrons were not valid; Officer Edwards and Vice had no specific and articulable facts that supported a reasonable suspicion that they had committed criminal offenses. Thus, the officers had no basis to detain those patrons for any period of time for the purpose of taking and scanning their IDs, and, indeed, should have detained patrons suspected of criminal activity (e.g., the individual he observed engaging in public sex) only as long as necessary to determine that cases against them could not be made under Georgia law. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

#### B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1231</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1232</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1233</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Officer Edwards falsely imprisoned the patrons when they were detained without reasonable suspicion or probable cause. The patrons' freedom to move was restrained until their IDs were processed and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

D. Warrantless Search - Eagle Premises

Officer Edwards accompanied Investigator Bridges and Kelly to the upstairs Office, however, it does not appear that he entered or searched the Office. Therefore, he did not violate the Fourth Amendment.

Truthfulness (4.1.03)

Edwards denies taking any pictures with his cell phone on the night of the Raid.<sup>1234</sup> However, as discussed in greater detail in the section 1.9 *Preservation of Cell Phone Data* above, information downloaded from his cell phone indicates that he in fact took a picture of Ernest Buehl being placed into a city vehicle by Officer Godwin. This picture is referenced in the City of Atlanta's Supplemental discovery responses<sup>1235</sup> and was produced in discovery.

Additionally, as discussed in greater detail in section 1.9 *Preservation of Cell Phone Data* above, certain of Edwards' discovery responses regarding cell phone usage are inaccurate. Specifically, when asked for all billing records indicating usage around the time of the Raid, Edwards responds that he does not use a personal communications device and instead uses the APD radio for all calls.<sup>1236</sup> However, as previously stated, and as discussed in greater detail in section 1.9 *Preservation of Cell Phone Data* above, a review of Edwards' cell phone billing records, data collected from his cell phone, and Edwards' own testimony clearly indicate that this is an inaccurate statement. It should also be noted that Edwards did not recall using his cell

phone the night of the Raid until he was confronted by the City Attorney's office with billing records indicating that he had sent texts to Officer Jacques.<sup>1237</sup>

Further, other inconsistencies exist in certain of Edwards' discovery responses. His response to Interrogatory No. 1 states that on September 10, 2009, Edwards witnessed 5-10 men having sex -- some of whom were openly engaging in oral sex.<sup>1238</sup> In light of all of the record evidence, this statement is false. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Edwards violated the above-referenced Standard Operating Procedure.

### **3.3.5 Investigator Herman E. Glass**

**Vice Unit approximately 9 years (Retired)  
APD since February 4, 1980  
Photo Array ID No. 4391**

Investigator Glass is a member of the Vice Unit and was present on the September 10, 2009 Raid of the Atlanta Eagle.<sup>1239</sup> Glass did not participate in any of the prior undercover operations.<sup>1240</sup>

Glass was assigned to the Pool Room.<sup>1241</sup> Glass entered the Eagle and proceeded to the Main Bar, Glass also observed dancers in their underwear,<sup>1242</sup> and he stated that there was a dancer on a side table receiving tips.<sup>1243</sup> Glass then went to the Club Room and witnessed three patrons standing around a man on his knees but it was dark and Glass could not see what was happening.<sup>1244</sup> From Glass's experience as a Vice officer, he believed it was the beginning of a sexual act.<sup>1245</sup> Glass recalled briefly speaking with Bridges and informing him of what he saw in the Club Room.<sup>1246</sup>

When Red Dog entered, Glass pretended to be one of the patrons and remembers hearing instructions to get on the floor, with which he complied.<sup>1247</sup> Glass stated that there was no prior

discussion regarding how the undercover officers would identify themselves to Red Dog,<sup>1248</sup> but he hoped most of the officers in Red Dog would recognize him.<sup>1249</sup>

Glass claimed he did not instruct any patron to get on the ground.<sup>1250</sup> He believed there were two patrons in the Pool Room with him.<sup>1251</sup> Glass approximates that he was on the floor for ten minutes.<sup>1252</sup> Before he informed one of the Red Dog officers that he was getting up and then he pulled out his ID so that they would know he was an officer.<sup>1253</sup> Glass was not kicked or stepped on while he was on the ground.<sup>1254</sup> He stated that the patrons were quiet and he did not hear any complaints<sup>1255</sup> or witness any patrons in the Pool Room being searched.<sup>1256</sup> After getting off the floor, Glass went to the Main Bar to find Bridges.<sup>1257</sup> Glass did not follow up on the individuals he suspected of engaging in sexual acts in the Club Room.<sup>1258</sup>

Glass states he did not frisk any patrons<sup>1259</sup> or retrieve any IDs.<sup>1260</sup> Glass contends he did not search any areas of the Eagle.<sup>1261</sup> Although Glass did not see any other officers patting down patrons, he stated that pat downs would be consistent with the briefing and the Tactical Plan.<sup>1262</sup> Additionally, he believed that only those arrested were handcuffed.<sup>1263</sup>

#### Search and Seizure (.3020)

Investigator Glass and the Vice Unit violated APD's Standard Operating Procedure for searches and seizures. To detain someone, "officers must have a particularized and objective basis for suspecting the particular person detained [was or is involved in] criminal activity." APD.SOP.3020 ¶ 4.3.3(3). Although Investigator Glass believes he may have seen illegal activity, he did not investigate or identify the individual(s) involved. As such, he could not identify any patron who was involved in illegal activity. Based on his lack of a particularized and objective basis for suspecting the patrons detained were involved in criminal activity,



Investigator Glass violated APD's Standard Operating Procedure for detentions by participating in the broad-scale detentions of Eagle patrons during the Raid.

*Use of Firearms (4.6.09)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

*Maltreatment or Unnecessary Force (4.2.50)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

*Courtesy (4.2.02)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

*Discriminatory References (4.2.13)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Investigator Glass wrongfully participated in the wide-scale detentions of the Eagle patrons.<sup>1264</sup> Although Investigator Glass did not order any patrons to the ground, he did nothing when he saw patrons who were not suspected of engaging in illegal activity on ground. The wholesale detentions of the Eagle patrons were not valid under Terry v. Ohio.<sup>1265</sup> A Terry stop must be based on specific and articulable facts which, taken together with rational inferences from those facts, support the suspicion that a person has committed a criminal offense.<sup>1266</sup> Under such circumstances, an officer may stop the individual for a brief time and take additional steps to investigate further.<sup>1267</sup> If certain patrons were suspected of engaging in illicit activity, those few patrons should have been identified and detained. The remaining patrons should have been released immediately thereafter. Instead, all patrons were detained illegally for an inordinate period of time.

Pretermitted whether running an ID for criminal history constitutes an illegal search under the Fourth Amendment, subjecting patrons not suspected of criminal activity to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this

instance, however, the Terry detentions of such patrons were not valid; Investigator Glass and the Vice Unit had no specific and articulable facts that supported a reasonable suspicion that they had committed criminal offenses. Thus, the officers had no basis to detain those patrons for any period of time for the purpose of taking and scanning their IDs, and, indeed, should have detained patrons suspected of criminal activity only as long as necessary to determine that cases against them could not be made under Georgia law. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1268</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1269</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1270</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

The Vice Unit falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Investigator Glass and the Vice Unit until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

### Truthfulness (4.1.03)

Based on a comprehensive review of Glass' statements, discovery responses, and other documents, Glass' statements contain a slight inconsistency regarding whether Glass went to the Apartment upstairs at the Eagle. Glass denies ever going to the Apartment upstairs.<sup>1271</sup> However, other officers recalled that Glass went upstairs with another officer. Sergeant Adams, Investigator Bridges and Officer Marcano all suggested Glass went upstairs on the night of the Raid.<sup>1272</sup> These statements are not definitive enough to draw a conclusion. It is impossible to discern from the existing evidence whether Glass went upstairs the night of the Raid.

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Glass violated the above-referenced standard operating procedure.

#### **3.3.6 Officer Robert C. Godwin**

**Vice Unit approximately 2 years  
APD since November 29, 2005  
Photo Array ID No. 4198**

Officer Godwin is a member of the Vice Unit and participated in the May 21, 2009 undercover operation at the Eagle.<sup>1273</sup> Officers Godwin and Watkins admitted they took a free shot of liquor from the bartender during the May 21, 2009 detail.<sup>1274</sup> That same night, Godwin saw males engaging in various sexual activities, including anal and oral sex.<sup>1275</sup> He also reported that the sex acts continued and that the people watching the acts were "grabbing themselves, or you know, masturbating."<sup>1276</sup> Godwin also stated that Officer Mague and Caldwell were groped that night.<sup>1277</sup> After witnessing this, the officers regrouped and returned to headquarters.<sup>1278</sup>

The night of the Raid, Officer Godwin was assigned to the Club Room.<sup>1279</sup> After entering the Eagle, Watkins and Godwin ordered beers from the bar<sup>1280</sup> and then the pair floated between the Club Room and the Game Room.<sup>1281</sup> He recalled witnessing a couple against the

wall making out and one of them had his pants down and his buttocks exposed; however, it did not appear that any sexual acts were occurring.<sup>1282</sup>

Godwin and Watkins were groped while they were standing in the back.<sup>1283</sup> After grabbing Godwin's crotch, the patron told Godwin that they should come back to that area later.<sup>1284</sup> Godwin went to the bar to get another beer and then returned to the entrance of the Club Room where he remained until Red Dog entered.<sup>1285</sup> At that point, Godwin recalled pulling out his badge, identified himself as an APD Officer and saying get down on the ground.<sup>1286</sup> By the time Red Dog entered that room the three patrons were all on the floor.<sup>1287</sup>

Although Godwin did not use force to get any of the patrons of the floor, he did help one of the patrons back onto his feet.<sup>1288</sup> Godwin admitted frisking one patron wearing loose fitting clothing.<sup>1289</sup> Godwin obtained IDs from the patrons and passed the IDs off to an officer to be processed.<sup>1290</sup> Godwin stated that the patrons detained in the Club Room were on the ground for 10-15 minutes<sup>1291</sup> and then were moved to another location.<sup>1292</sup> Godwin then moved to the Dance Floor where he helped fill out citations.<sup>1293</sup> Specifically, he recalls writing a citation for Robert Klein.<sup>1294</sup> After that, Godwin remembers waiting with an Eagle employee who appeared to be having a panic attack.<sup>1295</sup> Additionally, one of the dancers, Leandro Apud, identified Officer Godwin as being polite.<sup>1296</sup>

#### Search and Seizure (.3020)

Although Godwin did not search any areas of the Eagle,<sup>1297</sup> he violated SOP.3020<sup>1298</sup> when he detained the patrons without an individualized, articulable suspicion that such individual was engaged in illegal activity. Additionally, he violated SOP.3020<sup>1299</sup> when he frisked one of the patrons in the Club Room without having the requisite justification to do so.<sup>1300</sup>

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE PATRONS

A. Warrantless Searches - Terry Frisk

Officer Godwin's frisk of one patron violated the Fourth Amendment. Even where a bar is searched pursuant to a valid warrant, officers may not frisk all of the bar's patrons absent reasonable suspicion that each patron is armed and presently dangerous. In the absence of a warrant, such a frisk is altogether more unreasonable under the Fourth Amendment. There are no facts indicating that Officer Godwin had an individualized, articulable suspicion that the individual frisked was armed and presently dangerous.<sup>1301</sup>

B. Warrantless Seizures - Terry Stop

Officer Godwin wrongfully detained the patrons. During the Raid, Vice officers kept the patrons on the floor even after the Eagle's owners and employees were identified and isolated. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the [detention]."<sup>1302</sup> Patrons against whom the officers had no particularized and objective basis for suspecting criminal activity should have been released immediately rather than detained. The other patrons, against whom the officer had particularized and objective basis for suspecting illegal sex act, should have been released immediately after the officers determine they could not make cases against them in municipal courts of the City of Atlanta. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the across-the-board Terry detentions of patrons were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that they had committed criminal offenses. The officers had no basis to detain patrons not suspected of wrongdoing for any period of time for the purpose of taking and scanning their IDs, and, indeed, should have detained patrons suspected of criminal activity only as long as necessary to determine that cases against them could not be made in the municipal courts of the City of Atlanta. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

### C. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1303</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1304</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1305</sup> may have led to unlawful, constructive arrests.



#### D. False Imprisonment

The Vice Unit falsely imprisoned the patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were restrained by the Vice officers and were not free to move or leave the Eagle until their licenses were scanned and they were informed by the officers that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

#### Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Godwin violated the above-referenced Standard Operating Procedure.

#### **3.3.7 Officer Melonie Mague<sup>1306</sup>**

**Vice Unit  
APD since January 25, 2005 (no longer with APD)  
Photo Array Not Applicable.**

Officer Mague is a member of the Vice Unit and was present on the May 21, 2009 undercover detail at the Eagle.<sup>1307</sup> During that detail, Mague saw three naked men engaged in sexual activities including one male performing anal sex on another male who was concurrently performing oral sex on a third male.<sup>1308</sup> She claimed that approximately 30-35 people were watching the sexual acts and while watching were masturbating or touching themselves.<sup>1309</sup> Mague also claims she was groped.<sup>1310</sup> After witnessing the sexual conduct, the officers left the club to regroup.<sup>1311</sup>

Mague's assignment the night of the Raid was to lead Red Dog into the Eagle and perform ID checks on the computer.<sup>1312</sup> Mague was the first person in the line of officers because she knew the general layout as she had been there before.<sup>1313</sup> Upon entering the Eagle,

she remained in the Main Bar.<sup>1314</sup> She recalled individuals getting onto the ground as well as some individuals who were sitting on the floor.<sup>1315</sup>

Early on while processing IDs, Mague recalled checking an out-of-state ID that belonged to a police officer.<sup>1316</sup> Mague did not recall seeing any officers go behind the bar, nor did she see any officers go near the cash register while processing IDs.<sup>1317</sup> After Mague finished processing patron IDs, they collected the individuals who were to be arrested and then left the Eagle.<sup>1318</sup>

#### Search and Seizure (.3020)

Mague participated in the wholesale detentions of all the patrons in violation of APD.SOP.3020 ¶ 4.3.3(3) because the officers did not have “a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.” While suspects against whom the Vice Unit had a particularized and objective basis for suspecting criminal activity could have been identified and detained, the remaining patrons should have been released immediately. Instead, all of the Eagle’s patrons were detained until Mague ran their licenses through GCIC for outstanding warrants.

#### Use of Firearms (4.6.09)

It should be noted that Leandro Apud identified an African American female police officer wearing Red Dog-like pants pointing or aiming a gun toward the Pool Room and then at him, telling him to get on the floor.<sup>1319</sup> However, after a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Officer Mague violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

There was some evidence to suggest that Officer Mague complied with another unidentified officer's request to set aside the ID of a patron who was being uncooperative.<sup>1320</sup> However, after a review of all accessible and relevant information, the evidence **DOES NOT**

sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Mague wrongfully detained the patrons. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular persons detained [was or is involved in] criminal activity. Once any suspects had been identified, the remaining patrons should have been released immediately. Further, patrons observed engaging in illegal sex acts should have been released as soon as the determination was made that the Vice Unit could not make a case against them under Georgia law. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1321</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1322</sup> Once it was

determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1323</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Officer Mague falsely imprisoned the patrons when they were detained without reasonable suspicion or probable cause. The patrons were restrained by the police until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

Based upon a review of Officer Mague's statements, discovery responses and other documents, inconsistencies in statements have been identified. First, Mague's response to Interrogatory No. 10 stated that she received an oral admonishment once for failure to appear in Court.<sup>1324</sup> The response further stated, "[s]ee OPS records previously produced."<sup>1325</sup> These records indicated that Mague received two oral admonishments for failure to appear in court. Because Mague's OPS files were produced in discovery, it is unlikely that there was any intent to mislead, and in any event would be immaterial in light of her direction to the records produced. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mague violated the above-referenced Standard Operating Procedure.

### 3.3.8 Officer Vicente Marcano

**Vice Unit approximately 3 years  
APD since May 22, 2001  
Photo Array ID No. 4247**

Officer Marcano is a member of the Vice Unit who participated in the May 21, 2009, June, 11, 2009 and the September 10, 2009 undercover operations at the Atlanta Eagle.<sup>1326</sup> He did not enter any of the Back Rooms that night.<sup>1327</sup> Marcano remembered seeing dancers on the bar in their underwear.<sup>1328</sup>

Regarding the June 11, 2009 visit, Marcano recalled going back and forth between the hallway and the Main Bar and also entering the Pool Room area.<sup>1329</sup> He recalled seeing a dancer on the bar,<sup>1330</sup> but did not remember seeing the dancer collecting tips.<sup>1331</sup> However, the dancer was placing his hands inside his shorts, touching himself and exposing part of his rear-end to customers sitting at the bar.<sup>1332</sup> Similarly to the first visit, Marcano did not enter any of the Back Rooms in the Eagle.<sup>1333</sup>

On the night of the Raid, Marcano was assigned to the Pool Room.<sup>1334</sup> Upon arriving at the Eagle, Marcano entered with Investigator Bridges<sup>1335</sup> and then proceeded to the bar where he ordered a beer and then walked down the Hallway to the Pool Room.<sup>1336</sup> Marcano did not witness any illegal activity in the Pool Room.<sup>1337</sup>

Sometime thereafter, Officer Edwards informed Marcano that Red Dog was about to enter the bar.<sup>1338</sup> Marcano stated that when he heard Red Dog come into the Eagle, he displayed his lanyard with identification and shield and ordered everyone to the ground.<sup>1339</sup> Marcano stated that the patrons in the Pool Room all cooperated with his instructions.<sup>1340</sup> Marcano also stated that he ordered patrons to the ground in the Back Bar.<sup>1341</sup>

When everyone was on the floor, Marcano stated that Red Dog patted people down for weapons and then IDs were requested and produced and then checked for warrants.<sup>1342</sup> He stated

that he did not conduct any pat-downs<sup>1343</sup> and that Red Dog assisted him in requesting IDs.<sup>1344</sup> When requested, patrons would retrieve IDs from their pockets<sup>1345</sup> and then Marcano took the IDs to Officer Noble who checked them on the computer.<sup>1346</sup> Once complete, the IDs were returned and the patrons were allowed to leave.<sup>1347</sup>

#### Search and Seizure (.3020)

The detentions of all the patrons in the Pool Room and Back Bar area violated APD.SOP.3020 ¶ 4.3.3(3) because Officer Marcano did not have “a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.” APD.SOP.3020 ¶ 4.3.3(3).

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

#### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

#### Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Marcano violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Marcano wrongfully detained the patrons in the Pool Room and the Back Bar area. Along with the Vice Unit, he also participated in the wrongful detentions of all the patrons in general. The detentions of all the patrons in the Pool Room and Back Bar area were not valid under Terry v. Ohio because Officer Marcano did not have “a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.”<sup>1348</sup> Instead, all patrons were detained illegally for an inordinate period of time.



Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1349</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1350</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1351</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Officer Marcano falsely imprisoned patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Officer Marcano until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

Based upon a review of Officer Marcano's statements, discovery responses and other documents, an inconsistency in statements was identified. Marcano's response to Interrogatory No. 10 states that Marcano has not been disciplined as a police officer.<sup>1352</sup> Based upon a review of Marcano's prior OPS complaints, that were produced during discovery in the Calhoun matter, it appears that Marcano did have complaints sustained against him three times<sup>1353</sup> and has received at least two oral admonishments.<sup>1354</sup> It should be noted, however, that under Federal Rules of Civil Procedure Rule 33(b)(3) each interrogatory must be answered "in writing under oath." Despite this Rule, no verification was attached to Marcano's responses, and thus, it is possible that this is an inadvertent misstatement by the attorney preparing the response. Nevertheless, for purposes of this report, we assume that Marcano participated in preparing and reviewing the responses to these Interrogatories. We note that the City Law Department communicated with the individual officers regarding the need to respond to these discovery requests. After a review of all accessible and relevant information, and subject to the qualifications above, **there is** sufficient evidence to find that Marcano violated the above-referenced Standard Operating Procedure.

**3.3.9 Investigator Timothy McClain**

**Vice Unit approximately 8 years  
APD since December 17, 1983  
Photo Array ID No. 4130**

Investigator McClain was present at both the May 21, 2009 and the June 11, 2009 undercover details that occurred at the Atlanta Eagle.<sup>1355</sup> On May 21, 2009, McClain admits arriving late at the bar because he was apprehensive and uncomfortable about entering because the Eagle was a gay bar.<sup>1356</sup> McClain then walked around and saw the different rooms in the bar as well as the different patrons in each room.<sup>1357</sup> McClain believes he had one drink that night

and also bought a patron a drink.<sup>1358</sup> He recalls seeing dancers exposing themselves<sup>1359</sup> and that the dancers were receiving tips.<sup>1360</sup> McClain learned from a patron that later in the night, the Back Rooms of the Eagle would get “busy,” seemingly indicating that sexual activity would occur.<sup>1361</sup> Although McClain visited the Back Rooms, it was too dark for him to see anything.<sup>1362</sup>

When the rest of the Vice Unit went to observe sexual acts in the back, McClain stayed at the bar because he didn’t want to witness the activities.<sup>1363</sup> Although the officers did not intend to make any arrests that night,<sup>1364</sup> McClain became nervous at the length of time the officers were in the Back Room and thought that arrests were being made so he proceeded to the Back Rooms and he saw the officers exiting.<sup>1365</sup>

Regarding the June 11, 2009 operation, McClain states that he entered the Eagle in the same manner he did on the previous occasion.<sup>1366</sup> McClain witnessed dancers on top of the bar.<sup>1367</sup> McClain ordered a Smirnoff Ice and also purchased two drinks for patrons.<sup>1368</sup> Aside from the dancers, McClain did not witness any other illegal activity that night.<sup>1369</sup>

On the night of the Raid, although McClain stayed in the Main Bar where he was assigned, he occasionally got up and walked around.<sup>1370</sup> McClain recalls purchasing an alcoholic beverage, but states that he would only take a sip of it and then would go to the bathroom and pour some out so that it appeared he was drinking more than he actually was.<sup>1371</sup> McClain again recalls seeing dancers on the bar and states that one of the dancers placed his penis on a patron’s head and received a tip from the patron.<sup>1372</sup> McClain also recalls additional dancers at the other end of the bar and that a patron was grabbing a dancer’s genitals and buttocks.<sup>1373</sup> McClain reported the aforementioned events to Bridges after the Raid, and provided Bridges with a description of both the dancers and patrons involved in the aforementioned acts.<sup>1374</sup>

During Red Dog's entry, McClain identified himself as an officer by taking his badge out from underneath his shirt.<sup>1375</sup> However, he claims that he did not verbally identify himself as an officer because no one was in his general vicinity when Red Dog entered.<sup>1376</sup>

While securing the area, the Red Dog officers moved patrons to the Center Bar area and then ordered them to the floor.<sup>1377</sup> McClain approximates that thirty individuals were ordered to the floor in the Main Bar area.<sup>1378</sup> McClain overheard complaints that individuals were being stepped on.<sup>1379</sup> McClain states that although some individuals were hesitant to get on the floor, no officer used physical force to place anyone on the ground.<sup>1380</sup>

McClain claims that he did not frisk anyone nor did he reach into any pockets.<sup>1381</sup> He also denies handling any IDs.<sup>1382</sup> As IDs were processed, patrons began to leave and as the crowd dwindled, patrons began to sit on the floor rather than lie on it.<sup>1383</sup>

#### Search and Seizure (.3020)

McClain's participation in the wholesale detention of all the patrons violated APD.SOP.3020 ¶ 4.3.3(3) because the officers did not have "a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity."<sup>1384</sup> While suspects against whom Vice had a particularized and objective basis for suspecting criminal activity could have been identified and detained, the remaining patrons should have been released immediately. Instead, all of the Eagle's patrons were detained until their licenses were checked GCIC for outstanding warrants.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer McClain wrongfully detained the patrons. During the Raid, Vice officers kept the patrons on the floor even after the Eagle's owners and employees were identified and isolated. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the detention]."<sup>1385</sup> Patrons against whom the officers had no particularized and objective basis for suspecting criminal activity should have been released immediately rather than detained. The other patrons against whom the officers had particularized and objective bases for suspecting illegal sex acts should have been released immediately after the officers determined they could not make cases against them in the municipal courts of the City of Atlanta. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1386</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1387</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1388</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Investigator McClain falsely imprisoned the patrons when they were detained without reasonable suspicion in violation of Terry and were without probable cause. The patrons were restrained by the Vice officers and were not free to move or leave the Eagle until their licenses were scanned and they were informed by the officers that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that McClain violated the above-referenced Standard Operating Procedure.

**3.3.10 Officer Marlon Noble**

**Vice Unit over 1 year  
APD since May 30, 2006  
Photo Array ID No. 4381**

Officer Noble is a member of the Vice Unit attended the September 3, 2009 undercover detail.<sup>1389</sup> That night, Investigator Bridges was in charge and Investigator Thurman and Sergeant

Collier were present.<sup>1390</sup> Pursuant to Noble's testimony, undercover officers were allowed to drink alcohol.<sup>1391</sup> Although he does not typically drink alcohol,<sup>1392</sup> Noble admitted to consuming half of a bottle of Corona.<sup>1393</sup>

After leaving the Main Bar area, Noble was with Bridges when they claim to have witnessed a male touching the genitals of another male in the Club Room.<sup>1394</sup> After witnessing the act, Noble and Bridges went to the Pool Room<sup>1395</sup> and told Sergeant Collier and Investigator Thurman what they had seen.<sup>1396</sup> That night, Noble also witnessed a dancer on top of the bar<sup>1397</sup> but did not see the dancer expose himself<sup>1398</sup> nor did he witness the dancer receive any tips.<sup>1399</sup>

On September 10, 2009, Officer Noble was assigned to the Game Room.<sup>1400</sup> Although the undercover officers were permitted to drink alcohol that night,<sup>1401</sup> Noble did not consume alcohol.<sup>1402</sup> While in the Game Room, Noble saw two male patrons and did not see illegal activity.<sup>1403</sup>

When Red Dog entered, Noble moved from the Game Room to the Hallway and was near the stairs<sup>1404</sup> to prevent anyone from going up or down to the Apartment.<sup>1405</sup> Noble stated that he took out his badge and blue lanyard<sup>1406</sup> but claims he did not identify himself as a police officer because he was not "interacting with anyone."<sup>1407</sup> Sometime during Red Dog's entry, Noble claims to have heard numerous Red Dog officers ordering people to get on the ground.<sup>1408</sup> However, Noble does not specifically recall which Red Dog officers were giving the orders.<sup>1409</sup> Noble did not ask any individuals to get on the ground.<sup>1410</sup>

After the area was secure, Noble was sent to the Cloak Room to perform ID checks.<sup>1411</sup> The IDs were brought to him by Officer Marcano.<sup>1412</sup> Noble then checked IDs on the computer and once he was finished with a patron's ID, he returned it and the patron was allowed to leave.<sup>1413</sup> As Mague also was running ID checks at the Main Bar,<sup>1414</sup> the processing was split



between the two. Mague was handling the processing of patrons and employees located in the front half and Noble was handling the processing of patrons and employees located in the back half.<sup>1415</sup>

Search and Seizure (.3020)

Officer Noble violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of all the patrons without reasonable articulable suspicion authorizing the detentions.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

Allegations of maltreatment exist in the hallway where Noble admits being during the Raid. Specifically, Sean Gaboya identified Officer Noble from an anonymous photo lineup as the officer who used force to put him on the ground in the hallway.<sup>1416</sup> Gaboya also states that Noble was the same officer that placed a foot into his back while he was lying face down.<sup>1417</sup> By Noble's own account, he was in the Hallway when Red Dog entered. Although Gaboya identified Noble, he inaccurately describes Noble as wearing boots<sup>1418</sup> and a dark colored uniform<sup>1419</sup> which fits the description of a Red Dog officer — not Noble, who was in plain clothes. Gaboya's identification standing alone is insufficient. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Searches - Terry Stop

Officer Noble and the Vice Unit, acting as a whole, wrongfully detained the patrons. During the Raid, Vice officers (along with Red Dog officers) wholesale detentions of all the

patrons were not valid under Terry v. Ohio because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.<sup>1420</sup> Patrons against whom the officers had no particularized and objective basis for suspecting criminal activity should have been released immediately rather than detained. And other patrons against whom the officers had particularized and objective bases for suspecting illegal sex acts should have been released immediately after the officers determined they could not make cases against them in the municipal courts of the City of Atlanta. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Searches - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1421</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1422</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating

the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1423</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

The Vice Unit falsely imprisoned the patrons when they were detained without probable cause and in violation of Terry. The patrons were restrained by the Vice officers and were not free to move or leave the Eagle until their IDs were scanned and they were informed by the officers that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

D. Excessive Force

Eagle Patron Sean Gaboya stated Officer Noble used force to put him on the ground and placed a foot on his back while he was down. Officer Noble denies that he mistreated anyone during the Raid. Even if Officer Noble committed the act described, the injury, if any, was *de minimus*. Therefore, the conduct described does not rise to the level of excessive force.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Noble violated the above-referenced Standard Operating Procedure.

**3.3.11 Investigator Kelleita Thurman**

**Vice Unit approximately 2 years  
APD approximately 14 years  
Photo Array ID Not Applicable**

Investigator Thurman was incorrectly named as a defendant in the lawsuit. She did not participate in the operation on September 10-11, 2009 as she was out sick from work.<sup>1424</sup> However, she was one of the officers present on the undercover operation on September 3, 2009 and submitted an incident report for that operation on September 11, 2009.<sup>1425</sup>

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Thurman violated the above-referenced Standard Operating Procedure.

**3.3.12 Investigator Jared G. Watkins**

**Vice Unit approximately 3 years  
APD since August 26, 2003  
Photo Array ID No. 4246**

Investigator Watkins is a member of the Vice Unit and was present on the May 21, 2009 undercover detail.<sup>1426</sup> After entering the Eagle, Watkins went to the Main Bar, ordered drinks and began conversing with the bartender.<sup>1427</sup> Watkins and Godwin were posing as a gay couple.<sup>1428</sup> According to Watkins, they did not remain at the Main Bar for very long because the bartender began offering them free shots.<sup>1429</sup> After leaving, Watkins claimed he witnessed dancers<sup>1430</sup> near where the cage was located.<sup>1431</sup> Watkins did not remember whether the dancers exposed themselves or received tips<sup>1432</sup> After witnessing certain sex acts, Watkins returned to the Main Bar.<sup>1433</sup> No arrests were made that night.

On the night of September 10, 2009, Watkins' assigned location was the Club Room.<sup>1434</sup> Godwin and Watkins stopped at the bar for a drink and then proceeded to the back area.<sup>1435</sup> In one of the Back Rooms. Watkins claimed he observed what appeared to be an individual receiving oral sex but he was not able to clearly see due to the poor lighting in the bar.<sup>1436</sup> Watkins decided not to remain in the Back Rooms for very long as it gave patrons the impression that he was there to engage in sexual activities.<sup>1437</sup> In the Back Bar, Watkins claimed that he was groped by a patron.<sup>1438</sup> After groping Watkins, the patron told him he would see him later that night.<sup>1439</sup> Watkins then went back to the Main Bar area where he witnessed a dancer in a g-string place his crotch area onto another man's head.<sup>1440</sup> Watkins recalls that the dancer was also receiving tips,<sup>1441</sup> but does not remember whether the dancer was exposing himself.<sup>1442</sup>

Watkins believed that there may have been a miscommunication between the officers in the Back Rooms and the officers assigned to call Red Dog to enter the Eagle.<sup>1443</sup> Watkins believes that he was in the Hallway when Red Dog entered<sup>1444</sup> and he proceeded to take out his blue lanyard with his police identification.<sup>1445</sup> Watkins does not remember whether he gave instructions for patrons to get on the ground, but thinks he probably said "police, just to let everybody know you're not getting robbed."<sup>1446</sup> Further, he does not recall patting down any employees or patrons<sup>1447</sup> nor does he recall taking any IDs.<sup>1448</sup> Sometime after the area was secured, Watkins proceeded to the Main Bar<sup>1449</sup> where he assisted with writing citations.<sup>1450</sup> Ernest Buehl, the Eagle's doorman, identified Watkins as the officer who wrote his citation and described Watkins as "real nice."<sup>1451</sup>

#### Search and Seizure (.3020)

There is no evidence that Investigator Watkins searched any areas of the Eagle or that he searched or frisked any patrons. However, he violated the seizure portion of the above-

referenced standard operating procedure when he detained the patrons who were not suspected of having engaged in illegal activity.<sup>1452</sup>

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.



Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizure - Terry Stop

Investigator Watkins and the Vice Unit, acting as a whole, wrongfully detained the patrons. The wholesale detentions of all the patrons were not valid under Terry v. Ohio because the officers did not have a particularized and objective basis for suspecting that the particular person detained was or is involved in criminal activity. Patrons against whom the officers had no particularized and objective basis for suspecting criminal activity should have been released immediately rather than detained. And any patrons against whom the Investigator Watkins and the Vice Unit had particularized and objective basis for suspecting illegal sex acts should have been released immediately after the officers determined they could not make cases against them under Georgia law. Therefore, Investigator Watkins violated the Fourth Amendment.

Pretermitted whether running an ID for criminal history constitutes an illegal search under the Fourth Amendment, subjecting patrons not suspected of criminal activity to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions of such patrons were not valid; Investigator Watkins and Vice had no specific and articulable facts that supported a reasonable suspicion that

they had committed criminal offenses. Thus, the officers had no basis to detain those patrons for any period of time for the purpose of taking and scanning their IDs, and, indeed, should have detained patrons suspected of criminal activity only as long as necessary to determine that cases against them could not be made in the municipal courts of the City of Atlanta. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizure - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1453</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1454</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1455</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

The Vice Unit falsely imprisoned the patrons when they were detained without probable cause and in violation of Terry. The patrons were restrained by the Vice officers and were not free to move or leave the Eagle until their IDs were scanned and they were informed by the officers that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Watkins violated the above-referenced Standard Operating Procedure.

### **3.4 Red Dog Officers**

#### **3.4.1 Sergeant Craig Condon**

**Red Dog Unit approximately 5 years (currently a Sergeant assigned to Zone 1 FIT Team)  
APD since September 12, 2000  
Photo Array ID No. 4404**

On September 10, 2009, Condon was an officer assigned to the Red Dog Unit to assist with the Atlanta Eagle Raid.<sup>1456</sup> Condon arrived after the briefing started because he had to take Officer Carlos Smith back to the precinct because he was leaving early that night.<sup>1457</sup>

Condon's assignment for the night was to get the Eagle's patrons on the ground and secure the scene until Vice completed their investigation.<sup>1458</sup> He does not recall being assigned to secure a specific room.<sup>1459</sup>

As discussed in more detail below, Condon claimed to go into the Main Hallway, then upstairs, and then back to the Main Hallway. He noted seeing Officer Meredith in the Game Room and Officer Porter in the Pool Room.<sup>1460</sup> He stated that he did not pat anyone down, frisk for weapons or assist in obtaining IDs.<sup>1461</sup>

Condon, together with Sergeant Adams and one or two additional investigators (one whom he recalls being a African American male), went upstairs to Shepherd's Apartment.<sup>1462</sup> Condon understood that there was an owner or manager that resided there who needed to come downstairs.<sup>1463</sup> Either Sergeant Adams, or Condon, or both, stepped into the Apartment at some point.<sup>1464</sup> Shepherd was instructed to come downstairs for an investigation.<sup>1465</sup> Condon walked Shepherd downstairs to the dance floor; he did not handcuff Shepherd.<sup>1466</sup>

Eventually the patrons in the Main Hallway were moved by Vice, but Condon was not sure if they were moved to a different area or released.<sup>1467</sup> The Red Dog officers all left the Eagle together, and Condon cannot remember if there were people on the Deck, but he did notice some people walking around the parking lot.<sup>1468</sup>

Search and Seizure (.3020)

Officer Condon violated APD.SOP.3020 by participating in the wholesale detention of patrons not suspected of wrongdoing.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE EMPLOYEES

A. Warrantless Seizures

Officer Condon violated the Fourth Amendment when he effected the warrantless arrest of Shepherd in his home for the violation of a nonfelonious crime, assuming that Shepherd was in a residence or home within the meaning of the Fourth Amendment. The arrest was effected when multiple officers confronted Shepherd and instructed him to come downstairs for an investigation. At that point in time, it was reasonable for Shepherd to believe he was under arrest and not free to close his door or leave. Further, Officer Condon's entry into Shepherd's home without a warrant, consent or exigent circumstances violated the Fourth Amendment.

No exigent circumstances existed that would excuse the warrant requirement. There are no facts in the record that would lead Officer Condon to reasonably believe Shepherd was a

flight risk or that he was destroying evidence or about to destroy evidence. Clearly, Officer Condon and the other officers were not in hot pursuit of Shepherd. Therefore, the warrantless arrest of Shepherd in his home violated the Fourth Amendment.

B. False Imprisonment

Officer Condon falsely imprisoned Mr. Shepherd when he was unlawfully detained and deprived of his personal liberty. Mr. Shepherd was wrongfully arrested without a warrant in his home for a nonfelonious crime and transported to jail. Mr. Shepherd was falsely imprisoned until he was released from jail.

II. EAGLE PATRONS

A. Warrantless Seizures - Terry Stop

Officer Condon wrongfully detained the patrons. During the Raid, all the patrons were ordered to lay on their stomachs on the ground and kept on the floor even after the Eagle's owners and employees were identified and isolated. The detentions of all the patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity. The patrons, particularly those not suspected of criminal wrongdoing, never should have been detained and, in fact, should have been released immediately. Those patrons suspected of wrongdoing should have been released immediately upon determining that cases against them could not be made in the municipal courts of the City of Atlanta. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale

Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1469</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1470</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1471</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Red Dog falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Red Dog until their IDs were scanned and they were informed that they were free to go. The false imprisonment only lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Condon violated the above-referenced Standard Operating Procedure.

### 3.4.2 Officer Stalone Davis

**Red Dog Unit**  
**APD since August 16, 2005**  
**Photo Array ID No. 4208**

Officer Stalone Davis was a member of the Red Dog Unit who participated in the Eagle Raid. However, Officer Davis is no longer employed by the Atlanta Police Department, and has moved out of the state of Georgia. Officer Davis declined to be interviewed, thus, this summary is based on the statements he provided to OPS on February 25, 2010 and to the ACRB on March 10, 2010.

On the night of the Raid, Officer Davis was assigned to the Main Bar Area, near the Dance Floor.<sup>1472</sup> He stated that by the time he made entry all patrons were already on the floor.<sup>1473</sup> Officer Davis denied patting down or frisking any employees or patrons.<sup>1474</sup> He denied searching patrons or employees.<sup>1475</sup> He also claimed that he did not order patrons or employees to provide their IDs, or enter their pockets to retrieve their IDs.<sup>1476</sup> Instead, he suggested that patrons were ordered by another officer to have their IDs out, and he collected the IDs and provided them to Officer Mague.<sup>1477</sup> Specifically, he stated that he did not pat any patrons down prior to allowing them to retrieve their IDs from their pockets.<sup>1478</sup> On the other hand, Officer Cayenne Mayes stated that he believed Officer Davis patted down patrons in the Main Bar area because “thats what [they] were assigned to do.”<sup>1479</sup>

#### Search and Seizure (.3020)

Although there is no evidence that Officer Davis ordered any patrons to the ground, his participation in the wholesale detention of the patrons violated APD.SOP.3020 ¶ 4.3.3(3).

Officer Davis denied patting down or frisking any employees or patrons.<sup>1480</sup> He denied searching patrons or employees.<sup>1481</sup> He also claimed that he did not order patrons or employees to provide their IDs, or enter their pockets to retrieve their IDs.<sup>1482</sup> Instead, he suggested that



patrons were ordered by another officer to have their IDs out, and he collected the IDs and provided them to Officer Mague.<sup>1483</sup> Specifically, he stated that he did not pat any patrons down prior to allowing them to retrieve their IDs from their pockets.<sup>1484</sup> On the other hand, Officer Cayenne Mayes stated that he believed Officer Davis patted down patrons in the Main Bar area because “that [sic]what [they] were assigned to do.”<sup>1485</sup> Accordingly, Officer Davis may have violated the Search and Seizure procedure paragraph 4.3.3(4) by patting down patrons, as well as taking the patrons IDs.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

Thomas Hayes positively identified Davis from the photo array, stating Davis “had a booted foot, he put it to my side and rolled me over with it...a heavy nudge.”<sup>1486</sup> Davis was in fact in the Main Bar. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Davis violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE PATRONS

A. Warrantless Seizures - Terry Stop

Officer Davis wrongfully detained the patrons. Although Officer Davis stated he did not order any patrons to the ground, he participated in the wholesale detention of the Eagle's patrons, against whom Officer Davis had no particularized and objective basis for suspecting criminal activity. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person

detained was involved in criminal activity. Even if Officer Davis believed a search warrant had been obtained, it is well established that a warrant does not authorize the indiscriminate detention of all patrons in an establishment.<sup>1487</sup>

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

#### B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1488</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1489</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1490</sup> may have led to unlawful, constructive arrests.

#### C. False Imprisonment

Officer Davis falsely imprisoned the Main Bar patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were

restrained by Officer Davis until their licenses were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

Officer Davis denied patting down, frisking or otherwise searching any employees or patrons.<sup>1491</sup> He also claimed that he did not order patrons or employees to provide their IDs, or enter their pockets to retrieve their IDs.<sup>1492</sup> Instead, he suggested that patrons were ordered by another officer to have their IDs out, and he collected the IDs and provided them to Officer Mague.<sup>1493</sup> Specifically, he stated that he did not pat any patrons down prior to allowing them to retrieve their IDs from their pockets.<sup>1494</sup> On the other hand, Officer Cayenne Mayes stated that he “believed” Officer Davis patted down patrons in the Main Bar area because that was part of the assignment to secure the area.<sup>1495</sup> After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Davis violated the above-referenced Standard Operating Procedure.

**3.4.3 Officer Christopher Dowd**

**Red Dog Unit approximately 2 years  
APD since November 14, 2006  
Photo Array ID No. 4162**

Dowd was assigned to the perimeter with Officers Walters and Menzoian.<sup>1496</sup> Dowd was placed on the perimeter due to his inexperience.<sup>1497</sup> Dowd had only been a member of Red Dog for two or three weeks and the Raid was his first major operation.<sup>1498</sup>

Dowd was at the very back of the line of officers that was preparing to enter the Eagle.<sup>1499</sup> Upon proceeding up to the Back Deck, Dowd recalled approximately ten to twelve patrons being detained and then placed in a sitting position on the bench or floor of the Deck.<sup>1500</sup> Although some of the individuals were handcuffed, Dowd did not recall who the individuals were or why they were handcuffed,<sup>1501</sup> but he believed they may have worked for the Eagle.<sup>1502</sup>

Dowd elaborates that one of the handcuffed individuals may have been the person collecting the cover charges.<sup>1503</sup> However, Dowd claimed that none of patrons on the back Deck were handcuffed to one another because that would have been a violation of procedure.<sup>1504</sup> Dowd described the patrons as being fairly cooperative and doesn't recall anyone resisting.<sup>1505</sup> At some point, IDs were collected.<sup>1506</sup> Dowd did not specifically recall patting anyone down but states that such conduct would not have been out of line with the Standard Operating Procedures.<sup>1507</sup> Dowd did not remember handcuffing anyone nor did he recall taking items out of anyone's pockets.<sup>1508</sup>

Sometime during the Raid, Dowd entered Rawhide.<sup>1509</sup> Dowd recalls two individuals in the store whom he requested come out onto the Deck area.<sup>1510</sup> Although Dowd did not have a clear recollection as to whether he handcuffed anyone the night of the Raid, evidence suggests that Dowd handcuffed M. Du-Wayne Ray.<sup>1511</sup> Both Ray and McLeod identify Dowd as the officer who placed Ray in handcuffs while inside Rawhide.<sup>1512</sup>

About twenty minutes after the Deck and store were secured, Dowd went upstairs to the side entrance and briefly stepped into the Eagle in an attempt to find Sergeant Adams but was unable to do so.<sup>1513</sup> He intended to find Adams to discuss the status of the operation and to find out how long he and the other officers were to hold the patrons on the Deck as they had already been out there for about twenty minutes.<sup>1514</sup> Dowd stated that roughly ten minutes after he stepped into the Eagle, patrons from inside were beginning to be released and someone from Vice informed Dowd and the other officers on the back Deck that they could release the detained patrons.<sup>1515</sup>

### Search and Seizure (.3020)

The wholesale detentions of the patrons on the Deck, as well as the Rawhide occupants, violated APD.SOP.3020 ¶ 4.3.3(3), as Officer Dowd did not have a particularized and objective basis for suspecting the patrons on the Deck were involved in criminal activity.

McLeod claims that Dowd searched his pockets.<sup>1516</sup> Ray claims that Dowd patted him down while in Rawhide.<sup>1517</sup> If Dowd searched Ray's pockets, Dowd violated section SOP.3020 when he did so without a warrant and in the absence of any exigent circumstances that would justify a warrantless search.<sup>1518</sup> Dowd also would have violated SOP.3020 ¶ 4.3.3(4) if he frisked Ray without a reasonable belief that Ray was armed and dangerous.<sup>1519</sup>

### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

### Courtesy (4.2.02)

Allegations exist that Walters and Dowd were in a conversation where Dowd allegedly stated that "this is more fun than raiding niggers on crack"<sup>1520</sup> and that both officers laughed after the comment was made.<sup>1521</sup> The evidence also shows, however, that (1) an African American officer was a foot away from Dowd and Walters when the comment was made,<sup>1522</sup> and (2) this same comment was allegedly heard at different times and in different locations within the Eagle.

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

*Discriminatory References (4.2.13)*

Allegations exist that Walters and Dowd were in a conversation where Dowd allegedly stated that “this is more fun than raiding niggers on crack”<sup>1523</sup> and that both officers laughed after the comment was made.<sup>1524</sup> The evidence also shows, however, that (1) an African American officer was a foot away from Dowd and Walters when the comment was made,<sup>1525</sup> and (2) this same comment was allegedly heard at different times and in different locations at the Eagle. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

*Conformance to Directives (4.2.33)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

*Abuse of Authority (4.2.49)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE PATRONS

A. Warrantless Seizures - Terry Stop

During the Raid, Officer Dowd wrongfully detained all the patrons on the back Deck. The detentions of all the patrons were not valid under Terry because the officers did not have “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the detention].”<sup>1526</sup> Patrons against whom the officers had no particularized and objective basis for suspecting criminal activity should have been released immediately rather than detained. Indeed, in hindsight, Officer Dowd voiced this concern regarding the Deck patrons.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1527</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron’s involvement in any illicit activities.<sup>1528</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released.



Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1529</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Officer Dowd and Red Dog falsely imprisoned the patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The Lower Deck patrons were restrained by Officer Dowd until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

II. RAWHIDE

A. Warrantless Searches - Terry Frisk

Ray stated that he was patted down by Dowd while inside Rawhide. If believed, Dowd's pat down of Ray inside Rawhide violated the Fourth Amendment's prohibition of unreasonable searches. A Terry frisk is appropriate only if an officer reasonably believes a person is armed and presently dangerous. There are no facts indicating Ray was armed and dangerous or that Dowd feared for his safety. As such, the pat down of Ray was illegal.

B. Warrantless Seizures - Terry Stop

Dowd's entry into the Rawhide store did not violate the Fourth Amendment as it appears he only would have entered portions of the store that were open to the public. The detentions of the individuals inside Rawhide, however, constituted an improper Terry detention because Officer Dowd had no specific, articulable facts supporting a reasonable suspicion that those had committed, or were about to commit, criminal offenses.

C. Warrantless Seizures - Arrest

If Mr. Ray is to be believed, when Officer Dowd placed handcuffs on Mr. Ray, he effected an arrest. At that time, it was reasonable for Mr. Ray to believe he was under arrest and his freedom was restricted. The arrest was improper as there was no probable cause, let alone reasonable suspicion, to support the seizure.

Further, the prolonged Terry detentions of the other Rawhide occupants may have led to improper arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities. As there were no facts indicating the individuals inside Rawhide had committed a crime or were about to commit a crime, constructive arrests may have been effected when these individuals were detained for an unreasonable period of time.

D. False Imprisonment

Dowd falsely imprisoned Mr. Ray. Dowd also falsely imprisoned the other individuals in Rawhide when they were detained without probable cause or reasonable suspicion. The false imprisonment lasted until Mr. Ray and the Rawhide occupants were instructed to leave.

E. Excessive Force

Although Mr. Ray complained that his handcuffs left him bruised, such *de minimus* injuries are insufficient to support a Fourth Amendment violation.<sup>1530</sup>

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Dowd violated the above-referenced Standard Operating Procedure.

### 3.4.4 Officer Brandon Jackson

**Red Dog Unit approximately 4 years (currently assigned to APEX)  
APD since April 20, 2004  
Photo Array ID No. 4117**

Jackson does not recall being assigned to secure a specific location on the night of the Raid.<sup>1531</sup> Jackson entered the Eagle and went into the Main Bar near the cage.<sup>1532</sup>

When he walked in Jackson stated that the patrons were told to get on the ground, and according to Jackson, “everybody was pretty much on the ground.”<sup>1533</sup> Jackson claimed he stayed in the Main Bar area, and was not sure where other specific officers were located.<sup>1534</sup> Jackson states that the area was crowded and it was possible that he or someone else could have accidentally stepped on a patron.<sup>1535</sup> He admitted that he patted people down and had patrons provide him their IDs.<sup>1536</sup> Jackson noted that people were allowed to sit up one at a time during this process to hand him their IDs.<sup>1537</sup> He also observed other officers patting people down.<sup>1538</sup>

Officer Jackson claimed he did not secure the Kitchen area and he did not know who did.<sup>1539</sup> He also denied seeing anyone kicking the Kitchen door.<sup>1540</sup> Jackson also denied searching anything that night.<sup>1541</sup> Robert Kelley, a the Eagle co-owners who was placed on the Dance Floor, however, identified Jackson from photographs as the officer who kicked in the Kitchen door and then went in.<sup>1542</sup>

Eventually the whole Red Dog Unit left together.<sup>1543</sup> Jackson admitted that it is possible that some patrons’ vehicles may have been blocked in the parking lot as a result of where the Red Dog Unit parked their cars.<sup>1544</sup>

#### Search and Seizure (.3020)

Officer Jackson’s frisks of the patrons in the Main Bar area violated SOP.3020 ¶ 4.3.3(4) as he did not have an individualized, articulable suspicion that the individual frisked was armed

and presently dangerous. In fact, all the patrons were already on the floor when Officer Jackson entered the Eagle and he did not see any threat.<sup>1545</sup>

The detentions of all the patrons in the Main Bar area violated APD.SOP.3020 ¶ 4.3.3(3) because Officer Jackson did not have “a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity.”

Officer Jackson also violated SOP.3020 ¶ 4.3.4 when he searched the Kitchen in the absence of any exigent circumstances.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

#### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

#### Courtesy (4.2.02)

Although Jackson denied that any officer used profanity or other abusive language.<sup>1546</sup> Kelley identified Jackson from photographs as the officer who told him to “shut the fuck up.”<sup>1547</sup> Kelley had previously identified Jackson as the person who used abusive language.<sup>1548</sup> According to the ACRB Minutes Kelley, “was able to recall the use of specific profanity toward him and patrons.”<sup>1549</sup> After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Jackson violated the above-referenced standard operating procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

Jackson denies making or hearing any anti-gay or racially discriminatory comments.<sup>1550</sup> He did receive a text message on September 15, 2009 that said “Bro no more fuckin gay jokes. For rea[l] for real,” but he denies that it was prompted by him making such jokes.<sup>1551</sup> Jacques confirms this by saying that he sent a mass text to Red Dog officers and it was not prompted by anyone making such jokes. Kelley identified Jackson from photographs as the officer who called him a “faggot.”<sup>1552</sup> Kelley had previously identified Jackson as the person who used abusive language.<sup>1553</sup> According to the ACRB Minutes Kelley, “was able to recall the use of specific profanity toward him and patrons; however, he did state that he did not hear Officer Jackson use any homophobic slurs or language.”<sup>1554</sup> However, Kelley’s statements are inconsistent, and there is no other corroborating evidence. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

Conformance to Directives

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jackson violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE PATRONS

A. Warrantless Searches - Terry Frisk

Officer Jackson's frisks of the patrons violated the Fourth Amendment. Even where a bar is searched pursuant to a valid warrant, officers may not frisk all of the bar's patrons absent reasonable suspicion that each patron is armed and presently dangerous. In the absence of a warrant, such a frisk is altogether more unreasonable under the Fourth Amendment. There are no facts indicating that Officer Jackson had an individualized, articulable suspicion that the patrons in the Main Bar area were armed and presently dangerous. In fact, as noted above, according to Jackson, the patrons were already on the floor when he entered the Eagle and he did not see any threats.

B. Warrantless Seizures - Terry Stop

Officer Jackson wrongfully detained the patrons in the Main Bar area. During the Raid, Red Dog officers ordered all the patrons to lay on their stomachs on the ground and kept the patrons on the floor even after the Eagle's owners and employees were identified and isolated. The detentions of all the patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity. The patrons, particularly, those not suspected of criminal wrongdoing, never should have been detained and, in fact, should have been released immediately. And those suspected of wrongdoing should have been released immediately upon

determining that cases against them could not be made in the municipal courts of the City of Atlanta. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

#### C. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1555</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1556</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1557</sup> may have led to unlawful, constructive arrests.

#### D. False Imprisonment

Officer Jackson falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The Main Bar patrons were restrained by Red Dog until their licenses were scanned and they were informed by the officers that they were free to go. The

false imprisonment lasted until each patron was instructed to leave. Although police vehicles may have blocked the driveways exiting the Eagle, the patrons' personal liberties to move about freely were no longer restrained even though they could not leave in their own vehicles.

## II. EAGLE PREMISES

### A. Search Incident to Arrest

Officer Jackson's warrantless entry and search of the Eagle's Kitchen violated the Fourth Amendment. Nothing in the record indicates consent was provided for the search. Additionally, no exigent circumstances excused the warrant requirement.<sup>1558</sup> The Eagle's patrons were compliant and did not offer any resistance.<sup>1559</sup> There are no facts indicating anyone attempted to flee or hide in the Kitchen, which was locked from the outside.<sup>1560</sup> There are no facts indicating a danger of harm to the officers or the public. Indeed, Red Dog could easily have secured the Eagle and returned the following day with a search warrant if they believed a search of the Kitchen was justified or necessary. Therefore, Red Dog's warrantless search of the Kitchen was unreasonable.

The search cannot be justified as a search incident to the arrest of the Eagle's employees.<sup>1561</sup> The search incident to arrest doctrine may not extend to rooms other than where the arrest occurred.<sup>1562</sup> Although the Kitchen is adjacent to the Dance Floor where the arrestees were taken, the search incident to arrest doctrine does not permit Red Dog to search other rooms that are not within the immediate reach of the arrestees. It certainly does not permit Red Dog to open drawers and containers in the Kitchen.

### B. Protective Sweep

The search of the Kitchen/supply area cannot be justified as a protective sweep. The record lacks any facts based on which a reasonable officer could believe the Kitchen harbored an



individual who might have posed a threat to the officers. An officer's lack of information cannot justify a protective sweep.<sup>1563</sup> The key fact here is that the Kitchen was locked from the *outside*. No reasonable officer would believe that any person would be able to enter or exit the Kitchen without opening the outside lock. The fact that someone "might be" inside the room is not a strong enough basis to justify a protective sweep.<sup>1564</sup> Further a protective sweep generally does not allow officers to open containers and drawers as it is limited to discovering the presence of an armed individual. Therefore, the warrantless search and entry of the Kitchen constituted an improper search.

#### Truthfulness (4.1.03)

Based upon a comprehensive review of Jackson's statements, discovery responses and other documents, Jackson's statements contain inconsistencies. First, Jackson denied kicking the Kitchen door or going into the Kitchen.<sup>1565</sup> Jackson was in the Main Bar/Dance Floor area in the vicinity of the Kitchen door. Kelley positively identified Jackson from a photo array as the person who kicked the door.<sup>1566</sup> On June 25, 2011, a truth verification examination was conducted to determine if Jackson was being truthful.<sup>1567</sup> Following the initial examination, a second examination was conducted utilizing the same format as the initial examination as well as the same relevant questions.<sup>1568</sup> During the examination, Jackson did not answer the control questions as instructed.<sup>1569</sup> This is often a method used as an attempt to defeat the machine.<sup>1570</sup> Deception was indicated on the relevant questions regarding the Kitchen door.<sup>1571</sup> The evidence supports a finding that Jackson was untruthful regarding kicking the Kitchen door.

Second, as discussed above, the evidence supports a finding that Jackson violated APD SOP 4.202. Because Jackson denied using profanity, the evidence supports a finding that Jackson was untruthful regarding the use of profanity or any other abusive language.<sup>1572</sup>

Finally, it appears that Jackson was untruthful in responding to Interrogatory No. 13, which asked if he had “ever been found to have been untruthful or to have misled any court, judge, magistrate, government agency, government department, superior officer, fellow officer, or subordinate officer.”<sup>1573</sup> On October 15, 2009, United States Magistrate Court Judge Linda T. Walker found that the officers were “less than candid” in their testimony in U.S. v. Bryant, Case No. 1:09-cr-00018 (N.D. Ga.).<sup>1574</sup> Nevertheless, Jackson responded “No” to Interrogatory No. 13. This is a misstatement of a material fact, and thus, we find it to be untruthful. It has not been independently confirmed that Jackson is aware of Judge Walkers’ findings, but in light of Jackson’s other instances of untruthfulness, it is reasonable to conclude that he was also untruthful in his response to this interrogatory. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Jackson violated the above-referenced Standard Operating Procedure.

### **3.4.5 Officer Dimitri Jacques**

**Red Dog Unit approximately 3 years**  
**APD since May 3, 2005**  
**Photo Array ID No. 4158**

On the night of September 10, 2009, Jacques was an officer assigned to the Red Dog Unit to assist with the Atlanta Eagle Raid.<sup>1575</sup> Jacques stated that during the briefing, they were warned that there may be men dancing, naked men, men making out as well as other “illegal activity,” which was interpreted to mean drug use.<sup>1576</sup> Jacques recalled the briefing lasting approximately fifteen to twenty minutes.<sup>1577</sup> After the briefing Jacques believed they waited for at least an hour before they were called to go into the Eagle.<sup>1578</sup> Because they were waiting so long, he was texting Officer Edwards of the Vice Unit, who was inside the Eagle, to see how much longer they were going to have to wait.<sup>1579</sup>

Once they received the call, Red Dog drove from the staging area to the Eagle. Jacques parked on the street adjacent to the Eagle.<sup>1580</sup> Red Dog officers followed a Vice officer into the Eagle.<sup>1581</sup> According to Jacques, they did not line up in the parking lot to enter in a traditional stack formation or use a dynamic entry.<sup>1582</sup> Instead, they just followed each other loosely into the Eagle, and Jacques was at the end of the line.<sup>1583</sup> Jacques also stated they did not run into the Eagle — and they would never run into any situation because “[n]o officer rushes into danger.”<sup>1584</sup>

Officer Jacques was assigned to the Dance Floor.<sup>1585</sup> When he entered the Eagle, he walked in past the Main Bar (and not through the Pool Room); in front of the cage and around to the Dance Floor, and did not have to step over anybody.<sup>1586</sup> He then stood on the Dance Floor near the DJ booth.<sup>1587</sup>

Jacques indicated that everyone was on the ground by the time he entered, and there was nobody in the Dance Floor area to instruct to get on the ground because he was at the end of the line.<sup>1588</sup> According to Jacques, the patrons he observed were cooperative.<sup>1589</sup> He also denies performing any pat downs or frisks, or placing anyone in handcuffs.<sup>1590</sup> Jacques stated he did not see anyone else frisking patrons or employees.<sup>1591</sup> Jacques stated he did not search for drugs, and he is not sure if any other Red Dog officer did so.<sup>1592</sup> Jacques contended he did not take any cash or other property from anyone that evening.<sup>1593</sup> Jacques stated he did not obtain IDs from anyone that night either, but saw IDs being collected in the Main Bar area.<sup>1594</sup>

According to Jacques, it was boring in the club so he stood around watching a football game that was on the TV behind the bar.<sup>1595</sup> Jacques does not know if anyone secured the Kitchen.<sup>1596</sup> Jacques did not recall ever seeing the door.<sup>1597</sup> Eventually Red Dog left, prior to the Vice Unit.<sup>1598</sup>

Search and Seizure (.3020)

Officer Jacques violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of all the patrons without reasonable, articulable suspicion authorizing the detentions.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

Jacques denied making any discriminatory comments or remarks.<sup>1599</sup> Jacques also denied hearing any such remarks — either anti-gay or racial slurs.<sup>1600</sup> Jacques did send a text message on September 15, 2009, which said “Bro no more fuckin gay jokes. For rea[l] for real.”<sup>1601</sup> He said it was a mass text to Red Dog officers, and was not precipitated by any improper remarks;

instead, he was trying to be a good leader by encouraging people not to make such remarks.<sup>1602</sup>

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Jacques violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Although Officer Jacques denied ordering anyone to the floor, Red Dog, acting as a whole, wrongfully detained the patrons. During the Raid, all the patrons were ordered to lay on their stomachs on the ground and kept on the floor even after the Eagle's owners and employees were identified and isolated. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the detention]."<sup>1603</sup> The patrons, particularly, those not suspected of criminal wrongdoing, never should have been detained and, in fact, should have been released immediately. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions.

Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

B. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1604</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1605</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1606</sup> may have led to unlawful, constructive arrests.

C. False Imprisonment

Officer Jacques falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Red Dog until their IDs were scanned and they were informed that they were free to go. The false imprisonment only lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

Based on a comprehensive review of Jacques' statements, discovery responses and other documents, Jacques' statements contain inconsistencies. First, Jacques' response to Interrogatory

No. 5 states “[w]e were told by members of Vice that there were illegal narcotics inside the club...[and] [i]n my experience, a lot of people I have dealt with who deal with illegal narcotics, have some kind of weapon.<sup>1607</sup> During his GT interview, Jacques stated that at the briefing they were warned there may be men dancing, naked men, men making out and other “illegal activity,” which Officer Jacques interpreted to mean drug use.<sup>1608</sup> There is evidence that the original complaint regarding the Eagle, which referenced illegal drugs, was read during the briefing. Thus, while these statements were not completely accurate, they do not rise to the level of an untruthful statement.

Second, Interrogatory No. 11 asks if “you have ever been charged with, convicted of, or plead guilty or nolo contendere to any crime, code violation, or ordinance violation” and Jacques responded “No.”<sup>1609</sup> This is an untrue statement because he was arrested on February 6, 2004 in Boca Raton, Florida, and charged with buying alcohol for a minor.<sup>1610</sup> He disclosed this arrest in his employment application, which appears to have been produced by the City during discovery.<sup>1611</sup> This is a misstatement of a material fact, and thus, we find it to be untruthful. It should be noted, however, that under Federal Rules of Civil Procedure Rule 33(b)(3) each interrogatory must be answered “in writing under oath.” Despite this Rule, no verification was attached to Jacques’ responses, and thus, it is possible that this is an inadvertent misstatement by the attorney preparing the response. Nevertheless, for purposes of this report, we assume that Jacques participated in preparing and reviewing the responses to these Interrogatories. We note that the City Law Department communicated with the individual officers regarding the need to respond to these discovery requests.

After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Jacques violated the above-referenced Standard Operating Procedure.

### 3.4.6 Officer Cayenne Mayes

**Red Dog Unit approximately 2 years  
APD since November 14, 2006  
Photo Array ID No. 4385**

Mayes was assigned to the Main Bar, and that is where he went after entering through the Pool Room and going down the Main Hallway.<sup>1612</sup> Davis was in the Main Bar as well.<sup>1613</sup> Mayes recalls seeing Officer Mague with a computer at Main Bar,<sup>1614</sup> as well as Sergeant Brock in the Main Bar.<sup>1615</sup> Mayes stated that he was focused on the Main Bar area and was standing near the bar where they were taking IDs.<sup>1616</sup>

When he entered the Eagle, Mayes stated that not all patrons were getting on the floor, but after being instructed once or twice, everyone was eventually on the floor.<sup>1617</sup> Mayes stated that the patrons and employees were cooperative.<sup>1618</sup> Officer Mayes patted down approximately three (3) patrons while they were on the ground.<sup>1619</sup> Mayes was able to walk around the patrons on the floor and he does believe it was possible that he could have bumped into them. Mayes claimed that when he asked for IDs, the patrons reached into their pockets and handed them to him and he then gave them to Mague or Sergeant Brock.<sup>1620</sup> Mayes claimed he did not go into any pockets for the IDs.<sup>1621</sup>

Mayes saw that the Kitchen door was open, but is unsure who opened it or if it was kicked in.<sup>1622</sup> Although Mayes denied going in the Kitchen, he believes other Vice and Red Dog officers were going in and out of the Kitchen.<sup>1623</sup> Mayes denied doing any physical search of the premises.<sup>1624</sup> Mayes claimed he did not go upstairs that night or into Rawhide.<sup>1625</sup>

Eventually, Mayes left with the rest of the Red Dog officers. Mayes did not recall seeing anybody on the Deck as they left.<sup>1626</sup> He did notice people on the sidewalk as they left.<sup>1627</sup> Typically, Red Dog debriefs each night, but Mayes stated that he did not remember any details of a debriefing that night.<sup>1628</sup>



Search and Seizure (.3020)

Officer Mayes' pat downs of the three patrons violated APD.SOP.3020, as Officer Mayes lacked a reasonable belief that the patrons were armed and dangerous. As Officer Mayes did not search any of the patron's pockets, however, he did not violate any SOPs regarding unreasonable searches of people. As Officer Mayes did not search any area of the premises, he did not violate any SOPs regarding unreasonable searches of the premises.

Additionally, Officer Mayes violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of all the patrons without reasonable, articulable suspicion authorizing the detention.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Mayes violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Searches - Terry Frisk

Officer Mayes' frisks of the patrons violated the Fourth Amendment. Even where a bar is searched pursuant to a valid warrant, officers may not frisk all of the bar's patrons absent reasonable suspicion that each patron is armed and presently dangerous. In the absence of a warrant, such a frisk is altogether more unreasonable under the Fourth Amendment. There are no facts indicating that Officer Mayes had an individualized, articulable suspicion that the individuals frisked were armed and presently dangerous.<sup>1629</sup>

## B. Warrantless Seizures - Terry Stop

Officer Mayes and Red Dog violated the Fourth Amendment's prohibition against unreasonable seizures. During the Raid, all the patrons were ordered to lay on their stomachs on the ground and kept on the floor even after the Eagle's owners and employees were identified and isolated. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the detention]."<sup>1630</sup> The patrons, particularly, those not suspected of criminal wrongdoing, never should have been detained and, in fact, should have been released immediately. Instead, all patrons were detained illegally for an inordinate period of time.

Disregarding whether running a license for criminal history constitutes an illegal search under the Fourth Amendment, subjecting all patrons to ID scans led to improper detentions. Requesting ID is proper during a valid Terry detention. In this instance, however, the wholesale Terry detentions were not valid because the officers did not have any specific and articulable facts that supported a reasonable suspicion that all patrons had committed criminal offenses. By taking and scanning licenses, patrons not suspected of any wrongdoing were detained illegally. Indeed, doing so prolonged the detentions, making it virtually indisputable that the detentions violated recognized law.

## C. Warrantless Seizures - Arrest

Further, the prolonged Terry detentions may have led to improper, constructive arrests.<sup>1631</sup> A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1632</sup> Once it was determined that the patrons had not performed any illegal sex acts or the officers were unable to

identify any patron believed to have engaged in illegal sex acts, they should have been released. Failure to let the patrons leave, particularly patrons not suspected of wrongdoing, after isolating the Eagle's owners and employees, and holding their IDs to be scanned for warrants<sup>1633</sup> may have led to unlawful, constructive arrests.

#### D. False Imprisonment

Red Dog falsely imprisoned the patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were restrained by Red Dog until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

#### Truthfulness (4.1.03)

In his ACRB interview, Mayes denied that he patted down or frisked patrons.<sup>1634</sup> In addition, while he admitted seeing other officers pat patrons down, he said he did not recall who.<sup>1635</sup> Finally, Mayes stated that he did not observe any other officer go into the Kitchen.<sup>1636</sup> As noted above, in his subsequent interview, Mayes told a different story. First, Officer Mayes admitted that he patted down approximately three (3) patrons.<sup>1637</sup> Next, Mayes stated that he believed Officer Davis patted down patrons in the Main Bar area because “that what [they] were assigned to do.”<sup>1638</sup> Lastly, Mayes stated that he believes other Vice and Red Dog officers were going in and out of the Kitchen.<sup>1639</sup> Thus, the evidence supports a finding that Mayes was untruthful with regard to whether he patted down patrons, observed others pat down patrons, or observed others going into the Kitchen — all of which were key issues in the litigation. After a review of all accessible and relevant information, **THERE IS** sufficient evidence to find that Mayes violated the above-referenced Standard Operating Procedure.

### 3.4.7 Officer James Menzoian

**Red Dog Unit approximately 2 years  
APD since February 10, 2004  
Photo Array ID No. 4126**

On September 10, 2009, Red Dog Officers Menzoian and Walters were both assigned to detain the doorman/bouncer, Ernest Buehl.<sup>1640</sup> Upon reaching Buehl, Menzoian secured Buehl by using two sets of handcuffs.<sup>1641</sup> Sometime thereafter, Menzoian claimed he took the cash box that Buehl used to collect cover charges and placed it on the bench next to Buehl.<sup>1642</sup> During this time, Menzoian recalled patrons sitting on a bench on the back Deck<sup>1643</sup> and stated that eventually a Vice officer came and retrieved Buehl<sup>1644</sup> and took him inside the Eagle.<sup>1645</sup>

After being instructed he could leave the Eagle, Menzoian was walking to his car when he realized that he did not have his handcuffs, so he returned to the Eagle in order to retrieve them.<sup>1646</sup> When he entered the bar, he saw several people handcuffed.<sup>1647</sup> As he was unsure whether Buehl was still wearing his two sets of cuffs, he retrieved two sets of different handcuffs from an officer<sup>1648</sup> and then he left the bar.<sup>1649</sup>

#### Search and Seizure (.3020)

Officer Menzoian was operating under the assumption that a warrant existed for the Eagle Raid.<sup>1650</sup> As previously stated, Menzoian recalls detaining Buehl and then patting him down for weapons.<sup>1651</sup> During his OPS interview, Menzoian states that he did not search the pockets of anyone that night.<sup>1652</sup> However, in his interview with GT, Menzoian clarifies that he does not remember whether he retrieved Buehl's ID from Buehl's pockets but that it is likely that either he or Officer Walters did so.<sup>1653</sup> Although these statements are slightly inconsistent with one another, it is likely that Menzoian did not consider the possible retrieval of Buehl's ID to constitute an actual search. Officer Menzoian's search of Buehl to retrieve his ID was a proper

search incident to arrest<sup>1654</sup> and did not violate APD.SOP.3020. Officer Menzoian violated APDSOP.3020 by participating in the Deck patron detentions.

*Use of Firearms (4.6.09)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

*Maltreatment or Unnecessary Force (4.2.50)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

*Courtesy (4.2.02)*

In his interview, Elton Burkes believed that Officers were laughing at him and said he felt humiliated as he was leaving the Eagle.<sup>1655</sup> Burkes recalled seeing Brock and Menzoian as he was walking out, but does not identify them as making any discriminatory statements.<sup>1656</sup> Menzoian stated he did not use any profanity or abusive language that night.<sup>1657</sup> Moreover, even if the officers were laughing, it is impossible to determine at what they were laughing. Burke's statement alone is insufficient. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Menzoian violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE EMPLOYEES

A. Warrantless Searches - Search Incident to Arrest

Officer Menzoian's search of Buehl for weapons and his ID did not violate the Fourth Amendment. The search for weapons and ID was proper as a search incident to arrest.<sup>1658</sup>

B. Warrantless Seizures - Arrest

Officer Menzoian did not violate any laws when he detained the Eagle employee as Red Dog was called in only after the Vice officers saw violations of City of Atlanta ordinances<sup>1659</sup> in the Eagle. As such, there was probable cause to detain and arrest Buehl.

## II. EAGLE PATRONS AND RAWHIDE OCCUPANTS

### A. Warrantless Seizures - Terry Stop

Officer Menzoian wrongfully detained the patrons on the back Deck. Although Officer Menzoian does not remember who detained the Deck patrons, it is undisputed that the Deck patrons were detained and Officer Menzoian was assigned to that area. Additionally, at some point, the occupants of Rawhide were brought to the Deck. Officer Menzoian also wrongfully detained these individuals even if he was not the person who brought them to the Deck. The detentions of the Deck patrons and Rawhide's occupants were not valid under Terry because Menzoian did not have any specific and articulable facts to support a suspicion that they had committed a criminal offense. As such, they should not have been detained.

### B. Warrantless Seizures - Arrest

Officer Menzoian assisted in keeping the Deck patrons and Rawhide occupants detained while their licenses were being run through GCIC. As the detentions of these individuals were improper, holding them further while their licenses<sup>1660</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities. The Deck patrons and the Rawhide occupants were suspected of no wrongdoing whatsoever and should have never been detained. Failure to let them leave and holding them for ID checks for a prolonged period of time, therefore, may have constituted unlawful, constructive arrests.

### C. False Imprisonment

Officer Menzoian falsely imprisoned the Deck patrons and Rawhide occupants when they were detained without probable cause or reasonable suspicion. The patrons were restrained by



Red Dog until their IDs were scanned and they were informed that they were free to go. The false imprisonment only lasted until they were instructed to leave.

Truthfulness (4.1.03)

Based upon a comprehensive review of Menzoian's statements, discovery responses and other documents, Menzoian's statements contain inconsistencies. It appears that Menzoian was untruthful in responding to Interrogatory No. 12, which asked if he had "ever been found to have been untruthful or to have misled any court, judge, magistrate, government agency, government department, superior officer, fellow officer, or subordinate officer."<sup>1661</sup> On October 15, 2009, United States Magistrate Court Judge Linda T. Walker found that the officers were "less than candid" in their testimony in U.S. v. Bryant, Case No. 1:09-cr-00018 (N.D. Ga.).<sup>1662</sup> Nevertheless, Menzoian responded "No" to Interrogatory No. 12. This is a material misstatement of a relevant question, and thus, we find it to be untruthful. It has not been independently confirmed that Menzoian is aware of Judge Walkers' findings. Moreover, it should be noted that under Federal Rules of Civil Procedure Rule 33(b)(3) each interrogatory must be answered "in writing under oath." Despite this Rule, no verification was attached to Menzoian's responses, and thus, it is possible that this is an inadvertent misstatement by the attorney preparing the response. Nevertheless, for purposes of this report, we assume that Menzoian was aware of the ruling and participated in preparing and reviewing the responses to these Interrogatories. We note that the City Law Department communicated with the individual officers regarding the need to respond to these discovery requests.

### 3.4.8 Officer Dion Meredith

**Red Dog Unit approximately 2 years  
APD since December 26, 2006  
Photo Array ID No. 4188**

Meredith was one of the last officers to enter the bar.<sup>1663</sup> Upon entering, Meredith proceeded to the Main Bar<sup>1664</sup> where he witnessed people lying on the ground.<sup>1665</sup> Meredith stated he went to the Game Room where he recalls witnessing patrons lying on the ground<sup>1666</sup> because other officers<sup>1667</sup> had arrived ahead of him.<sup>1668</sup>

Meredith stated that he did not have any interaction with any of the detained patrons in the Game Room,<sup>1669</sup> other than telling individuals waiting to have their IDs checked “Bro, it will be over in a minute.”<sup>1670</sup> Meredith did not recall asking anybody for ID,<sup>1671</sup> nor did he remember taking anybody’s wallet to retrieve ID.<sup>1672</sup> Meredith also stated he did not pat down or frisk anyone<sup>1673</sup> and did not enter the Back Bar room nor the Club Room.<sup>1674</sup> After some time, Meredith recalled someone informing him it was time to leave.<sup>1675</sup> Meredith then walked through the Main Bar area and out of the Eagle where he met his team at the car.<sup>1676</sup>

#### Search and Seizure (.3020)

Officer Meredith violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of the Eagle’s patrons without “a particularized and objective basis for suspecting that the particular persons detained [was or is involved in] criminal activity.” APD.SOP.3020 ¶ 4.3.3(3).

Although allegations exist that patrons in the Game Room were searched in a manner that would violate APD.SOP.3020 ¶ 4.3.3(4),<sup>1677</sup> Officer Meredith was never positively identified by any of the patrons as having conducted frisks or pat downs. Further, Officer Meredith stated he did not perform any frisks. Therefore, there is no definitive evidence suggesting that Officer Meredith violated SOP.3020 § 4.3.3(4).

Similarly, Officer Meredith was never positively identified by any of the patrons as having conducted a search of their persons by pulling out the contents of their pockets. Meredith asserts that he did not perform any frisks nor pat-downs that night<sup>1678</sup> nor did he perform any searches on any patrons or employees.<sup>1679</sup> Further, he asserts that he did not enter the Kitchen,<sup>1680</sup> the upstairs Office/Apartment,<sup>1681</sup> nor did he search any closets.<sup>1682</sup> In fact, Meredith asserts that he was unaware that an Apartment existed above the Eagle<sup>1683</sup> and was also unaware that Rawhide was on the same premises.<sup>1684</sup> Therefore, there are insufficient facts indicating Officer Meredith violated the search portion of APD.SOP.3020.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Meredith wrongfully detained the patrons in the Game Room. During the Raid, Red Dog officers ordered all patrons to lay on their stomachs on the ground and kept the patrons on the floor even after the Eagle's owners and employees were identified and isolated. The wholesale detentions of all the patrons were not valid under Terry because Officer Meredith did not have a particularized and objective basis for suspecting that the particular person detained was involved in criminal activity. Once the suspects had been identified, the remaining patrons should have been released.

Although Officer Meredith assumed the Raid was conducted pursuant to a search warrant, his belief does not excuse the wrongful detentions. It is well established that even where a search warrant authorizes a search of a premises and/or the individual(s) described in the

warrant, it does not authorize the indiscriminate detention of all patrons within the establishment.<sup>1685</sup>

B. Warrantless Seizures - Arrest

Officer Meredith assisted in keeping the patrons on the floor while their licenses were being run through GCIC. As the detentions of the patrons were improper Terry detentions, holding them further while their licenses<sup>1686</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1687</sup> As Officer Meredith had no specific and articulable facts creating a reasonable suspicion that the patrons he detained had committed criminal offenses; they should never have been detained. Holding those patrons for a prolonged period of time to run their licenses may have constituted unlawful, constructive arrests.

C. False Imprisonment

Officer Meredith falsely imprisoned the patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were restrained by Red Dog officers and were not free to move or leave the Eagle until their licenses were checked and they were informed by the officers that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Meredith violated the above-referenced Standard Operating Procedure.

### 3.4.9 Officer Darnell Perry

**Red Dog Unit approximately 2 years (currently assigned to APEX)  
APD since September 23, 2003  
Photo Array ID No. 4241**

Perry was assigned to the Game Room the night of the Raid.<sup>1688</sup> Upon entering the Game Room, he witnessed five or six patrons<sup>1689</sup> who were already down on the ground.<sup>1690</sup> He also witnessed an unknown Vice officer.<sup>1691</sup> However, according to Perry, as soon as he entered the room, the undercover Vice officer left.<sup>1692</sup>

Perry states that he did not have any verbal interaction with the patrons in the Game Room,<sup>1693</sup> and he also did not conduct any searches or pat-downs.<sup>1694</sup> Shortly thereafter, he recalls a Vice officer retrieved patrons one at a time and Perry believes the officer likely asked for IDs so as to check them in the system.<sup>1695</sup> However, Perry states he never personally removed an ID nor did he see any other officers do so.<sup>1696</sup>

When the investigation was complete, Perry left the Eagle and returned to his vehicle.<sup>1697</sup>

#### Search and Seizure (.3020)

Officer Perry violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of the Eagle's patrons without "a particularized and objective basis for suspecting that the particular persons detained [was or is involved in] criminal activity." APD.SOP.3020 ¶ 4.3.3(3).

Although allegations exist that patrons in the Game Room were searched in a manner that would violate APD.SOP.3020 ¶ 4.3.3(4),<sup>1698</sup> Officer Perry never was positively identified by any of the patrons as having conducted frisks or pat downs. Further, Officer Perry stated he did not conduct any searches or pat downs.<sup>1699</sup> Therefore, there is no definitive evidence suggesting that Officer Perry violated SOP.3020 ¶¶ 4.3.2, 4.3.3(3) or 4.3.4.

Similarly, Officer Perry was never positively identified by any of the patrons as having conducted a search of their persons by pulling out the contents of their pockets. Additionally, there are no facts indicating Officer Perry searched any area of the Eagle. Therefore, there are insufficient facts indicating Officer Perry violated APD.SOP.3020 ¶¶ 4.3.1, 4.3.2, 4.3.3, 4.3.4.

*Use of Firearms (4.6.09)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Maltreatment or Unnecessary Force (4.2.50)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Courtesy (4.2.02)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Discriminatory References (4.2.13)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Darnell Perry and Red Dog, acting as a whole, wrongfully detained the patrons. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the detention].”<sup>1700</sup> Thus, the patrons Officer Perry detained never should have been detained and, in fact, should have been released immediately.

B. Warrantless Seizures - Arrest

Red Dog assisted in keeping the patrons on the floor while their IDs were being run. As the detentions of the patrons were improper Terry detentions, holding them further while their IDs<sup>1701</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron’s involvement in any illicit activities.<sup>1702</sup> Because Officer Perry had no specific and articulable facts creating a reasonable suspicion that the patrons he detained had committed



criminal offenses, they should never have been detained. Thus, holding those patrons for such a prolonged period of time to run their IDs<sup>1703</sup> may have constituted unlawful, constructive arrests.

C. False Imprisonment

Officer Perry falsely imprisoned the Pool Room patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Officer Perry until their IDs were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

**3.4.10 Officer Scott Perry**

**Red Dog Unit  
Photo Array ID Not Applicable**

Officer Scott Perry was wrongly named in the lawsuit as he was on vacation at the time of the Raid.

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Maltreatment or Unnecessary Force (4.2.50)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Courtesy (4.2.02)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Discrimination (4.2.12)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Discriminatory References (4.2.13)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

*Conformance to Directives (4.2.33)*

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Perry violated the above-referenced Standard Operating Procedure.

**3.4.11 Officer William Porter**

**Red Dog Unit approximately 3 years  
APD since August 16, 2005  
Photo Array ID No. 4121**

Officer Porter's assignment the night of the Raid was the Pool Room.<sup>1704</sup> Porter recalled walking up the stairs to the Back Deck and mistakenly entering Rawhide.<sup>1705</sup> Porter stated that he exited the store because he realized that it was not his assigned location,<sup>1706</sup> but by that time, nearly all of the officers had passed him and were already inside the Eagle.<sup>1707</sup>

Porter recalled patrons already placed on the floor.<sup>1708</sup> Porter proceeded to ask the patrons on the floor of the Pool Room for their IDs<sup>1709</sup> and then handed the IDs to Officer Noble who was operating the computer.<sup>1710</sup> Once the ID checks were complete, Porter gave the patrons their IDs back and they were able to leave.<sup>1711</sup> Porter did not recall collecting IDs from the

patrons located in the Back Bar.<sup>1712</sup> Additionally, Porter did not recall patting down patrons that night.<sup>1713</sup>

Sergeant Adams later informed him it was time to leave<sup>1714</sup> and Porter then returned to his vehicle.<sup>1715</sup> Upon exiting, Porter did not recall seeing anyone on the Deck<sup>1716</sup> or in Rawhide.<sup>1717</sup>

#### Search and Seizure (.3020)

Officer Porter violated APD.SOP.3020 ¶ 4.3.3(3) when he participated in the wholesale detentions of the Eagle’s patrons without “a particularized and objective basis for suspecting that the particular persons detained [was or is involved in] criminal activity.” APD.SOP.3020 ¶ 4.3.3(3).

Officer Porter did not remember patting anyone down.<sup>1718</sup> Officer Porter also stated he did not search any employees or patrons. Porter (ACRB) 7:19-22 (EAGLE 05158). Therefore, there is no definitive evidence suggesting that Officer Porter violated APD.SOP.3020 ¶ 4.3.3(4).<sup>1719</sup> Additionally, there are no facts indicating Officer Porter searched any area of the Eagle. Therefore, there are insufficient facts indicating Officer Porter violated APD.SOP.3020 ¶¶ 4.3.1, 4.3.2, 4.3.3, 4.3.4.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

A. Warrantless Seizures - Terry Stop

Officer Porter wrongfully detained the patrons in the Pool Room when he kept the patrons on the floor even after the Eagle's owners and employees were identified and isolated. The detentions of the patrons in the Pool Room were not valid under Terry because Officer Porter did not have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed] the [detentions]." <sup>1720</sup> Thus, those patrons never should have been detained and, in fact, should have been released immediately. Although Officer Porter may have believed the Raid was conducted pursuant to a search warrant, it is well established that a search warrant does not authorize an indiscriminate, wholesale detention of all individuals inside an establishment. <sup>1721</sup>

B. Warrantless Seizures - Arrest

Officer Porter assisted in keeping the patrons on the floor while their licenses were being run through GCIC. As the detentions of the patrons were improper Terry detentions, holding them further while their licenses <sup>1722</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities. <sup>1723</sup> Because Officer Porter had no specific and articulable facts creating a reasonable suspicion that the patrons he detained had committed criminal offenses, they should never have been detained. Thus, holding the patrons for a prolonged period of time to run their licenses may have constituted unlawful, constructive arrests.

C. False Imprisonment

Officer Porter falsely imprisoned the Pool Room patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were restrained until their licenses were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

D. Rawhide

Officer Porter did not violate the Fourth Amendment when he entered Rawhide because the store was open to the public at the time of entry and he only traversed public areas of the store. Additionally, there are no facts indicating Officer Porter searched Rawhide, therefore, Officer Porter's entry into Rawhide did not violate the Fourth Amendment's prohibition against unreasonable searches.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Porter violated the above-referenced Standard Operating Procedure.

**3.4.12 Officer Edward Rabb**

**Red Dog Unit  
Photo Array ID Not Applicable**

Officer Rabb is an improperly named defendant in this case. He did not participate in the Raid that evening as he was off-duty.<sup>1724</sup>

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.



Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Rabb violated the above-referenced Standard Operating Procedure.

**3.4.13 Officer Carlos Smith**

**Red Dog Unit  
Photo Array ID Not Applicable**

The complaint incorrectly identifies “Officer Cederic F. Smith” and named defendant.<sup>1725</sup> Officer Cederic F. Smith is a member of the Criminal Investigation Division of the APD.<sup>1726</sup> He is not a member and is in no way involved with either the Vice or Red Dog Units of the APD and was not in the vicinity of 306 Ponce de Leon.<sup>1727</sup> The officer, “C. Smith” should have been “Officer Carlos Smith,” formerly of the Red Dog Unit.<sup>1728</sup> On the night of the Raid, Officer Smith was stationed inside the police wagon parked outside of the Eagle.<sup>1729</sup> He never entered the Eagle that night.<sup>1730</sup>

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Smith violated the above-referenced Standard Operating Procedure.

**3.4.14 Sergeant Tyrone Taylor**

**Red Dog Unit  
Photo Array ID Not Applicable**

Sergeant Taylor was incorrectly named as a defendant in the lawsuit and was at APD Headquarters during the Raid.

Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Courtesy

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-references Standard Operating Procedure.

Unlawful Order

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Taylor violated the above-referenced Standard Operating Procedure.

### 3.4.15 Officer Stephanie Upton

**Red Dog**  
**APD since April 18, 2006**  
**Photo Array Not Applicable**

Officer Upton, an openly gay officer, is currently employed by the Drug Enforcement Agency (DEA). Upton, on the advice of her employer, declined to be interviewed. At the time of the Raid, Upton was a member of the Red Dog Unit and on the night of the Raid was assigned to the Pool Room.<sup>1731</sup> Upton states that since she was fairly new to Red Dog, she was at the very back of the entry team and was one of the last officers to enter.<sup>1732</sup> Upon entering the Eagle, she recalled patrons and employees being ordered to the floor.<sup>1733</sup> Upton stated that people in the Pool Room were already on the floor.<sup>1734</sup>

In her OPS statement, Upton denied searching anyone, but admitted conducting pat-downs for weapons.<sup>1735</sup> However, in her ACRB interview, Upton answered “yes” when asked whether she searched any employees or patrons and then states “[t]here was one male I patted down. He had a hard object inside of his sock. It could have been a weapon. So I retrieved it and it was an eyeglasses case.”<sup>1736</sup> Upton claimed she did not search or pat down anyone else.<sup>1737</sup> Upton claimed she did not go upstairs, nor did she enter the Kitchen or any other areas of the Eagle.<sup>1738</sup> After securing the area, Upton claimed that she notified her supervisor that she had detained a deaf patron to ensure that he was one of the first individuals to be released.<sup>1739</sup>

#### Search and Seizure (.3020)

Officer Upton violated SOP.3020 ¶ 4.3.3(3) when she participated in the wholesale detention of the Eagle’s patrons without articulable suspicion authorizing the detention. Officer Upton also violated 4.3.3(4) when she performed a pat down on one of the patrons. Although Officer Upton may have had a reasonable belief that the hard object in the sock was a weapon, the pat down was preceded by an improper detention. As such, the frisk was also improper.

Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

Allegations of maltreatment exist in the Pool Room where Upton was stationed the night of the Raid. Specifically, there are allegations while officers were detaining people, a deaf patron was pushed down onto the pool table and that officers “roughed him up sort of and pushed him down.”<sup>1740</sup> Allegations also exist that an African American female officer in the Pool Room threw a patron on the floor and searched a patron’s pockets.<sup>1741</sup> However, Officer Upton is Caucasian and not African American. By her own account, Upton denies using her foot to place or to keep any patrons or employees on the ground.<sup>1742</sup> After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

### Discriminatory References (4.2.13)

There is no evidence to indicate that Officer Upton made any discriminatory references the night of the Raid. Allegations do exist that Officer Upton was a part of a group of officers that were high-fiving one another after the Raid and stating “[t]his was so much fun. We should do this to a faggot bar every week.”<sup>1743</sup> Further, Upton is also alleged to have said “I thought that this was supposed to be a sex club. What are we doing here?”<sup>1744</sup> It is unlikely that the discriminatory comment referenced above was made as Officer Upton is openly gay, and after a review of all other accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

### Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

### Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

### Obey the Law (4.1.05)

#### A. Warrantless Seizures - Terry Stop

Officer Upton wrongfully detained the patrons. During the Raid, Red Dog officers ordered all the patrons to lay on their stomachs on the ground and kept the patrons on the floor even. The wholesale detentions of all the patrons were not valid under Terry because the officers did not have a particularized and objective basis for suspecting that the particular person detained [was or is involved in] criminal activity. Officer Upton had no particularized and objective basis



for suspecting the patrons she detained had engaged in criminal activity and, thus, she should have never detained them.

B. Warrantless Seizures - Arrest

Officer Upton assisted in keeping the patrons on the floor while their licenses were being run through GCIC. As the detentions of the patrons were improper Terry detentions, holding them further while their licenses <sup>1745</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities.<sup>1746</sup> As there were no facts indicating the patrons Officer Upton detained had committed a crime or were about to commit a crime, constructive arrests may have been effected when these patrons were detained for an unreasonable period of time.<sup>1747</sup>

C. False Imprisonment

Officer Upton falsely imprisoned the patrons when they were detained without probable cause or reasonable suspicion. The patrons were restrained by Red Dog until their licenses were scanned and they were informed that they were free to go. The false imprisonment only lasted until each patron was instructed to leave.

Truthfulness (4.1.03)

Although an inconsistency exists between Upton's ACRB and OPS statements, it does not appear the inconsistency is material. Specifically, in her OPS statement, Upton denied searching anyone but admits to conducting pat downs. However, in her ACRB interview, she admits conducting searches and then states "[t]here was one male I patted down. He had a hard object inside of his sock. It could have been a weapon. So I retrieved it and it was an eyeglasses

case.”<sup>1748</sup> It appears that this inconsistency is the result of a misunderstanding of the differences between the definition of a pat-down and that of a search. As such, standing alone, this inconsistency does not constitute a truthfulness violation.

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Upton violated the above-referenced Standard Operating Procedure.

### **3.4.16 Sergeant Ronald J. Walker**

**Red Dog Unit  
Photo Array Not Applicable**

Sergeant Walker was not present at the Eagle on the night of the Raid and was incorrectly named as a defendant in the lawsuit.<sup>1749</sup> Walker was one of three sergeants in the Red Dog Unit at the time of the Raid.<sup>1750</sup> Because he oversaw the K-9 unit, he seldom helped with support details. He was off duty during the time of the operation at the Atlanta Eagle.<sup>1751</sup>

#### Search and Seizure (.3020)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

#### Use of Firearms (4.6.09)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Courtesy

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

Responsibility of Supervisor

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

### Unlawful Orders

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

### Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

### Obey the Law (4.1.05)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

### Truthfulness (4.1.03)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walker violated the above-referenced Standard Operating Procedure.

#### **3.4.17 Officer William Walters**

**Red Dog Unit approximately 2 years  
APD since December 28, 2004  
Photo Array ID No. 4178**

Officer Walters was a member of the Red Dog Unit.<sup>1752</sup> Officer Walters and Menzoian were assigned to the Back Deck of the Eagle Bar and were to ensure that no one entered after the Raid began.<sup>1753</sup>

Upon arriving at the Eagle, Walters and Menzoian were towards the front of the line of officers so that they could detain Ernest Buehl, the doorman.<sup>1754</sup> Walters stated that Officer

Menzoian handcuffed Buehl who was then placed on a bench on the Back Deck along with the cash box that was in Buehl's possession.<sup>1755</sup>

Walters recalls Eagle patrons that were on the Back Deck were eventually being taken inside by Vice officers and that he, Menzoian and Dowd were on the Back Deck by themselves for the majority of the night.<sup>1756</sup> He stated that nobody on the Back Deck was handcuffed nor put on the ground but that some of them may have been set on the Back Deck next to doorman.<sup>1757</sup> Although it is clear that Walters remained on the Back Deck and never entered the Eagle,<sup>1758</sup> conflicting testimony exists as to whether Walters entered Rawhide. Walters denied entering Rawhide.<sup>1759</sup> However, M. Du-Wayne Ray and Jeffrey McLeod, both of whom were in Rawhide, identified Walters as having entered the store. Specifically, McLeod identifies two officers, one tall and one short, as entering Rawhide.<sup>1760</sup> McLeod later identifies the shorter officer as Walters<sup>1761</sup> and states that Walters performed a sweep of the store and then left.<sup>1762</sup> Ray identifies Walters as being in the store and pointing a gun at him.<sup>1763</sup> However, McLeod, who was in the same location as Ray, did not see any guns the night of the Raid.<sup>1764</sup>

While waiting on the Back Deck, Walters remembered individual patrons who had been cleared by the Vice Unit exiting the Eagle.<sup>1765</sup> The Vice Unit indicated that the patrons were clear by signaling and waving.<sup>1766</sup> Walters stated that a few of those patrons may have attempted to reenter the bar to retrieve their belongings.<sup>1767</sup> The patrons were told to wait until the investigation was complete before re-entering the Eagle.<sup>1768</sup>

#### Search and Seizure (.3020)

As Buehl was properly arrested for violating Atlanta City Ordinance 30-55, the restriction on his freedom to move did not violate SOP.3020 ¶ 4.3.3(3). Although Walters states

that he did not frisk or search Buehl, such a search would have been appropriate under SOP.3020 ¶ 4.3.3(4).

The wholesale detention of the patrons on the Deck, however, violated APD.SOP.3020 ¶ 4.3.3(3) as Officer Walters did not have a particularized and objective basis for suspecting the patrons on the Deck were involved in criminal activity. Additionally, Walters does not recall handcuffing or searching any of the patrons on the back Deck.<sup>1769</sup> As such, there is insufficient evidence to show that Walters violated APD.SOP.3020 ¶ 4.3.2, 4.3.3(4), or 4.3.4.

Officer Walters stated he never entered the Eagle<sup>1770</sup> and denies that he entered Rawhide.<sup>1771</sup> However, two occupants of Rawhide affirmatively identified Walters and stated that he entered Rawhide. Even so, Walters' entry into a store, which was open to the public at that time, did not constitute an unreasonable search because there is insufficient evidence that he ventured beyond the public areas of the store.

#### Use of Firearms (4.6.09)

A determination cannot be made as to whether Walters crossed the threshold of Rawhide or did so with a weapon drawn. The two witnesses inside Rawhide provide conflicting testimony as to whether the weapon was drawn. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

#### Maltreatment or Unnecessary Force (4.2.50)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Courtesy (4.2.02)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Discrimination (4.2.12)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Discriminatory References (4.2.13)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Conformance to Directives (4.2.33)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Abuse of Authority (4.2.49)

After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

Obey the Law (4.1.05)

I. EAGLE PATRONS ON THE LOWER DECK

A. Warrantless Seizures - Terry Stop

Officer Walters wrongfully detained the Deck patrons. The detentions of all the Deck patrons were not valid under Terry because Officer Walters did not have a particularized and objective basis for suspecting that the particular persons detained were involved in criminal activity.

B. Warrantless Seizures - Arrest

The prolonged Terry detentions may have constituted improper arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron's involvement in any illicit activities. As there were no facts indicating the Deck patrons had committed a crime or were about to commit a crime, constructive arrests may have been effected when these patrons were detained for an unreasonable period of time.

C. False Imprisonment

Officer Walters falsely imprisoned the Deck patrons when they were detained without reasonable suspicion in violation of Terry and without probable cause. The patrons were restrained until their licenses were scanned and they were informed that they were free to go. The false imprisonment lasted until each patron was instructed to leave.

II. RAWHIDE

A. Warrantless Searches

Officer Walters was identified by two Rawhide occupants as having entered Rawhide and performing a protective sweep of its premises, which Officer Walters denies. If Officer Walters entered Rawhide and performed a sweep, his actions violated the Fourth Amendment's provision against unreasonable searches. A protective sweep, performed incident to an arrest, is a quick



and limited search of the premises conducted to protect the safety of police officers and others.<sup>1772</sup> A protective sweep is only permitted if the officer reasonably believes the area swept harbors an individual posing a threat to the officers or others.<sup>1773</sup> A lack of information that someone “might be” hiding does not justify a protective sweep.<sup>1774</sup> Here, the protective sweep was improper for two reasons. First, none of Rawhide’s occupants were arrested.<sup>1775</sup> Second, there are no facts indicating Officer Walters reasonably believed Rawhide’s premises harbored an individual posing a threat to the officers or others.

B. Warrantless Seizures - Terry Stop

Officer Walters wrongfully detained Rawhide occupants. The detentions of the Rawhide occupants were not valid under Terry because Officer Walters did not have a particularized and objective basis for suspecting that the Rawhide occupants were involved in criminal activity.

C. Warrantless Seizures - Arrest

The prolonged Terry detentions may have constituted improper arrests. A Terry detention must last only as long as necessary to effectuate the purpose of the stop, i.e., to ascertain the patron’s involvement in any illicit activities. As there were no facts indicating that Rawhide’s occupants had committed a crime or were about to commit a crime, constructive arrests may have been effected when those individuals were detained for an unreasonable period of time. Officer Walters participated in keeping the Rawhide occupants detained while their licenses were being run through GCIC. As the detentions of the Rawhide occupants were improper Terry detentions, holding them further while their licenses<sup>1776</sup> were being scanned (and after the Eagle employees had been identified) prolonged the improper detentions and may have constituted improper, constructive arrests.

#### D. False Imprisonment

Officer Walters falsely imprisoned the Rawhide occupants when they were detained without reasonable suspicion in violation of Terry and without probable cause. Their freedom to move was restrained by Officer Walters until their licenses were scanned and they were informed that they were free to go. The false imprisonment lasted until the Rawhide occupants were instructed to leave.

#### Truthfulness (4.1.03)

From reviewing Officer Walters' testimony, discovery responses and other documents, there exist inconsistent statements as to whether he entered Rawhide, pointed a gun, or saw people other than the bouncer handcuffed. As noted above, a determination cannot be made as to whether Walters crossed the threshold of Rawhide or did so with a weapon drawn. The two witnesses inside Rawhide provide conflicting testimony as to whether his weapon was drawn. In addition, whether Walters "saw" people handcuffed that evening on the Back Deck is subjective inquiry. Walters was not in a supervisory role, and not expected to observe other officers' conduct. After a review of all accessible and relevant information, the evidence **DOES NOT** sufficiently support a finding that Walters violated the above-referenced Standard Operating Procedure.

### **3.5 SOPs Outside of Settlement Agreement**

#### **3.5.1 Alcohol Consumption**

An article in the *Atlanta Journal-Constitution* noted that Investigators Bridges and Watkins consumed alcohol and spent excessive amounts of APD funds on multiple occasions at the Eagle.<sup>1777</sup> More specifically, the article alleged that Bridges spent \$60 on May 21, 2009 and \$50 on the night of the Raid, whereas Watkins spent \$60 on the night of the Raid. The article

also claimed that both Bridges and Watkins were drinking heavily and consuming shots of Jagermeister.<sup>1778</sup>

When taken at face value, the allegations contained in the aforementioned article are of great concern. However, upon closer inspection, it is evident that the article provides an incomplete picture of the events that occurred and omits certain important facts. For example, regarding the usage of city funds, although the amounts that Watkins and Bridges spent at the Eagle may seem large, the article never mentions that only investigators, and not officers, carry city-issued funds. It is typical for investigators to sign-out funds from the city, and either distribute those funds to other officers who do not have access to city-issued funds or to make drink purchases for the officers. On the night of the Raid, Watkins stated that he was either paying for or distributing funds to Godwin and Edwards.<sup>1779</sup> For example, that night Watkins claims he paid the \$5.00 cover charge for himself, Godwin and Edwards, he purchased drinks for the three of them, and he tipped the bartender.<sup>1780</sup> Similarly, Bridges recalled providing other officers with funds and or paying the cover charge on their behalf.<sup>1781</sup> Bridges also claims he purchased drinks for two patrons.<sup>1782</sup>

As previously stated, the article also alleges that Bridges and Watkins were taking shots while undercover and more specifically on the night of the Raid.<sup>1783</sup> It should also be noted this particular allegation is not contained in the Amended Complaint, despite the Amended Complaint containing allegations which specifically identify the various brands and types of alcohol consumed by undercover officers.<sup>1784</sup> The aforementioned allegation stems from Eagle co-owner Robert Kelley, who identified Bridges as taking at least two shots of Jaegermeister on the night of the Raid.<sup>1785</sup> Contrary to Kelley's allegation, Chris Lopez, an Eagle bartender, remembered serving Bridges and even recalls what Bridges was drinking and never makes any

mention of anyone taking shots on the night of the Raid. Rather, Lopez identified Bridges as ordering two doubles of Kettle One Vodka.<sup>1786</sup> The fact that Lopez never mentioned anyone taking shots is bolstered by officer testimony. Specifically, Bridges denied taking any shots the night of the Raid.<sup>1787</sup> Further, it is clear that neither Watkins nor Godwin were taking shots on the night of the Raid.<sup>1788</sup> Although it is evident that no shots were taken on the night of the Raid in September, Watkins and Godwin admit to taking shots on a previous detail at the Eagle<sup>1789</sup> with Lopez.<sup>1790</sup> Based upon Lopez's testimony, it may be that Robert Kelley was confused as to the night that officers took shots.

It should also be noted that just because officers were ordering alcoholic beverages does not necessarily mean that they were consuming any or all of the drink. In fact, based upon officer testimony, it appears common for officers to order a drink, drink a portion of it and throw the rest away. Multiple officers said that they used this tactic.<sup>1791</sup> Additionally, not a single interviewee (out of the approximately twenty patrons and employees interviewed during the course of this investigation) identified any officer as appearing intoxicated. This supports the officers' testimony that they only consumed at most, a portion of their drinks and were not drinking to excess as suggested by the above-referenced news article.

## SECTION 4: RECOMMENDATIONS FROM APD OFFICERS

*During the course of the investigation conducted by GT, the APD officers we interviewed offered recommendations on a number of topics including, but not limited to upcoming training, additional resources and more personnel. What follows is a compilation of those suggestions for the consideration of the APD and the general public.*

- Low-light video/audio recording equipment to document the findings of the undercover investigation and the arrest and detainment procedures taken during the Raid and after.<sup>1792</sup>
- Higher ranked officer (Lieutenant or above) on scene of operations of this size, with multiple units<sup>1793</sup>
- Notification of LGBT liaison when operation planned at gay establishment<sup>1794</sup>
- Formal training of Vice Unit officers by retired/reserve Vice Unit officers as part of the reserve program's service component<sup>1795</sup>
- Create a hard cap on the number of years an investigator can be assigned to Vice Unit to raise the profile of the unit and utilize the skillsets developed in Vice in related units (i.e., Narcotics)<sup>1796</sup>
- Creating a formal policy/practice/training that patrons will not be placed on the ground and guns not initially drawn in an establishment where the investigated activity is a non-violent crime and no imminent danger to officers is expected<sup>1797</sup>
- More personnel at the officer level<sup>1798</sup>
- Reducing the number of administrative meetings for statistical reporting requirements (COBRA) and/or alternating the time of the meetings to conform with the schedules of evening operations to allow Lieutenants to be on the scene for more details.<sup>1799</sup>
- Reiterate, possibly by SOP, that Tac Plan for operations with a warrant or larger details needs a Lieutenant signature.<sup>1800</sup> However, recreate the pre-Neal Street undercover operation sheets for smaller and interim operations that do not necessitate a Lieutenant signature.
- Create an SOP for the Vice Unit detailing specific crimes it has responsibilities for and emphasizing that not all crimes with a sexual component are limited to its jurisdiction (i.e., public sex as a general ordinance violation that any unit can address)

- Improved organization and communication by the City Law Department when dealing with officers they represent in litigation.<sup>1801</sup> Including, greater opportunity to review and comment on any discovery responses.
- More detailed pre-Raid briefings, especially for tactical support teams unfamiliar with the underlying investigation and layout of the location for a detail<sup>1802</sup>
- Regular and more frequent training on criminal procedure<sup>1803</sup>
- Having meetings on best practices among undercover officers, which in turn can inform any changes to SOPs.<sup>1804</sup>
- Increased interaction between ACRB and APD outside of the ACRB complaint process to improve relations. Greater screening of complaints by the ACRB before it conducts formal investigations of alleged officer misconduct.<sup>1805</sup>
- Greater responsiveness from the City and APD public affairs officers to media inquiries and news stories involving officer misconduct.<sup>1806</sup> However, such responses should also be scrupulously checked for accuracy.<sup>1807</sup>
- Revision of APD.SOP.6142 (Crime Stoppers) to require a 30-day turnaround time on responses to tips delivered by Crime Stoppers as currently requested on Crime Stopper lead sheets.<sup>1808</sup>
- Homeland Security Unit should not be utilized in all cases to perform forensic examinations of APD officer phones.
- Homeland Security Unit should utilize additional forensic devices and/or applications beyond Cellbright to collect evidence from cell phones.

## SECTION 5: APPENDICES

### 5.1 Cast of Characters

The following individuals have been identified as persons of interest in the Eagle investigation and raid:

The following individuals have been identified as persons of interest in the Eagle investigation and raid

APD COMMAND STAFF		EAGLE BAR EMPLOYEES	
<b>Chief Richard Pennington</b>	Former Chief of APD	<b>Leandro Apud</b>	Dancer
<b>Chief George N. Turner</b>	Current Chief of APD and Head of Eagle Reforms Task Force	<b>Antonio Benitez</b>	Dancer
<b>Dep. Chief Carlos Banda</b>	Former Deputy Chief of APD	<b>Ernest Buehl</b>	Doorman at the Eagle
<b>Maj. Elder Dancy</b>	Commander of Office of Professional Standards	<b>Tadareius Johnson</b>	Dancer
<b>Maj. Debra A. Williams</b>	Commander of Special Enforcement Section	<b>Robert Kelley</b>	Bartender/Co-Owner of the Eagle
APD VICE UNIT		<b>Robert Klein</b>	Dancer
<b>Lt. Tony Crawford</b>	Commander of Vice Unit	<b>Chris Lopez</b>	Bartender at the Eagle
<b>Sgt. John Brock</b>	Lead Supervisor	<b>Richard Ramey</b>	Co-Owner of the Eagle
<b>Sgt. Kelley Collier</b>	Supervisor	<b>M. Du-Wayne Ray</b>	Rawhide Leather Manager
<b>Inv. Bennie Bridges</b>	Lead Investigator	<b>David Shepherd</b>	Off-duty Manager of Eagle, living in apartment above Eagle
<b>Off. Dimitri Caldwell</b>		EAGLE BAR PATRONS WHO HAVE GIVEN STATEMENTS	
<b>Inv. Gregory D. Dabney</b>		<b>Elton Burkes</b>	<b>Raymond Matheson</b>
<b>Off. Jeremy D. Edwards</b>		<b>Geoffrey Calhoun</b>	<b>Andre Mayes</b>
<b>Inv. Herman E. Glass</b>		<b>Benjamin Cheaves</b>	<b>Robert McLendon, III</b>
<b>Off. Robert C. Godwin</b>		<b>John Curran</b>	<b>Jeffrey McLeod</b>
<b>Off. Melonie Mague</b>		<b>Alan Dale</b>	<b>Saverio Monteleone</b>
<b>Off. Vincente Marcano</b>		<b>Mark Danak</b>	<b>Matthew Presley</b>
<b>Inv. Timothy McClain</b>		<b>Christopher Daniels</b>	<b>M. Du-Wayne Ray</b>
<b>Off. Marlon O. Noble</b>		<b>Thomas Fast</b>	<b>Chris Schmaltz</b>
<b>Inv. Kelleita Thurman</b>		<b>Sean Gaboya</b>	<b>Scott Schneider</b>
<b>Inv. Jared G. Watkins</b>		<b>Felix Garcia</b>	<b>Eric Staats</b>
APD RED DOG UNIT		<b>Thomas Hayes</b>	<b>David Thomas</b>
<b>Lt. Scott Pautsch</b>	Commander of Red Dog Unit	<b>Brian Hughes</b>	<b>Robert Treutel, Jr.</b>
<b>Sgt. Willie Adams, III</b>	Supervisor	<b>Kenneth Keck</b>	<b>Allan Vives</b>
<b>Off. Craig Condon</b>		<b>Nicholas Koperski</b>	<b>Gary Ziemer</b>
<b>Off. Stalone Davis</b>		<b>Robert Marlow</b>	
<b>Off. Christopher Dowd</b>			
<b>Off. Brandon Jackson</b>			
<b>Off. Dimitri Jacques</b>			
<b>Off. Cayenne Mayes</b>			
<b>Off. James Menzoian</b>			
<b>Off. Dion Meredith</b>			
<b>Off. Darnell Perry</b>			
<b>Off. William Porter</b>			
<b>Off. Stephanie Upton</b>			
<b>Off. William "Brian" Walters</b>			

## 5.2 Timeline of Events for Eagle Raid

Below is a timeline of key events relating to the Eagle Raid.  
*Italics indicate disputed facts*

**May 15, 2009:** Anonymous complaint about public sex occurring at Atlanta Eagle sent to Mayor's Office and three local media organizations.<sup>1809</sup>

**May 19, 2009:** Anonymous complaint forwarded from Mayor's Communications Office to APD-Public Affairs Unit.<sup>1810</sup>

**May 20, 2009:** Major Debra Williams, then-head of APD-Special Enforcement Section (including Vice and Red Dog Units), asked to investigate complaint.<sup>1811</sup>

**May 21, 2009:** First undercover investigation visit by Vice Unit at Atlanta Eagle in response to anonymous complaint. Officers indicated in their reports that alleged illegal activity complained of was observed (public sex) as well as adult entertainment (partially nude dancing), but no arrests are made.<sup>1812</sup> Three reasons were given by officers for their inaction: (1) lack of knowledge of licensing for the Atlanta Eagle (i.e., whether it had adult entertainment permit); (2) inadequate force presence to deal with large crowd; and (3) goal set to establish pattern of illegal activity through a longer investigation.

**June 11, 2009:** Second undercover investigation visit by Vice Unit at Atlanta Eagle. Alleged illegal activity observed (dancers), but no action is taken.<sup>1813</sup>

**July 1, 2009:** Anonymous tip made to Crime Stoppers Atlanta web site of planned illegal acts at Atlanta Eagle on July 5, 2009. Tip centered on public sex and drugs at an after-hours sex party to be hosted at the Atlanta Eagle. There is no indication that the tip was ever followed up on by APD.<sup>1814</sup>

**September 3, 2009:** Third undercover detail by Vice Unit at Atlanta Eagle. Alleged illegal activity observed (public sex and dancers), but no action is taken.

**September 10-11, 2009:** Eagle Raid occurs over the following timeline:

**9:30 P.M.:** Scheduled briefing time prior to operation.<sup>1815</sup>

**10:00 P.M.:** Scheduled time of undercover operation under tactical plan.<sup>1816</sup>

**10:00-10:45 P.M. (approx.):** Vice Unit enters Eagle undercover to observe illegal activity. Two couples (four individuals) are observed having public sex that evening, as well as dancers in only their underwear.<sup>1817</sup>

**11:04 P.M.:** Bridges calls Mague to give the signal for Red Dog to come in.<sup>1818</sup>

**11:05 P.M.:** APD wagons and squad cars arrive at the Eagle.<sup>1819</sup>



**11:06 P.M.:** Mague calls Bridges to confirm arrival at the Eagle.<sup>1820</sup> Mague then leads Red Dog officers onto the back Deck where the doorman, Ernest Buehl, the patrons on the Lower Deck, the customers inside the Rawhide store, and the manager of Rawhide are detained.

**11:10 P.M. (approx.):** Sergeant Brock and Investigator Bridges handcuff Kelley and Lopez and inform them that the bar is being raided. Almost immediately thereafter, Red Dog officers and Vice officers command Eagle patrons and employees to get down on the floor. Over the next several minutes, Red Dog Unit officers enter to secure the perimeter and assist with crowd control. As Red Dog fans out through the bar, Officer Brandon Jackson kicks in the door to the Kitchen/supply room.<sup>1821</sup>

**11:14 P.M.:** Officers Melonie Mague and Marlon Noble begin processing patron IDs through computer to check for existing warrants on GCIC. No outstanding warrants are found on any patron. Patrons are released and instructed to leave the Eagle as their information clears.<sup>1822</sup>

**11:15 P.M. (approx.):** Sergeant Adams and Officer Condon go to the upstairs Office/Apartment above the bar and remove off-duty Eagle manager David Shepherd, who is later arrested.<sup>1823</sup>

**11:15-11:20 P.M. (approx):** *Bridges asks Kelley how to open cash registers and then how to get into the upstairs office. Kelley identifies the key to the office and Bridges proceeds upstairs.*<sup>1824</sup>

**11:21 P.M.:** First patron, an off-duty police officer from the Back Bar area, is released.<sup>1825</sup>

**11:40 P.M. (approx.):** *Bridges, Jackson, and Jacques search the Kitchen/supply room.*<sup>1826</sup>

**11:43 P.M. (approx.):** Officers move vehicles blocking exit to Eagle parking lot. Patrons who waited for upwards of approximately 20 minutes in the parking lot to get their cars are allowed to retrieve their vehicles and leave.<sup>1827</sup>

**11:49 P.M.:** Last patron released has ID run through GCIC and is let go shortly thereafter.<sup>1828</sup>

**11:56 P.M. - 12:01 A.M.:** Eagle Employees have their IDs run through GCIC.<sup>1829</sup>

**12:05 A.M. (approx.):** Eagle employees notified that they would be arrested and charged with violating city ordinances relating to operating an adult entertainment business without a permit.<sup>1830</sup> Kelley is then allowed to close up the bar and secure the money from the cash registers while other employees are taken outside to await transport to the Atlanta City Detention Center.<sup>1831</sup>

**12:30 A.M. (approx.):** Officers call for a Zone 5 wagon to transport the employees.<sup>1832</sup>

**12:40 A.M. (approx.):** Because Buehl experiences a panic attack, an ambulance is requested to examine him before transport. Officers also call for a separate Zone 5 squad car to transport Buehl at the urging of Kelley and the wagon driver.<sup>1833</sup>

**12:50 A.M. (approx.):** The ambulance and squad car for Buehl arrive. An EMT examines Buehl and clears him for transport.<sup>1834</sup>

**12:51 A.M.:** Officer Edwards takes a cell phone picture of the employees in the wagon awaiting transport and Buehl sitting on the bumper.<sup>1835</sup>

**1:20-1:25 A.M. (approx.):** - Employees arrive at Atlanta City Detention Center.<sup>1836</sup>

**1:32 A.M.:** Employees are booked and processed.<sup>1837</sup>

**5:25 P.M.:** Employees released from jail after bail is posted.<sup>1838</sup>

**September 15, 2009:** Complaints filed by Eagle patrons and employees to APD (Complaint # 09-C-0387-MISC).<sup>1839</sup>

**October 17, 2009:** First ACRB complaint filed.<sup>1840</sup>

**November 24, 2009:** Calhoun federal civil rights suit (42 U.S.C. § 1983) filed by 25 patrons, employees, and the Eagle's corporate form against the City of Atlanta and individually against the officers present.<sup>1841</sup>

**March 11, 2010:** Seven of the Eagle 8 are acquitted at trial after being defended by Alan Begner. One of the dancers charged, Antonio Benitez, did not show and had a bench warrant issued for his arrest.<sup>1842</sup>

**March 15, 2010:** Discovery begins in Calhoun lawsuit.<sup>1843</sup>

**June 10, 2010:** ACRB sustains complaint for false arrest by off-duty Eagle manager David Shepherd against Inv. Bennie Bridges and Sergeant John Brock.<sup>1844</sup>

**August 12, 2010:** ACRB sustains allegations that abusive language and anti-gay slurs were used by police at Eagle Raid and commissions report on supervisory liability.<sup>1845</sup>

**September 9, 2010:** ACRB rules that police falsely imprisoned patrons during the Eagle Raid.<sup>1846</sup>

**December 8, 2010:** Calhoun settlement approved by Judge Batten. As part of the settlement agreement, APD has 180 days to complete a "thorough and meaningful" investigation of the Eagle Raid.<sup>1847</sup>

### 5.3 SOP Violations By Officer

		Search and Seizure (3020)	Use of Firearms (4.6.09)	Mistreatment or Unnecessary Force	Courtesy (4.2.02)	Discrimination (4.2.12)	Discriminatory References (4.2.13)	Conformance to Directives (4.2.33)	Responsibility of Supervisor (4.2.03)	Unlawful Orders (4.2.05)	Abuse of Authority (4.2.49)	Obey the Law (4.1.05)	Unsatisfactory Performance (4.2.37)	Truthfulness (4.1.03)
<b>COMMAND STAFF</b>	Maj. Deborah Williams								•					
	Lt. Tony Crawford (V)								•			•	•	
	Lt. Scott Pautsch (RD)													
<b>SERGEANTS</b>	Sgt. John Brock (V)	•			•	•			•	•		•		•
	Sgt. Kelley Collier (V)	•							•			•		
	Sgt. Willie Adams (RD)	•							•	•		•		•
	Sgt. Tyrone Taylor (RD)													
	Sgt. Ronald Walker (RD)													
<b>VICE UNIT</b>	Inv. Bennie Bridges	•										•		•
	Off. Dimitri Caldwell													
	Inv. Gregory Dabney											•		
	Off. Jeremy D. Edwards	•			•	•	•					•		•
	Inv. Herman E. Glass	•										•		
	Off. Robert C. Godwin	•										•		
	Off. Melonie Mague	•										•		
	Off. Vincente Marcano	•										•		•
	Inv. Timothy McClain	•										•		
	Off. Marlon Noble	•										•		
	Inv. Kelleita Thurman													
Inv. Jared Watkins	•										•			
<b>RED DOG UNIT</b>	Off. Craig Condon	•										•		
	Off. Stalone Davis	•			•							•		
	Off. Christopher Dowd	•										•		
	Off. Brandon Jackson	•			•							•		•
	Off. Dimitri Jacques	•										•		•
	Off. Cayenne Mayes	•										•		•
	Off. James Menzoian	•										•		•
	Off. Dion Meredith	•										•		
	Off. Darnell Perry	•										•		
	Off. Scott Perry													
	Off. William Porter	•										•		
	Off. Edward Rabb													
	Off. Carlos Smith													
	Off. Stephanie Upton	•										•		
	Off. William Walters	•										•		

## 5.4 4th Amendment Violations by Officer

		<i>Seizure: Improper Warrantless Arrest</i>	<i>Seizure: Improper Terry Detentions (APD.SOP:3020 ¶ 4.3.3(3))</i>	<i>Seizure: False Imprisonment (O.C.G.A. 51-7-20)</i>	<i>Unnecessary Force (APD.SOP:3020 ¶ 4.1.3)</i>	<i>Search: Improper Terry Frisks (APD.SOP:3020 ¶ 4.3.3(4))</i>	<i>Improper Search Incident to Arrest – Employees (APD.SOP:3020 ¶ 4.3.2)</i>	<i>Improper Search Incident to Arrest – Patrons (APD.SOP:3020 ¶ 4.3.2)</i>	<i>Improper Protective Sweep (APD.SOP:3020)</i>
<b>COMMAND STAFF</b>	Maj. Deborah Williams								
	Lt. Tony Crawford (V)								
	Lt. Scott Pautsch (RD)								
<b>SERGEANTS</b>	Sgt. John Brock (V)		●	●		●			
	Sgt. Kelley Collier (V)		●	●					
	Sgt. Willie Adams (RD)	●	●	●		●	●		●
	Sgt. Tyrone Taylor (RD)								
	Sgt. Ronald Walker (RD)								
<b>VICE UNIT</b>	Inv. Bennie Bridges	●	●	●			●		
	Off. Dimitri Caldwell								
	Inv. Gregory Dabney								
	Off. Jeremy D. Edwards		●	●					
	Inv. Herman E. Glass		●	●					
	Off. Robert C. Godwin		●	●		●			
	Off. Melonie Mague		●	●					
	Off. Vincente Marcano		●	●					
	Inv. Timothy McClain		●	●					
	Off. Marlon Noble		●	●					
	Inv. Kelleita Thurman								
	Inv. Jared Watkins		●	●					
<b>RED DOG UNIT</b>	Off. Craig Condon	●	●	●					
	Off. Stalone Davis		●	●					
	Off. Christopher Dowd		●	●					
	Off. Brandon Jackson		●	●		●	●		●
	Off. Dimitri Jacques		●	●					
	Off. Cayenne Mayes		●	●		●			
	Off. James Menzoian		●	●					
	Off. Dion Meredith		●	●					
	Off. Darnell Perry		●	●					
	Off. Scott Perry								
	Off. William Porter		●	●					
	Off. Edward Rabb								
	Off. Carlos Smith								
	Off. Stephanie Upton		●	●		●			
	Off. William Walters		●	●					

<sup>1</sup> 3.4.1 states, “All employees must answer questions and/or make available any relevant materials or sworn statements concerning an investigation of employee misconduct when directed to do so by a disciplinary authority or duly appointed investigator. Employees will provide all relevant information and materials and answer all questions honestly, completely, and to the best of their ability. An employee’s refusal to cooperate and provide sworn statements, answers, or relevant materials during an authorized administrative investigation will result in disciplinary action, up to and including dismissal.” APD.SOP 20.20 § 3.4.1; see also APD.SOP 20.20 § 3.3.2 (“Disciplinary authorities may delegate the investigation of a complaint and some of the administrative aspects of the disciplinary process.”).

<sup>2</sup> Memo from City Attorney Cathy Hampton to Chief of Police George N. Turner (Mar. 7, 2011).

<sup>3</sup> APD.SOP 20.20 § 3.4.1.

<sup>4</sup> These materials are limited to the Law Department’s defense of the City. Attorney-client and work product privileges related to the Law Department’s defense of the individual officers were not waived during the investigation.

<sup>5</sup> Given the circumstances surrounding the Eagle Raid, some of the people we interviewed may have been motivated to describe events in a manner colored by self-interest or hindsight. GT made every effort to maintain objectivity. When appropriate, our counsel used cross-examination techniques to test the credibility of witnesses.

<sup>6</sup> Counsel for Plaintiffs indicated that the naming of Defendants that were not present at the Raid was unintentional and based on records supplied by the City Law Department.

<sup>7</sup> <http://www.atlantapd.org/specialenforcement.aspx>

<sup>8</sup> APD.SOP.5030 § 3.1.

<sup>9</sup> APD.SOP.5030 § 3.1.

<sup>10</sup> <http://www.atlantapd.org/specialenforcement.aspx> ; Brock GT 18. Although there is no SOP for the Vice Unit, vice activities are defined by SOP as “activities such as prostitution; illegal sale, manufacture and consumption of alcohol; manufacture, sale, or distribution of obscene or pornographic materials.” APD.SOP.5030 § 5.10.

<sup>11</sup> Brock GT 29.

<sup>12</sup> Brock GT 29.

<sup>13</sup> Brock GT 34-35.

<sup>14</sup> Bridges GT 101.; Brock GT 69.

<sup>15</sup> <http://www.atlantapd.org/specialenforcement.aspx>

<sup>16</sup> APD.SOP.5130 § 2 (License and Permits - Policy).

<sup>17</sup> Additionally, there are approximately six civilian inspectors that work in the unit during the day shift. Cavender GT 9.

<sup>18</sup> Cavender has since been promoted to the rank of Captain. Cavender GT 7.

<sup>19</sup> <http://www.atlantapd.org/apdhistory.aspx>

<sup>20</sup> <http://stephanieramage.com/blog/apd-red-dog-unit-to-be-overhauled-or-disbanded-sources-say>.

<sup>21</sup> APD.SOP.5140 § 2 (Red Dog Unit - Policy).

<sup>22</sup> Pautsch GT 12.

<sup>23</sup> S.W.A.T. is an acronym for “Special Weapons and Tactics.”

<sup>24</sup> Williams GT 28-29.

<sup>25</sup> Williams GT 28-29.

<sup>26</sup> In late 2006, a narcotics operation by the APD resulted in the death of a 92-year-old bystander, Kathryn Johnston. In the aftermath of the Neal Street incident, the Narcotics Unit underwent extensive reforms including the reassignment and replacement of all personnel. Red Dog has often mistakenly been associated with the Neal Street incident despite having no involvement with that operation.

<sup>27</sup> Brock GT 24.

<sup>28</sup> Pautsch GT 13.

<sup>29</sup> Pautsch GT 13.

<sup>30</sup> On January 7, 2010, APD announced that the Red Dog Unit was to be replaced by a new tactical crime-fighting unit, the Atlanta Proactive Enforcement and Interdiction (“APEX”) Unit, because of changes in both the types of crime in Atlanta as well as the Department’s increased capabilities. See Public Affairs Unit, APD, Atlanta Police to

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Create New Crime-Fighting Unit to Replace Red Dog (Jan. 7, 2010), available at <http://www.atlantapd.org/pdf/news-releases/28.pdf>.

<sup>31</sup> <http://www.atlantaeagle.com/>

<sup>32</sup> EAGLE013075.

<sup>33</sup> <http://www.atlantaeagle.com/>

<sup>34</sup> EAGLE013087. Prior to Rawhide's occupancy, a similar retail establishment called Four Skins Leather operated out of the space for approximately ten years.

<sup>35</sup> EAGLE021128-EAGLE021129.

<sup>36</sup> The email copied the Atlanta ABC, Fox, and NBC television affiliates.

<sup>37</sup> EAGLE021128-EAGLE021129. Notably, this was not the first such report made about the Eagle. The former Commander of the Vice Unit, Lieutenant Dan Rasmussen, recalled seeing similar complaints, possibly from the same author, in early 2009 and discussing a potential joint investigation at a staff meeting with Lieutenant Barbara Cavender, Commander of the License and Permits Unit. Rasmussen GT 26-30, 67-68. Further, in a police report dated August 17, 2007, a patron reported that his property had been stolen while he was "having anonymous sex with another male" in a "dark room inside the Atlanta Eagle." EAGLE021143-EAGLE021144. Moreover, during the Calhoun litigation, the co-owner of the Eagle acknowledged hearing patrons discussing sexual activity in the bar in the past. Kelley Dep. (EAGLE 013122).

<sup>38</sup> EAGLE021128. The Atlanta Police Department has divided the city into six patrol zones (more commonly referred to as "Zones"). Zone 5 is the most central of the Zones and includes Midtown, Downtown, and the Old Fourth Ward. <http://www.atlantapd.org/findmyzone.aspx>

<sup>39</sup> EAGLE021127.

<sup>40</sup> Williams GT 40; see also O.G.C.A. § 16-6-8; Atlanta, Ga., Code of Ordinances § 106-29 (1977).

<sup>41</sup> Williams GT 41-42.

<sup>42</sup> EAGLE021127; Crawford GT 4-5. The leadership of the Vice Unit had a high turnover rate during the period just before and during this investigation. Lieutenant Dan Rasmussen was relieved of command of the Vice Unit on May 4, 2009 for an unrelated disciplinary matter. His interim successor was Lieutenant William Trivelpiece for a period of less than three weeks. Trivelpiece was followed by Lieutenant Tony Crawford, promoted to that rank just fifteen months earlier, and who was already responsible for the Targeted Enforcement Unit. Notably, the Eagle complaint was received during Crawford's first week as the commander of Vice.

<sup>43</sup> EAGLE021127.

<sup>44</sup> Crawford GT 5-6.

<sup>45</sup> Crawford GT 52-53.

<sup>46</sup> Brock GT 57-58. Sergeant Brock noted that consensual public sex, as described in the citizen complaint, is an ordinance violation for which any unit or officer could investigate and make an arrest. It would only have been a Vice-specific crime if there was the exchange of money related to the sexual acts. This was not an unusual occurrence according to Brock, as Lieutenant Crawford, like others at APD, misunderstood Vice to have primary jurisdiction over any crime with a sexual component. Brock GT 61-62, 64-66.

<sup>47</sup> EAGLE037583.

<sup>48</sup> Brock GT 66.

<sup>49</sup> Bridges GT 125.

<sup>50</sup> EAGLE021131-EAGLE021133.

<sup>51</sup> Bridges GT 63, 151-153.; Brock GT 112.

<sup>52</sup> EAGLE021132.

<sup>53</sup> EAGLEATL044794 (Supplemental Reports at 8).

<sup>54</sup> EAGLEATL044794 (Supplemental Reports at 8).

<sup>55</sup> EAGLE021131-021132.

<sup>56</sup> Brock OPS 5 (EAGLE022218).

<sup>57</sup> Brock OPS 5 (EAGLE022218).

<sup>58</sup> Brock OPS 5 (EAGLE022218); Collier ACRB 11-12 (EAGLE051827-EAGLE051828).

<sup>59</sup> Crawford GT 53.

<sup>60</sup> Dabney GT 83-84.

<sup>61</sup> Bridges GT 106-107.

<sup>62</sup> Gardener was also the prosecutor who tried the "Eagle 8" case on behalf of the City in Municipal Court.

<sup>63</sup> Bridges GT 105-106, 111-112; see also Brock GT 98-99.

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- <sup>64</sup> Bridges GT 111-112; see also Atlanta, Ga., Code of Ordinances §§ 106-29 (Indecency); 30-55 (Operating a business without a permit); 10-206 (Adult Entertainment Employees without Permits).
- <sup>65</sup> Bridges GT 201-202.
- <sup>66</sup> Bridges GT 124.
- <sup>67</sup> Bridges GT 101-103. But see Collier GT 98-99 (denying use of camera on second visit). GT's review of the evidence has not located a copy of any recordings from the second undercover operation and Bridges is unaware of where such a recording would now exist. See Bridges GT 361.
- <sup>68</sup> EAGLEATL044794 (Supplemental Reports at 8).
- <sup>69</sup> EAGLEATL044789 (Supplemental Reports at 3).
- <sup>70</sup> EAGLEATL044789 (Supplemental Reports at 3).
- <sup>71</sup> EAGLEATL044789 (Supplemental Reports at 3).
- <sup>72</sup> EAGLEATL044794 (Supplemental Reports at 8).
- <sup>73</sup> EAGLEATL044789 (Supplemental Reports at 3).
- <sup>74</sup> EAGLEATL044794 (Supplemental Reports at 8).
- <sup>75</sup> Bridges GT 125.
- <sup>76</sup> Williams GT 48, 50-51, 128, 137-140.
- <sup>77</sup> Williams GT 48, 50-51, 128, 137-140.
- <sup>78</sup> See Williams GT 138-140; Crime Stoppers Tip and Internal Record (EAGLEATL044778-EAGLEATL044780).
- <sup>79</sup> Crime Stoppers Tip and Internal Record (EAGLEATL044778-EAGLEATL044780). Although Kelley confirmed that there was a fundraiser hosted at the Eagle that night by the Southern Bears to benefit juvenile AIDS that he advertised, he is unaware of any illegal activity (i.e., alcohol sales past closing, nude dancers). Kelley Dep. (EAGLEATL044778).
- <sup>80</sup> Crime Stoppers Tip and Internal Record (EAGLEATL044779).
- <sup>81</sup> Crime Stoppers Tip and Internal Record (EAGLEATL044778-EAGLEATL044780).
- <sup>82</sup> EAGLE037589.
- <sup>83</sup> Brock GT 109-111.
- <sup>84</sup> EAGLEATL044793 (Supplemental Reports at 7).
- <sup>85</sup> EAGLE021135.
- <sup>86</sup> EAGLE021135.
- <sup>87</sup> Thurman GT 58.
- <sup>88</sup> Brock GT 116.
- <sup>89</sup> Brock GT 121-122.
- <sup>90</sup> Brock indicated that there was no specific reason for the request to the Gangs Unit other than that Vice had helped them recently with the "smash-and-grab" investigation. Brock GT 123 (EAGLE022217); Brock OPS 4.
- <sup>91</sup> Brock GT 123 (EAGLE022217); Brock OPS 4.
- <sup>92</sup> COBRA stands for "Command Operations Briefing to Revitalize Atlanta." It is a crime mapping system that provides regularly updated information via APD's website. The Command Staff has weekly meetings reviewing the crime statistics throughout the city with commanders of all units present to discuss any topics of concern. See Lisa Spagnoli, Protecting the Perimeter, Officer.com (Aug. 14, 2007), available at <http://www.officer.com/article/10249573/protecting-the-perimeter> (describing COBRA meetings).
- <sup>93</sup> EAGLE093415.
- <sup>94</sup> Crawford GT 59-60. Brock recalls the elevator conversation differently and believes that Crawford instructed him to ask Red Dog for assistance after denying his request for help from the Gangs Unit. Brock GT 117.
- <sup>95</sup> Crawford GT 59-60. Brock recalls the elevator conversation differently and believes that Crawford instructed him to ask Red Dog for assistance after denying his request for help from the Gangs Unit. Brock GT 117.
- <sup>96</sup> Crawford GT 14.
- <sup>97</sup> Crawford GT 59-60.
- <sup>98</sup> Pautsch GT 20.
- <sup>99</sup> Brock GT 130.
- <sup>100</sup> Pautsch GT 20-21; Adams GT 35-36, 40.
- <sup>101</sup> Adams GT 42-43, 45-46; Brock GT 131-132.
- <sup>102</sup> EAGLE022413; EAGLE051829. Two Red Dog officers, Officers William "Brian" Walters and Christopher Dowd, missed the "first part" of the briefing because they stopped to grab dinner on their way to the staging area. Walters GT 23. All other officers present at the Eagle that night reported being at the briefing in its entirety.

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<sup>103</sup> EAGLE051830-EAGLE051831.  
<sup>104</sup> EAGLE022412-EAGLE022421.  
<sup>105</sup> Adams GT 47-48  
<sup>106</sup> EAGLE022412. The handwritten authorization to drink alcohol was added by Sergeant Brock. Brock GT 120.  
<sup>107</sup> EAGLE051830.  
<sup>108</sup> Adams GT 51-53 (EAGLE051732).  
<sup>109</sup> Adams GT 51-53 (EAGLE051777).  
<sup>110</sup> Adams GT 50.  
<sup>111</sup> Godwin GT 73.  
<sup>112</sup> Godwin GT 72. Although both the complaint to the Mayor's Office and to Crime Stoppers made reference to drugs, not mention was made of suspected drug activity in either the Tactical Plan or the briefing. Further, no officer interviewed believes that drugs were being investigated that night. See Brock GT 121. ("We didn't deal with drugs. We had nobody solicit us for drugs.")  
<sup>113</sup> Godwin GT 60.  
<sup>114</sup> EAGLE051777.  
<sup>115</sup> Godwin GT 70-71.  
<sup>116</sup> Godwin GT 76.  
<sup>117</sup> Godwin GT 76.  
<sup>118</sup> Mague GT 8.  
<sup>119</sup> Godwin GT 72-73. See also Brock GT 126; Adams GT 65-67.  
<sup>120</sup> Godwin GT 73.  
<sup>121</sup> Godwin GT 74.  
<sup>122</sup> Brock GT 127-128. See also Godwin GT 74. Chief Pennington acknowledged after the Raid that this was a common practice at APD during his tenure and described it as "normal procedure." Sept. 14, 2009 Press Conference by Chief Pennington, full audio available at <http://www.publicbroadcasting.net/wabe/news.newsmain/article/2866/0/1554435/Atlanta.Morning.Edition/APD.Chief.Says.Undercover.Officers.Twice.Visited.Gay.Bar> (10:47 mark).  
<sup>123</sup> Mague GT 11-12.  
<sup>124</sup> Bridges GT 234 (EAGLE022413) (Tactical Plan); Supplemental Reports with McClain Entries at 6 (Bridges) (EAGLEATL044787-96).  
<sup>125</sup> Note: the one Vice undercover officer present not accounted for in the assignments listed in the Tactical Plan was Officer Marcano, who was assigned to the Pool Room. Marcano GT 92-93; (EAGLE022415).  
<sup>126</sup> Supplemental Reports with McClain Entries at 4 (Watkins, Noble), 6 (Edwards, Marcano, Bridges), 7 (Glass), 9 (McClain) (EAGLEATL 044787-96).  
<sup>127</sup> Bridges GT 249-250.  
<sup>128</sup> Watkins GT 73-74, 91. See also Supplemental Reports with McClain Entries at 4 (Watkins).  
<sup>129</sup> Supplemental Reports with McClain Entries at 5 (Edwards); Edwards GT 69; (EAGLEATL 044787-96).  
<sup>130</sup> Godwin GT 92-94.  
<sup>131</sup> Watkins GT 79. Note: However, Watkins believes there may have been a misunderstanding or miscommunication with Bridges about what he observed in the Back Room that contributed to Red Dog being called in when it was. Bridges' statements appear to confirm this confusion as he viewed the activity in the Club Room and the Back Bar to be the "same conduct." (Bridges GT 251).  
<sup>132</sup> Edwards GT 70.  
<sup>133</sup> Bridges GT 250.  
<sup>134</sup> Bridges GT 250; (EAGLE020191). Note: a second call was also made by Mague to Bridges at 11:06 P.M., but neither has any memory of what was said.  
<sup>135</sup> Bridges GT 256.  
<sup>136</sup> Bridges GT 256.  
<sup>137</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>138</sup> Bridges GT 256.  
<sup>139</sup> McLeod Dep. (EAGLE012131).  
<sup>140</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>141</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>142</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>143</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).



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<sup>144</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>145</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>146</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>147</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).  
<sup>148</sup> Ray Dep. (EAGLE012823).  
<sup>149</sup> Ray Dep. (EAGLE012825).  
<sup>150</sup> McLeod Dep. (EAGLE012121).  
<sup>151</sup> Ray and McLeod were able to identify both Walters and Dowd during a review of meaningful photographs provided by APD. Ray GT 14-20; McLeod GT 54-55.  
<sup>152</sup> Ray Dep. (EAGLE012824); Ray GT 11-12.  
<sup>153</sup> Ray Dep. (EAGLE012826); Ray GT 21.  
<sup>154</sup> Ray Dep. (EAGLE012824); McLeod GT (EAGLE012123); Ray GT 17.  
<sup>155</sup> Ray Dep. (EAGLE012827); Ray Dep. 21.  
<sup>156</sup> McLeod Dep. (EAGLE012123); McLeod GT 16, 18.  
<sup>157</sup> McLeod Dep. (EAGLE012128).  
<sup>158</sup> Ray Dep. (EAGLE012828).  
<sup>159</sup> McLeod Dep. (EAGLE012127); see also Ray Dep. (EAGLE012829, EAGLE012832).  
<sup>160</sup> McLeod Dep. (EAGLE012131).  
<sup>161</sup> McLeod Dep. (EAGLE012130).  
<sup>162</sup> McLeod Dep. (EAGLE012132).  
<sup>163</sup> Ray Dep. (EAGLE012833).  
<sup>164</sup> Ray Dep. (EAGLE012834-EAGLE012835).  
<sup>165</sup> Ray Dep. (EAGLE012835).  
<sup>166</sup> McLeod Dep. (EAGLE012133); McLeod GT 37.  
<sup>167</sup> Ray Dep. (EAGLE012829); Kelley GT 118-120.  
<sup>168</sup> Ray Dep. (EAGLE012830).  
<sup>169</sup> Ray Dep. (EAGLE012830).  
<sup>170</sup> Although Buehl estimates the time closer to 11:30 P.M., this is inconsistent with the timing of other events in the Eagle. Specifically, Buehl states that Shepherd had not been brought down from his Apartment before Buehl was brought inside the bar. See EAGLE020924 (Buehl APD Complaint); ACRB001622 (Buehl ACRB Complaint).  
<sup>171</sup> Ray Dep. (EAGLE012831-EAGLE012832); McLeod Dep. (EAGLE012133); McLeod GT 45; Ray GT 30-31. Notably, this exact phrase is alleged to have been heard by other patrons and employees at other points that night.  
<sup>172</sup> McLeod Dep. (EAGLE012134).  
<sup>173</sup> McLeod Dep. (EAGLE012134). Ray says that patrons started being released approximately thirty minutes after he was placed on the Deck. Ray Dep. (EAGLE012840). Based on GCIC reports, this was likely closer to twenty minutes. See MAGUE GCIC Report at 3; Out-of-State GCIC Supplemental at 4 (showing that first patron released had ID run at 11:21 P.M.).  
<sup>174</sup> McLeod Dep. (EAGLE012134).  
<sup>175</sup> McLeod Dep. (EAGLE012134).  
<sup>176</sup> McLeod Dep. (EAGLE012135).  
<sup>177</sup> McLeod Dep. (EAGLE012135); McLeod GT 40.  
<sup>178</sup> McLeod Dep. (EAGLE012136-EAGLE01137); Ray Dep. (EAGLE012838).  
<sup>179</sup> McLeod Dep. (EAGLE012137). Although it is undisputed that the IDs of patrons on the Lower Deck were collected that night, no patron appears on the GCIC report. See EAGLE013676-EAGLE013797 (Full GCIC Report). This has prevented GT from determining an exact time when release was possible in this area of the bar.  
<sup>180</sup> McLeod Dep. (EAGLE012137).  
<sup>181</sup> McLeod Dep. (EAGLE012137).  
<sup>182</sup> McLeod Dep. (EAGLE012137-EAGLE012138).  
<sup>183</sup> Ray Dep. (EAGLE012839). Ray claims that he was handcuffed on the Deck until approximately 1:45-2:00 A.M. on September 11, 2009. Because Ray also claims to have seen patrons still being released after he was uncuffed, this is implausible. See Ray Dep. (EAGLE012840). The last patron released that night had his ID run at 11:49 P.M. on September 10, 2009, and left shortly thereafter.  
<sup>184</sup> McLeod Dep. (EAGLE012136-EAGLE01137); Ray Dep. (EAGLE012838).  
<sup>185</sup> Ray Dep. (EAGLE012844); EAGLE013676-EAGLE013797 (Full GCIC Report)

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<sup>186</sup> Ray Dep. (EAGLE012842).  
<sup>187</sup> Ray Dep. (EAGLE012842).  
<sup>188</sup> Ray Dep. (EAGLE012842).  
<sup>189</sup> Ray Dep. (EAGLE012843).  
<sup>190</sup> Ray Dep. (EAGLE012843); Ray GT 40.  
<sup>191</sup> Ray Dep. (EAGLE012843).  
<sup>192</sup> McLeod Dep. (EAGLE012122).  
<sup>193</sup> Lopez GT 21.  
<sup>194</sup> Lopez GT 21.  
<sup>195</sup> Lopez GT 21-22. There is some dispute in patron/employee accounts of whether Brock showed his badge to Lopez and Kelley before handcuffing them. Compare Kelley Dep. 125 (EAGLE013101) (after) with Garcia Dep. 36-37 (EAGLE012896) (before).  
<sup>196</sup> Kelley GT 16.  
<sup>197</sup> Kelley GT 16.  
<sup>198</sup> Kelley was able to identify both Bridges and Brock during a review of meaningful photographs provided by APD. Kelley GT 121-122.  
<sup>199</sup> Kelley GT 17-19.  
<sup>200</sup> Curran ACRB (ACRB001596); Hughes ACRB (ACRB001592).  
<sup>201</sup> Kelley GT 20  
<sup>202</sup> Kelley GT 29 (“with it being a nightclub [and the fact that we’re a leather club], it was hard to distinguish at that point the difference . . . between who was . . . dressed as a Red Dog officer and who was dressed in normal daily wear for our club”).  
<sup>203</sup> First Amended Complaint ¶ 81.  
<sup>204</sup> First Amended Complaint ¶ 82. See also Kelley GT 21. Note: While the Complaint mentions the fear that “gay-bashers” had entered the premises, none of the witnesses expressed such a fear in the multiple interviews conducted by APD, ACRB, the City Law Department and GT.  
<sup>205</sup> ACRB001596 (Curran ACRB Complaint).  
<sup>206</sup> This patron’s necklace was broken as well because of the other’s tactics. EAGLE021669 (Gaboya OPS Statement at P-19-1-3).  
<sup>207</sup> Hayes GT 20 (ruptured disc); Hayes GT 18 (same); Keck GT 27 (recently broken leg).  
<sup>208</sup> Kelley GT 30.  
<sup>209</sup> Fast GT 26.  
<sup>210</sup> Kelley GT 19.  
<sup>211</sup> Danak Dep. 55-56; Hayes Dep. 21.  
<sup>212</sup> Danak Dep. 61.  
<sup>213</sup> Thomas Dep. 75.  
<sup>214</sup> This may have been because of the officers’ commands not to speak and refusal of requests to move. See Hayes GT 20; Danak Dep. 60-62.  
<sup>215</sup> Curran Dep. (EAGLE012498).  
<sup>216</sup> Curran Dep. (EAGLE012499).  
<sup>217</sup> Hayes was able to identify Davis during a review of meaningful photographs provided by APD. Hayes GT at 71.  
<sup>218</sup> Hayes GT 44-45.  
<sup>219</sup> Hughes ACRB (ACRB001592).  
<sup>220</sup> Treutel ACRB (ACRB001586).  
<sup>221</sup> Curran Dep. 56 (EAGLE012499).  
<sup>222</sup> Treutel ACRB (ACRB001586).  
<sup>223</sup> Kelley GT. 79-80, 105-106; Ray GT at 39-40.  
<sup>224</sup> Kelley GT 24; Hughes ACRB (ACRB001592).  
<sup>225</sup> Kelley was able to identify Jackson during a review of meaningful photographs provided by APD. Kelley GT 122-123. He also identified Jackson in a photo array as one of the officers using profanity during the ACRB investigation. See ACRB002419-ACRB002425.  
<sup>226</sup> Although this area of the bar was at one time a Kitchen, it has primarily been used as a supply room during Kelley’s ownership. Kelley GT 36.  
<sup>227</sup> Kelley GT 31-32.

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<sup>228</sup> Kelley GT 31-32.

<sup>229</sup> Kelley GT 32. See also Hughes ACRB (ACRB001592). Employees of the Eagle later had to repair the door and the door frame. Kelley GT 32; Shepherd Dep. 57-58 (EAGLE013037-EAGLE013038).

<sup>230</sup> Kelley GT 35-38.

<sup>231</sup> Kelley GT 42-43. See also Lopez GT 13, 27 (recalling incident, but unable to identify officer).

<sup>232</sup> Kelley GT 42-43.

<sup>233</sup> Kelley GT 42-43.

<sup>234</sup> Kelley GT 43.

<sup>235</sup> Kelley GT 42.

<sup>236</sup> Kelley GT122-123. Specifically, Kelley recalls asking Jackson if he had any rights, and being told “No. You are a fag. You don’t have any rights.” Kelley GT 32-33. But see (ACRB Report 09-36 Addendum 2 (ACRB002420) (“Mr. Kelley then advised that he did not hear Officer Jackson use any homophobic slurs or language.”). Kelley also recalls hearing comments including the slurs “fag” and “queer” used throughout the night, but could not identify the speaker(s) or remember where they were spoken in the bar. Kelley GT 103-104.

<sup>237</sup> Kelley GT 122-123. Specifically, Kelley recalls asking Jackson if he had any rights, and being told “No. You are a fag. You don’t have any rights.” Kelley GT 32-33, but see ACRB August 2010 Minutes (noting that Kelley identified Jackson as using abusive language, but not gay slurs; see also, Lopez GT 40 (recalling officers responding to Kelley’s inquiries by telling him to “shut the fuck up”).

<sup>238</sup> Acevedo GCIC report (EAGLE013679).

<sup>239</sup> GCIC stands for the Georgia Crime Information Center. GCIC is a division within the Georgia Bureau of Investigation (GBI) that serves as the chief provider of criminal justice information services in the state of Georgia. Within GCIC is the Georgia Criminal Justice Information System (CJIS) that provides realtime access to computerized databases maintained by Georgia, other states, and the FBI Criminal Justice Services Division. See Georgia Crime Information Center, available at [http://www.georgia.gov/00/channel\\_title/0,2094,67862954\\_74028473,00.html](http://www.georgia.gov/00/channel_title/0,2094,67862954_74028473,00.html).

<sup>240</sup> Mague GT 24-25.

<sup>241</sup> Kelley GT 100. Similarly, a patron recalls one of the Vice officers asking, “Got any marines in here?” Treutel ACRB (ACRB001586).

<sup>242</sup> Kelley GT 100-101.

<sup>243</sup> Hughes ACRB (ACRB001592).

<sup>244</sup> Estimated time based on Buehl informing officers of residence upstairs and subsequent detention of Shepherd.

<sup>245</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).

<sup>246</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).

<sup>247</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).

<sup>248</sup> Ray Dep. (EAGLE012831).

<sup>249</sup> Kelley GT 74-75. A later accounting determined that \$700.00 was contained in the cash box at the time. Ramey Interview, June 20, 2011 (EAGLEATL04507-74).

<sup>250</sup> Buehl APD (EAGLE020924); Buehl ACRB (ACRB001622).

<sup>251</sup> Buehl APD (EAGLE020924-EAGLE020925); Buehl ACRB (ACRB001622-ACRB001623).

<sup>252</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623); Kelley GT 46.

<sup>253</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).

<sup>254</sup> Kelley GT 46-48.

<sup>255</sup> Kelley GT 45.

<sup>256</sup> Kelley GT 48.

<sup>257</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623); Kelley GT 50.

<sup>258</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623); Kelley GT 50.

<sup>259</sup> Kelley GT 50.

<sup>260</sup> Kelley GT 38-39.

<sup>261</sup> Apud GT (Rought) 43-44.

<sup>262</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).

<sup>263</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623). See also Hughes ACRB (ACRB001592).

<sup>264</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).

<sup>265</sup> Treutel Dep. 67, 70 (AEGLE021185-86).

<sup>266</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).

<sup>267</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).

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<sup>268</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).  
<sup>269</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623); Kelley GT 66.  
<sup>270</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623); Kelley GT 55.  
<sup>271</sup> Treutel ACRB (ACRB001587).  
<sup>272</sup> Treutel ACRB (ACRB001587).  
<sup>273</sup> Treutel ACRB (ACRB001587).  
<sup>274</sup> Treutel ACRB (ACRB001587).  
<sup>275</sup> Treutel ACRB (ACRB001587).  
<sup>276</sup> Treutel ACRB (ACRB001587).  
<sup>277</sup> (Treutel GCIC Report) (EAGLE013678-EAGLE013679).  
<sup>278</sup> Treutel ACRB (ACRB001587). See also Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).  
<sup>279</sup> Kelley GT 65.  
<sup>280</sup> Kelley GT 68; see EAGLE013676-EAGLE013797 (Full GCIC Report from Eagle).  
<sup>281</sup> EAGLE013676-EAGLE013797 (Full GCIC Report from Eagle).  
<sup>282</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).  
<sup>283</sup> Kelley GT 51, 54. Notably, the only white female officer present at the Eagle was Stephanie Upton, who was openly gay.  
<sup>284</sup> Buehl APD (EAGLE020925); Buehl ACRB (ACRB001623).  
<sup>285</sup> Buehl APD (EAGLE020925-EAGLE020926); Buehl ACRB (ACRB001623-ACRB001624).  
<sup>286</sup> Buehl APD (EAGLE020925-EAGLE020926); Buehl ACRB (ACRB001623-ACRB001624).  
<sup>287</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>288</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>289</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>290</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>291</sup> Kelley GT 82-83.  
<sup>292</sup> Kelley GT 85.  
<sup>293</sup> Kelley GT 72.  
<sup>294</sup> Kelley GT 76-77.  
<sup>295</sup> Kelley Dep. 77.  
<sup>296</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>297</sup> Kelley GT 102. This exact phrase had been allegedly spoken in the same area earlier in the night by Dowd. See Ray Dep. (EAGLE012831-EAGLE012832); McLeod Dep. (EAGLE012133); McLeod GT 45; Ray GT 30-31. Notably, this exact phrase is alleged to have been heard by other patrons and employees at other points that night.  
<sup>298</sup> Shepherd Dep. (EAGLE013030).  
<sup>299</sup> Shepherd Dep. (EAGLE013028).  
<sup>300</sup> Shepherd Dep. (EAGLE013028).  
<sup>301</sup> Shepherd Dep. (EAGLE013030).  
<sup>302</sup> Because there was not a separate street address for the Apartment, Shepherd used a post office box to receive his mail. Shepherd Dep. (EAGLE013025).  
<sup>303</sup> Shepherd Dep. (EAGLE013029).  
<sup>304</sup> Shepherd Dep. (EAGLE013030).  
<sup>305</sup> Shepherd Dep. (EAGLE013030); Adams GT 116; Condon GT 42.  
<sup>306</sup> Shepherd Dep. (EAGLE013031).  
<sup>307</sup> Shepherd Dep. (EAGLE013031).  
<sup>308</sup> Shepherd Dep. (EAGLE013031).  
<sup>309</sup> Shepherd Dep. (EAGLE013031).  
<sup>310</sup> Shepherd Dep. (EAGLE013031).  
<sup>311</sup> Shepherd Dep. (EAGLE013031).  
<sup>312</sup> Shepherd Dep. (EAGLE013031).  
<sup>313</sup> Shepherd Dep. (EAGLE013031).  
<sup>314</sup> Shepherd Dep. (EAGLE013031).  
<sup>315</sup> Shepherd Dep. (EAGLE013031).  
<sup>316</sup> Shepherd Dep. (EAGLE013031).  
<sup>317</sup> Shepherd Dep. (EAGLE013031).

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<sup>318</sup> Burkes GT (Rough) 21.  
<sup>319</sup> Keck GT 16, 26-27  
<sup>320</sup> Keck GT 27.  
<sup>321</sup> Keck GT 16, 25.  
<sup>322</sup> A. Mayes was able to identify Officer C. Mayes during a review of meaningful photographs provided by APD.  
A. Mayes GT 15-21.  
<sup>323</sup> A. Mayes GT 15-21.  
<sup>324</sup> Apud GT (Rough) 7.  
<sup>325</sup> Apud GT (Rough) 7, 16, 18-19.  
<sup>326</sup> Apud GT (Rough) 20, 24-25.  
<sup>327</sup> Apud GT (Rough) 28-29.  
<sup>328</sup> Keck GT 25.  
<sup>329</sup> Keck GT 28; A. Mayes GT (Rough ) 20.  
<sup>330</sup> Keck GT 35-38; Keck GT 35, 58-59; A. Mayes GT (Rough) 24-25.  
<sup>331</sup> Keck GT 37.  
<sup>332</sup> Keck GT 37-38.  
<sup>333</sup> Keck GT 50.  
<sup>334</sup> A. Mayes GT (Rough) 24.  
<sup>335</sup> Keck Dep. 28-29, 30-31.  
<sup>336</sup> See Kelley GT 104-105; Burkes GT (Rough) 13-15.  
<sup>337</sup> Burkes GT (Rough) 14-15.  
<sup>338</sup> Burkes GT (Rough) 16; A. Mayes GT 32.  
<sup>339</sup> Burkes GT (Rough) 14-15.  
<sup>340</sup> Burkes GT (Rough) 14; Schneider GT 38-40. Although Kelley claims to have heard second-hand that David was “thrown on top of the pool table,” none of the patrons actually present in the Pool Room that night claim to have seen such treatment. Compare Kelley GT 104-105, with Burkes GT (Rough) 40 (claiming not to have seen anyone thrown on top of the pool table).  
<sup>341</sup> Schneider GT 34-36.  
<sup>342</sup> Burkes GT (Rough) 14, 16.  
<sup>343</sup> Keck GT 34.  
<sup>344</sup> Keck GT 34.  
<sup>345</sup> Keck GT 40.  
<sup>346</sup> Staats GT 13, 16.  
<sup>347</sup> Schneider GT 13.  
<sup>348</sup> Staats GT14 ; Schneider GT 17.  
<sup>349</sup> Schneider GT 19.  
<sup>350</sup> Schneider GT 21.  
<sup>351</sup> Burkes GT (Rough) 14.  
<sup>352</sup> Burkes GT (Rough) 33-34.  
<sup>353</sup> Schneider GT 21-23; Staats GT 16.  
<sup>354</sup> Staats GT 13.  
<sup>355</sup> Edwards GT 80-81.  
<sup>356</sup> Edwards GT 81.  
<sup>357</sup> Edwards GT 81.  
<sup>358</sup> Edwards GT 81.  
<sup>359</sup> Edwards GT 82. It is unclear how this criteria distinguished this patron from any other detained that night and awaiting release.  
<sup>360</sup> Edwards GT 82; Bridges GT 282-283.  
<sup>361</sup> See EAGLE013676-EAGLE013797 (GCIC Report).  
<sup>362</sup> Staats GT 31; Edwards GT 82; Mague GT 34.  
<sup>363</sup> Schneider GT 23.  
<sup>364</sup> Schneider GT 24.  
<sup>365</sup> Schneider GT 28-29.

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<sup>366</sup> Schneider was able to identify Adams during a review of meaningful photographs provided by APD. Schneider GT 58-59.

<sup>367</sup> Schneider GT 34.

<sup>368</sup> Schneider GT 59.

<sup>369</sup> Schneider was able to identify Brock during a review of meaningful photographs provided by APD. Schneider GT 58.

<sup>370</sup> Schneider GT 42.

<sup>371</sup> Schneider GT 40-42.

<sup>372</sup> Schneider GT 43.

<sup>373</sup> EAGLE013768 (Schneider GCIC Report).

<sup>374</sup> Dale GT 42.

<sup>375</sup> Dale GT 15.

<sup>376</sup> Dale GT 19-20.

<sup>377</sup> Dale GT 22, 36; Dale Dep. (EAGLE01273).

<sup>378</sup> Dale GT 22-23.

<sup>379</sup> Dale GT 26.

<sup>380</sup> Dale GT 26.

<sup>381</sup> Dale GT 27-28.

<sup>382</sup> Dale GT 30; Dale Dep. (EAGLE012731).

<sup>383</sup> Dale GT 30.

<sup>384</sup> Dale GT 37.

<sup>385</sup> EAGLE013782 (Dale GCIC Report).

<sup>386</sup> See, generally, Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 1921 (1972).

<sup>387</sup> Doc. 265 at 3.

<sup>388</sup> Upton left the APD to continue her career in law enforcement with a federal agency.

<sup>389</sup> This appears to be more than mere puffery as cell phone data from Red Dog officers provided during the Calhoun litigation showed Upton and her domestic partner interacting with her colleagues socially outside of work.

<sup>390</sup> 13 out of 24 (54%) officers present for the detail were African American.

<sup>391</sup> See Doc. 44, ¶¶167-173 (Battery Claims); at 41 (seeking relief of damages for “physical pain and injury”).

<sup>392</sup> The one possible exception is a complaint of bruising by Robert Klein from handcuffs. However, he did not request, nor sought medical attention for his purported injuries. EAGLE021615, EAGLE012617-EAGLE021619 (Klein OPS 2, 4-6 (P-8-2-6, P-8-4-6 to P-8-6-6)).

<sup>393</sup> Mague GT 17.

<sup>394</sup> Mague GT 17. Mague’s memory is corroborated by her rank and the rank of supervisors present that night. As an APD employee at the rank of Officer, Mague was not there in a supervisory capacity. Because there were three sergeants on the scene supervising, but no lieutenant, supervisors have indicated that officers would only obey orders from a supervisor from their own unit. See Adams GT 50; Brock GT 186.

<sup>395</sup> Porter GT 18-19; 44.

<sup>396</sup> Porter GT 44.

<sup>397</sup> Walters GT 38.

<sup>398</sup> Menzoian GT 42.

<sup>399</sup> Menzoian GT 33, 36.

<sup>400</sup> Menzoian GT 39; Walters GT 34-35.

<sup>401</sup> Dowd GT 28.

<sup>402</sup> Menzoian GT 39-40; Walters GT 36.

<sup>403</sup> Menzoian GT 49-50.

<sup>404</sup> Walters GT 36; Menzoian GT 44.

<sup>405</sup> Dowd GT 45.

<sup>406</sup> Menzoian GT 41, 43.

<sup>407</sup> Dowd GT 44.

<sup>408</sup> Menzoian GT 40.

<sup>409</sup> Menzoian GT 41.

<sup>410</sup> Dowd GT 74.

<sup>411</sup> Walters GT 40.

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412 Menzoian GT 41  
413 Dowd GT 44.  
414 Dowd GT 65-66.  
415 Dowd GT 55.  
416 Dowd GT 55-56.  
417 Menzoian GT 45.  
418 Dowd GT 59; Menzoian GT 46; Walters GT 55.  
419 Walters GT 37-38.  
420 Brock GT 124; Collier GT 156; McClain GT 61.  
421 McClain GT 179-180.  
422 Brock GT 92-93, 157.  
423 Collier GT 138-39, 178.  
424 McClain GT 182.  
425 Glass GT 83.  
426 Glass GT 90.  
427 Glass GT 90-91.  
428 Glass GT 98.  
429 EAGLE021133; Watkins GT 75-76, 84.  
430 Watkins GT 76.  
431 Watkins GT 76.  
432 Brock GT 159.  
433 Brock GT 160  
434 Brock GT 159.  
435 Brock GT 159.  
436 Brock GT 159.  
437 Collier GT 152-154.  
438 Collier GT 155.  
439 Collier GT 155.  
440 Bridges GT 261.  
441 Bridges GT 261.  
442 McClain GT 188; Adams GT 67.  
443 Mayes GT 29; Davis OPS 4 (EAGLE022314); Jackson GT 56; Jacques GT 50.  
444 Mayes GT 60.  
445 Davis ACRB 4 (EAGLE051652); Jackson GT 57; Jacques GT 50.  
446 McClain GT 191.  
447 McClain GT 203.  
448 McClain GT 192.  
449 Mayes GT 76.  
450 Jackson GT 64.  
451 Jacques GT 89.  
452 McClain GT 193.  
453 McClain GT 193.  
454 McClain GT 193-194.  
455 McClain GT 200.  
456 Collier GT 131.  
457 Collier GT 131-32.  
458 Collier GT 146.  
459 Collier GT 202.  
460 McClain GT 206, 211.  
461 Mayes GT 86.  
462 Mayes GT 86, 100.  
463 Davis ACRB 4, 8-9 (EAGLE 05152, 56-57)  
464 Jackson GT 67-68. Officer Jackson also stated that Red Dog followed their usual procedure at the Eagle because they were not sure of the situation.

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465 Jackson GT 69, 81.  
466 McClain GT 206.  
467 McClain GT 211.  
468 Collier GT 177-78.  
469 McClain GT 199; Adams GT 68.  
470 Mague GT 11.  
471 Mague GT 17.  
472 Mague GT 21. The MDT is a police laptop computer.  
473 Mague GT 28.  
474 Mague GT 24.  
475 Mague GT 38.  
476 McClain GT 209.  
477 McClain GT 209.  
478 McClain GT 209-210.  
479 Brock ACRB (EAGLE051622); Brock GT 146-193, 196.  
480 Mayes GT 90-1.  
481 Jacques GT 78-9.  
482 Jackson GT 64.  
483 Cite Don's memo to file on Jackson CUSA.  
484 McClain GT 227.  
485 McClain GT 227.  
486 Adams GT 152.  
487 Although Sergeant Adams stated Investigator Glass was with them, Investigator Glass has no recollection of going upstairs to the Apartment.  
488 Condon OPS 4 (EAGLE022321); Condon ACRB 5 (EAGLE051811); Condon GT 40-41.  
489 Adams GT 153  
490 Condon GT 61.  
491 Adams GT 157.  
492 Adams GT 158.  
493 Adams GT 157-158; Condon GT 44.  
494 Condon ACRB 5 (EAGLE051811); Condon GT 43, 44, 11.  
495 Condon GT 44-45; Condon ACRB 5 (EAGLE051811); Adams GT 160.  
496 Bridges GT 277-79.  
497 Bridges GT 286.  
498 Bridges GT 286, 290.  
499 Glass GT 128.  
500 Collier GT 180.  
501 Edwards GT 96-97.  
502 Bridges GT 291-92.  
503 Bridges GT 287.  
504 Bridges GT 286.  
505 Bridges GT 315.  
506 Glass GT 64; Marcano GT 112-13; Condon GT 36; Porter GT 18; Upton OPS (EAGLE022325).  
507 Marcano GT 115.  
508 Marcano GT 119.  
509 Marcano GT 120.  
510 Marcano GT 120.  
511 Glass GT 107.  
512 Glass GT 113.  
513 Glass GT 115.  
514 Condon GT 36.  
515 Condon GT 36-37.  
516 Porter GT 54.  
517 Porter GT 52.



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<sup>518</sup> Porter GT 55.  
<sup>519</sup> See, generally, Transcripts of Marcano, Glass, Condon, Upton and Porter. The reason for this lack of inquiry is that GT's investigation revealed the presence of a deaf patron after all officer interviews had been conducted.  
<sup>520</sup> Glass GT 106.  
<sup>521</sup> Glass GT 106.  
<sup>522</sup> Glass GT 111-112.  
<sup>523</sup> Glass GT 111.  
<sup>524</sup> Porter GT 54. The other officers were not asked about Investigator Glass' reveal.  
<sup>525</sup> Porter GT 57.  
<sup>526</sup> Glass GT 110-111.  
<sup>527</sup> Marcano GT 115.  
<sup>528</sup> Noble GT 119.  
<sup>529</sup> Porter GT 66-7.  
<sup>530</sup> Porter GT 55.  
<sup>531</sup> Porter GT 59.  
<sup>532</sup> Marcano GT 136-137.  
<sup>533</sup> Marcano GT 137.  
<sup>534</sup> Upton OPS 3 (EAGLE022327).  
<sup>535</sup> Upton ACRB 5 (EAGLE051748).  
<sup>536</sup> Marcano GT 136.  
<sup>537</sup> Marcano GT 136; Glass GT 122, 124.  
<sup>538</sup> Porter GT 59; Marcano GT 137.  
<sup>539</sup> Porter GT 82.  
<sup>540</sup> Porter GT 83.  
<sup>541</sup> Porter GT 84.  
<sup>542</sup> Porter GT 72.  
<sup>543</sup> Porter GT 72.  
<sup>544</sup> Porter GT 74.  
<sup>545</sup> Porter GT 75.  
<sup>546</sup> Watkins GT 61.  
<sup>547</sup> Godwin GT 60; EAGLE022415; Watkins GT 63; Tactical Plan (EAGLE022415).  
<sup>548</sup> Godwin GT 82.  
<sup>549</sup> Godwin GT 83.  
<sup>550</sup> Godwin GT 87.  
<sup>551</sup> Godwin GT 84-85.  
<sup>552</sup> Godwin GT 92.  
<sup>553</sup> Godwin GT 92.  
<sup>554</sup> Watkins GT 73-74. Compare with Godwin who states that the couple was making out, but that it did not appear that any sexual acts were occurring Godwin GT 92:13-22.  
<sup>555</sup> Glass GT 83-84, Exhibit 4.  
<sup>556</sup> Glass GT 97.  
<sup>557</sup> Glass GT 85-86.  
<sup>558</sup> Godwin GT 87.  
<sup>559</sup> Watkins GT 74.  
<sup>560</sup> Watkins GT 74, 75; Godwin GT 88-89; Godwin ACRB 12 (EAGLE051637).  
<sup>561</sup> Godwin GT 98.  
<sup>562</sup> Godwin GT 98.  
<sup>563</sup> Godwin GT 102.  
<sup>564</sup> Godwin GT 99.  
<sup>565</sup> Godwin GT 107-108.  
<sup>566</sup> Watkins GT 89.  
<sup>567</sup> Watkins GT 89.  
<sup>568</sup> Watkins GT 88.  
<sup>569</sup> Watkins GT 89.

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<sup>570</sup> Watkins GT 90.  
<sup>571</sup> Godwin GT 108-109.  
<sup>572</sup> Godwin GT 13. Inconsistencies exist as to the number of patrons who were frisked. Scott Schneider indicates that all three patrons were frisked. Schneider GT 21. However, as Godwin admittedly frisked at least one patron, this inconsistency is immaterial.  
<sup>573</sup> Godwin GT 113-114.  
<sup>574</sup> Godwin GT 114.  
<sup>575</sup> Godwin GT 114.  
<sup>576</sup> Godwin GT 114.  
<sup>577</sup> Godwin GT 115.  
<sup>578</sup> Godwin GT 113, Exhibit 5.  
<sup>579</sup> There are inconsistencies as to where the patrons were moved. Godwin states that the patrons were moved to the hallway (Godwin GT 113, Exhibit 5) while one of the patrons, Scott Schneider states that they were moved to the Back Bar (Schneider GT27:25-28:3). However, this inconsistency is immaterial.  
<sup>580</sup> Godwin GT 122:13-21; 96:6-8.  
<sup>581</sup> Godwin ACRB 18:6-7 (EAGLE051643).  
<sup>582</sup> Godwin ACRB 21:3-8 (EAGLE051646).  
<sup>583</sup> Godwin ACRB 21:6-8 (EAGLE051646).  
<sup>584</sup> Watkins ACRB at 6:13-15 (EAGLE051673).  
<sup>585</sup> Watkins GT 95:4-5.  
<sup>586</sup> Watkins ACRB at 6:10-12 (EAGLE051673); Watkins GT 95:6-8.  
<sup>587</sup> Watkins GT 103:14-16.  
<sup>588</sup> Watkins GT 93:19-20.  
<sup>589</sup> Buehl GT 64-65.  
<sup>590</sup> Edwards GT 19, 53, 117.  
<sup>591</sup> Edwards GT 26.  
<sup>592</sup> Edwards GT 59, 66.  
<sup>593</sup> Edwards GT 67.  
<sup>594</sup> Edwards GT 66, 68.  
<sup>595</sup> Edwards GT 68.  
<sup>596</sup> Edwards GT 69-70.  
<sup>597</sup> Edwards GT 83-84.  
<sup>598</sup> Edwards GT 73.  
<sup>599</sup> Edwards GT 74-75.  
<sup>600</sup> Edwards GT 76-77.  
<sup>601</sup> Marcano GT 131:12-14.  
<sup>602</sup> Edwards GT 88-89.  
<sup>603</sup> Edwards GT 81.  
<sup>604</sup> Edwards GT 81.  
<sup>605</sup> Edwards GT 82.  
<sup>606</sup> Mague GT 31.  
<sup>607</sup> Mague GT 31.  
<sup>608</sup> Tactical Plan (EAGLE022415); Noble GT 68:1-4.  
<sup>609</sup> Noble GT 79:16-18.  
<sup>610</sup> Noble GT 80:23-81:2.  
<sup>611</sup> Noble GT 82:5-7.  
<sup>612</sup> Noble GT 83:25-84:2.  
<sup>613</sup> Noble GT 81:6-9.  
<sup>614</sup> Noble GT 81:18-22.  
<sup>615</sup> Noble GT 85:14-17.  
<sup>616</sup> Noble GT 91:23-92:2.  
<sup>617</sup> Noble GT 86:16-18.  
<sup>618</sup> Noble GT 96:17-24.  
<sup>619</sup> Noble GT 97:7-9.

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<sup>620</sup> Noble GT 98:1-4.  
<sup>621</sup> Noble GT 98:5-9.  
<sup>622</sup> Noble GT 102:10-13; Noble ACRB 4:13-14 (EAGLE051663).  
<sup>623</sup> Noble GT 102:18-24; 104:15-17.  
<sup>624</sup> Noble GT 98:11-25.  
<sup>625</sup> Noble GT 108:19-20; 112:13-14.  
<sup>626</sup> Noble GT 113:10-15.  
<sup>627</sup> Noble GT 113:10-25.  
<sup>628</sup> Noble GT 119:14-19.  
<sup>629</sup> Noble GT 119:14-120:5.  
<sup>630</sup> Meredith ACRB p.4:12-14 (EAGLE051767).  
<sup>631</sup> Meredith GT 51:5-6.  
<sup>632</sup> Meredith GT 51:19-52:1; Meredith OPS 1 (EAGLE021069); Meredith ACRB 3:9-12 (EAGLE051766).  
<sup>633</sup> Meredith GT 52:6-15.  
<sup>634</sup> Meredith GT 52:16-18.  
<sup>635</sup> Meredith GT 55:16-18.  
<sup>636</sup> Meredith GT 55:23-56:5.  
<sup>637</sup> Note that in Meredith's OPS transcript he states "officers" whereas in his GT interview he states that there was only one officer in the Game Room (Meredith GT 27:19-23).  
<sup>638</sup> Meredith OPS 1 (EAGLE022332).  
<sup>639</sup> Meredith GT 57:17-20.  
<sup>640</sup> Meredith GT 58:3-5.  
<sup>641</sup> Meredith GT 58:6-10.  
<sup>642</sup> Meredith GT 64:2-6.  
<sup>643</sup> Meredith GT 66:18-21.  
<sup>644</sup> Meredith GT 64:22-25.  
<sup>645</sup> Meredith GT 68:6-8.  
<sup>646</sup> Meredith GT 69:1-9.  
<sup>647</sup> Hughes ACRB (ACRB001592-ACRB001593); Schneider GT 44.  
<sup>648</sup> Hughes ACRB (ACRB001592)  
<sup>649</sup> See EAGLE013782 (Dale GCIC Report); Dale GT 40-41.  
<sup>650</sup> Hayes Dep. 61-63 (EAGLE012996-97).  
<sup>651</sup> Ray Dep. (EAGLE012847)  
<sup>652</sup> While the log sheet by the driver shows that the call for the wagon was at 1:00 A.M. and the detail ended at 1:20 A.M., other evidence indicates that the wagon arrived earlier and that these log times were likely an estimate. See Zone 5 Log for 9/10/09-9/11/09 for Officer Khayiriyyah Bashir.  
<sup>653</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>654</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>655</sup> Zone 5 Log for 9/10/09-9/11/09 for Officer Keo Siharath.  
<sup>656</sup> Buehl APD (EAGLE020926); Buehl ACRB (ACRB001624).  
<sup>657</sup> Ray Dep. (EAGLE012847).  
<sup>658</sup> Ray Dep. (EAGLE012847-EAGLE012848).  
<sup>659</sup> Zone 5 Log for 9/10/09-9/11/09 for Officer Khayiriyyah Bashir; Zone 5 Log for 9/10/09-9/11/09 for Officer Keo Siharath.  
<sup>660</sup> ACRB001195 (Shepherd Booking Entry).  
<sup>661</sup> EAGLE021137-40.  
<sup>662</sup> Kelley GT 61; ACRB001163 (Buehl Booking Entry); Buehl GT 72-74.  
<sup>663</sup> Kelley GT 62; Christian Boone, Atlanta police raid gay bar, arrest 8, ATLANTA JOURNAL-CONSTITUTION (Sept. 12, 2009), available at <http://www.ajc.com/news/atlanta/atlanta-police-raid-gay-136646.html>.  
<sup>664</sup> ACRB001171 (Kelley Booking Entry).  
<sup>665</sup> EAGLE093418.  
<sup>666</sup> EAGLE093418; Williams GT 77.  
<sup>667</sup> Major Williams GT 50.  
<sup>668</sup> Williams OPS (EAGLE093422); Williams GT 77.

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<sup>669</sup> Williams OPS (EAGLE093422).  
<sup>670</sup> Williams OPS (EAGLE093423).  
<sup>671</sup> Williams GT 76-77.  
<sup>672</sup> Williams OPS (EAGLE093423). Crawford later recanted this version of events in statements made to OPS during its investigation, and acknowledged the conversation with Brock after the COBRA meeting on September 10, 2009. See Crawford OPS (EAGLE093414).  
<sup>673</sup> Williams GT 77.  
<sup>674</sup> Williams GT 79.  
<sup>675</sup> It is unclear from the evidence how Sergeant Collier determined during the investigation that management was aware of the sex acts. However, during his deposition in the Calhoun litigation, Kelley did state that he had overheard customers discussing sex acts that were occurring at the Eagle in the past. Kelley Dep. 166-167.  
<sup>676</sup> This statement is incorrect because of the undisputed use of flexicuffs on Ray.  
<sup>677</sup> EAGLE037589.  
<sup>678</sup> Williams GT 80.  
<sup>679</sup> Williams GT 80.  
<sup>680</sup> EAGLE015102.  
<sup>681</sup> <http://www.ajc.com/news/atlanta/police-to-discuss-raid-138211.html>; Full audio: <http://www.publicbroadcasting.net/wabe/news.newsmain/article/2866/0/1554435/Atlanta.Morning.Edition/APD.Chief.Says.Undercover.Officers.Twice.Visited.Gay.Bar>  
<sup>682</sup> A caveat was added at one point during the press conference that there were “at least two complaints.”  
<sup>683</sup> 17:44 mark of press conference.  
<sup>684</sup> EAGLE021620-EAGLE021629 (Buehl); EAGLE021634-EAGLE021638 (Calhoun); EAGLE021639-EAGLE021640 (Cheaves); EAGLE021641-EAGLE021646 (Curran); EAGLE021647-EAGLE021649 (Hayes); EAGLE021650-EAGLE021653 (Keck); EAGLE021608-EAGLE021610 (Kelley); EAGLE021614-EAGLE021619 (Klein); EAGLE021654-EAGLE021658; EAGLE021630-021633 (Lopez); EAGLE021659-EAGLE021662 (McClendon); EAGLE021663-EAGLE021668 (Presley); EAGLE021611-EAGLE021613 (Shepherd).  
<sup>685</sup> Am. Compl. ¶ 100.  
<sup>686</sup> 10:47 mark of press conference.  
<sup>687</sup> Am. Compl. ¶ 100.  
<sup>688</sup> While Pennington stated he would look into possibly creating an SOP mandating camera use during raids, ultimately the APD’s subsequent review resulted in no change to policy because of the resources that would be required (e.g., training, equipment, data storage and retrieval). Email from Major Erika Shields (June 16, 2011).  
<sup>689</sup> Video excerpts at <http://www.youtube.com/watch?v=cjTYf2WHWbw#t=08m43s>  
<sup>690</sup> Video excerpts at <http://www.youtube.com/watch?v=cjTYf2WHWbw#t=08m43s>; Am. Compl. ¶ 98.  
<sup>691</sup> Video excerpts at <http://www.youtube.com/watch?v=cjTYf2WHWbw#t=08m43s>; Am. Compl. ¶ 98.  
<sup>692</sup> Video excerpts at <http://www.youtube.com/watch?v=wPz4e5uJWAo> ; Am. Compl. ¶ 99.  
<sup>693</sup> Video excerpts at <http://www.youtube.com/watch?v=wPz4e5uJWAo> ; Am. Compl. ¶ 99.  
<sup>694</sup> Video excerpts at <http://www.youtube.com/watch?v=wPz4e5uJWAo> ; Am. Compl. ¶ 99.  
<sup>695</sup> One notable exception is the presence of employee complaints among the grievances submitted to OPS. Only one off-duty employee, David Shepherd, was a named Plaintiff in the Calhoun litigation. See Am. Compl. ¶10 (“Herein, Calhoun and all individuals who are plaintiffs and who were not working for the Eagle that night as owners, managers, employees or independent contractors, are referred to as “Patron Plaintiffs,” and each was at the Atlanta Eagle the night of September 10-11, 2009.”).  
<sup>696</sup> EAGLE021669-EAGLE021671 (Gaboya).  
<sup>697</sup> EAGLE020879.  
<sup>698</sup> Doc. 265-1 at 8 (Settlement Agreement Paragraph 8); Doc. 269 at 1-2 (Consent Order).  
<sup>699</sup> Paragraph 7 states in full: “The Atlanta Police Department shall investigate and finally adjudicate all citizen complaints of police misconduct of any kind within 180 days of the complaint.” Doc. 265-1 at 8.  
<sup>700</sup> <http://acrbgov.org/complaints-reviewed/>  
<sup>701</sup> See generally Steve Visser, Mayor: New chief will make cops subject to civilian review, ATLANTA JOURNAL-CONSTITUTION (June 22, 2010), available at <http://www.ajc.com/news/atlanta/mayor-new-chief-will-554824.html>.  
<sup>702</sup> Rhonda Cook, City Council to subpoena police officers on gay bar raid, ATLANTA JOURNAL-CONSTITUTION (Mar. 1, 2010), available at <http://www.ajc.com/news/atlanta/city-council-to-subpoena-339384.html>.  
<sup>703</sup> ACRB000027-ACRP000255.

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<sup>704</sup> Lieutenant Pautsch was exonerated because he was not present at the Raid, nor had any supervisory role in the planning of the investigation or Raid.

<sup>705</sup> See ACRB Meeting Minutes (Sept. 9, 2010), available at <http://acrbgov.org/meeting-minutes-September-9-2010/>; ACRB Meeting Minutes (Aug. 12, 2010), available at <http://acrbgov.org/meeting-minutes-August-12-2010/>.

<sup>706</sup> ACRB Meeting Minutes (Sept. 9, 2010), available at <http://acrbgov.org/meeting-minutes-September-9-2010/>.

Based on the evidence available, Investigator Addington commented that it was “impossible to identify which person engaged in the behavior and therefore, they could not assign blame.” In response, Board Member Williams stated, “I don’t agree [with the investigators’ recommendation] because each of the individuals was a participant. . . . Personally, I agree with the complainants. There was something said and the patrons did not just lie on the floor and invent something. I believe everyone across the board should be disciplined.”

<sup>707</sup> Atl. City Ordinance 07-0-0141 § 2-2211(O).

<sup>708</sup> [http://acrbgov.org/wp-content/uploads/2010/08/Complaint\\_10-59\\_EagleBarCombined\\_ADJ.pdf](http://acrbgov.org/wp-content/uploads/2010/08/Complaint_10-59_EagleBarCombined_ADJ.pdf)

<sup>709</sup> GT has relied on a video recording of the court proceedings that served as the official transcript.

<sup>710</sup> Doc. 265-1 at 8.

<sup>711</sup> Calhoun Docket No. 1.

<sup>712</sup> EAGLE038351-53.

<sup>713</sup> EAGLE038351-53.

<sup>714</sup> EAGLE038349-50.

<sup>715</sup> EAGLE038349-50.

<sup>716</sup> EAGLE038346-47.

<sup>717</sup> EAGLE038346-47.

<sup>718</sup> EAGLE038346-47.

<sup>719</sup> EAGLE038346-47.

<sup>720</sup> In addition to Pennington, Bridges, Noble and Watkins, the following officers were added as individual defendants in the First Amended Complaint: Willie Adams, III, John H. Brock, Dimitrio O. Caldwell, Kelley Collier, Craig Condon, Gregory D. Dabney, Stalone Davis, Christopher Dowd, Jeremy D. Edwards, Herman E. Glass, Robert C. Godwin, Brandon Jackson, Dimitri Jaques, Melonie Mague, Vicente Marcano, Cayenne Mayes, Timothy McClain, James Menzoian, Dion Meredith, Scott Pautsch, Darnell Perry, Scott Perry, William Porter, Edward Rabb, Cedric F. Smith, Tyrone Taylor, Kelleita Thurman, Stephanie Upton, Ronald J. Walker, William Walters and Debra Williams.

<sup>721</sup> Calhoun Docket No. 44.

<sup>722</sup> EAGLE009650-51.

<sup>723</sup> EAGLE009650-51.

<sup>724</sup> See EAGLE009652.

<sup>725</sup> See Calhoun Docket Nos. 83-121

<sup>726</sup> EAGLE009667-69

<sup>727</sup> Adams GT 184:21-184:25; Brock GT 199:2-200:21; Dowd GT 59-60; Edwards GT 114:20-115:8; Glass GT 119:13-120:6; Godwin GT 151:1-151:25; Jackson GT 86:12-88:10; Jacques GT 101:3-101:12; Mayes GT 102: 18-103:20; Porter GT 104:17-105:11 and Walters GT 59.

<sup>728</sup> While the Cellbright device utilized by the Homeland Security Unit is a well-recognized device for forensic processing, Cellbright does not support all makes and models of cell phones, which almost certainly resulted in the compatibility issues referenced above.

<sup>729</sup> Digital files such as photographs, video, text messages and other electronic documents can be stored on removal storage devices and SIM (subscriber identity module) cards.

<sup>730</sup> Williams GT 92:22-93:13.

<sup>731</sup> Williams GT 92:22-93:13.

<sup>732</sup> Williams GT 93:17-94:15.

<sup>733</sup> It appears that city-issued BlackBerry devices had a 30-day rolling retention period for call logs and text messages.

<sup>734</sup> Crawford GT 87:1-7.

<sup>735</sup> Crawford GT 94:3-6.

<sup>736</sup> Pautsch GT 41:4-13.

<sup>737</sup> Pautsch GT 41:14-25.

<sup>738</sup> Pautsch GT 42:1-7.

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<sup>739</sup> Brock GT 218:19-220:5.  
<sup>740</sup> Brock GT 220:24-221:5.  
<sup>741</sup> Brock GT 228:15-229:1; see also Sergeant John Brock's Response to Plaintiff's First Request for Production of Documents to Defendant.  
<sup>742</sup> Brock GT 230:18-231:15.  
<sup>743</sup> Brock GT 230:24-231:15.  
<sup>744</sup> Brock GT 231:9-15.  
<sup>745</sup> Brock GT 223:20-25; 224:23-225:3.  
<sup>746</sup> Brock GT 223:1-19.  
<sup>747</sup> Collier ACRB 10; Collier GT 82:13-16.  
<sup>748</sup> Collier GT 80:22-81:4; 210:13-19.  
<sup>749</sup> Collier GT 198:1-3. This testimony is inconsistent with testimony provided by Sergeant Brock, who testified that he believed Sergeant Collier may have texted his Lieutenant indicating that the Raid had been completed. See Brock GT 220:24-221:5.  
<sup>750</sup> See Sergeant Kelley Collier's Response to Plaintiffs' First Request for Production of Documents.  
<sup>751</sup> Collier GT 98:20-23.  
<sup>752</sup> Collier GT 80:22-81:18.  
<sup>753</sup> Collier GT 205:12-206:13.  
<sup>754</sup> Collier GT 208:16-20.  
<sup>755</sup> Collier GT 209:24-210:4.  
<sup>756</sup> Collier GT 210:5-16.  
<sup>757</sup> Collier GT 212:16-21.  
<sup>758</sup> Collier GT 212:23-213:1.  
<sup>759</sup> Adams GT 206:10-23.  
<sup>760</sup> Adams GT 205:24-206:5.  
<sup>761</sup> Adams GT 205:24-206:1; 206:24-9.  
<sup>762</sup> Adams GT 108:10-109:1.  
<sup>763</sup> Adams GT 208:11-19.  
<sup>764</sup> Adams GT 215:18-22.  
<sup>765</sup> Adams GT 212:14-19; 213:6-19.  
<sup>766</sup> Adams GT 212:14-213:5.  
<sup>767</sup> Adams GT 208:1-10.  
<sup>768</sup> Bridges GT 154:17-19; 155:6-8  
<sup>769</sup> Bridges GT 155:6-16  
<sup>770</sup> Bridges GT 253:21-254:7; see also COA/EAGLE020186-020197 (reflecting calls to and from Officer Mague on September 10, 2009 at approximately 11:04 p.m. and 11:06 p.m.).  
<sup>771</sup> Bridges GT 356:7-11.  
<sup>772</sup> Bridges GT 356:19-23.  
<sup>773</sup> Bridges GT 357:14-19.  
<sup>774</sup> Bridges GT \_358:2-5.  
<sup>775</sup> See COA/EAGLE04366-04377.  
<sup>776</sup> Dabney GT 47:8-48:4.  
<sup>777</sup> Dabney GT 87:14-21.  
<sup>778</sup> Dabney GT 87:18-24; 88:22-89:3.  
<sup>779</sup> Dabney GT 89:4-10; 89:15-90:4.  
<sup>780</sup> Dabney GT 108:12-16.  
<sup>781</sup> Dabney GT 110:4-22.  
<sup>782</sup> Dabney GT 111:2-7.  
<sup>783</sup> See COA/EAGLE020168.  
<sup>784</sup> Edwards GT 45:19-23.  
<sup>785</sup> Edwards GT 46:2-8; 57:19-58:6.  
<sup>786</sup> Edwards GT 105:4-106:1.  
<sup>787</sup> Edwards GT 106:18-107:5.  
<sup>788</sup> Edwards GT 111:18-112:1.

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<sup>789</sup> Edwards GT 111:23-112.  
<sup>790</sup> Godwin GT 138:24-139:10.  
<sup>791</sup> See APD Officer Jeremy Edwards' Response to Plaintiffs' First Request for Production of Documents.  
<sup>792</sup> Glass GT 133:23-134:1.  
<sup>793</sup> Glass GT 34:6-17.  
<sup>794</sup> Glass GT 135:13-24.  
<sup>795</sup> Glass GT 136:5-22.  
<sup>796</sup> Glass GT 139:1-141:2.  
<sup>797</sup> See EAGLE020212, EAGLE020182.  
<sup>798</sup> Glass GT 134:6-17.  
<sup>799</sup> Godwin GT 50:3-3.  
<sup>800</sup> Godwin GT 50:7-12.  
<sup>801</sup> Godwin GT 51:8- 12; 136:20-22.  
<sup>802</sup> Godwin GT 135:17-136:8.  
<sup>803</sup> Godwin GT 136:15-19.  
<sup>804</sup> Godwin GT 79:14-19.  
<sup>805</sup> Godwin GT 137:8-16  
<sup>806</sup> Godwin GT 139:2-10.  
<sup>807</sup> Godwin GT 142:3-5.  
<sup>808</sup> Godwin GT 51:1-7.  
<sup>809</sup> Godwin GT 152:1-5.  
<sup>810</sup> Godwin GT 151:1-8.  
<sup>811</sup> See EAGLE020549, EAGLE020550.  
<sup>812</sup> Godwin GT 136:15-19.  
<sup>813</sup> Officer Godwin testified that he did not own this phone at the time of the Eagle Raid. Godwin GT 153:21-154:3.  
At the time of the Eagle Raid, Officer Godwin believed he had either a Katana or BlackBerry phone, but has had many different phones since the Eagle Raid. Godwin GT 50:13-20.  
<sup>814</sup> Marcano GT 53:13-24.  
<sup>815</sup> Marcano GT 148:10-16; 150:19-25.  
<sup>816</sup> Marcano GT 154:23-155:1.  
<sup>817</sup> Marcano GT 154:23-155:8.  
<sup>818</sup> Marcano GT 152:15-24.  
<sup>819</sup> Marcano GT 152:25-153:5.  
<sup>820</sup> Marcano GT 153:6-154:3.  
<sup>821</sup> McClain GT Vol. II 30:10-31:1.  
<sup>822</sup> McClain GT Vol. II 33:13-34:9.  
<sup>823</sup> McClain GT Vol. II 114:2-12.  
<sup>824</sup> McClain GT Vol. II 114:13-16.  
<sup>825</sup> Noble GT 27:16-28:6.  
<sup>826</sup> Noble GT 49:20-24.  
<sup>827</sup> Noble GT 133:24-134:7.  
<sup>828</sup> See COA/EAGLE020548-020550.  
<sup>829</sup> Noble GT 133:24-134:7.  
<sup>830</sup> See APD Officer Marlon Noble's Response To Plaintiffs' First Request To Production For Documents.  
<sup>831</sup> Noble GT 141:20-143:25.  
<sup>832</sup> Noble GT 143:22-144:9.  
<sup>833</sup> Noble GT 144:12-13.  
<sup>834</sup> Watkins GT 53:20-23.  
<sup>835</sup> Watkins GT 53:24-54:7.  
<sup>836</sup> Watkins GT 54:20-23.  
<sup>837</sup> Watkins GT 119:25-121:5.  
<sup>838</sup> Watkins GT 121:12-122:6.  
<sup>839</sup> Condon GT 72:22-73:5.  
<sup>840</sup> Condon GT 73:8-15.

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841 Condon GT 73:16-21.  
842 Condon GT 74:1-8.  
843 Condon GT 78:9-11.  
844 Condon GT 79:11-14; 80:1-7.  
845 Condon GT 78:22-79:3; 79:6-10.  
846 Condon GT 80:8-11.  
847 Dowd GT 23:17-24:5.  
848 Dowd GT 24:6-9.  
849 Dowd GT 64:9-11.  
850 Dowd GT 64:12-14.  
851 Dowd GT 68:17-24.  
852 Dowd GT 66:9-18.  
853 Dowd GT 67:2-7.  
854 Dowd GT 67:2-68:7.  
855 Jackson GT 84:3-9.  
856 Jackson GT 85:6-9.  
857 Jackson GT 85:10-16.  
858 Jackson GT 92:18-20.  
859 Jackson GT 92:2-93:6.  
860 Id. 92:21-93:1.  
861 Jackson GT 93:7-10.  
862 Jackson GT 93:11-14.  
863 Jackson GT 88:23-89:10.  
864 Jackson GT 89:11-19.  
865 Jackson GT 90:23-91:4.  
866 Jacques GT 106:7-23.  
867 Jacques GT 108:10-13.  
868 Jacques GT 108:22-109:2.  
869 Jacques GT 110:1-3.  
870 Jacques GT 113:11-20.  
871 Jacques GT 111:3-8.  
872 Jacques GT 111:5-8.  
873 Jacques GT 116:9-16.  
874 Jacques GT 114:12-16.  
875 Jacques GT 115:5-9.  
876 Mayes GT 114:8-14.  
877 Mayes GT 117:22-25.  
878 Mayes GT 115:21-116:2.  
879 Mayes GT 116:3-10.  
880 Mayes GT 116:11-15.  
881 Mayes GT 116:20-23.  
882 Menzoian GT 62:10-12.  
883 Menzoian GT 62:15-20.  
884 Menzoian GT 62:23-63:2.  
885 Menzoian GT 63:8-15.  
886 Menzoian GT 63:16-64:1.  
887 Menzoian GT 66:12-18.  
888 Menzoian GT 66:22-67:3.  
889 Menzoian GT 67:19-23.  
890 Menzoian GT 69:23-70:1.  
891 See COA/EAGLE020551-020554.  
892 Meredith GT 84:6-9.  
893 Meredith GT 91:7-21.  
894 Meredith GT 92:6-13.



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<sup>895</sup> Officer Meredith testified the data downloaded was not from the cell phone he had the night of the Raid. Meredith GT 84:10-25.

<sup>896</sup> Perry GT 85:23-86:1.

<sup>897</sup> Perry GT 88:18-21.

<sup>898</sup> Perry GT 91:7-20.

<sup>899</sup> Perry GT 92:4-7.

<sup>900</sup> Perry GT 92:11-15.

<sup>901</sup> Perry GT 93:8-13.

<sup>902</sup> Perry GT 93:18-94:4.

<sup>903</sup> Perry GT 96:11-14.

<sup>904</sup> Perry GT 96:4-7.

<sup>905</sup> Perry GT 97:1-5.

<sup>906</sup> Porter GT 105:25-106:2.

<sup>907</sup> Porter GT 105:3-10.

<sup>908</sup> Porter GT 109:19-110:15.

<sup>909</sup> See COA/EAGLE020489.

<sup>910</sup> Porter GT 109:24-110:1.

<sup>911</sup> Porter GT 110:20-24.

<sup>912</sup> See APD Officer William Porter's Response to Plaintiffs' First Request for Production of Documents to Defendant.

<sup>913</sup> See APD Officer Stephanie Upton's Response to Plaintiffs' First Request for Production of Documents.

<sup>914</sup> See ADP Officer Stephanie Upton's Response to Plaintiffs' First Request for Production of Documents.

<sup>915</sup> See COA/EAGLE020458-020469.

<sup>916</sup> See COA/EAGLE020458-020469.

<sup>917</sup> See COA/EAGLE020458-020469.

<sup>918</sup> See COA/EAGLE020458-020469.

<sup>919</sup> Walters GT 63:15-18.

<sup>920</sup> Walters GT 63:7-14.

<sup>921</sup> See APD Officer William Walters's Response to Plaintiffs' First Request for Production of Documents.

<sup>922</sup> See ADP Officer William Walter's Response to Plaintiffs' First Request for Production of Documents.

<sup>923</sup> Walters GT 63:15-64:4.

<sup>924</sup> Walters GT 64:13-22.

<sup>925</sup> Walters GT 66:17-22; 67:20-68:7.

<sup>926</sup> Adams GT 212:14-213:19; Brock GT 223:20-225:3; Dowd GT 66:9-67:7, 69:22-70:12; Edwards GT 130:4-19; Glass GT 138:19-139:8; Godwin GT 150:10-151:25; Jackson GT 89:11-90:22; Jacques GT 116:9-117:2; Mayes GT 116:3-117:8; Porter GT 115:16-116:14; Walters GT at 66:17-68:10.

<sup>927</sup> It is recommended that the APD implement an SOP relating to cell phone use.

<sup>928</sup> There is incorrect or inconsistent information regarding cell phone data in several of the officers' responses to the Officers' Requests for Production of Documents. However, because there is no requirement under the Federal Rules of Civil Procedure are not required to be answered under oath we find that any misstatements do not rise to the level of untruthfulness.

<sup>929</sup> Upon the written complaint of any certified peace officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws and otherwise as authorized in Code Section 17-5-20 under oath or affirmation, which states facts sufficient to show probable cause that a crime is being committed or has been committed and which particularly describes the place or person, or both, to be searched and things to be seized, any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws, referred to in this Code section as "judicial officer," may issue a search warrant for the seizure of the following:

- (1) Any instruments, articles, or things, including the private papers of any person, which are designed, intended for use, or which have been used in the commission of the offense in connection with which the warrant is issued;
- (2) Any person who has been kidnapped in violation of the laws of this state, who has been kidnapped in another jurisdiction and is now concealed within this state, or any human fetus or human corpse;

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(3) Stolen or embezzled property;

(4) Any item, substance, object, thing, or matter, the possession of which is unlawful; or

(5) Any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of the crime for which probable cause is shown.

O.C.G.A. § 17-5-21(a) (2010).

<sup>930</sup> In the present matter, there are no facts indicating consent to a warrantless search was provided. As such, this exception will not be addressed in this report.

<sup>931</sup> Calhoun Doc. 265-1 at 8-9.

<sup>932</sup> Section 8 of the Settlement also requires that the APD's inquiry into any potential "Truthfulness" violation "consider all statements about the Eagle Raid including but not limited to statements made to the Atlanta Police Department's Office of Professional Standards, the Atlanta Citizen Review Board, fellow and superior officers, and testimony during the March 11, 2010 Municipal Court trial arising from the raid." Doc. 265-1 at 10.

<sup>933</sup> Because this SOP covers all possible sources of legal authority (i.e., U.S. and Georgia Constitutions, all federal, state, and local laws, and all applicable court decisions and orders), this report examines all of the plaintiffs' claims for relief and allegations of noncompliance with court orders through this policy.

<sup>934</sup> Because this SOP covers all possible sources of legal authority (i.e., U.S. and Georgia Constitutions, all federal, state, and local laws, and all applicable court decisions and orders), this report examines all of the plaintiffs' claims for relief and allegations of noncompliance with court orders through this policy.

<sup>935</sup> The only exception to this chart is Investigator Bennie Bridges who was below the rank of Sergeant, but had a leadership role as the lead investigator assigned to the Eagle case.

<sup>936</sup> Officers' specific assignments may have bchanged, but this reflects their assignment as of the Eagle Raid.

<sup>937</sup> EAGLE021128-EAGLE021129.

<sup>938</sup> EAGLE021127.

<sup>939</sup> Williams GT 40:21-41:1.

<sup>940</sup> Williams GT 76:12-77:4.

<sup>941</sup> Williams GT 77:9-12.

<sup>942</sup> Williams OPS (EAGLE093422); Williams GT 77.

<sup>943</sup> Williams OPS (EAGLE093422).

<sup>944</sup> Williams OPS (EAGLE093423).

<sup>945</sup> Williams Transcript at 76-77.

<sup>946</sup> Williams OPS (EAGLE093423). Crawford later recanted this version of events in statements made to OPS during its investigation, and acknowledged the conversation with Brock after the COBRA meeting on September 10, 2009. See Crawford OPS Statement (EAGLE093414).

<sup>947</sup> Williams GT 77:3-4.

<sup>948</sup> <http://www.ajc.com/news/atlanta/police-to-discuss-raid-138211.html>; Full audio:

<http://www.publicbroadcasting.net/wabe/news.newsmain/article/2866/0/1554435/Atlanta.Morning.Edition/APD.Chief.Says.Undercover.Officers.Twice.Visited.Gay.Bar>.

<sup>949</sup> Video excerpts at <http://www.youtube.com/watch?v=cjTYf2WHWbw#t=08m43s>.

<sup>950</sup> Williams GT 14:20-15:4.

<sup>951</sup> Williams GT 59:11-15.

<sup>952</sup> Brock GT 49:6-12.

<sup>953</sup> Williams ACRB 5 (11/10/2010).

<sup>954</sup> This is further supported by Crawford's statement to OPS. See Crawford OPS 2 (EAGLE093415).

<sup>955</sup> Crawford GT 4:14-18.

<sup>956</sup> Crawford GT 5:7-25.

<sup>957</sup> Crawford GT 6:1-9.

<sup>958</sup> Crawford GT 10:16-22.

<sup>959</sup> Crawford GT 12:11-16.

<sup>960</sup> Crawford GT 13:21-14:4; It should be noted that Crawford initially stated that he had no advance warning about the Raid. See Crawford OPS Statement (EAGLE093414). However, he later recanted this version of events in

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statements made to OPS during its investigation, and acknowledged the conversation with Brock after the COBRA meeting on September 10, 2009.

<sup>961</sup> Crawford GT 15:24-16:13; 16:25-17:16.

<sup>962</sup> Crawford GT 16:8-13.

<sup>963</sup> Williams OPS (EAGLE093422); Williams GT 77.

<sup>964</sup> Williams OPS (EAGLE093423).

<sup>965</sup> Williams Transcript at 76-77.

<sup>966</sup> Williams OPS (EAGLE093423). Crawford later recanted this version of events in statements made to OPS during its investigation, and acknowledged the conversation with Brock after the COBRA meeting on September 10, 2009. See Crawford OPS Statement (EAGLE093414).

<sup>967</sup> Williams GT 77:3-4.

<sup>968</sup> Brock GT 38:23-39:3.

<sup>969</sup> Brock GT 39:5.

<sup>970</sup> Brock GT 40:9-13.

<sup>971</sup> Bridges GT 25:20-26:2.

<sup>972</sup> Bridges GT 28:5-7.

<sup>973</sup> The settlement Agreement does not require an investigation into potential violations of this Standard Operating Procedure, nevertheless, the facts compelled us to consider the significant lack of oversight.

<sup>974</sup> Crawford OPS 2 (4/14/2010) (EAGLE021040).

<sup>975</sup> Crawford OPS 1 (12/2/2010) (EAGLE093414).

<sup>976</sup> Pautsch GT 20:6-13.

<sup>977</sup> Pautsch GT 20:16-21.

<sup>978</sup> Pautsch GT 22:11-16.

<sup>979</sup> Brock GT 130:25-131:13.

<sup>980</sup> Pautsch GT 20:21-21:1.

<sup>981</sup> Pautsch GT 23:1-8.

<sup>982</sup> APD.SOP.1010 at 3.2.2.

<sup>983</sup> ACRB 10-59 Report at 10 (ACRB000037); see also Adams October 21 ACRB 8 (Not bates labeled); Adams ACRB 2:25-3:1 (EAGLE051611-12).

<sup>984</sup> (EAGLE021127); Crawford GT 4-5. The leadership of the Vice Unit had a high turnover rate during the period just before and during this investigation. Lieutenant Dan Rasmussen was relieved of command of the Vice Unit on May 4, 2009 for an unrelated disciplinary matter. His interim successor was Lieutenant William Trivelpiece for a period of less than three weeks. Trivelpiece was followed by Lieutenant Tony Crawford, promoted to that rank just fifteen months earlier, and who was already responsible for the Targeted Enforcement Unit. Notably, the Eagle complaint was received during Crawford's first week as the commander of Vice.

<sup>985</sup> Crawford GT 52-53.

<sup>986</sup> EAGLE021131-EAGLE021133.

<sup>987</sup> Brock GT 80:16-81:21.

<sup>988</sup> EAGLE021132.

<sup>989</sup> EAGLEATL044794 (Supplemental Reports at 8).

<sup>990</sup> Brock OPS 5 (EAGLE020967).

<sup>991</sup> Brock GT 69:6-24; Crawford GT 53.

<sup>992</sup> Brock GT 96:11-97:14.

<sup>993</sup> Brock GT 96:11-97:14.

<sup>994</sup> Brock GT 116.

<sup>995</sup> Brock GT 121-122.

<sup>996</sup> Brock GT 123.

<sup>997</sup> Brock GT 123:4-9; Brock GT 117:9-17.

<sup>998</sup> Crawford GT 59-60. Brock recalls the elevator conversation differently and believes that Crawford instructed him to ask Red Dog for assistance after denying his request for help from the Gangs Unit. Brock GT 117.

<sup>999</sup> Crawford GT 59-60.

<sup>1000</sup> Pautsch GT 20.

<sup>1001</sup> Brock GT 130.

<sup>1002</sup> Pautsch GT 20-21; Adams GT 35-36, 40.

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<sup>1003</sup> Adams GT 42-43, 45-46; Brock GT 131-132.

<sup>1004</sup> EAGLE022413; EAGLE051829. Two Red Dog officers, Officers William “Brian” Walters and Christopher Dowd, missed the “first part” of the briefing because they stopped to grab dinner on their way to the staging area. Walters GT 23. All other officers present at the Eagle that night reported being at the briefing in its entirety.

<sup>1005</sup> Brock GT 20:22.

<sup>1006</sup> EAGLE022412-EAGLE022421.

<sup>1007</sup> Godwin GT 73.

<sup>1008</sup> Godwin GT 72. Although both the complaint to the Mayor’s Office and to Crime Stoppers made reference to drugs, not mention was made of suspected drug activity in either the Tactical Plan or the briefing. Further, no officer interviewed believes that drugs were being investigated that night. See Brock GT 121. (“We didn’t deal with drugs. We had nobody solicit us for drugs.”).

<sup>1009</sup> Godwin GT 60.

<sup>1010</sup> EAGLE051777.

<sup>1011</sup> Brock 125:1-126:13

<sup>1012</sup> Brock 125:1-126:13

<sup>1013</sup> Brock OPS 3 (EAGLE020965); Brock GT 136:6-20.

<sup>1014</sup> Godwin GT 73.

<sup>1015</sup> Godwin GT 74.

<sup>1016</sup> Brock GT 127-128. See also Godwin GT 74. Chief Pennington acknowledged after the Raid that this was a common practice at APD during his tenure and described it as “normal procedure.” Sept. 14, 2009 Press Conference by Chief Pennington, full audio available at <http://www.publicbroadcasting.net/wabe/news.newsmain/article/2866/0/1554435/Atlanta.Morning.Edition/APD.Chief.Says.Undercover.Officers.Twice.Visited.Gay.Bar> (10:47 mark).

<sup>1017</sup> Mague GT 11-12.

<sup>1018</sup> Bridges GT 234 (EAGLE022413); (Tac Plan); EAGLEATL044792 (Supplemental Reports at 6). (Bridges).

<sup>1019</sup> Brock Dep. 92-93, 157 ; Brock GT 155: 21-25; Brock GT 139:6-12.

<sup>1020</sup> Bridges GT 250 (EAGLE020191). A second call was also made by Mague to Bridges at 11:06 P.M., possibly to confirm Red Dog’s arrival at the Eagle.

<sup>1021</sup> Kelley Dep. 17-19.

<sup>1022</sup> Kelley Dep. 24; Hughes ACRB (ACRB001592 ).

<sup>1023</sup> Brock GT 146:7-19

<sup>1024</sup> EAGLE012498.

<sup>1025</sup> Schneider was able to identify Brock during a review of meaningful photographs provided by APD. Schneider Dep. 58-59 .

<sup>1026</sup> Schneider Dep. 34.

<sup>1027</sup> Schneider Dep. 59.

<sup>1028</sup> Schneider GT [Insert]; Apud GT Rough 35. Apud initially identified Brock, but then said he was not “100 percent” sure it was him. Nevertheless, his statement just further corroborates Schneider’s statement.

<sup>1029</sup> Brock Transcript at 125-126 (emphases added).

<sup>1030</sup> See discussions above regarding APD SOP 4.2.02 and 4.2.13.

<sup>1031</sup> See discussions below regarding APD.SOP 4.1.05.

<sup>1032</sup> Watson, 423 U.S. at 422-23, n. 12.

<sup>1033</sup> O.C.G.A. § 17-4-20 (2010).

<sup>1034</sup> Gainor, 59 F. Supp.2d 1259 (“If a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable....”)

<sup>1035</sup> Ybarra v. Illinois, 444 U.S. at 92.

<sup>1036</sup> Brock Tr. p. 124.

<sup>1037</sup> Brock Tr. p. 144.

<sup>1038</sup> Brock Tr. p. 129.

<sup>1039</sup> Gainor, 59 F. Supp.2d 1259.

<sup>1040</sup> Terry, 392 U.S. 1 (1968).

<sup>1041</sup> Hiibel, 542 U.S. 177 (2004).

<sup>1042</sup> Brown, 443 U.S. at 51.

<sup>1043</sup> Hiibel, 542 U.S. at 188; Brown, 443 U.S. at 53.

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1044 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).

1045 Sharpe, 470 U.S. at 682-84.

1046 See Hammock, 860 F.2d at 393.

1047 O.C.G.A. § 51-7-20 (2010).

1048 Collier Interrogatory response (EAGLEATL009605 ).

1049 Exhibit 1 to Collier's GT interview.

1050 EAGLE037583.

1051 Brock GT 66.

1052 Collier GT 51:18-20.

1053 Collier GT 53:22-24 and 55:8-11.

1054 Collier GT 59:10-11.

1055 Collier GT 63:16-64:7.

1056 Collier GT 66:10-22.

1057 Collier GT 85:16-20.

1058 Collier GT 88:17-89:1.

1059 Collier GT 104:1-2.

1060 Collier GT 90:5-16.

1061 Collier GT 94:9-95:1.

1062 Collier GT 96:2-4.

1063 Collier GT 96:10-19.

1064 Collier GT 115:23-116:12.

1065 Collier GT 128:7-16.

1066 Collier GT 131:25-132:7.

1067 Collier GT 132:8-17.

1068 Collier GT 160:8-161:15.

1069 Collier GT 127:19-20.

1070 Collier GT 149:6-10.

1071 Collier GT 119:16-19.

1072 Collier GT 142:13-19.

1073 Collier GT 151:14-17.

1074 Collier GT 152:16-24.

1075 Collier GT 154:9-18.

1076 Collier GT 158:21-24.

1077 Collier GT 159:4-9.

1078 Collier GT 164:13-16.

1079 Collier GT 171:4-8.

1080 Collier GT 171:14-20.

1081 Collier GT 178:9. See also Collier GT 183:13-22 (Collier did not search any areas of the Eagle, did not open any drawers nor look in any closets).

1082 Collier GT 188:2-18. See also Collier GT 190:2-18 (Collier did not hear any officer use profanity or abusive language nor make any antigay slurs); Collier GT 193:24-194:1 (Collier did not hear any racial slurs).

1083 In his OPS statement Adams suggests that he went upstairs with Inv. Bridges and Sergeant Adams. Collier OPS 5 (EAGLE020959). In his ACRB statement he suggests he went upstairs with Sergeant Adams to clear the area and secure money. Collier ACRB at 7:6-22. And in his GT Interview he suggested he went upstairs with Inv. Bridges and Robert Kelley to secure money. Nevertheless, because Collier did not direct anyone else to go upstairs, and because he did not deny going upstairs, his motive in doing so and who he went up with are immaterial.

1084 Collier ACRB 11:9-12 (EAGLE051827).

1085 Collier Tr. p. 178.

1086 Gainor, 59 F. Supp.2d 1259.

1087 Terry, 392 U.S. 1 (1968).

1088 Hiibel, 542 U.S. 177 (2004).

1089 Brown, 443 U.S. at 51.

1090 Hiibel, 542 U.S. at 188; Brown, 443 U.S. at 53.

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<sup>1091</sup> Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).

<sup>1092</sup> Sharpe, 470 U.S. at 682-84.

<sup>1093</sup> See Hammock, 860 F.2d at 393.

<sup>1094</sup> O.C.G.A. § 51-7-20 (2010).

<sup>1095</sup> Adams GT 37:20-24, 38:3-6.

<sup>1096</sup> Adams GT 40:3-23.

<sup>1097</sup> Adams GT 42:9-43:4.

<sup>1098</sup> Adams GT 42:9-43:4.

<sup>1099</sup> EAGLE022413; EAGLE051829.

<sup>1100</sup> EAGLE022413; EAGLE051829.

<sup>1101</sup> Adams GT 49:5-8.

<sup>1102</sup> Adams GT 42:9-43:4.

<sup>1103</sup> Adams GT 48:23-49:4; It was not typical to have all Red Dog officers review a warrant on a detail, as that task is left to the commanding Red Dog officer on the scene.

<sup>1104</sup> Adams GT 103:2-9.

<sup>1105</sup> Adams GT 104:1-5.

<sup>1106</sup> Adams GT 67:11-15; Adams 10/21/09 ACRB 6 (No Bates); but see, Brock GT 126. Note, however, that no evidence indicates that Adams was aware of Brock's motivation in suggesting patrons be put on the ground, beyond the safety issue.

<sup>1107</sup> Adams 10/21/09 ACRB 8 (No Bates); Adams OPS 1 (EAGLE021082).

<sup>1108</sup> Adams GT 99:4-100:4; Adams ACRB 3:20-22 (EAGLE051612); see also, Godwin GT 73.

<sup>1109</sup> Adams GT 127:4-20; Adams 10/21/09 ACRB 6 (No Bates); Adams Interrogatory Response No. 2 (EAGLEATL010743).

<sup>1110</sup> Adams Supplemental Interrogatory Response No. 2 (EAGLEATL010817).

<sup>1111</sup> Godwin GT 73.

<sup>1112</sup> Adams GT 50:17-24.

<sup>1113</sup> Bridges GT 250 (EAGLE020191). Note: a second call was also made by Mague to Bridges at 11:06 P.M., but neither has any memory of what was said.

<sup>1114</sup> Adams GT 119:2-12; Adams GT 127:4-20.

<sup>1115</sup> Adams OPS 2 (EAGLE021083); Adams OPS 3 (EAGLE021084).

<sup>1116</sup> Adams ACRB 3:2-5 (EAGLE051612).

<sup>1117</sup> Adams ACRB 6:1-9 (EAGLE051615); Adams GT 203:12-16; Adams GT 204:1-16; Adams 10/21/09 ACRB 7 (No Bates); Adams OPS 2 (EAGLE021083); Adams GT 108:10-109:1.

<sup>1118</sup> Adams GT 106:21-107:20.

<sup>1119</sup> Adams 10/21/09 ACRB 9 (No Bates); Adams ACRB 4:16-20; Adams Interrogatory Responses at No. 2 (EAGLEATL010744).

<sup>1120</sup> Adams GT 171:9-21.

<sup>1121</sup> Adams Interrogatory Response No. 3 (EAGLEATL010744).

<sup>1122</sup> Adams OPS 3 (EAGLE021084); Adams GT 181:23-182:17 (Adams claims that by the time the Vice Unit was running names and IDs through the GCIC system, he believed all patrons were sitting up).

<sup>1123</sup> Adams GT 152:1-154:2.

<sup>1124</sup> Adams GT 141:19-23; 152:1-154:2.

<sup>1125</sup> Adams GT 154:3-155:22.

<sup>1126</sup> Adams GT 115:21-117:13.

<sup>1127</sup> Shepherd Dep. 29:18-30:23 (two officers knocked on his door and after he opened the door they stepped into the foyer of the Apartment); Condon GT 43:18-44:9 (when Shepherd retreated into his Apartment to put on his shirt and shoes, Sergeant Adams and the investigator accompanied him three to five feet into the Apartment while Officer Condon waited on the landing); Adams GT 157:24-158:15 (Sergeant Adams stated that when Mr. Shepherd went back into the Apartment that it was possible Condon may have followed him to ensure Shepherd was not retrieving a weapon, however, ultimately Adams was not sure if he walked in or if Condon did). When asked during his OPS statement if "anyone went inside the upstairs room to conduct a search" Condon said no. Condon OPS 4 (EAGLE022321). This is not inconsistent with his later statements, as he may have inferred that the question being asked was "did anyone conduct a search."

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1128 Adam OPS 4 (EAGLE021085).  
1129 Adams GT 149:11-150:10; Adams GT 160:13-161:3.  
1130 Adams GT 194:15.  
1131 Adams GT 194:8-14.  
1132 Adams GT 68:6-70:8.  
1133 Adam OPS 5 (EAGLE021086); Adams GT 184:13-16.  
1134 Adams GT 186:5-187:5.  
1135 APD.SOP.3020 ¶ 4.3.2(1).  
1136 APD.SOP.3020 ¶ 4.1.3.  
1137 Adams GT 103:2-9.  
1138 See discussion below regarding APD SOP 4.1.05.  
1139 Welch, 466 U.S. at 752-54; Hamrick, 198 Ga. App. at 125.  
1140 McClish, 483 F.3d at 1242; Shepard, 300 Fed. Appx. at 841-42.  
1141 See e.g. Hodari, 499 U.S. at 626.  
1142 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1143 Sharpe, 470 U.S. at 682-84.  
1144 See Hammock, 860 F.2d at 393.  
1145 See e.g. Payton, 445 U.S. 573, 587-88.  
1146 Blasco, 702 F.2d at 1325.  
1147 Chimel, 395 U.S. at 763.  
1148 Id.  
1149 Sunkett, 95 F. Supp. 2d at 1372-73.  
1150 Adams 10/21/09 ACRB 9 (No Bates).  
1151 Adams Interrogatory Responses at No. 2 (EAGLEATL010744).  
1152 Adams ACRB 4:16-20.  
1153 Adams Interrogatory Response No. 3 (EAGLEATL010744).  
1154 Adams OPS 3 (EAGLE021084).  
1155 Bridges GT 52:18-20.  
1156 Crawford GT 53.  
1157 Bridges GT 71:7-8; 117:16-22 and 142:10-16.  
1158 Bridges GT 156:20-25.  
1159 Bridges GT 158:22-159:1.  
1160 Bridges GT 164:17-20.  
1161 Bridges GT 164:17-165:3.  
1162 Godwin GT 72. Although both the complaint to the Mayor's Office and to Crime Stoppers made reference to drugs, not mention was made of suspected drug activity in either the Tactical Plan or the briefing. Further, no officer interviewed believes that drugs were being investigated that night. See Brock GT 121. ("We didn't deal with drugs. We had nobody solicit us for drugs.").  
1163 Godwin GT 60.  
1164 EAGLE051777.  
1165 Brock GT 126.  
1166 Bridges GT 249-250.  
1167 Bridges GT 244:10-15.  
1168 Bridges GT 244:18-21.  
1169 Bridges GT 245:5-8.  
1170 Bridges GT 247:14-21.  
1171 Bridges GT 248:9-13.  
1172 Bridges GT 248:1-4.  
1173 Bridges GT 248:14-249:4.  
1174 Bridges GT 249:21-23.  
1175 Bridges GT 250:16-21.  
1176 Bridges GT 250 (EAGLE020191). A second call was also made by Mague to Bridges at 11:06 PM, possibly to confirm Red Dog's arrival at the Eagle.

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1177 Bridges GT 264:15-19.  
1178 Bridges GT 266:1-11.  
1179 Bridges GT 269:11-21.  
1180 Bridges ACRB 9:8-13. (EAGLE051734).  
1181 Bridges ACRB 10:23-11:1. (EAGLE051735-36).  
1182 Compare Bridges ACRB 8:11-13 (EAGLE051733) with Bridges GT 298:12-16; 300:16-24.  
1183 EAGLE021137.  
1184 Bridges GT 286:9-20.  
1185 Ramey Interview Notes 06/20/11 (EAGLEATL045073-74).  
1186 Kelley GT 45:7-9.  
1187 Ramey Interview Notes 06/20/11 (EAGLEATL045073-74).  
1188 Bridges GT 312:3-10. Till references money from the cash registers in the Main Bar Area.  
1189 Muni. Trans. 8.  
1190 Muni. Trans. 9-10.  
1191 Muni. Trans. 13.  
1192 Muni. Trans. 17-19.  
1193 Muni. Trans. 20-21.  
1194 Apud GT (rough draft) 6.  
1195 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1196 Sharpe, 470 U.S. at 682-84.  
1197 See Hammock, 860 F.2d at 393.  
1198 Bridges ACRB 8:11-13. (EAGLE051733).  
1199 Bridges GT 298:12-16; 300:16-24.  
1200 Response 1 (EAGLE051899).  
1201 EAGLEATL011506.  
1202 EAGLEATL009566 (Interrogatory response) (note that there appears to be some confusion in Edwards' interrogatory response. He claims to have been present on 6/11 and 9/10, but likely was referencing the date his supplemental report for the 5/21 visit was submitted as the time release on the 6/11 report was at 7:18 p.m., before the Eagle would have opened (8:00 p.m.). His interview transcript and attached exhibit map also reference 5/21 rather than 6/11.  
1203 Edwards GT 38:7-10.  
1204 Edwards GT 39:7-15.  
1205 Edwards GT 39:18-20.  
1206 Edwards GT 40:3-7.  
1207 Edwards GT 41:16-42:5.  
1208 Edwards GT 43:5-7.  
1209 Edwards GT 63:1-3.  
1210 Edwards GT 63:9-15.  
1211 Edwards GT 67:3-9.  
1212 Edwards GT 67:3-9.  
1213 Edwards GT 69:5-20.  
1214 Edwards GT 69:23-70:1.  
1215 Edwards GT 70:1-6.  
1216 Edwards GT 71:23-72:2. It should be noted that although Edwards report does not contain any mention of the second couple, his OPS statement does. See Edwards OPS 2 (EAGLE021020).  
1217 Edwards GT 73:1-6.  
1218 Edwards GT 73:7-9.  
1219 Edwards GT 64:8-9.  
1220 Edwards GT 66:22-67:10.  
1221 Edwards GT 77:7-13.  
1222 Edwards GT 80:23-81:3.  
1223 Edwards GT 81:4-15.  
1224 Edwards GT 81:4-15.



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1225 Edwards GT 82:6-9.  
1226 Edwards GT 82:23-83:7.  
1227 Edwards GT 124:5-12.  
1228 Edwards GT 90:10-17.  
1229 Edwards GT 95:22-96:5; Edwards ACRB 6:5-7:11 (EAGLE051694-95).  
1230 Edwards GT 73:1-6.  
1231 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1232 Sharpe, 470 U.S. at 682-84.  
1233 See Hammock, 860 F.2d at 393.  
1234 Edwards GT 11:18-119:1.  
1235 City of Atlanta RPD responses #20 (EAGLEATL011090).  
1236 Edwards RPD response #6 (EAGLE052175).  
1237 Edwards GT 105:16-106:25.  
1238 Edwards Interrogatory Response #1 (EAGLEATL009566).  
1239 EAGLEATL009502 (Interrogatory response).  
1240 Id.  
1241 Glass GT 82:9; EAGLE022415.  
1242 Glass GT 83:2-11.  
1243 Glass GT 90:11-91:3.  
1244 Glass GT 83:24-84:24; Exhibit 4.  
1245 Glass GT 97:5-14.  
1246 Glass GT 85:22-86:8.  
1247 Glass GT 106:7-13.  
1248 Glass GT 106:14-25; Glass's testimony bolsters the assumption that he did not attend the pre-Raid briefing that took place in the church parking lot where it was seemingly discussed that undercover officers would identify themselves to Red Dog by placing their city identifications which were hung from a blue lanyard around their necks.  
1249 Id.  
1250 Glass GT 107:17-19.  
1251 Glass GT 110:25-111:6.  
1252 Glass GT 110:4-6.  
1253 Glass GT 111:15-18.  
1254 Glass GT 111:25-112:3.  
1255 Glass GT 113:4-10.  
1256 Glass GT 115:15-19.  
1257 Glass GT 113:14-15.  
1258 Glass GT 120:9-21.  
1259 Glass GT 122:22-24.  
1260 Glass GT 124:22-25.  
1261 Glass GT 126:21-24.  
1262 Glass GT 122:25-123:9.  
1263 Glass GT 123:10-25.  
1264 Gainor, 59 F. Supp.2d 1259.  
1265 Terry, 392 U.S. 1 (1968).  
1266 Hiibel, 542 U.S. 177 (2004).  
1267 Brown, 443 U.S. at 51.  
1268 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1269 Sharpe, 470 U.S. at 682-84.  
1270 See Hammock, 860 F.2d at 393.  
1271 Glass GT 128:11-16.  
1272 Adams GT149, 151, 153; Bridges GT 286 and 290; and Marcano GT 142.  
1273 EAGLEATL010636.  
1274 Godwin GT 64:14-22.

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1275 Godwin GT 37:23-38:3; Exhibit 3 to Godwin's GT Interview.; Godwin OPS 6 (EAGLE020981); Report: EAGLE021132.

1276 Godwin GT 40:6-9.

1277 Godwin GT 40:22-23.

1278 Godwin GT 41:4-17.

1279 Godwin GT 60:6-8; EAGLE022415.

1280 Godwin GT 82:20-23.

1281 Godwin GT 87:19-23.

1282 Godwin GT 92:13-22.

1283 Godwin GT 88:21-89:4; Godwin ACRB 12:15-18 (EAGLE051637).

1284 Godwin GT 90:1-4.

1285 Godwin GT 98:14-15.

1286 Godwin GT 102:4-7.

1287 Godwin GT 99:9-12.

1288 Godwin GT 108:25-109:5.

1289 Godwin GT 113:22-114:4.

1290 Godwin GT 114:5-24.

1291 Godwin GT 113:3-7; Exhibit 5 to Godwin's interview.

1292 There are inconsistencies as to where the patrons were moved. Godwin states that the patrons were moved to the hallway (Godwin GT 113:3-7; Exhibit 5) while one of the patrons, Scott Schneider states that they were moved to the Back Bar (Schneider GT 27:25-28:3). However, this inconsistency is immaterial.

1293 Godwin GT 122:13-21; 96:6-8.

1294 Godwin ACRB 18:6-7 (EAGLE051643).

1295 Godwin ACRB 21:3-8.EAGLE051646.

1296 Apud GT Rough 59.

1297 Godwin GT 126:13-19.

1298 SOP.3020 ¶ 4.3.3(3).

1299 SOP.3020 ¶ 4.3.3(4).

1300 Godwin GT 113:22-114:4.

1301 See generally Ybarra, 444 U.S. 85.

1302 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).

1303 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).

1304 Sharpe, 470 U.S. at 682-84.

1305 See Hammock, 860 F.2d at 393.

1306 Mague is no longer with APD.

1307 EAGLEATL009646

1308 Mague OPS 2 (EAGLE021011).

1309 Mague OPS 2-3 (EAGLE021011-12).

1310 Mague OPS 2 (EAGLE021011).

1311 Mague OPS 2 (EAGLE02011).

1312 Mague GT 8:12-15.

1313 Mague GT 17:16-21.

1314 Mague GT 18:15-23.

1315 Mague GT 20:7-23; Mague ACRB 14:13-15 (EAGLE051580).

1316 Mague GT 31:6-22.

1317 Mague GT 26:16-25.

1318 Mague GT 38:10-18.

1319 Apud GT Rough 16-18.

1320 Truetel Dep. 75-78.

1321 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).

1322 Sharpe, 470 U.S. at 682-84.

1323 See Hammock, 860 F.2d at 393.

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1324 EAGLEATL009650.  
1325 EAGLEATL009650. See also EAGLE084519 and EAGLE084538.  
1326 EAGLEATL010881 (Interrogatory response); Role Call for May 21, June 11 and Sept 10, 2009 (not yet bates labeled).  
1327 Marcano GT 44:20-24.  
1328 Marcano GT 46:6-7.  
1329 Marcano GT 69:4-12.  
1330 Marcano GT 70:15-16; EAGLE021133  
1331 Marcano GT 71:9-10.  
1332 Marcano GT 71:19-25; 72:16-73:5; EAGLE021133.  
1333 Marcano GT 75:1-3.  
1334 Marcano GT 92:24-25.  
1335 Marcano GT 105:12-14.  
1336 Marcano GT 106:18-22.  
1337 Marcano GT 115:19-21.  
1338 Marcano GT 119:8-10.  
1339 Marcano GT 119:22-25.  
1340 Marcano GT 120:22-123:4.  
1341 Marcano GT 131:12-14.  
1342 Marcano GT 128:12-19.  
1343 Marcano GT 136:4-6.  
1344 Marcano GT 136:21-22.  
1345 Marcano GT 136:23-137:3.  
1346 Marcano GT 137:5-12.  
1347 Marcano GT 137:20-138:6.  
1348 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1349 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1350 Sharpe, 470 U.S. at 682-84.  
1351 See Hammock, 860 F.2d at 393.  
1352 See Marcano's Response to Interrogatory #10 of Plaintiff's First set of Continuing Interrogatories.  
1353 See EAGLE082096, EAGLE082359 and EAGLE082383.  
1354 See EAGLE082098 and EAGLE082361.  
1355 EAGLEATL010844 (Interrogatory response mentions three visits, but does not give specific dates). Updated incident report includes supplemental reports for all three dates.  
1356 McClain GT 73:22-74:10.  
1357 McClain GT 80:7-23.  
1358 McClain GT 103:6-10.  
1359 McClain GT 105:8-15.  
1360 McClain GT 105:16-18.  
1361 McClain GT 107:19-108:7.  
1362 McClain GT 108:10-15.  
1363 McClain GT 142:19-143:1.  
1364 McClain GT 144:23-25.  
1365 McClain GT 144:2-9.  
1366 McClain GT 126:19-24.  
1367 McClain GT 132:15-19.  
1368 McClain GT 135:9-18.  
1369 McClain GT 148:3-7.  
1370 McClain GT 181:13-20.  
1371 McClain GT 178:1-14.  
1372 McClain GT 179:10-180:3.  
1373 McClain GT 180:12-181:9.  
1374 McClain GT 182:5-15.

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1375 McClain GT 195:16-22.  
1376 McClain GT 196:17-24.  
1377 McClain GT 188:2-16.  
1378 McClain GT 191:21-24.  
1379 McClain GT 203:15-22.  
1380 McClain GT 200:1-22.  
1381 McClain GT 206:14-20.  
1382 McClain GT 211:2-7.  
1383 McClain GT 199:12-25.  
1384 APD.SOP.3020 ¶ 4.3.3(3).  
1385 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1386 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1387 Sharpe, 470 U.S. at 682-84.  
1388 See Hammock, 860 F.2d at 393.  
1389 Noble GT 29:23-30:7.  
1390 Noble GT 30:17-17.  
1391 Noble GT 31:3-6.  
1392 Noble GT 31:17-20.  
1393 Noble GT 31:17-20.  
1394 Noble GT 34:16-22; 37:10-11; Noble OPS 4 (EAGLE020989).  
1395 Noble GT 38:3-4.  
1396 Noble GT 38:23-39:1.  
1397 Noble GT 42:11-18.  
1398 Noble GT 43:16-18.  
1399 Noble GT 43:19-22.  
1400 Tactical Plan EAGLE022415; Noble GT 68:1-4.  
1401 Noble GT 82:5-7.  
1402 Noble GT 83:25-84:2.  
1403 Noble GT 81:18-22; 86:16-18.  
1404 Noble GT 96:17-24.  
1405 Noble GT 97:7-9.  
1406 Noble GT 98:1-4.  
1407 Noble GT 98:5-9.  
1408 Noble GT 102:10-13; Noble ACRB 4:13-14 (EAGLE051663).  
1409 Noble GT 102:18-24; 104:15-17.  
1410 Noble GT 98:11-25.  
1411 Noble GT 108:19-20; 112:13-14.  
1412 Noble GT 113:10-15.  
1413 Noble GT 113:10-25.  
1414 Noble GT 119:14-19.  
1415 Noble GT 119:14-120:5.  
1416 Gaboya Dep. 63:12-20 . Note that 4381 is the four digit identifier for Officer Noble.  
1417 Gaboya Dep. 63:12-20 . Note that 4381 is the four digit identifier for Officer Noble.  
1418 Gaboya Dep. 18:10-21 ; Gaboya Dep. 48:1-17.  
1419 Gaboya Dep. 18:10-21 .  
1420 See generally Terry, 392 U.S. 1, APD.SOP.3020 ¶ 4.3.3(3).  
1421 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1422 Sharpe, 470 U.S. at 682-84.  
1423 See Hammock, 860 F.2d at 393.  
1424 EAGLEATL011507.  
1425 EAGLE021135.  
1426 EAGLEATL009546 (Interrogatory response).

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1427 Watkins GT 34:23-35:8.  
1428 Watkins GT 37:1-4.  
1429 Watkins GT 37:16-20.  
1430 Watkins GT 39:16-17.  
1431 Watkins GT 39:2-6 (Exhibit 3).  
1432 Watkins GT 47:17-20.  
1433 Watkins GT 43:17-21.  
1434 Watkins GT 63:15-16; Tactical Plan EAGLE022415.  
1435 Watkins GT 72:24-73:2.  
1436 Watkins GT 73:24-74:5. Compare with Godwin who states that the couple was making out, but that it did not appear that any sexual acts were occurring (Godwin GT 92:13-22).  
1437 Watkins GT 74:12-19; 75:1-8.  
1438 Watkins GT 74:12-19; 75:1-8.  
1439 EAGLE021133; Watkins GT 75:11-14.  
1440 EAGLE021133; Watkins GT 75:22-76:3; 84:4-14.  
1441 Watkins GT 76:2-3.  
1442 Watkins GT 76:16-18.  
1443 Watkins GT 79:21-24.  
1444 Watkins GT 89:22-24.  
1445 Watkins GT 89:8-9.  
1446 Watkins GT 90:12-16.  
1447 Watkins ACRB at 6:13-15 (EAGLE051673).  
1448 Watkins GT 95:4-5.  
1449 Watkins GT 93:19-20.  
1450 Buehl GT Rough draft p. 69-70.  
1451 Buehl GT Rough draft p. 69-70.  
1452 APD.SOP.3020 ¶ 4.3.3(3).  
1453 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1454 Sharpe, 470 U.S. at 682-84.  
1455 See Hammock, 860 F.2d at 393.  
1456 Condon ACRB 3:5-14 (EAGLE051809).  
1457 Condon GT 23:4-12.  
1458 Condon GT 26:7-15; Condon ACRB 3:5-14 (EAGLE051809); Condon OPS 34-1-7 (EAGLE022318).  
1459 Condon GT 26:16-18.  
1460 Condon GT 51:5-8, 14-16.  
1461 Condon OPS 34-3-7 (EAGLE022320); Condon ACRB 7:22-24 (EAGLE051813); Condon GT 49:9-50:1.  
1462 Condon OPS 34-4-7 (EAGLE022321); Condon ACRB 5:6-12 (EAGLE051811); Condon GT 40:15-41:23.  
1463 Condon GT 61:16-20.  
1464 Shepherd 29:18-30: 23 (two officers knocked on his door and after he opened the door they stepped into the foyer of the Apartment); Condon GT 43:18-44:9 (when Shepherd retreated into his Apartment to put on his shirt and shoes, Sergeant Adams and the investigator accompanied him three to five feet into the Apartment while Officer Condon waited on the landing); Adams GT 157:24-158:15 (Sergeant Adams stated that when Mr. Shepherd went back into the Apartment that it was possible Condon may have followed him to ensure Shepherd was not retrieving a weapon, however, ultimately Adams was not sure if he walked in or if Condon did). When asked during his OPS statement if “anyone went inside the upstairs room to conduct a search” Condon said no. Condon OPS 34-4-7 (EAGLE022321). This is not inconsistent with his later statements, as he may have inferred that the question being asked was “did anyone conduct a search.”  
1465 Condon ACRB 5:13-15 (EAGLE051811) Condon GT 43:14-17, 44;11.  
1466 Condon GT 44:11-45:5; Condon ACRB 5:17-18 (EAGLE051811).  
1467 Condon GT 54:3-22.  
1468 Condon GT 69:18-71:2.  
1469 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).

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1470 Sharpe, 470 U.S. at 682-84.  
1471 See Hammock, 860 F.2d at 393.  
1472 Davis Response to ROG No. 3 (EAGLEATL010797); Davis OPS 4 (EAGLE022314).  
1473 Davis ACRB 4:9-13 (EAGLE051652).  
1474 Davis ACRB 4:23-25 (EAGLE051652).  
1475 Davis ACRB 4:20-22 (EAGLE051652).  
1476 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1477 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1478 Davis ACRB 9:19-23 (EAGLE051657).  
1479 Mayes GT 88:12-24.  
1480 Davis ACRB 4:23-25 (EAGLE051652).  
1481 Davis ACRB 4:20-22 (EAGLE051652).  
1482 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1483 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1484 Davis ACRB 9:19-23 (EAGLE051657).  
1485 Mayes GT 88:12-24.  
1486 Hayes GT 27.  
1487 Ybarra, 444 U.S. at 94.  
1488 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1489 Sharpe, 470 U.S. at 682-84.  
1490 See Hammock, 860 F.2d at 393.  
1491 Davis OPS3 (EAGLE022313); Davis ACRB 4:20-25 (EAGLE051652).  
1492 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1493 Davis ACRB 8:7-9:18 (EAGLE051656-051657).  
1494 Davis ACRB 9:19-23 (EAGLE051657).  
1495 Mayes GT 88:12-18.  
1496 Dowd GT 28:2-13.  
1497 Dowd GT 30:10-18; In his testimony, Dowd states that only officers who have attended SWAT training are allowed to make entry into a building.  
1498 Dowd GT 33:24-34:2.  
1499 Dowd GT 37:1-4.  
1500 Dowd GT 45:8-23.  
1501 Dowd GT 48:3-20.  
1502 Dowd GT 48:8-11.  
1503 Dowd GT 48:14-20.  
1504 Dowd GT 74:2-12.  
1505 Dowd GT 50:23-51:4.  
1506 Dowd GT 51:18-21.  
1507 Dowd GT 52:4-6.  
1508 Dowd GT 57:7-14.  
1509 Dowd GT 46:16-47:3.  
1510 Dowd GT 47:12-15.  
1511 Dowd GT 57:7-14.  
1512 McLeod Dep. 18:4-12 (where McLeod makes allegations that “taller” officer handcuffed Ray); 54:10-18 (where McLeod identifies Dowd as “taller” officer from a lineup) and Ray Dep. 17:1-12 .  
1513 Dowd GT 43:16-24.  
1514 Dowd GT 55:5-11.  
1515 Dowd GT 55:12-24.  
1516 McLeod Dep. 38:17-39:3 .  
1517 Ray Dep. 27:20-24 . (Although Ray does not state that Dowd conducted the pat-down, it is likely that Dowd conducted a pat down after he handcuffed Ray).  
1518 See APD.SOP.3020 § 4.3.4.  
1519 See APD.SOP.3020 § 4.3.3(4).

1520 Ray Dep. 30:24-31:7 ; McLeod Dep. 34:14-17 . McLeod identifies Dowd as making the comment to Walters.  
Ray does not specify which officer made the comment.

1521 McLeod Dep. 34:14-17 .

1522 See McLeod GT. 30:17-31:90 .

1523 Ray GT 30-31 McLeod Dep. 34 . McLeod identifies Dowd as making the comment to Walters. Ray does not  
specify which officer made the comment.

1524 McLeod GT 34:14-17.

1525 See McLeod GT 30:17-31:90.

1526 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).

1527 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an  
arrest).

1528 Sharpe, 470 U.S. at 682-84.

1529 See Hammock, 860 F.2d at 393.

1530 See generally Jones v. City of Dothan, 121 F.3d 1456 (11th Cir. 1997).

1531 Jackson GT 52.

1532 Jackson GT 56.

1533 Jackson ACRB 3 (EAGLE051600); Jackson GT 57, 58, 72.

1534 Jackson OPS 4-5 (EAGLE021099-021100); Jackson GT 58-59.

1535 Jackson GT 64-65.

1536 Jackson OPS 4-5 (EAGLE021099-021100); Jackson ACRB 6:1-7, 21-24, 9 (EAGLE051603, 51606); Jackson  
GT 56, 68.

1537 Jackson GT 82:20-1.

1538 Jackson GT 68.

1539 Jackson GT 64.

1540 Jackson OPS 4 (EAGLE021099); Jackson ACRB 6 (EAGLE051603); Jackson GT 70.

1541 Jackson GT 74.

1542 Kelley GT 31, 34, 35, 122-123.

1543 Jackson GT 77.

1544 Jackson GT 87.

1545 Jackson GT 38.

1546 Jackson OPS 2 (EAGLE021097); Jackson ACRB 8 (EAGLE051605); Jackson GT 79.

1547 Kelley GT 123.

1548 ACRB August 2010 Minutes.

1549 ACRB August 2010 Minutes.

1550 Jackson OPS 2 (EAGLE021097); Jackson GT 79, 85.

1551 Jackson GT 91-93.

1552 Kelley GT 123.

1553 ACRB August 2010 Minutes.

1554 ACRB August 2010 Minutes .

1555 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an  
arrest).

1556 Sharpe, 470 U.S. at 682-84.

1557 See Hammock, 860 F.2d at 393.

1558 See e.g. Payton, 445 U.S. 573, 587-88.

1559 Blasco, 702 F.2d at 1325.

1560 Although Officer McClain stated that prior to the Raid, the Kitchen door was open and he saw an individual  
going in and out of the Kitchen, his testimony is uncorroborated.

1561 Chimel, 395 U.S. at 763.

1562 Id.

1563 Sunkett, 95 F. Supp. 2d at 1372-73.

1564 Although Officer McClain stated that prior to the Raid, the Kitchen door was open and he saw an individual  
going in and out of the Kitchen, his testimony is uncorroborated.

1565 Jackson GT 64, 70.

1566 Jackson GT 31, 34-35, 122-123.

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1567 See June 25, 2011 Report of Inv. Haff .  
1568 See June 25, 2011 Report of Inv. Haff.  
1569 See June 25, 2011 Report of Inv. Haff .  
1570 See June 25, 2011 Report of Inv. Haff .  
1571 See June 25, 2011 Report of Inv. Haff .  
1572 See discussion above regarding APD SOP 4.2.02.  
1573 EAGLEATL008659.  
1574 Final Order at 19, U.S. v. Bryant, Case No. 1:09-cr-00018 (Doc. No. 50) (EAGLE024234).  
1575 Jacques ACRB 2-3 (EAGLE051678-79); Jacques GT 39-40.  
1576 Jacques ACRB 4, 7(EAGLE051680, 051683); Jacques GT 41-42.  
1577 Jacques GT 69.  
1578 Jacques GT 69-70.  
1579 Jacques GT 106-108.  
1580 Jacques GT 54:-56.  
1581 Jacques GT 46, 52.  
1582 Jacques GT 46, 54, 56.  
1583 Jacques GT 51, 54, 56, 60-61.  
1584 Jacques GT 46-47.  
1585 Jacques GT 50-19, 63-64.  
1586 Jacques GT 73-74, 77.  
1587 Jacques OPS 4 (EAGLE021092); Jacques ACRB 4-5 (EAGLE051680-81); Jacques GT 74-75.  
1588 Jacques ACRB 4 (EAGLE051680); Jacques GT 57.  
1589 Jacques GT 88.  
1590 Jacques ACRB 6 (EAGLE051682); Jacques GT 85-86, 90-91, 95, 97.  
1591 Jacques ACRB 6(EAGLE051682); Jacques GT 85-86.  
1592 Jacques OPS 3 (EAGLE021091); Jacques ACRB 6, 14-20 (EAGLE051682); Jacques GT 81-82.  
1593 Jacques GT 96-97.  
1594 Jacques ACRB 10:6-10 (EAGLE051686); Jacques GT 86:2-7.  
1595 Jacques GT 58, 75.  
1596 Jacques OPS 4 (EAGLE021092); Jacques ACRB 5 (EAGLE051681); Jacques GT 78-79.  
1597 Jacques GT 83-84. Because of his proximity to the Kitchen door, which was kicked in, a truth verification examination of Jacques was conducted on June 10, 2011. He denied kicking the door or knowing or suspecting who kicked the door. No deception was indicated during the examination. See June 23, 2011 Report of Inv. Haff (EAGLEATL045075-76).  
1598 Jacques GT 91:20-21.  
1599 Jacques OPS 2 (EAGLE021090).  
1600 Jacques OPS 2 (EAGLE021090); Jacques GT 103, 104.  
1601 Jacques GT110:7:111:1.  
1602 Jacques GT 111-112.  
1603 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1604 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1605 Sharpe, 470 U.S. at 682-84.  
1606 See Hammock, 860 F.2d at 393.  
1607 Jacques ROG 5 (EAGLEATL009050).  
1608 Jacques ACRB 4, 7 (EAGLE051680, 051683); Jacques GT 41-42.  
1609 Jacques ROG 8 (EAGLE009053).  
1610 EAGLEATL054068-72.  
1611 Jacques Employment Application 7-9 (produced as COA/EAGL38067-69) (EAGLE005143-45).  
1612 Mayes OPS 4 (EAGLE022307); Mayes ACRB 3 (EAGLE 051709); Mayes GT 54-55.  
1613 Mayes GT 32, 58.  
1614 Mayes GT 64.  
1615 Mayes GT 78.  
1616 Mayes GT 78.



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1617 Mayes GT 59-61; Mayes ACRB 8 (EAGLE051714).  
1618 Mayes OPS 3 (EAGLE022306); Mayes GT 62-63.  
1619 Mayes GT 86.  
1620 Mayes GT 76-78.  
1621 Mayes GT 100.  
1622 Mayes OPS 4 (EAGLE022307); Mayes ACRB 5 (EAGLE051711); Mayes GT 90.  
1623 Mayes GT 90-91.  
1624 Mayes ACRB 6 (EAGLE051712).  
1625 Mayes OPS 4 (EAGLE022307); Mayes ACRB 5 (EAGLE051711).  
1626 Mayes GT 105-106.  
1627 Mayes GT 107-108.  
1628 Mayes GT 108-109.  
1629 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(4).  
1630 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1631 Hiibel, 542 U.S. at 185-86; Hammock, 860 F.2d at 393 (retention of piece of identification may constitute an arrest).  
1632 Sharpe, 470 U.S. at 682-84.  
1633 See Hammock, 860 F.2d at 393.  
1634 Mayes ACRB 6 (EAGLE051712).  
1635 Mayes ACRB 6 (EAGLE051712).  
1636 Mayes ACRB 5 (EAGLE051711).  
1637 Mayes GT 86.  
1638 Mayes GT 88.  
1639 Mayes GT 90-91.  
1640 Menzoian GT 32.  
1641 Menzoian GT 49-50.  
1642 Menzoian GT 44.  
1643 Menzoian GT 43.  
1644 Menzoian GT 45.  
1645 Menzoian GT 45.  
1646 Menzoian GT 45.  
1647 Menzoian GT 47.  
1648 Menzoian GT 49.  
1649 Menzoian GT 47.  
1650 Menzoian GT 26.  
1651 Menzoian GT 52.  
1652 Menzoian OPS 3 (EAGLE021843).  
1653 Menzoian GT 52-53:  
1654 Buehl was arrested under City of Atlanta Ordinance 30-55.  
1655 Burkes GT (rough) 30-31.  
1656 Burkes GT (rough) 31-33.  
1657 Menzoian ACRB 10:2-5 (EAGLE051565).  
1658 Buehl was arrested under City of Atlanta Ordinance 30-55.  
1659 Specifically, City of Atlanta Ordinance 30-55 and 10-206.  
1660 See Hammock, 860 F.2d at 393.  
1661 EAGLEATL009526.  
1662 Final Order at 19, U.S. v. Bryant, Case No. 1:09-cr-00018 (Doc. No. 50) (EAGLE024234).  
1663 Meredith ACRB 4 (EAGLE051767).  
1664 Meredith GT 51:5-6.  
1665 Meredith GT 51:19-52:1; Meredith OPS 1 (EAGLE021069); Meredith ACRB 3:9-12 (EAGLE051766).  
1666 Meredith GT 55-56.  
1667 Note that in Meredith's OPS transcript he states "officers" whereas in his GT interview he states that there was only one officer in the Game Room (Meredith GT 27:19-23).  
1668 Meredith OPS 1.

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1669 Meredith GT 57.  
1670 Meredith GT 62.  
1671 Meredith GT 58.  
1672 Meredith GT 58.  
1673 Meredith GT 64.  
1674 Meredith GT 66.  
1675 Meredith GT 64.  
1676 Meredith GT 69.  
1677 This SOP section addresses the authority to conduct “frisks” or pat downs for weapons.  
1678 Meredith GT 63-64; Meredith ACRB 5 (EAGLE051768).  
1679 Meredith ACRB 5 (EAGLE051768); Meredith OPS 3 (EAGLE021071).  
1680 Meredith ACRB 5:7-10 (EAGLE051768).  
1681 Meredith ACRB 5 (EAGLE051768); Meredith OPS 4 (EAGLE021072).  
1682 Meredith GT 72; Meredith ACRB 5 (EAGLE051768).  
1683 Meredith GT 71.  
1684 Meredith GT 72.  
1685 Ybarra, 444 U.S. at 94.  
1686 See Hammock, 860 F.2d at 393.  
1687 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1688 Perry GT 37.  
1689 Perry GT 57.  
1690 Perry GT 54.  
1691 Perry GT 55.  
1692 Perry GT 61. It is unclear whether Perry is referring to a single Vice offer or whether there was more than one officer that left the Game Room. Perry’s initial testimony indicates that there was a single officer but his later testimony refers to “they” indicating that there may have been more than one officer that left the room. See Perry 60-61.  
1693 Perry GT 61-62.  
1694 Perry GT 64; Perry OPS 3 (EAGLE021113); Perry ACRB 6 (EAGLE051722).  
1695 Perry GT 65.  
1696 Perry GT 65-66.  
1697 Perry GT 77.  
1698 This SOP section addresses the authority to conduct “frisks” or pat downs for weapons.  
1699 Perry GT 64; Perry OPS 3 (EAGLE021113); Perry ACRB 6 (EAGLE051722).  
1700 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1701 See Hammock, 860 F.2d at 393.  
1702 Sharpe, 470 U.S. at 682-84.  
1703 See Hammock, 860 F.2d at 393.  
1704 Porter GT 34-35.  
1705 Porter GT 34-35.  
1706 Porter GT 35.  
1707 Porter GT 37-38.  
1708 Porter GT 36.  
1709 Porter GT 55.  
1710 Porter GT 59.  
1711 Porter GT 59.  
1712 Porter GT 63.  
1713 Porter GT 66.  
1714 Porter GT 72.  
1715 Porter GT 72.  
1716 Porter GT 74.  
1717 Porter GT 75.  
1718 Porter GT 66.  
1719 This SOP section addresses the authority to conduct “frisks” or pat downs for weapons.

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1720 Terry, 392 U.S. at 21; APD.SOP.3020 ¶ 4.3.3(3).  
1721 Ybarra, 444 U.S. at 94.  
1722 See Hammock, 860 F.2d at 393.  
1723 See Terry, 392 U.S. 1; APD.SOP.3020 ¶ 4.3.3(3).  
1724 EAGLEATL011506.  
1725 EAGLEATL011506.  
1726 EAGLEATL011506.  
1727 EAGLEATL011506.  
1728 EAGLEATL011506.  
1729 EAGLEATL011506.  
1730 EAGLEATL011506.  
1731 Upton OPS 1 (EAGLE021062).  
1732 Upton ACRB 9-10 (EAGLE051752-53).  
1733 Upton ACRB 4 (EAGLE051757).  
1734 Upton ACRB 11 (EAGLE051754).  
1735 Upton OPS 3 (EAGLE021064).  
1736 Upton ACRB 5 (EAGLE051748).  
1737 Upton ACRB 5 (EAGLE051748).  
1738 Upton OPS 3 (EAGLE021064); see also Upton ACRB 4-5 (EAGLE051747-48).  
1739 Upton OPS 5 (EAGLE021066).  
1740 Buehl GT 32.  
1741 Buehl GT 11.  
1742 Upton ACRB 8 (EAGLE051751).  
1743 Kelly GT 51.  
1744 Kelly GT 51.  
1745 See Hammock, 860 F.2d at 393.  
1746 See generally Terry, 392 U.S. 1; APD.SOP.3020 ¶ 4.3.3(3).  
1747 See Hammock, 860 F.2d at 393.  
1748 Upton ACRB 5 (EAGLE051748).  
1749 EAGLEATL011506.  
1750 Pautsch GT 25.  
1751 EAGLEATL011506.  
1752 Walters GT 21.  
1753 Walters GT 25.  
1754 Walters GT 34.  
1755 Walters GT 36.  
1756 Walters GT 37-8.  
1757 Walters GT 39.  
1758 Walters GT 32.  
1759 Walters GT 38.  
1760 McLeod GT 13.  
1761 McLeod GT 54.  
1762 McLeod GT 18.  
1763 Ray GT 20. (Ray initially identifies Edwards as the other officer who entered Rawhide but later changes the  
identification to Walters).  
1764 McLeod GT 44.  
1765 Walters GT 47-48.  
1766 Walters GT 48.  
1767 Walters GT 47-48.  
1768 Walters GT 47.  
1769 Walters GT 40.  
1770 Walters GT 32.  
1771 Walters GT 38.  
1772 Maryland v. Buie, 494 U.S. at 327.

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<sup>1773</sup> Maryland v. Buie, 494 U.S. at 327

<sup>1774</sup> Sunkett, 95 F. Supp. 2d at 1372-73.

<sup>1775</sup> The occupants of Rawhide, however, may have been under constructive arrest when their detentions were prolonged.

<sup>1776</sup> See Hammock, 860 F.2d at 393.

<sup>1777</sup> Eagle Co-Owner Robert Kelley was cited in a news article as stating that Investigator Bridges and Officer Watkins purchased \$6 shots of Jagermeister and received another two complimentary shots just before the Raid. Rhonda Cook, APD undercover officers drank shots just before Eagle Bar raid, ATLANTA JOURNAL-CONSTITUTION (Feb. 15, 2011), <http://www.ajc.com/news/atlanta/apd-undercover-officers-drank-839054.html>. But see Am. Compl. ¶ 80 (alleging that Ketel One vodka, Tangueray gin, Budweiser beer, and Amstel Light beer were consumed by Vice Unit officers, but making no mention of Jagermeister shots). See also Lopez GT 14-15 (where Eagle bartender Chris Lopez states that he and Watkins took shots on previous occasions, not on the night of the Raid).

<sup>1778</sup> Rhonda Cook, APD undercover officers drank shots just before Eagle Bar raid, ATLANTA JOURNAL-CONSTITUTION (Feb. 15, 2011), <http://www.ajc.com/news/atlanta/apd-undercover-officers-drank-839054.html>.

<sup>1779</sup> Watkins GT 34.

<sup>1780</sup> Watkins GT 71-72.

<sup>1781</sup> Bridges GT 235.

<sup>1782</sup> Bridges GT 240.

<sup>1783</sup> Rhonda Cook, APD undercover officers drank shots just before Eagle Bar raid, ATLANTA JOURNAL-CONSTITUTION (Feb. 15, 2011), <http://www.ajc.com/news/atlanta/apd-undercover-officers-drank-839054.html>.

<sup>1784</sup> Am. Compl. ¶ 80 (alleging that Ketel One vodka, Tangueray gin, Budweiser beer, and Amstel Light beer were consumed by Vice Unit officers, but making no mention of Jagermeister shots).

<sup>1785</sup> Kelly GT 96.

<sup>1786</sup> Lopez GT 8-9.

<sup>1787</sup> Bridges GT 240.

<sup>1788</sup> Godwin GT 91 (Godwin denies receiving any shots from Lopez the night of the Raid; see Lopez GT (rough) 14:17-15:20 (Lopez denies taking shots with Godwin on the night of the Raid and recalls that Godwin's only purchases were two Bud Lights, one for himself and another for the individual he was with); see also Watkins GT 82-83 (Watkins does not remember taking any shots but recalls avoiding the bar area so as to avoid being handed shots by Lopez).

<sup>1789</sup> The number of shots is disputed. Godwin and Watkins recall taking a single shot bought by Lopez (Godwin GT 64; Watkins GT 37) where Lopez describes multiple shots (Lopez GT 14-15:19). However, the number of shots is immaterial as these shots were not taken the night of the Raid, and there are no allegations of misconduct related to prior undercover operations at the Eagle.

<sup>1790</sup> Godwin GT 64-35; See also Lopez GT 14-15.

<sup>1791</sup> Watkins GT 50 (Watkins would take a few sips, walk around, wait the length of time that it took someone to typically drink a beer and then go to the bathroom and throw the drink away.); Bridges GT 81 (Bridges would order a drink, pretend to drink it, and then find a trash can and throw it away); see also McClain GT 101-102; Noble GT 31.

<sup>1792</sup> Adams GT 227; Collier GT 223; Dabney GT 117; Godwin GT 162; Jackson GT 99; Meredith GT 98-99; Noble GT 156-157; Rasmussen GT 73-74; Thurman GT 87-89; Trivelpiece GT 48; Williams GT 84, 141-143.

<sup>1793</sup> Adams GT 227-228; Brock GT 244-245; Collier GT 223; Rasmussen GT 72-73, 75-76.

<sup>1794</sup> Adams GT 228; 9/14/09 Pennington Press Conference.

<sup>1795</sup> Brock GT 240-243.

<sup>1796</sup> Brock GT 246-248.

<sup>1797</sup> Cavender GT 28-29.

<sup>1798</sup> Collier GT 225-226.

<sup>1799</sup> Collier GT 224-225; Rasmussen GT 73.

<sup>1800</sup> Collier GT 224.

<sup>1801</sup> Dowd GT 75-76; Edwards GT 143-148; Godwin GT 158-160; Jacques GT 124-126; McClain GT 245-248; Meredith GT 99; Watkins GT 133-134.

<sup>1802</sup> Jackson GT 99-100; Porter GT 125-126.

<sup>1803</sup> Pautsch GT 53-55; Trivelpiece GT 47-48.

<sup>1804</sup> Rasmussen GT 74-75.

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1805 Perry GT 103-105; Watkins GT 129-130, 132-133.  
1806 Watkins GT 131-132.  
1807 Watkins GT 135-136.  
1808 EAGLEATL044786 (Crime Stoppers Tip Disposition Sheet).  
1809 EAGLE021128-EAGLE021129.  
1810 EAGLE021128-EAGLE021129.  
1811 EAGLE021128-EAGLE021129.  
1812 EAGLE021130-EAGLE021136.  
1813 EAGLE021130-EAGLE021136.  
1814 EAGLE021125-EAGLE021126.  
1815 EAGLE022413.  
1816 EAGLE022413.  
1817 EAGLE021130-EAGLE021136; Bridges GT 234; EAGLE022413 (Tac Plan); EAGLEATL044792  
(Supplemental Reports at 6).  
1818 EAGLE020191 (Bridges Cell Phone Records); Bridges GT 250.  
1819 EAGLE020924 (Buehl APD Complaint); ACRB001622 (Buehl ACRB Complaint).  
1820 EAGLE020191 (Bridges Cell Phone Records).  
1821 EAGLE020890; EAGLE020896; EAGLE020902; EAGLE020909; EAGLE020918; EAGLE020924;  
EAGLE020928; EAGLE020939; EAGLE020943; EAGLE020948.  
1822 EAGLE021379-EAGLE021408. Note: GCIC print-outs appear to differ slightly from the length of time  
specified by Inv. Haff in his report (EAGLE021605).  
1823 EAGLE020893; EAGLE013030 (Shepherd Deposition).  
1824 Kelley GT 45-50; EAGLE020925 (Buehl APD Complaint); ACRB001623 (Buehl ACRB Complaint).  
1825 EAGLEATL046043 (GCIC Report at 3 (Staats)); EAGLEATL045057 (Out of State GCIC Supplemental at 4  
(Staats)).  
1826 Kelley GT 38-39; Apud GT Rough 43-44.  
1827 See EAGLE013782 (Dale GCIC Report); Dale GT 40-41.  
1828 EAGLE013678 (Treutel GCIC Report).  
1829 EAGLE013676-EAGLE013797 (Full GCIC Report).  
1830 See EAGLE020926 (Buehl APD Complaint at 3). While the arrest citations list the time of arrest as 11:20 P.M.,  
this is likely an approximation by the officer filling out the citations at the end of the Raid. See EAGLE021137-  
EAGLE021140.  
1831 Kelley GT 72.  
1832 While the log sheet by the driver shows that the call for the wagon was at 1:00 A.M. and the detail ended at 1:20  
A.M., other evidence indicates that the wagon arrived earlier and that these log times were likely an estimate. See  
EAGLEATL045066 (Zone 5 Log for 9/10/09-9/11/09 for Officer Khayiriyyah Bashir).  
1833 EAGLEATL045067 (Zone 5 Log for 9/10/09-9/11/09 for Officer Keo Siharath).  
1834 Id.; EAGLE020926 (Buehl APD Complaint); ACRB001624 (Buehl ACRB Complaint).  
1835 See supra at Section 1.9.  
1836 EAGLEATL045066 (Zone 5 Log for 9/10/09-9/11/09 for Officer Khayiriyyah Bashir); EAGLEATL045067  
(Zone 5 Log for 9/10/09-9/11/09 for Officer Keo Siharath).  
1837 ACRB001195 (Shepherd Booking Entry).  
1838 ACRB001171 (Kelley Booking Entry).  
1839 EAGLE020879.  
1840 ACRB001610.  
1841 Calhoun v. Pennington, 1:09-cv-3286-TCB (Dkt. 1).  
1842 Video Recording of March 11, 2010 Municipal Court Proceedings.  
1843 Calhoun v. Pennington, 1:09-cv-3286-TCB (Dkt. 122 at 14).  
1844 <http://acrbgov.org/case-10-16-david-shepherd/>.  
1845 <http://acrbgov.org/wp-content/uploads/2010/10/August2010OfficialMinutes.pdf>.  
1846 <http://acrbgov.org/wp-content/uploads/2010/11/September2010OfficialMinutes.pdf>.  
1847 Calhoun v. Pennington, 1:09-cv-3286-TCB (Dkt. 265 at 8).