



ERASING THE EAGLE

Evidence in lawsuit against City of Atlanta missing or destroyed

BY STEPHANIE RAMAGE

Owners, employees and patrons of the Atlanta Eagle bar claim the City of Atlanta has lost, destroyed or intentionally withheld evidence in a lawsuit against the city's police department over alleged civil rights violations during a raid in 2009.

Even after a judge ordered the city to preserve and provide all documents and communications related to the Atlanta

COVER Police Department's Sept. 10, 2009 raid on the bar on Ponce de Leon Avenue, depositions of APD command staff and affidavits of expert witnesses taken in the past two months show phone evidence was deleted and requested e-mails have not been provided.

According to court filings that became public last week, U.S. District Judge Timothy C. Batten Sr. said in an Aug. 20 phone conference with attorneys in the case: "I must say that based on what I've read, the defendants [the city] have been woefully deficient in their responses to the plaintiffs' discovery requests." Later in the same call, he said "I suspect that the city and the other defendants are correct in their representations that many of the items requested have

been wiped out, they don't exist. They were wiped out before anybody knew anything about it. They were either destroyed or taken off the computer."

Faced with the lawsuit, filed Nov. 24, 2009, the city's law department sent a letter on Dec. 21 to Mayor Shirley Franklin, City Council President Lisa Borders, Police Chief Richard Pennington, and Deputy Chief George Turner, who became chief in January, as well as the rest of the APD command staff, instructing them not to delete, destroy,

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—Federal Judge Timothy Batten on APD documents related to Eagle raid

or overwrite any relevant electronic information, including e-mails. But according to court documents, the city's Information Technology Department was never given the letter—which would have prompted IT staff to stop the routine destruction of document backup data.

The city asserted dozens of times during the discovery process that it did not possess certain records, so the federal judge ordered

the APD to allow the plaintiffs' attorney to search the command staff's offices. Upon doing so, attorney Daniel Grossman discovered previously unrevealed documents related to the case.

"We're at APD headquarters. We've only been here an hour, and we've already found massive amounts of files that exist which the city originally said didn't even exist," Grossman said during an Aug. 27 phone call with the judge and city attorneys, according to a court transcript of the call.

A sworn affidavit submitted by Grossman states: "In the office of the Red Dog unit, I [Grossman] found thousands of previously unproduced documents..."

He continues: "In the offices of the Special Enforcement Section and Criminal Investigation Division, I discovered detailed minutes of 'Special Enforcement Section Supervisor Meetings' for 2007, 2008, 2009 and 2010, in which commanders of SES

units [including the two units involved in the raid, Vice and Red Dog] presented detailed descriptions of their activities during the week. The minutes for the period which included the Eagle raid were missing from both locations."

Additionally, the court records include text messages between police officers during the raid that the plaintiffs hope will show potentially incriminating messages and photos were deleted.

Because the city has not yet made a full answer to the plaintiffs' allegations, The Sunday Paper has opted not to name officers of the rank of sergeant or below because the extent to which they understood what they were doing cannot yet be ascertained. However, it may be reasonably assumed that lieutenants and the officers above them have an understanding of APD practices, if not policies, that would allow them to accurately represent the position of the city and its police department.

Here are some excerpts from the filings: ■ Plaintiffs' attorneys requested the name of each person involved in the raid, but "the city identifies only 28 individuals and omits persons known to have been involved in the raid." For example, Maj. Khirus Williams confirmed the identity of the driver of one of

continued on 22

continued from 21

the prisoner transport vans used in connection with the raid, so her involvement was known to the city but her name was not included in the city's list of officers involved.

■ Plaintiffs requested a list of all raids involving the Red Dog unit with more than four civilians being detained and their IDs checked during the previous 18 months. Instead, the city gave them a list of raids by the Vice unit. Also, the documents state "the city failed to identify a single operation conducted at a residential address, despite the fact that Major Debra Williams [who was commander over the Red Dog unit] testified that Red Dog raided at least 10-12 drug houses over the previous 18 months. . . . Common sense would have indicated to [the city law department] that the 21 locations listed [which are all massage parlors or adult

gender community liaison officer, the day after the raid, saying she would be meeting with media [the Atlanta Eagle is a gay bar].

■ When asked last April to provide cell phone photos and text messages related to the Eagle, the 35 officers named as defendants did not comply with the request. Consequently, in August they were ordered to submit their cell phones for examination. An officer who'd previously claimed he didn't use a cell phone was found to not only have one, but one so active that he had more than 750 contacts saved in it.

According to John Carney, a forensic phone expert retained by the plaintiffs, as the court's deadline for handing over cell phones—Sept. 10 of this year—drew closer, it appeared that officers were deleting messages that may have been related to the raid. In some cases, other officers' phones showed

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—Attorney Dan Grossman, after searching APD offices

entertainment clubs] could not possibly be the only locations at which Red Dog conducted operations."

■ Constance Martin, an expert in electronic data, testified that the city did not hand over all of its e-mails related to the Eagle. It handed over some e-mail server files, but they contained enormous gaps that would not normally exist. "As just one example . . . files related to Defendant [Maj.] Debra Williams contained no data later than November 2008 and contained no 'Sent Items' later than June 6, 2008," even though the city's own IT director testified that the city's Microsoft Exchange program retains e-mails for seven years (unless an e-mail is created and deleted within 30 days). "The city clearly did not produce all Microsoft Exchange backups which are currently in existence," Martin said.

■ Regarding documents saved on city computers, backups are deleted every 90 days. The IT Department didn't get the notice not to do so until September of this year—a year after the raid.

■ Plaintiffs requested "any and all recordings of all telephone, cell phone, mobile phone, or other voice communications between or among APD officers and employees" involved in the incident from 6 p.m. on the day of the raid until 6 a.m. the next morning. The city produced only a 14-second voice mail recording from Dani Lee Harris, the department's Gay, Lesbian, and Trans-

messages received, but the officer who'd sent the messages did not have them on his or her phone.

An examination of Lt. Scott Pautsch's phone revealed it did not hold a text that other officers' phones showed to have come from him on Sept. 2 of this year. The text read "Tell everybody to stop making comments."

Additionally, Carney's affidavit says another officer's [Officer E.'s] phone held 131 photos but "there was a gap of two photographs taken by that camera from Aug. 29, 2009 to Sept. 11, 2009 which included the date of the Atlanta Eagle raid," and "missing from the text messages on [Officer E.'s] phone were eight sent to or from him as recorded on [sergeant's] phone from August 2010 [during plaintiffs' investigation]. Also missing from the text messages in his phone are five sent to or from him as recorded on [Officer J.'s] phone from September 10 and 11, 2009 at the very time of the Atlanta Eagle Raid." Some are reproduced below:

- "It's just now getting busy"
- "The action's just beginning"
- "Our Sgt is wanting to make as many cases as possible"

Also missing from another officer's text messages, according to Carney, was one sent to [Officer J.] on Sept. 15, 2009, less than a week after the Atlanta Eagle Raid, that read "Bro, no more f**kin' gay jokes. For rear [sic], for real." **SP**