

In the Matter Of:

ACLU Vs.

CITY OF MEMPHIS,

217cv02120

PROCEEDINGS

April 23, 2019



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

ACLU,

Plaintiff,

Vs.

Case No. 217cv02120

CITY OF MEMPHIS,

Defendant.

STATUS CONFERENCE

April 23, 2019

BEFORE: JON P. MCCALLA, JUDGE

ALPHA REPORTING CORPORATION
DEBORAH J. PEARCE
236 Adams
Memphis, Tennessee 38103
901.523.8974

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1 The status conference, taken on this, the
2 23rd day of April, 2019, pursuant to notice and
3 consent of counsel, beginning at approximately
4 9:30 a.m., in the Courtroom 9, Ninth Floor, of
5 167 North Main, Memphis, Tennessee 38107.

6 This status conference is taken in
7 accordance with the terms and provisions of the
8 Federal Rules of Civil Procedure.

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- APPEARANCES -

For the Plaintiff:

Tom Castelli
Attorney at Law
AMERICAN CIVIL LIBERTIES UNION
P.O. Box 120160
Nashville, Tennessee 37212
615.320.7142

For the Defendant:

R. Mark Glover
Attorney at Law
BAKER DONELSON
165 Madison Avenue
Suite 2000
Memphis, Tennessee 38103
901.577.2222

Reported by:

Deborah J. Pearce
ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103
901-523-8974

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1 THE COURT: All right. We're going
2 to have a report. Actually, what we're going to
3 do, because it's so far back there, if someone
4 needs to sit in the jury box, we'll let them do
5 that. So anybody who would like to sit, until we
6 fill the jury box, is welcome to.

7 Do we have any witnesses who will be
8 testifying on either side? I know we've got the
9 presentation of the special master. Of course
10 you're up here. What are you doing out there?
11 You're the star of the show. Come on. Bring
12 anybody else you need up there. I see a few folks
13 you might want, so all of them get the front seat
14 of the jury box. Absolutely.

15 And I know that you're going to make
16 the presentation, as I understand it, but you may
17 have some others who want to participate in that.
18 So everybody associated with the special master in
19 this part of the jury box (indicating).

20 And, then -- okay. That's better.
21 It's a little easier on all of us. This is a cozy
22 courtroom, so the idea is to get everybody close
23 together. It's much easier.

24 Everybody is good?

25 MR. STANTON, III: Yes, sir.

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1 THE COURT: We're going to -- and
2 anybody else out there who -- Mr. Cramer, you're
3 welcome. You can hardly hear nowadays. I'm not
4 picking on you.

5 MR. CRAMER: And, unfortunately, I
6 hear too well.

7 THE COURT: Oh, okay, you can sit
8 wherever you want. We've got a few extra seats.
9 If somebody does want to be closer, it's no
10 problem. It's a more intimate setting so that we
11 can have a conversation in part, because we try to
12 keep this a little more conversational if we can,
13 as best as we can.

14 Okay. Well, nobody else took those
15 seats up, so they want to stay back there.

16 We're -- we have a report, of course,
17 and we've had a couple of reports so far, and the
18 process we would normally follow would be to start
19 with a few, or as full as the special master would
20 like to make it, report, and then there will be an
21 opportunity for both sides to make some inquiry,
22 if they wish to do so. And I know we've got a
23 couple of people that we want to hear from.

24 Lawyers don't have to be sworn in
25 because they're obligated under their oath as an

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1 attorney to speak candidly to the Court -- and we
2 hope they do that. In this case, they will; some
3 other cases, I'm not so sure. And, then, of
4 course, anybody else who's speaking who's not an
5 attorney, we'll have sworn in --

6 MR. STANTON, III: Yes, sir.

7 THE COURT: Because that's a better
8 process and they're not under the same obligation.

9 Okay. Mr. Stanton, you're almost in
10 charge here. You're going to make the
11 presentation, so thank you.

12 MR. STANTON, III: Thank you,
13 Your Honor, and if it please the Court -- would
14 you prefer (indicting)?

15 THE COURT: That's usually a pretty
16 good spot, and that's the reason I was trying to
17 make sure everybody could hear okay. We usually
18 have lapel mics on. I hope they have gotten one
19 for you, they're supposed to, and that's because
20 it's hard to hear in the back -- and we're
21 supposed to do that.

22 And, also, I need my other set of
23 glasses. I usually wear the others. All right.

24 MR. STANTON, III: Testing.

25 THE COURT: That's good. That's

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1 good. Everybody can hear, and that's important.

2 MR. STANTON, III: Again, good
3 morning, Your Honor, and may it please the Court
4 and counsel and all the attendees this morning, I
5 am Edward L. Stanton, III, the court-appointed
6 independent monitor for this case and, if I may,
7 Your Honor, take a moment to introduce the members
8 of the monitoring team.

9 THE COURT: We may have seen
10 everybody, but you may need to do it for everybody
11 else.

12 MR. STANTON, III: To my immediate
13 left in the jury box is Jim Letten, general
14 deputy. Mr. Letten is the deputy monitor and,
15 also, the former U.S. Attorney for the Eastern
16 District of Louisiana, in New Orleans, and is a
17 member of Butler Snow Law Firm, in New Orleans.

18 To his left is
19 Rachel Levinson-Waldman, and Ms. Levinson-Waldman
20 is our subject matter expert in the public policy
21 and social media space. She serves as senior
22 counselor to the Brennan Center for Justice at NYU
23 law school.

24 To her left is John Henegan, the
25 person who is part of the team as a constitutional

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1 and first amendment subject matter expert, and
2 Mr. Henegan is a partner with Butler Snow Law Firm
3 and he's based out of Ridgeland, Mississippi.

4 And to his left is Mr. Theron Bowman,
5 Dr. Bowman, also Chief Bowman, is our law
6 enforcement and police practice subject matter
7 expert. And Chief Bowman is a former police chief
8 of Arlington, Texas. He also is currently serving
9 on two other monitoring teams. His services are
10 very valuable as he's serving on the court
11 monitoring teams for Baltimore and New Orleans.

12 THE COURT: It's interesting because
13 we all have connections with both of those cities.
14 So I'm not going to ask you how they're going, but
15 I know we're doing better.

16 MR. BOWMAN: Absolutely.

17 MR. STANTON, III: And to his left is
18 Dave McGriff, and Mr. McGriff has actually
19 testified before this Court before. He's no
20 stranger to law enforcement, with over 40 years of
21 experience, having actually served as a Memphis
22 Police Department officer, as well as most
23 recently as deputy commissioner of Homeland
24 Security here, in the state of Tennessee, and he
25 is an expert as relates to auditing and

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1 compliance.

2 And, also, I do have two partners
3 here in the jury box, my partner, Will Perry, from
4 Butler Snow, and Shanell Tyler, Attorney Tyler,
5 who has been working tremendously and assisting
6 with our efforts, Your Honor.

7 Let me begin. I think one of the
8 best places to begin, Your Honor, is pursuant to
9 the order, your order dated October 26th, 2018,
10 you said something in the order, it said, "To
11 ensure compliance with the decree and to provide
12 closer guidance on what constitutes political
13 intelligence, this Court -- the Court will appoint
14 an independent monitor to supervise the
15 implementation of sanctions." And I think that's
16 one of the ways, obviously, a role of why we're
17 here today.

18 In our submission to the Court, there
19 were three guiding principles that we told the
20 Court, if selected, we would abide by. Those
21 three core principles outlined in the monitoring
22 plan include principle one, and this is respect
23 for the limited role of the monitor, that is, to
24 support and advise the Court, but not substitute
25 its judgment for or replace the Court or the MPD.

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1 Secondly, principle two, Your Honor,
2 was, "Clarity, consistency, and accountability in
3 all communications with the MPD," and last, but
4 not least, "Rigorous transparency." That is, we
5 want the Court, the MPD, the ACLU Tennessee, and
6 the entire public to know what we're doing, why
7 we're doing it, and how much it costs.

8 And I think, Your Honor, this
9 transparency, rigorous transparency, hopefully can
10 be seen with the submissions we have made to the
11 Court to this point.

12 Briefly, Your Honor, there are four
13 areas that I'd like to cover this morning in the
14 independent monitor status report and update. The
15 first, I've already covered, and that's the who,
16 who the team is. You'll hear more from a select
17 group from the individuals I introduced, Your
18 Honor. The second is the what, what we've been
19 doing over the last three months on behalf of the
20 Court; third, next steps, Your Honor; and, fourth,
21 leads to one or two outstanding items we think
22 that might be before the Court.

23 Since I've already addressed the what
24 -- the who, rather, I want to go into the second
25 area, Your Honor, and that's the what we've been

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1 doing.

2 First, the team has conducted
3 comprehensive reviews of the Memphis Police
4 Department's code of conduct, policies, chain of
5 command and reporting procedures. A comprehensive
6 review of MPD's entire on-boarding training and
7 continuing education curricula and related
8 policies and procedures.

9 Third, a comprehensive review of all
10 uses, proper and improper, public and covert, that
11 the MPD is making of the technology at its
12 disposal, and also a comprehensive review,
13 Your Honor, of the department's current social
14 media use and practices.

15 Over the last three and a half
16 months, the monitoring team, we have hosted weekly
17 conference calls as well as video conferences.
18 Oftentimes these calls last anywhere from
19 45 minutes to an hour, up to, and some calls and
20 video conferences that have gone in excess of
21 three hours where we have a rigorous analysis, a
22 discussion, and even a spirited debate by team
23 members as we are functioning as the eyes and ears
24 of the Court and operating in the independent
25 monitor capacity.

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1 We also have weekly calls with the
2 City, officials from the City of Memphis, Your
3 Honor, counsel for the city, the city attorney,
4 counsel for the Memphis Police Department, and
5 we've had these weekly calls without fail for
6 nearly the last three months with the City. And
7 we strictly adhere to the directive of evaluating
8 the submissions of the City and ACLU and providing
9 recommendations to the Court.

10 Just to go back, Your Honor, briefly,
11 this started with the Court ordering the City to
12 make several submissions on January 14th, 2019, as
13 a start to achieving compliance with the Kendrick
14 consent decree. The City made -- attorneys made
15 those submissions, and the ACLU objected to those
16 submissions on February the 4th, 2019, and, then,
17 the monitoring team, Your Honor, we reviewed the
18 City's submissions and the ACLU's objections and
19 prepared a set of recommendations in late
20 February/early March, which we submitted to the
21 Court.

22 The City subsequently revised its
23 submissions in response to the ACLU's objections
24 and sent them to the ACLU. The ACLU, then,
25 responded to those revisions, and once again, the

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1 monitoring team, we requested from the City and
2 they duly complied to provide both the revised
3 submissions and the ACLU responses. We received
4 those, the monitoring team, Your Honor, and we
5 submitted our recommendations to this Court and
6 our interim report that we shared with the Court
7 on April 1st of this year.

8 Additionally, to the what we've been
9 doing, Your Honor, on February the 11th and 12th
10 of this year, the full monitoring team, as
11 assembled here this morning, we've met with the
12 Memphis Police Department and representatives and
13 discussed their observations and proposed changes
14 to the revised MPD policies and procedures. We
15 met at the Memphis Police Department's
16 headquarters and also had a real informative,
17 actual boots-on-the-ground interactive tour of the
18 Memphis Police Department's realtime crime center.

19 If I may, Your Honor, I think it's
20 worth noting, the individuals, to show them that
21 the director and the City of Memphis and the
22 Police Department went through during our two-day
23 visit and tour, during that two-day meeting, Your
24 Honor, the monitoring team met with the following
25 command staff personnel: First, Police Director

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1 Michael Rallings; Deputy Police Director
2 James Ryall; Deputy Chief Frank Garrett, who is
3 part of the Uniform Patrol District I; Deputy
4 Chief Terry Landrum, Uniform Patrol District II;
5 Deputy Chief Michael Shearin, Investigative
6 Services; Deputy Chief Michael Hardy, Special Ops;
7 Deputy Chief Don Crowe, Information Systems; and
8 Deputy Chief Sharonda Hampton, Administrative
9 Services.

10 The monitoring team also met with the
11 following Memphis Police Department officials:
12 Major Steven Chandler with information systems,
13 Major Sharon Cunningham, training academy,
14 Lieutenant Tracy Washington, training academy; and
15 Manager John Williams with the realtime crime
16 center.

17 Memphis Police Department legal
18 counsel were also present at each of these
19 meetings, Your Honor.

20 I think it's worth noting, Your
21 Honor, and important to note that, to date, the
22 City, through its counsel, they have been
23 extremely cooperative, responsive, and resourceful
24 in providing the access to documents, files, and
25 MPD key personnel that the monitoring team has

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1 requested thus far.

2 The City, early on, identified an
3 individual by the name of Attorney Zayid Saleem,
4 legal advisor to the police department. He's been
5 a tremendous resource. He's continued to act in a
6 prompt cooperative and professional manner, and
7 his efforts are much appreciated by the monitor
8 and the monitoring team.

9 Going forward, Your Honor, so roughly
10 a week or so after the February 11th and 12th
11 meetings with the City, we received -- I received
12 a notice from outside counsel, Mr. Glover,
13 Mr. Mark Glover, and he was asking for input. The
14 City was asking for input regarding nine
15 hypothetical situations that were of concern, and
16 safety concerns, and other concerns, discrete
17 concerns, to the City, and they wanted to know,
18 the City wants to know how to deal with those
19 items.

20 I've apprised the Court of those
21 hypotheticals, but, in essence, Your Honor, when
22 Mr. Glover reached out, I requested that he put
23 those items in writing. He did that, the City did
24 that, and we were able to provide, again, a
25 rigorous analysis of those hypotheticals, and I

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1 think we even added two others that we saw that
2 needed attention, and we submitted our
3 recommendations to the Court for review.

4 That gets me, Your Honor, to the
5 third item, and that is next steps for the
6 monitoring team. We're still in the process of
7 reviewing and evaluating thousands of the
8 voluminous amounts of documents that we received
9 from the City and the data that I mentioned we
10 requested earlier.

11 We're in the process of scheduling a
12 meeting with MPD Lieutenant Colonel David Rudolph,
13 who is the officer in charge of MPD training. We
14 were hoping to get that meeting before today's
15 hearing -- status conference, Your Honor, but
16 Lieutenant Colonel Rudolph was out of the country
17 on travel and we were not able to get our
18 schedules in line. So that is very important for
19 us to meet with the person who is in charge of
20 training in the very near future.

21 We will follow, as we laid out in our
22 monitoring plan, our quarterly -- our first
23 quarterly report, we plan to have that done within
24 the next week, Your Honor, hopefully by the end of
25 this week with the Court so the Court and the

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1 public can see what the monitoring team has been
2 doing, particularly in the first quarter.

3 We're in the process, as we mentioned
4 in the monitoring plan, of finalizing a monitoring
5 team website and page. Obviously, Your Honor,
6 before we launch that or go live, we would have to
7 get -- and want to get the insight of the Court to
8 ensure that it's authorized and the Court is
9 completely comfortable with the information
10 displayed on the website but, within the next two
11 and a half or three weeks, we should have that
12 ready for the Court to review and, hopefully, for
13 the public to review as well.

14 We're also in the process of looking
15 at best practices of the police departments
16 throughout the county so as to advise the Court on
17 recommended best practices and ensure compliance,
18 again, with the consent decree.

19 We're also in the process with
20 meeting with certain social media providers
21 through our relationships with members of the
22 monitoring team, which we really believe will be
23 resourceful when addressing the monitoring team's
24 questions, and will provide further guidance on
25 our recommendations to the Court.

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1 And, finally, Your Honor, we believe
2 that community engagement is vital, as we
3 mentioned in our monitoring plan, so we look to
4 work with the Court. We have some ideas as to
5 community engagement and what that looks like and
6 the means of medium that we will do that but,
7 again, that is something we want to address with
8 the Court before proceeding. So those are the
9 items as we look forward to next steps.

10 And the fourth item, Your Honor, and
11 that's something that is, again, open items before
12 the Court, obviously, there's a motion that was
13 filed yesterday by the City, and we are happy to
14 address that at the Court's will and pleasure, if
15 called upon.

16 Your Honor, I would like to say,
17 again, this remains a work in progress. It's an
18 honor to serve this community. I know I speak for
19 the monitoring team, working alongside of the ACLU
20 and City of Memphis and their counsel. It's,
21 obviously, impossible to attain instant solutions
22 and compliance, but we believe, again, the City
23 has demonstrated a good faith effort to getting
24 the trajectory of a path to compliance.

25 Having said that, Your Honor, if

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1 there are any questions, I'm happy to entertain
2 those, or we could move forward and I would like
3 to call --

4 THE COURT: I think the objective was
5 to go through the full presentation first --

6 MR. STANTON, III: Yes, sir.

7 THE COURT: -- so we didn't ask
8 questions that were going to be answered in the
9 presentation. I think that's a better way to do
10 that.

11 MR. STANTON, III: Okay. Sounds
12 good. This is in no order, Your Honor. I call
13 Chief Bowman to the stand.

14 THE COURT: Sure.

15 MR. STANTON, III: And what we've --
16 what I've asked the subject matter experts,
17 Your Honor, is to just take a brief moment of
18 sharing their observations and, particularly,
19 someone like Chief Bowman, who's served in this
20 capacity with cities with similar issues. And,
21 then --

22 THE COURT: Pass forward from the
23 back and bring it up, please.

24 CHIEF BOWMAN: Yes, sir.

25 THE COURT: If you'll raise your

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1 right hand, I'll swear you in.

2 (Witness sworn.)

3 CHIEF BOWMAN: Yes, sir.

4 THE COURT: Have a seat right up here
5 (indicating).

6 MR. STANTON, III: And what I've
7 asked is that Chief Bowman and all of the members
8 here is to give their observations and
9 assessments --

10 THE COURT: Yes, absolutely.

11 MR. STANTON, III: -- of what they've
12 observed over the last three and a half months of
13 coming forward on the team. And, again, we
14 welcome questions from the Court. It sounds like
15 you want to hold them in abeyance --

16 THE COURT: Well, I think as each
17 individual testifies, once they finish their
18 initial presentation, which may be relatively
19 brief --

20 MR. STANTON, III: It will.

21 THE COURT: -- then there will be
22 opportunity for questions by counsel from the City
23 -- and everybody, frankly. So that's how we're
24 going to handle that.

25 Are you doing well today?

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1 CHIEF BOWMAN: I'm doing terrific.
2 Thank you.

3 THE COURT: Well, we're interested in
4 hearing what you have to say, so go right ahead.

5 CHIEF BOWMAN: Thank you, Your Honor,
6 and to the Court, again, my name is T. Bowman, I
7 go by T. Bowman. I have the honor of serving on
8 this monitoring team, but also have the honor of
9 serving on additional monitoring teams in other
10 cities, as well.

11 In addition to my consent decree
12 monitoring work, I've done quite a bit of what I
13 would call premonitoring work or preconsent decree
14 work in other cities like Seattle; in Cleveland,
15 Ohio; Maricopa County, Arizona; as well as
16 Albuquerque, New Mexico. I've done some
17 postconsent decree work in places like Chicago and
18 New York City, as well, so I've had the honor of
19 having quite a bit of experience in the consent
20 decree arena and, fortunately, I'm able to serve
21 here, in Memphis, as well.

22 In my very brief presentation, I
23 really want to cover three particular areas. I
24 want to talk about the monitoring team
25 characteristics, particularly because I've had an

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1 opportunity to engage and interact on other teams.
2 I'd like to talk a little bit about the team
3 logistics, as well as the interactions that our
4 team, from my perspective, having experience with
5 the other parties, as well.

6 So from the monitoring team
7 characteristics perspective, I believe that our
8 team is very professional. As you meet our team
9 members that you've not met already, what you'll
10 see is they each have their own unique individual
11 expertise, and that expertise contributes to a
12 very diverse and professional team in every sense
13 of the word.

14 Our team members check their egos at
15 the door, Your Honor. They're very respectful
16 and, since I'm sworn, I have to say very
17 respectful except when talking about barbecue,
18 talking about barbecue in Memphis and other
19 places.

20 THE COURT: Well, the problem with
21 other places is that they don't know how to make
22 it.

23 (Laughter.)

24 CHIEF BOWMAN: That is what I hear
25 quite often, that there's only one real barbecue

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1 and that's what we have right here in Memphis, and
2 it is very good in my opinion.

3 But the monitoring leader is a very
4 inclusive team leader. He solicits feedback from
5 all of the team members, and he's very sensitive
6 to the Court's expectations, as well as the
7 party's positions.

8 From a team logistics perspective,
9 the team was very quick to establish monitoring
10 team points of contact, and Will and Shanell who
11 are sitting here, in the jury box, we very early
12 on set up an e-mail group with team members and a
13 distribution contact list. The team immediately
14 established communication protocols and scheduled
15 a recurring weekly team call, which we've been
16 able to hold to, and within the first week of the
17 team being established, we set an initial team
18 meeting date, fiscal requirements for the team
19 were established, as well as periodic deadlines
20 that we would have to hold to.

21 We also quickly established a
22 document management system that, one, allows our
23 team members to review files from a central secure
24 repository; two, that those files that are -- that
25 the team needs access to are promptly downloaded;

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1 and, then, three, monitoring team members can, in
2 fact, submit edits to a common working document
3 through our document management system.

4 We receive frequent and timely
5 updates on consent decree-related issues and
6 concerns and, as the monitor indicated earlier, we
7 even now have access to video conferences. And
8 those video conferences allow some really enhanced
9 visual interactions, as well as slideshow
10 presentations that the entire team, regardless of
11 where we're located, can see.

12 And, then, the monitoring team
13 members are able to submit information requests,
14 and, again, MPD has been very responsive to our
15 requests and that's, of course, of supreme
16 importance.

17 And, then, finally, Your Honor, in
18 terms of interaction with the parties, as the
19 monitor indicated, we did meet with command staff
20 members and key MPD leaders, and I believe MPD has
21 ensured us that we, the individual monitoring team
22 members, are going to be connected to the right
23 MPD person on the right issue.

24 The command staff was very clear that
25 they fully intend to cooperate with the monitoring

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1 team, and they haven't hesitated to elicit
2 feedback from our team and team members.

3 We've had the opportunity to review
4 policies and practices, we've had questions
5 clarified by MPD, and, overall, I believe MPD has
6 demonstrated openness, professionalism,
7 responsiveness, and congeniality at the same time.

8 So Your Honor, I guess I can just
9 kind of sum it all up, in conclusion, by saying
10 that we have a very solid team that's energetic
11 and resourceful, and just as energetic and
12 resourceful, we are also all committed to this
13 process. And, then, as eyes and ears of the
14 Court, we're diligent and thorough and engaging
15 and interactive; and, finally, Your Honor, we
16 intend to be fully accountable to you.

17 So I would like to just close by
18 saying thank you again for allowing me to serve on
19 the team, and it's quite an honor to be here.

20 THE COURT: You know, other locations
21 have had different problems, and you're currently
22 active in two well-known examples of some serious
23 issues within the departments themselves.

24 CHIEF BOWMAN: Yes, sir.

25 THE COURT: We're talking about

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1 New Orleans and Baltimore.

2 CHIEF BOWMAN: That's correct.

3 THE COURT: I'm sure there are
4 others, but those stand out. Have you had a
5 chance to -- I think you're saying we're not
6 seeing that type of issue here, but I want to make
7 sure I understand, because you have a unique
8 perspective of anybody, probably, in the country
9 -- probably the world, but the country. What
10 about that? Are we seeing the structural issues
11 that exist in some locations? I hate to pick on
12 those two, but they are pretty well known, and
13 we've actually had individuals from Memphis who
14 have gone to, particularly New Orleans, in trying
15 to serve and deal with some of their issues.

16 What are you saying there in terms of
17 structural issues within the department?

18 CHIEF BOWMAN: Well, thanks,
19 Your Honor. It's still very early in the process,
20 but I can say very confidently that what I'm
21 seeing in Memphis is far above and beyond on the
22 good side of what I see or what I've seen either
23 in New Orleans or Baltimore. New Orleans has made
24 considerable improvements over the last six years
25 and, in many areas, they have become a best

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1 practices police department.

2 Baltimore is just about a year and a
3 half into their consent decree. They have a long
4 way to go, but the endemic-type problems that are
5 there in Baltimore, that were present, at least
6 initially in New Orleans, I believe are much more
7 difficult, total, than what I see here, in
8 Memphis.

9 Again, from a structural perspective,
10 it appears that the department has the approximate
11 right structure in place. Again, this is a very
12 preliminary indication, and this could change, but
13 more than anything, what I see in Memphis is just
14 the desire to abide by the terms of the consent
15 decree and the willingness that they've expressed
16 to the monitoring team to cooperate.

17 And I believe that that pushes us a
18 lot further down the road a lot quicker than what
19 I've seen either in Baltimore or New Orleans.

20 THE COURT: All right. I do want to
21 give the individuals, ACLU, a chance to make
22 inquiry if they wish to do so and, of course,
23 others.

24 MR. CASTELLI: Yes, Your Honor.
25 Tom Castelli for ACLU.

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1 Chief Bowman, could you, maybe,
2 describe your role on the team a little bit more
3 for me and kind of what your area of expertise,
4 you know, regarding your role in the team and what
5 you're bringing to the monitoring.

6 CHIEF BOWMAN: Sure, yes, sir. I
7 would be considered just a law enforcement
8 expertise and for, I guess, to kind of dumb that
9 down, a lot of the lawyers, in particular, don't
10 fully understand how police departments operate;
11 and with more than 35 years of policing-related
12 experience, 14 years as a chief, five years as a
13 public safety director, 35 years total, I've
14 worked nationally and internationally with police
15 departments all over the world.

16 And so I'm able to look into police
17 departments and virtually every aspect of their
18 operation and understand what they're doing,
19 understand what the opportunities are for
20 improvement, and, then, help my team members
21 understand what we're looking at and fully
22 participate in any discussion on how we can make
23 it better, how we can approach it differently, how
24 the department can approach their efforts
25 differently, so on and so forth.

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1 So my expertise ranges from stops,
2 searches, and arrests, to First Amendment issues,
3 to recruitment, training, hiring, promotions.
4 There's a whole range of issues that I've had
5 many, many years of experience doing, with both
6 directly my own agencies and with agencies that
7 I've studied and worked with.

8 MR. CASTELLI: And my other question
9 was about the receptiveness that you've been
10 describing from the command staff in the City.
11 Has there been conversations with the rank and
12 file officers at this point of the process? I
13 guess that's my first question.

14 CHIEF BOWMAN: Thank you. I would
15 say that our conversations have mostly involved
16 upper-level supervision management and command
17 staff members. Typically, conversation with rank
18 and file, that does occur further into the process
19 and, as the monitor indicated, we fully intend to
20 visit on some training issues and, I think, more
21 conversations with more officers are forthcoming.
22 But to date, most of the interaction has been with
23 the upper echelon with the department.

24 MR. CASTELLI: So as we progress,
25 that's something that will occur to get a better

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1 sense of how the leadership is filtering down to
2 the officers in the field?

3 CHIEF BOWMAN: Absolutely.
4 Absolutely. I think the consent decree can't be
5 successful until it's fully adopted throughout the
6 department, and that is evidenced in the way the
7 department operates from head to toe.

8 MR. CASTELLI: Thank you, Your Honor.
9 Those are my questions for Mr. Bowman.

10 THE COURT: Thank you.

11 Mr. Glover, it looks like you're the
12 one.

13 MR. GLOVER: And I just really have
14 one question, and it relates to, you made a
15 comment about "best practices" and working towards
16 best practices. Is there, within the monitoring
17 group -- I'm not going to say "attention," but a
18 recognition that, while there may be best
19 practices for normal police departments, we're
20 operating under a consent decree here that has
21 specific guidelines that may or may not enhance
22 best practices absent a consent decree?

23 CHIEF BOWMAN: Absolutely.

24 MR. GLOVER: And would it be within
25 your purview to help the Court or give reference

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1 to the Court, if it's asked, about any ways that
2 the consent decree might inhibit the institution
3 in carrying out best practices of the police
4 department?

5 CHIEF BOWMAN: We're obligated to be
6 the eyes and ears of the Court, and that is to
7 inform the Court of any barriers, any difficulties
8 that may be experienced in carrying out our
9 responsibilities, and that would include if we
10 recognize barriers to best practices.

11 MR. GLOVER: Thank you.

12 THE WITNESS: Yes, sir.

13 THE COURT: So to what degree have
14 you seen other departments attempting to deal with
15 the social media issues that are present here?
16 And I know they're present everywhere, but it's a
17 new area, to some degree.

18 CHIEF BOWMAN: This much focus, in
19 terms of a consent decree, almost entirely focused
20 on the social media arena is different. It's new.
21 In other departments, those consent decrees
22 involved pattern and practice investigations of
23 all of the areas of the department. This one is
24 much more narrowly focused and tailored.

25 THE COURT: Baltimore really has had

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1 a tough 90 days. Have you been there lately?

2 CHIEF BOWMAN: Yes, sir.

3 THE COURT: I'm not certain exactly
4 what they're doing within their department right
5 now, but they're dealing with more structural
6 issues, as I understand it; is that correct or
7 incorrect?

8 CHIEF BOWMAN: Baltimore has been
9 through, I believe, five police chiefs within the
10 last year.

11 THE COURT: Absolutely remarkable.
12 Difficult.

13 CHIEF BOWMAN: A change of staff is
14 occurring right now. Some restructuring within
15 the department is occurring, all within the
16 environment where officers have been convicted of
17 very serious crimes. So it's a very difficult
18 environment but, at the same time, there are
19 indications internally that they believe they can
20 work towards full and effective compliance with
21 that consent decree.

22 THE COURT: Sure. Other questions?

23 MR. STANTON, III: Nothing further
24 for the witness, Your Honor.

25 THE COURT: Glad to have you on the

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1 team and appreciate your insight.

2 CHIEF BOWMAN: Thank you, Your Honor.

3 (Chief Bowman excused.)

4 MR. STANTON, III: At this point, if
5 the Court would indulge, the independent monitor
6 would like to call Rachel Levinson-Waldman.
7 Again, she is the person on the team that's the
8 face of public policy and, to pick up on the
9 Court's point, on social media. She is an
10 attorney and, again, senior counsel to the Brennan
11 Center for Justice.

12 THE COURT: Our court reporter is not
13 as familiar with everybody as others might be, so
14 we're going to get everybody to spell their --

15 MR. STANTON, III: Yes, sir.

16 THE COURT: -- first and last name --

17 MR. STANTON, III: Great idea.

18 THE COURT: -- so we get them correct
19 in the record. Probably a good practice. She may
20 already have most of them, but we'll go ahead and
21 do that.

22 Raise your right hand.

23 (Ms. Levinson-Waldman sworn.)

24 THE WITNESS: Yes, I do.

25 THE COURT: And state your full name,

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1 please.

2 MS. LEVINSON-WALDMAN: Yes,
3 Rachel Levinson-Waldman, Rachel is R-A-C-H-E-L,
4 Levinson is L-E-V-I-N-S-O-N, dash, Waldman,
5 W-A-L-D-M-A-N.

6 THE COURT: All right. Thank you so
7 much.

8 MR. STANTON, III: And, if it please
9 the Court, we're going to go into the same format.
10 Ms. Levinson-Waldman will share her --

11 THE COURT: Absolutely.

12 MR. STANTON, III: -- observations
13 and assessments thus far.

14 MR. LEVINSON-WALDMAN: Thank you so
15 much, Your Honor. Just to, again, briefly
16 introduce myself, my name is
17 Rachel Levinson-Waldman. I'm senior counsel to
18 the Liberty and National Security Program, at the
19 Brennan Center for Justice.

20 Just by way of background, the
21 Brennan Center is affiliated with NYU law school,
22 founded about 25 years ago. It's a nonprofit,
23 nonpartisan law and policy institute that works to
24 reform, revitalize, and, when necessary, defend
25 our country's systems of democracy and justice.

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1 I've been at the Brennan Center for
2 about seven and a half years now and, in that
3 capacity, I've worked on a range of issues related
4 especially to monitoring and surveillance of
5 social media.

6 I published an article last summer --
7 which was cited in Your Honor's opinion -- in the
8 Howard Law Journal, on law enforcement
9 surveillance of social media. I've worked on
10 those issues in other contexts as well, including
11 legislation, community principles. We also work
12 on issues related to Department of Homeland
13 Security and Department of State use of social
14 media for visa vetting and use of social media
15 monitoring by school districts.

16 I appreciate the opportunity to
17 address the Court today, and I want to start by
18 echoing what we've already heard, that the Memphis
19 Police Department has been extremely responsive to
20 the monitoring team. That's been my perspective
21 as well. They have provided all the information
22 we've requested, arranged meetings with a range of
23 officials across the department, facilitated
24 access to the realtime crime center, and made
25 significant efforts to address questions and

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1 concerns raised by the team.

2 This has been a major factor in our
3 being able to accomplish the reviews and
4 recommendations that we've submitted to the Court
5 and exchanged amongst ourselves so far.

6 At the same time, I want to be sure
7 that we recall and put today's conversation in the
8 context of the actions that prompted this lawsuit.
9 These included collecting information about our
10 protestors and journalists on the basis of First
11 Amendment protected activities, using covert
12 accounts to friend activists and collect
13 information, and disseminating information about
14 protected activities and associations.

15 In addition to the fact that these
16 acts violated the Kendrick Consent Decree, as Your
17 Honor found, in general, social media surveillance
18 by law enforcement can be intimidating and
19 chilling, especially when it focuses or is
20 perceived to focus on individuals exercising their
21 constitutionally protected rights, or focused
22 disproportionately on communities of color, and
23 that's why I believe both the consent decree and
24 Your Honor's order are so important. I understand
25 that the police department may be concerned about

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1 its ability to carry out its critical policing and
2 public safety functions within the context of the
3 consent decree. In fact, I believe that the
4 consent decree and your order set out practical
5 and focused guideposts.

6 The Kendrick decree, as you know, is
7 focused specifically on ensuring that the police
8 department refrains from interfering with
9 individuals' exercise of their First Amendment
10 protected rights. It does so by ensuring that the
11 department takes care not to engage in political
12 intelligence and that there be certain procedures
13 in place to avoid unintentionally collecting
14 political intelligence, except where doing so is
15 unavoidable.

16 And where police investigative
17 activity and analysis does not involve First
18 Amendment activity or political intelligence, the
19 Kendrick decree does not appear to come into play.
20 Even when the consent decree is triggered, it
21 provides mechanisms to obtain approval for
22 investigations that will inadvertently collect
23 political intelligence as long as the police
24 department meets the required showings.

25 There's no question that the decree

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1 holds the Memphis Police Department to a high
2 standard, but taken together with this Court's
3 order, I believe it provides a roadmap for
4 compliance and that it delineates between the
5 activities that are covered by the consent decree,
6 and those that are not.

7 Finally, I would like to highlight
8 what I believe to be the need for oversight and
9 auditing mechanisms. In 2013, the Bureau of
10 Justice assistants at the Department of Justice
11 released a set of guidance and recommendations for
12 police departments relating to the use of social
13 media and intelligence and investigative
14 activities.

15 That report recommends that any law
16 enforcement action involving undercover activity,
17 including developing an undercover profile on a
18 social media site, should address supervisory
19 approval, required documentation of activity,
20 periodic reviews of activity, and, critically, the
21 audit of undercover processes and behavior.

22 In addition -- now I'm not yet
23 quoting from that report -- even when it comes to
24 overt, not undercover use of social media, I
25 believe the department's ability to comply with

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1 the consent decree will be enhanced if it
2 institutes auditing and accountability procedures
3 to ensure its fidelity to the policies that are
4 being developed.

5 I want to close by reiterating that
6 the City has made significant progress already,
7 has been extremely cooperative in terms of working
8 with the team, and also that there's more that can
9 be done in terms of putting good policies and
10 training protocols in place and ensuring that the
11 City continues to embrace the values set out by
12 the consent decree and this Court's order.

13 Memphis really does have the
14 opportunity to be a model of police departments
15 around the country that are facing these issues as
16 well, and I appreciate the opportunity to be
17 engaged in the process and address the Court
18 today.

19 THE COURT: Mr. Castelli?

20 MR. CASTELLI: Your Honor, thank you.

21 Ms. Levinson-Waldman, can you, maybe,
22 give me more detail on the progress that the City
23 has made thus far so I can get a sense of where we
24 are today?

25 MS. LEVINSON-WALDMAN: Sure. So in

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1 terms of -- I guess I would identify a few areas.
2 One is in terms of providing the materials or the
3 policies that are already in place with respect to
4 social media, providing copies of training
5 materials that have been used by the department
6 for our review and ultimate input and feedback on
7 those policies, providing draft policies on use of
8 social media, social media undercover accounts,
9 searches on social media generally, and receiving
10 feedback.

11 I know from the ACLU, there's
12 feedback that the team has provided as well, of
13 course under seal, providing information regarding
14 searches of social media as ordered by the Court.
15 And I believe that where we're seeing the policies
16 heading are, by and large, in a very good
17 direction. I think with respect to the auditing
18 and oversight mechanisms, that really goes to
19 having procedures in place down the road to ensure
20 that when policies are instituted, they're the
21 kind of eyes and a procedure in place to be sure
22 there's compliance with those policies; but I do
23 think that in terms of where we're seeing the
24 policies headed, I think there could be some
25 really strong policies and procedures in place.

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1 MR. CASTELLI: And with regard to the
2 social media search terms, and not to get into any
3 individual ones, but in your opinion, is the team
4 getting access to what you need to evaluate the
5 terms and the propriety of the terms that are
6 being used in the last, I guess, two quarters?

7 MS. LEVINSON-WALDMAN: I believe so.
8 We have access to the terms themselves and, in
9 light of the communication that we've had with the
10 City, I think that if we had questions about
11 specific terms, we would be able to present those
12 questions to the City.

13 MR. CASTELLI: Okay. But thus far,
14 there just hasn't been questions?

15 MS. LEVINSON-WALDMAN: There have
16 been one or two questions that I can think of. I
17 personally haven't had extensive questions about
18 the search terms.

19 MR. CASTELLI: Thank you, those are
20 my questions.

21 THE COURT: Mr. Glover?

22 MR. GLOVER: I have no questions,
23 Your Honor.

24 THE COURT: Congress is starting to
25 look at the issue of regulation and social media,

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1 and I assume that is an area of which you are very
2 up-to-date. The problem is a tricky one because,
3 obviously, it is easier to engage in certain
4 perceived law enforcement activities if you have
5 unfettered access to social media.

6 Where do you perceive the final lines
7 are going -- I think Memphis has a pretty good
8 line-drawing process. Where do you perceive those
9 lines going nationally and how does that fit into
10 what will be appropriate here?

11 I perceive that right now we're in a
12 pretty early stage into what you're doing, and we
13 have a long way to go in terms of training boots
14 on the ground and helping people understand what's
15 going on, but mine is the other question, which
16 is: If something is going to be occurring, how do
17 we make sure we are both in sync, but not
18 necessarily adopting a lower standard?

19 MS. LEVINSON-WALDMAN: Thank you,
20 Your Honor, that's a very good question. And I
21 think part of what it points to is, you're right,
22 there's significant Congressional interest right
23 now in social media. To some extent it's in a
24 slightly different aspect of what's happening with
25 the different social media platforms. So we're

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1 thinking about things like hate speech activity
2 online where there is counterterrorism efforts
3 online. So the questions of how is content itself
4 being managed and, especially, how is that process
5 happening by the platforms itself, so a lot of
6 this is coming out of the 2016 election,
7 potentially efforts to interfere on the platforms,
8 and how the platforms themselves are managing
9 different actors on the platforms, efforts to
10 evade policies set out by the social media
11 platforms about, you know, how political ads are
12 used about real-name policies on the platforms,
13 which do play out in this context as well.

14 I think there is somewhat less
15 attention on a national level to the questions
16 that I think we're grappling with here, in terms
17 of, what does law enforcement's access to data on
18 the platforms look like, whether it's sort of
19 publicly available information. So I have an
20 unprotected Twitter account, if I send out a
21 tweet, anyone can see that, so what rules are in
22 place out there with regard to access to and use
23 of that data; or, if I have a Facebook account
24 with privacy protections in place, what are the
25 rules around someone sending me an undercover

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1 friend request, sort of a covert friend request?
2 That's an area in which we're particularly engaged
3 because we're actually working on draft
4 legislation that we hope will be introduced within
5 the next month or two addressing this specific
6 issue of use of social media platforms by state
7 and local law enforcement.

8 It's not an area that has gotten as
9 much focus as this question of sort of regulation
10 of the platform themselves.

11 THE COURT: What will the Brennan
12 Center be performing, and, are you part of that
13 process?

14 MS. LEVINSON-WALDMAN: I am part of
15 that process. So we've been working on drafting
16 legislation.

17 THE COURT: What will they propose?

18 MS. LEVINSON-WALDMAN: In terms of
19 the specific proposals?

20 THE COURT: Right.

21 MS. LEVINSON-WALDMAN: In large part
22 what it puts is, in sort of thinking of broad
23 buckets, several measures into place. Part of it
24 is kind of transparency and accountability
25 mechanisms, so if a police department were using

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1 social media, that they would have a publicly
2 available policy in place.

3 I believe one of the things I
4 mentioned in my article, we had done a survey of
5 156 police departments that we knew had been
6 purchasing social media monitoring software, to
7 see, of those, how many had publicly available
8 policies that addressed their use of social media.
9 Not the use in terms of outward communication with
10 the public but, literally, to gain information
11 from social media platforms.

12 Of those 156, only 18 had publicly
13 available policies. So that's a major focus to
14 ensure that the public understands how social
15 media monitoring is happening, and has an
16 opportunity to participate in that process so that
17 there would be, for instance, a hearing at which
18 the public would have an opportunity to
19 participate to sort of submit their input.

20 It would also put into place First
21 Amendment protections, so kind of similar to the
22 policies that are being proposed here would
23 prohibit social media monitoring on the basis of
24 First Amendment protected activities and protected
25 characteristics, would put certain protections for

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1 juveniles in place to try to mirror the
2 protections for juveniles in face-to-face
3 interactions.

4 There's a public safety kind of
5 carve-out in the bill, so with respect to
6 monitoring or collecting social media for an
7 event, where that's needed for public safety where
8 it's not part of a criminal investigation, that
9 that capability would be in place leading up to a
10 major public event, and also putting restrictions
11 on the use of undercover accounts.

12 So it doesn't prohibit the use of
13 undercover accounts, but it focuses them on
14 predicated criminal investigations with some
15 oversight from a prosecutor's office confirming
16 that the information that would be collected would
17 be relevant and necessary to the criminal
18 investigation.

19 THE COURT: Have you thought about
20 the mechanism to prevent the monitoring process
21 and the approval process from being internally
22 captured, which is not often intentionally the
23 goal, but it happens, so can you propose and will
24 you be able to propose mechanisms to prevent that?

25 I think it would be good for

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1 everybody. It's good for the City to have
2 something that works in that regard and we look to
3 a model that prevents the capturing of that
4 process.

5 The FISA Court had been criticized a
6 lot, but the theory was that, well, there weren't
7 enough parts to prevent something inappropriate
8 from happening. I don't know if that's true or
9 not, but how do you prevent -- have you given
10 thought to that and have you given thought to that
11 particularly in the context of the mechanism that
12 needs to be refined in Memphis, because we're not
13 there yet on that process.

14 MS. LEVINSON-WALDMAN: Sure. So with
15 respect to the process of this draft legislation,
16 there is, I would say, two main mechanisms. So
17 one is a reporting requirement. So every year a
18 state or local law enforcement agency that is
19 undertaking social media monitoring would be
20 required to report out certain categories of
21 information. I can look back and provide the
22 specifics to the Court, but, essentially, it's the
23 number of investigations in which social media
24 monitoring was used, the number of public safety
25 events for which social media monitoring was used.

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1 Whether information -- part of the carve-out for
2 public safety events allows the information to be
3 retained if it is then relevant to a criminal
4 investigation, so the number of events in which
5 information was retained beyond the date of the
6 event.

7 So those kinds of data categories
8 would be recorded -- this all goes through
9 Department of Justice because it's tied to funding
10 from the Department of Justice.

11 THE COURT: What have you recorded in
12 this, our situation?

13 MS. LEVINSON-WALDMAN: That's a good
14 question. I think to some extent this is
15 conceived -- in the bill it's conceived as being
16 not just reporting for the attorney general, but
17 public reporting. That the attorney general would
18 provide a report on its website so the public
19 could go see, from my jurisdiction, I understand
20 because of this publicly available policy, that my
21 department is using social media monitoring, I can
22 now go look at this information and, without
23 getting specifics about a specific investigation,
24 understand how often it's being used, what the
25 scope looks like.

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1 Because I think often that's what it
2 comes back to, is empowering the community in a
3 particular jurisdiction to, then, be able to ask
4 questions of a police department, of a city
5 council, asking them to sort of probe into it. I
6 think it's an excellent question.

7 I will say it's -- my colleagues in
8 our New York office worked -- this is probably now
9 five to seven years ago -- to institute an
10 inspector general's office in the New York police
11 department. The New York police department is
12 kind of a unique animal, right? It's the largest
13 police department in the country. It's,
14 essentially, a counterterrorism department, so
15 they were able to make the case that an inspector
16 general was critical to the function of the police
17 department.

18 That's the kind of office that would
19 help enable a little bit of an outside look. I
20 think that particular function may be impractical
21 in a lot of the smaller police departments, but I
22 do think that's one of the keys, is thinking about
23 what capacity is in place to have some kind of
24 oversight, some independent judgment and, ideally,
25 public reporting out.

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1 THE COURT: That's helpful, and I
2 think we have a ways to go to getting to the right
3 mechanism.

4 MS. LEVINSON-WALDMAN: I think that's
5 right.

6 THE COURT: That's your assessment.
7 Any other questions? Obviously, this is
8 important. We need to understand the mechanism
9 that will work best for everybody without creating
10 such a bureaucratic process that we no longer have
11 adequate law enforcement. We don't want to do
12 that either. So I think you're right, the ideas
13 that you just suggested are things to think about
14 which cannot affect the ability of the department
15 to function properly, but does provides the type
16 of oversight that keeps everybody comfortable --
17 or if they're not comfortable, gets it corrected
18 that individuals' free speech rights are being
19 respected. It's a complicated question.

20 MS. LEVINSON-WALDMAN: That's right.

21 THE COURT: Well, thank you. We're
22 glad to have you on the team, too.

23 MS. LEVINSON-WALDMAN: Thank you so
24 much, Your Honor.

25 THE COURT: We do have a great team.

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1 Thank you.

2 (Ms. Levinson-Waldman excused.)

3 MR. STANTON, III: Just a couple of
4 more brief witnesses, Your Honor.

5 THE COURT: Well, that's fine. And
6 this is really important. We're trying to figure
7 out where we are and, then, where we are going,
8 understanding that we have a ways to go, but we
9 also, I think, so far it looks like we're making
10 the kind of progress that might be not made so
11 quickly in other circumstances, so that's good.

12 MR. STANTON, III: Thank you, Your
13 Honor. Next, Attorney John Henegan, and I'd ask
14 the witness to address constitutional law and
15 First Amendment.

16 THE COURT: I suppose he doesn't have
17 to get sworn in, but I kind of switched to
18 thinking that they're not members of our local bar
19 so maybe I have to swear them in. I don't know.

20 MR. HENEGAN: I am a member of the
21 Sixth Circuit, but I'm not a member of the local
22 bar here. Whatever you want to do.

23 THE COURT: I think that I realize
24 it's probably a good thing to do, so raise your
25 right hand.

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1 (Mr. Henegan sworn.)

2 THE WITNESS: I do.

3 THE COURT: And part of that is that
4 sanctions issue, how do you deal with that if
5 somebody doesn't tell you the truth, and the
6 answer is, you put them under oath. Okay.

7 (Mr. Henegan takes the stand.)

8 THE COURT: How are you doing today?

9 THE WITNESS: I'm good, thank you,
10 Your Honor.

11 THE COURT: We'll follow the same
12 process of names and spellings so the court
13 reporter is happy.

14 MR. HENEGAN: My name is John Clark
15 Henegan, Sr., and the last name is spelled
16 H-E-N-E-G-A-N, and I'm an attorney with Butler
17 Snow in its Ridgeland office in Ridgeland,
18 Mississippi, and I wanted to give Your Honor a
19 little bit of background about my personal
20 experience before I talk about the issues related
21 to the consent decree and your order.

22 My first experience with First
23 Amendment issues was as a student at the
24 University Mississippi, in 1971, when the
25 chancellor of Ole Miss refused to publish a

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1 student literary magazine called "Images" because
2 of its allegedly offensive content. I was a
3 contributor to the issue. I was an officer of the
4 organization that had published the magazine, and
5 that was within one year after the pentagon papers
6 and a decision by the U.S. Supreme Court.

7 And while we did not think that our
8 magazine included any military secrets, we did
9 think that the publication of the magazine was
10 important and that the public university did not
11 have the right to interfere with the publication
12 of our magazine. So we asked the North
13 Mississippi Rural Legal Services to represent us
14 in a suit filed against the chancellor of the
15 university, and Chief Judge William Keady, of the
16 Northern District of Mississippi, upheld --

17 THE COURT: He's the person for whom
18 the local court is named.

19 MR. HENEGAN: That's correct,
20 Your Honor. He ruled in favor of the students and
21 said that the magazine had to be released. And
22 four years later, while I was a student in law
23 school, the Fifth Circuit finally affirmed his
24 decision and an en banc decision -- and the name
25 the decision was called by was Bazaar vs. Fortune,

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1 so that would -- and I actually learned about the
2 outcome of the decision when I was sitting in a
3 law school class as a second year law student and
4 my law school professor told me about the
5 decision.

6 Since 1984, I have represented
7 nonmedia and media companies and the Mississippi
8 Press Association in issues related to equal
9 protection and the First Amendment, and that
10 included issues related to libel, privacy, news
11 gathering, access, commercial speech, and prior
12 restraint issues. During this time, I've
13 published and spoken at workshops and conferences
14 about these subjects for the past 35 years.

15 And, from my personal perspective, I
16 have been impressed by the civility and the high
17 caliber of the exchange between the parties in
18 connection with their exchanges about attempting
19 to implement the consent decree and to make
20 changes to the protocols and procedures of the
21 Memphis Police Department as they are impacted by
22 Your Honor's ruling in October and the terms of
23 the consent decree.

24 I've got a couple of observations
25 that -- and that's what I would prefer to call

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1 them, you know, at this perspective, these are my
2 observations related to the department's, the
3 police department's policies and procedures manual
4 and related materials.

5 And the first one is that, from my
6 perspective, I think it would benefit the police
7 department and, frankly, the citizens of Memphis,
8 if there would be a comprehensive review of the
9 police department's policies and manuals, and that
10 this comprehensive review take into account the
11 manual, the consent decree, the Court's order, and
12 the U.S. Department of Justice regulations related
13 to the monitoring and funding of intelligence
14 systems, which is at 28 CFR, part 23.

15 The -- in my opinion, the parties to
16 the suit and the Court should also consider a
17 review of some additional materials besides those,
18 which would include the police department's
19 responsibilities under the city -- under the
20 ordinance of the City of Memphis, including the
21 parade and public assembly permitting process and
22 related federal, state, county, and local
23 ordinances, such as Tennessee's criminal
24 disorderly conduct statute, which, in the past,
25 that was in the breach of the peace statutes, but

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1 Tennessee updated their statute -- and that's at
2 Tennessee Code 39-17-305. All of this would be
3 reviewed as it relates to the people's exercise of
4 their rights that are protected by the First
5 Amendment.

6 This review would include key federal
7 and state decisions interpreting those legal
8 authorities that I just mentioned, and, then,
9 involve the exercise of First Amendment rights.
10 This includes identifying those instances where
11 the police department and its officers are likely
12 to encounter citizens engaged in the exercise of
13 First Amendment activities, whether collectively
14 or individually, and whether, as a planned
15 permitted activity such as a public meeting, a
16 parade, a protest, or a counterprotest, or as a
17 spontaneous event.

18 And the Sixth Circuit has issued a
19 number of decisions that are pertinent to this
20 area as has the Tennessee supreme court, and the
21 purposes of the review is to attempt to identify
22 all the activities of the Memphis Police
23 Department that implicate the key terms and
24 provisions of the Kendrick consent decree and the
25 exercise of First Amendment rights, and to provide

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1 guidance in carrying out of those duties without
2 infringing on the people's lawful exercise of
3 their First Amendment civil liberties.

4 Representatives of the parties should
5 confer about the most efficient method for
6 accomplishing this comprehensive review and the
7 potential revision of the manual under a
8 self-imposed guideline for accomplishing this
9 task.

10 And, also, in addition to the input
11 from the monitoring team, also in my opinion,
12 consider whether other public interest groups
13 should be involved in part of that process of
14 making that contribution.

15 And the second point that I want to
16 mention is the -- I think it's vital and I think
17 there are other members of the team, the
18 monitoring team, that believe this -- that it's
19 vital to have comprehensive training at the City
20 of Memphis Police Academy and within the Memphis
21 Police Department about these -- whatever is
22 finally implemented as a result of this
23 comprehensive review to the revisions to the
24 police department's policy and protocol manual.

25 And we would like to -- we think it's

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1 important to assess the current training materials
2 at the academy and the inservice training
3 materials within the Memphis Police Department
4 that are related to the issues identified, that
5 I've just mentioned, about the comprehensive
6 review of the policies and protocols manual, and
7 determine whether those current training materials
8 should be revised to provide additional
9 instruction about those particular issues.

10 And this could also include
11 undertaking review of what training in these areas
12 is currently being provided by other metropolitan
13 police departments of similar size and geographic
14 area and population.

15 The representatives of the parties
16 should confer about the most efficient method for
17 accomplishing this task about revising, or at
18 least evaluating the current training and whether
19 that needs to be updated.

20 And those are my observations that I
21 have.

22 THE COURT: And you've not undertaken
23 a survey, at this point, of other departments and
24 training in this area. I think there's a
25 perception, I think maybe correctly, that it's

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1 limited, that dealing with this issue in the way
2 in which we're dealing with it, it may be limited,
3 but how do we verify that?

4 MR. HENEGAN: I'm going to turn to
5 someone, such as T, who I think is familiar with
6 other police departments and could lead us into
7 which police departments and what kind of training
8 is used in other parts of the country in terms of
9 looking for a set of best practices.

10 THE COURT: That's right.

11 MR. STANTON, III: And if I may, Your
12 Honor, before Chief Bowman speaks, I mentioned in
13 my remarks one of the key meetings that we have
14 not had an opportunity to have --

15 THE COURT: And I realize that.
16 You've got to speak to Lieutenant Colonel Rudolph.
17 Exactly. But this is an important area. And,
18 obviously, you want to accumulate material, but
19 you don't want to be wasteful in the process in
20 which we approach that. I don't know if anyone
21 has approached both University of Memphis or
22 Vanderbilt on those questions -- or University of
23 Mississippi.

24 But okay, I think the answer is, you
25 want to continue to -- you want to have another

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1 interview before you make your decision in that
2 regard as to what's available.

3 MR. STANTON, III: Yes, Your Honor.

4 THE COURT: But we do want to do
5 that. We do want to look at -- you don't have to
6 reinvent the process if somebody has come up with
7 a good model. I'm not sure anybody has. I'm
8 looking, in part, to our -- I'm not sure anybody
9 has, looking at two people over there, you may
10 have the best overview of anyone. I've got both a
11 professor and a person with 35 years of doing just
12 about everything in law enforcement.

13 What about that?

14 CHIEF BOWMAN: Sure, Your Honor.
15 Social media is a fairly new and emerging area for
16 law enforcement agencies, but agencies typically
17 bring in social media experts like Rachel to --

18 THE COURT: I knew New York City's
19 department adopted some things in this area, I
20 think. I know it's before the counsel there, and
21 I don't know what they've done versus what they've
22 talked about. That's two different questions. I
23 wasn't trying to pick on New York, but I know
24 that's a subject as to which there has been
25 discussion. I'm not going to ignore the other

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1 cities that have made progress in this area.

2 CHIEF BOWMAN: Sure. Well, two
3 things, in particular, the IACP, which is the
4 International Association of Chiefs of Police --

5 THE COURT: Yes.

6 CHIEF BOWMAN: -- has a social media
7 function where, while they have a national leader
8 and a working group that work along these lines in
9 social media, and that information that they
10 produce and provide includes training and training
11 recommendations is available to the departments
12 around the country.

13 And, then, secondly, I am aware that
14 Memphis PD participates in what's called a PSP
15 process, and, through the Bureau of Justice
16 Administration, they have access to the national
17 technical and training assistance center for
18 training offerings as well as SMEs, that are
19 experts in this area as well.

20 So the training is out there and
21 available, typically through the BJA, typically
22 through the IACP, or other SMEs that we are
23 familiar with and can recommend.

24 THE COURT: So basically, we're still
25 information gathering there and we think there is

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1 going to be some material, and nobody is sure
2 exactly how applicable it is in our particular
3 situation.

4 CHIEF BOWMAN: Yes.

5 THE COURT: Is that the answer?

6 Is there anybody else who wants to
7 comment, because I don't want to leave anybody out
8 who says, I've got the answer.

9 I don't see anybody raising their
10 hand.

11 MR. HENEGAN: We don't have the
12 answer.

13 THE COURT: We don't have the answer
14 yet. Absolutely. Okay. Obviously, you think
15 that there's a role for, I don't want to say third
16 parties, but that might not necessarily be exactly
17 how that works in terms of some of the input in
18 the areas that you're talking about.

19 Do you have any particular entities
20 in mind?

21 MR. HENEGAN: You did identify one of
22 them, a group of them would be the law schools in
23 this area which could be, potentially, the
24 University of Memphis law school, the University
25 of Mississippi law school, and Vanderbilt.

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1 THE COURT: Right.

2 MR. HENEGAN: As I don't know which
3 members of the faculty might have an interest and
4 might have a special expertise in that area at
5 this time. I did -- we are still in the process
6 of looking for and obtaining the training
7 materials and the instructional -- we understand
8 there are instructional materials used at the
9 police academy related to this area, and we'd like
10 to review those to get a sense of what's in them
11 and, then, to make -- again, work with the parties
12 about whether those materials should be revised
13 and updated and exactly what kind of content is
14 being recovered.

15 THE COURT: I'm going to go to the
16 ACLU on this. Obviously, this is something we're
17 interested in.

18 MR. CASTELLI: Absolutely.

19 Do you have a specific question for
20 me, Your Honor?

21 THE COURT: I was giving you a chance
22 to ask a question.

23 MR. CASTELLI: I just wanted to make
24 sure. One question we did have is: We're
25 focusing a lot on social media, but it sounds like

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1 you're talking about policies and training beyond
2 the social media aspect of this and to, generally,
3 First Amendment interaction between police and
4 people exercising their free speech; am I getting
5 that right?

6 MR. HENEGAN: That's correct.

7 MR. CASTELLI: So what role -- it
8 sounds like you're giving us some homework as far
9 as the parties coming up with a method of trying
10 to do this kind of survey. What role would you
11 see from the monitoring team in helping us come up
12 with that method and putting this all together,
13 this review?

14 MR. HENEGAN: Since you used the
15 phrase "homework," I'll use the -- I'll talk about
16 assignments. Okay. And -- but I think there's
17 things to be considered, again, when the First
18 Amendment rights are implicated and pretty
19 logical, and it would be the consent decree, the
20 Judge's October 2019 order, it would be looking at
21 the City of Memphis Police ordinance -- excuse me,
22 the City of Memphis ordinance, the city ordinance.
23 The police department has a role in connection
24 with permitting a lot of First Amendment-related
25 activities.

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1 And, then, once that process takes
2 place, you've got officers who are assigned to
3 those activities and to engage in law enforcement
4 activities, and there are incidents that could
5 happen and there are some things that are already
6 addressed in the policies and protocols manual,
7 for example, the use of body cameras, and there
8 have been exchanges about the use of body cameras
9 during those types of activities. The decisions
10 of the Sixth Circuit and the Tennessee supreme
11 court give guidance about what is the appropriate
12 conduct by an officer on the ground with respect
13 to somebody who is spontaneously coming up to a
14 permitted parade and begins addressing people in
15 the crowd.

16 I think that attempting to have the
17 protocol address those activities and the training
18 materials that are given at the police academy and
19 the inservice training, it would be very useful
20 for the police department, because as somebody
21 said, and I think it was your first question that
22 you asked of T, you know, is, who have we dealt
23 with, is it just its officers, the chiefs, the
24 deputy chiefs, and have you had the opportunity to
25 speak to a patrolman yet.

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1 At least from my perspective -- and I
2 don't want to speak for other members of the
3 team -- but I think it is important that the guys
4 who walk the beat have a sense of what these First
5 Amendment issues are and what is permitted and
6 what is not permitted. And that is particularly
7 true with a wide range of things. And, again,
8 back to the body cameras is one thing I'm thinking
9 of. The policies for the body cameras.

10 Was that helpful?

11 MR. CASTELLI: That's absolutely
12 helpful. So from my understanding of where we are
13 right now, we need to have a conversation with
14 Lieutenant Colonel Rudolph to get a sense of what
15 training there is in place now on all the issues,
16 and that will give us a sense for what might need
17 to be put in place.

18 MR. HENEGAN: Yes. And we have
19 spoken to a couple of people who report to him,
20 but he was out of the country at the time we had
21 those meetings and we want to continue to pursue
22 this part of it. As you know, again, as the
23 policies and protocols manual are being revised,
24 again, we would like to -- again, it's an
25 observation that there might be other parts, while

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1 you're doing this review, to consider and to
2 address, because it implicates what the officers
3 do on the street.

4 MR. STANTON, III: Thank you.

5 MR. GLOVER: Mr. Henegan, I have one
6 question -- or a couple of questions. When we're
7 talking about looking at the Sixth Circuit
8 opinions or state court opinions that give
9 guidance and samples of best practices in terms of
10 broad policies that we should consider with the
11 police department, I assume, from your discussion,
12 that we also need to tailor those because we're
13 operating under a consent decree that has
14 requirements that may go beyond what the First
15 Amendment authorities would articulate in case
16 law. Do you understand what I'm saying?

17 In your opinion as an expert on First
18 Amendment rights, would you agree that the
19 Kendrick decree sets out specifics and some
20 requirements that go beyond anything that was
21 clearly a First Amendment restriction or
22 protection?

23 MR. HENEGAN: I think his Honor
24 addressed that in his opinion, and I do think that
25 the City of Memphis may have done some -- may have

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1 imposed some burdens on itself that it might not
2 necessarily have to undertake. I think that's the
3 goal of anybody on the plaintiff's side who wants
4 a consent decree to push the government to try to
5 anticipate programs. Because, in my past, I've
6 negotiated some of those as representing
7 plaintiffs in suits involving public bodies and
8 the -- I, personally, don't think that there are
9 anything that is currently imposed that should
10 interfere with the police department's ability to
11 carry out a criminal investigation, but that's
12 just my personal view about it. And we'd have to
13 get into a more specific conversation before I go
14 on and address that any further.

15 MR. GLOVER: And I guess my question
16 is really to just ask you whether you agree that
17 if we gather policies from other sources, we're
18 going to then need to look at them and tailor them
19 further to make sure they come into compliance
20 with the Kendrick decree and not just basic First
21 Amendment constitutional principles.

22 MR. HENEGAN: Yes, we're going to
23 have to comply with his order and his
24 interpretation of the consent decree.

25 MR. STANTON, III: Nothing further,

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1 Your Honor.

2 THE COURT: I need to let you step
3 down. I think we're going to try to get back on
4 schedule a little bit.

5 (Mr. Henegan excused.)

6 MR. STANTON, III: Real quick, Your
7 Honor, I know I mentioned -- if Mr. McGriff could
8 come up.

9 THE COURT: Certainly.

10 MR. STANTON, III: And his part is
11 from an audit and compliance standpoint. We have
12 not gotten to that stage yet, but I do just want
13 to take a bite.

14 THE COURT: Right.

15 How are you doing today?

16 MR. MCGRIFF: Pretty good, Judge.

17 How are you?

18 THE COURT: I'm good.

19 (Mr. McGriff sworn.)

20 MR. MCGRIFF: I do.

21 The name is David McGriff,

22 M-C-G-R-I-F-F.

23 Your Honor, first of all I would like
24 to tell the Court I appreciate the opportunity to
25 be in the Court's -- in the courtroom again today

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1 and certainly feel honored to have been selected
2 to be a part of the monitoring team by
3 Mr. Stanton, as well as the Court.

4 I think Mr. Stanton had said a few
5 minutes ago that my principal role will be in the
6 auditing and compliance part of this monitoring
7 team, which we are approaching but have not yet
8 got there. The members of the team have, I think,
9 painted a great picture of what we have done thus
10 far, so I don't want to be redundant in that
11 regard and waste the Court's time.

12 I want to make a couple of points,
13 and that is, I too have found that the police
14 department has been extremely agreeable and
15 cooperative to the monitoring team. I consider
16 everyone on the monitoring team a professional.
17 That doesn't mean that we shy away from asking
18 hard questions and looking for the right answers,
19 and, thus far, I think we've gotten those.

20 And I think we're on track, Your
21 Honor, due to the selection of the monitoring
22 team, initially by Mr. Stanton and approved by the
23 Court, so I look forward to continuing on this
24 team and, when the opportunity presents itself to
25 get started on this audit and this -- the other

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1 duties that will be required.

2 THE COURT: Have you been thinking
3 about -- I'm sure you have -- but have you got
4 specific thoughts -- and you don't have to go
5 through much of this now -- as to the system
6 you're going to try to put in place? I know it
7 can't be too systematic, otherwise it's
8 anticipated and that affects adversely on the
9 audit function, but have you been thinking about
10 what you're going to do?

11 I'm not necessarily going to ask you
12 to tell us all about that, because some of that
13 will be more of an in-house process that everybody
14 is not going to know about, so I don't really want
15 to go too far into that, but I know you've
16 probably been giving that some thought and I know
17 any overview comments on that, versus this is what
18 I'm going to do, because that audit doesn't really
19 work that way.

20 MR. MCGRIFF: Yes, the Court is
21 absolutely right. We're on the verge of
22 consulting with each member on the monitoring team
23 and coming up with a plan on how exactly we're
24 going to handle that, so perhaps on the next visit
25 to the courtroom we'll be able to inform the judge

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1 exactly where we are.

2 THE COURT: And what we'll be looking
3 for, there may be there -- is an in camera report,
4 maybe in camera, or at least an under-seal
5 document that will lay out a little bit more,
6 because telling somebody how we're going to audit
7 is not exactly what you do if you're going to
8 audit them. So that's something that we'll be
9 looking at, some type of guidance there as to the
10 approach, but not a -- probably not a public --
11 well, not a publicly available document because
12 that's a function that you engaged in.

13 I think that's what I needed to make
14 sure we understand. We're not going to be
15 spilling the beans on how we're going to go check
16 on somebody. We're not going to do that, and I
17 don't think the City expects that because you
18 don't want that either. You have some internal
19 inspection units within the department called
20 something else actually, and they don't tell
21 everybody exactly what they're going to do because
22 otherwise it wouldn't be very effective in
23 ferreting out misconduct.

24 Any other questions from ACLU? I
25 think this is at a very preliminary stage, and I

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1 think we understand we're not going to ask them
2 how they're going to do it. This small group may
3 see a document which sets that out in part, but
4 it's not going to be publicly disclosed because of
5 the function.

6 MR. CASTELLI: Absolutely, and I
7 don't have any questions at this time at the stage
8 in the process. I don't really have anything to
9 add.

10 THE COURT: Mr. Glover, are we going
11 in the right direction on this?

12 MR. GLOVER: Yes, Your Honor, and no
13 questions.

14 THE COURT: I'm glad you're on the
15 team -- and I've known you for a while. This will
16 work out just fine.

17 MR. STANTON, III: And I think it's
18 worth noting, Your Honor, before starting his
19 career as a law enforcement police officer in
20 Washington, D.C. -- but, actually, I believe he
21 was a Memphis police officer when this consent
22 decree was actually signed, so he has a long
23 history.

24 MR. MCGRIFF: I recall Judge McRae
25 becoming very perturbed when there was a burning

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1 of files back in the day.

2 THE COURT: That's not a positive
3 thing to do. We don't want to do that at all.

4 (Mr. McGriff excused.)

5 MR. STANTON, III: I know time is of
6 the essence and we wanted to conclude, Your Honor,
7 with the presentation with the deputy monitor to
8 take three -- less than 5 minutes to put us back
9 on track.

10 THE COURT: Absolutely. He's
11 admitted to the court so I don't suppose he has to
12 be sworn in. Do you want to be sworn in anyway?

13 MR. LETTEN: Your Honor, I'm happy to
14 do that, sir.

15 (Mr. Letten sworn.)

16 MR. LETTEN: I do. Your Honor,
17 briefly, thank you for this opportunity. My name
18 is Jim Letten, L-E-T-T-E-N. I am a partner with
19 the law firm of Butler Snow and a very proud
20 partner with the monitor, Ed Stanton, also a
21 professional colleague as we served as U.S.
22 Attorneys together, and, of course, also, with
23 John. I do want to tell you that I want to thank
24 the Court for the opportunity to do this.

25 I think it's -- let me bring to bear

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1 a little bit of my background very, very quickly
2 to discuss what, hopefully, we bring to the table
3 here. I spent my entire life, adult life, I
4 should say, it seems, in federal court. I
5 graduated from Tulane law school in '79, JD, was a
6 state prosecutor for four years, and I spent about
7 30 years as a federal prosecutor, the last four
8 years of which were -- excuse me, the last
9 12 years of which were spent as the United States
10 Attorney for the Eastern District. I proudly
11 served under both Presidents, George W. Bush and
12 also President Barrack Obama, in that capacity
13 where I served with Mr. Stanton.

14 I will tell you that, during that
15 time frame as a federal prosecutor, I had actually
16 -- I had a chance to prosecute numerous organized
17 crime cases, I worked with a lot of criminal
18 intelligence, I've worked counterespionage, as
19 well. And I also had a chance to work as the U.S.
20 Attorney, along with Tom Perez, on the Civil
21 Rights division, one of the initial architects of
22 the very inception of the consent decree
23 investigation which resulted in the consent decree
24 of the New Orleans police department. Totally
25 different animal, great department, but that

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1 department, Your Honor, as Your Honor aptly noted
2 earlier, had systemic problems across a broad
3 spectrum, the broadest, I think, in the history of
4 the country, whereas this great department, very
5 professional department, we're dealing with a
6 single focused issue or series of related issues,
7 so it's much more focused.

8 THE COURT: I think you're referring
9 to the Memphis department being a great
10 department.

11 MR. LETTEN: Yes, sir, absolutely.
12 They're both great departments -- well, they're
13 both great departments, but Memphis PD is --

14 THE COURT: Well, Steve Parker was in
15 New Orleans for a period of time.

16 MR. LETTEN: He was indeed.

17 THE COURT: And they certainly have
18 problems to address.

19 MR. LETTEN: They did.

20 THE COURT: And I don't know that all
21 of them have been addressed, but they've made
22 progress and that's good to hear.

23 MR. LETTEN: They're still being
24 addressed, yes, sir. So it's a pleasure to be
25 here dealing within an extraordinarily

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1 professional and cooperative department.

2 I've also had a parallel career as a
3 naval foreign counterintelligence officer for
4 20 years, during which time I was a credentialed
5 NCIS special agent. During that time, Your Honor,
6 I had the burden, if you will, or the opportunity
7 to work, sometimes together, sometimes separately,
8 parallel criminal investigations requiring the
9 collection of evidence and intelligence that was
10 not political, but criminal intelligence, but also
11 counterintelligence and counterespionage and
12 counterterrorism operations in which we had to be
13 careful that the intelligence we were collecting
14 against foreign powers did not offend the First
15 Amendment in terms of U.S. persons. We were able
16 to do that. Your Honor, it's not intuitive, but
17 it's doable, and we were able to do it.

18 This monitoring team, Your Honor,
19 takes an approach that is neither formulaic nor
20 monolithic. To the contrary, Your Honor has seen
21 very diverse professionals across a broad
22 spectrum, police/federal law enforcement, First
23 Amendment, foreign counterintelligence, social
24 media, intelligence defense, civil rights, you
25 name it, with competing views, competing

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1 philosophies, competing orientations who bring, I
2 believe, a credible balance to the analysis that
3 we do in trying to make sure that two things
4 happen.

5 Our goal, Your Honor, in helping the
6 Court to ultimately realize the lasting, the
7 lasting compliance with the Court's consent decree
8 order is to facilitate and ensure that this
9 tremendous police department going forward is able
10 to do two things: To conduct effective criminal
11 enforcement by identifying, investigating,
12 apprehending, prosecuting, and convicting, where
13 appropriate, offenders, criminal offenders,
14 assisting federal authorities in those cases
15 involving counterterrorism responses and
16 investigations, and also, at the same time, making
17 sure that they do these things, that they collect
18 intelligence that is related to criminal
19 investigations without offending the consent
20 decree, without offending the First Amendment, and
21 while preserving the rights of all individuals to
22 express and enjoy their First Amendment freedoms.

23 Those are fundamental challenges,
24 Your Honor, that we believe are important because,
25 while making certain that this department

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1 functions within the scope, well within the scope
2 of the parameters of the Court's consent decree,
3 we do not want -- and we want to make sure that
4 our recommendations do not threaten degrading the
5 police department's ability to effectively
6 identify offenders and protect citizens and
7 establish public safety.

8 And so with that, Your Honor, I will
9 say that the process that this team brings to the
10 table is a lively process, to say the least. The
11 internal work that we do among ourselves to
12 address the challenges that we have, to address
13 the hypotheticals that have been given to us that
14 we've responded to, involves every single
15 individual from whom this Court has heard,
16 understanding and recognizing not just his or her
17 area of expertise, but recognizing the legitimacy
18 of the goals that the other individuals bring to
19 the table, whether it's preserving First Amendment
20 rights, which is a primary goal, or whether it's
21 investigating crimes.

22 This process is robust, and I think
23 it's been extremely productive. To be honest,
24 Your Honor, I think John Henegan mentioned this,
25 there are actually certain issues that are still

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1 being forged in terms of the team arriving at what
2 we believe are intelligent, effective, workable
3 solutions to some of the hypotheticals to make
4 certain that we honor the consent decree and the
5 consent decree's goals and also preserve the
6 department's investigative goals.

7 We believe that process is underway.
8 I, personally, will tell the Court I believe two
9 things have to happen in order for that to
10 ultimately occur. And I humbly will say that I
11 believe, number one, changing or introducing into
12 the culture of this great department a sensitivity
13 to and a recognition of and a response to the need
14 to educate and guide all police officers who work
15 in this department, all law enforcement officers,
16 in effectively recognizing and protecting First
17 Amendment rights as an integral part of their
18 investigative and law enforcement duties.

19 And I also believe that we do that,
20 not only by forging policies, which we're doing,
21 not only by responding to hypotheticals, but by,
22 at the end of the day, building a training program
23 that is going to be -- and we've talked about
24 that, Your Honor, that is going to be not only
25 effective, but a training program that is going to

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1 reach, at the end of the day, every single officer
2 in the department.

3 So when those officers experience the
4 upper mobility of a cross pollination, every
5 officer will already have been inculcated with
6 that sensitivity to First Amendment recognition of
7 and protection of the First Amendment rights right
8 alongside the need and the ability to achieve
9 public safety through investigations and
10 enforcement.

11 THE COURT: Well, it seems to me at
12 this point in time certain recommendations have
13 been made. Have all of those been adopted?

14 MR. STANTON, III: Yeah, for the most
15 part there are. For the April 1st submission,
16 there are a few tweaks that we, after having been
17 meeting in the last week, Your Honor -- so to
18 answer the question, not all of them have been
19 adopted, but a number have been, and we even have
20 a few items that we submitted to the Court on the
21 first of this month that we'll need to make some
22 minor adjustments to.

23 THE COURT: Okay. I don't want to --
24 I think I've gotten the point of view of where we
25 are, and the question is -- are there any other

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1 questions from ACLU and for the City for the
2 witness? Because the fact is that, we have --
3 we're making progress now, and the question is:
4 Where we will we be in 90 days; is that the
5 question?

6 MR. CASTELLI: I don't have any
7 questions, Your Honor.

8 THE COURT: Where we will we be in
9 90 days?

10 MR. LETTEN: Your Honor, I think if
11 we look at where we've come thus far and today, I
12 believe in 90 days -- first of all, we will have
13 already had the opportunity to learn an enormous
14 amount from Lieutenant Colonel Rudolph, which is
15 going to advance us by leaps and bounds in terms
16 of the training process that this department has
17 right now, how much that needs to be adjusted, how
18 much needs to be added to that. What their
19 training philosophy is --

20 THE COURT: Let's not be too positive
21 here. Everything is not hunky-dory. I'm going to
22 be candid, I've been waiting for somebody to tell
23 me, where did he go, Afghanistan?

24 MR. STANTON, III: I'll defer to the
25 City, but my understanding --

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1 THE COURT: I don't think he went to
2 Afghanistan. Now, if he did that, that might be a
3 good excuse.

4 MR. LETTEN: If I may, Your Honor --

5 THE COURT: I've got the question.
6 You get to talk when -- I've got this one.

7 MR. LETTEN: Yes, sir.

8 THE COURT: Mr. Mullen, you know
9 everything about this, where did he go?

10 MR. MULLEN: He was on vacation and
11 taking personal time.

12 THE COURT: How much time was he on
13 vacation?

14 MR. MULLEN: About two weeks, and
15 then I think scheduling difficulties.

16 THE COURT: Well, I'm going to be
17 candid: I've listened to everybody and there's
18 not a very good reason to have not had that
19 interview already. So I know everybody wants to
20 pat everybody on the back and say we're doing a
21 good job. I do think that the City had been very
22 responsive on almost everything.

23 These are difficult things and
24 sometimes we run into subtle institutional
25 resistance. I'm not in favor of that. I'm in

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1 favor of no institutional resistance -- because it
2 gets the job done. Not because I don't think
3 people shouldn't have opinions or thoughts, I know
4 they should, but that was a miscue. It should not
5 have occurred.

6 And, you know, one reason I asked the
7 question about comparing with other departments is
8 you can't lose your perspective on where you are
9 in the world. Sometimes we're just not good
10 enough. Well, that's not the answer. Sometimes
11 the answer is, we're doing well, we're doing okay,
12 but the answer is, we've got some things we need
13 to get done. So not so much a criticism, but a
14 mild criticism there. It should have happened
15 pronto. So take care of that one.

16 He's going to be anxious to talk to
17 you when he returns from Tahiti, or wherever he
18 went.

19 MR. LETTEN: Yes, sir, we're anxious
20 as well.

21 THE COURT: So that needs to happen
22 and, you know, those things happen. Sometimes
23 there's glitches, but that was a glitch.

24 Any other glitches we need to get
25 addressed?

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1 MR. STANTON, III: Not from the
2 monitors and the monitoring team. Let me
3 double-check with my colleagues.

4 THE COURT: And I know -- so in
5 90 days -- now you get to tell me where we're
6 going to be and we're going to write those down
7 and we're going to see in 90 days if we're there.
8 Because that's important. We have to have very
9 specific objectives and a very clear timeline, and
10 I finally got the last two guys on that are going
11 to tell me where we're going to be.

12 I know we've got some things that
13 we're going to do in terms of data accumulation.
14 I know we've got some things we're going to do in
15 terms of looking at where Congress is at on
16 certain things, not because we're trying to mirror
17 Congress, but because we want to know where it's
18 going so we're not over here and someone else is
19 in another direction.

20 So we will complete additional
21 interviews, I know we're going to have more of a
22 plan in terms of the auditing process, but that's
23 going to be filed -- and it may be an in camera
24 submittal just because it's under seal. It's
25 really accessible to a lot of people, the team

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1 will know about it, obviously, the City will know
2 about it, and the ACLU will know, but it's held
3 quite closely to the vest. So that's something I
4 will have, clearly, within that time frame.

5 I'm going to see the proposed final
6 revisions on any policies of the department,
7 including any revisions of ordinances that might
8 be necessary. I don't know that they will be, but
9 we're going to get that, and that will be nailed
10 down. We've made some progress on that, as I
11 understand that, and see that there have been a
12 lot of representations and it looks like that's
13 moving right along.

14 Now, that's just three things, and we
15 have a training program. We don't know where we
16 are in terms of the timing, because we know that,
17 having been a real boot on the ground in a real
18 military organization, sometimes the guys who have
19 to do the work are often the last ones to get told
20 about what they're supposed to do and are given
21 the shortest time period in which to do it.

22 If you're down at that level -- I'm
23 not saying it's actually the most important job on
24 the front line, but you kind of feel like that you
25 are not being given the data that you need early

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1 enough in order to be properly prepared. So
2 that's a really big deal. I know that -- you know
3 how it feels -- because I've got a couple of
4 officers here and I was in the military -- that's
5 how it feels when you're down there in the ranks
6 and all these guys up here are telling you to do
7 something that needs to change at the last minute
8 and are telling you they wanted it done yesterday.
9 And that's not going to work really well.

10 So that timeline for the training
11 program and all of that -- so you've gotten a
12 little preview about what the Court is looking at
13 and a timeline.

14 Ninety days from now we're going to
15 be where?

16 MR. LETTEN: Of course, we will cover
17 those things that the Court just mentioned. We
18 will certainly have -- I say "certainly," I don't
19 want to write checks I can't cash, but I will tell
20 Your Honor that we are in the process of and
21 hopefully will have successfully addressed all the
22 recommendations for all the hypotheticals that
23 have come up to the -- I think the satisfaction,
24 hopefully, of the Court and certainly will have
25 resolved challenges or issues that may have been

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1 brought up by the ACLU and the department.

2 We should also be --

3 THE COURT: We're going to have an
4 interactive training process, aren't we? We're
5 not going to have a lecture training process. We
6 know that one works and one doesn't work.

7 CHIEF BOWMAN: That's correct.

8 MR. LETTEN: The training processes
9 that we're already discussing and considering are
10 training programs that actually include
11 interaction, exercises, and hypotheticals
12 themselves that would provide for the officers,
13 whether it's academy level or advanced officers,
14 who are going to be going into these units and
15 dealing with intelligence on a daily basis,
16 realtime, and sometimes difficult examples of the
17 types of challenges they may see and they may have
18 to respond to.

19 We've got -- so with that training,
20 we're also in the process, Your Honor, we should
21 be pretty far along, if not fully developed, and
22 that is going to be any types of policies, fine
23 points that rules and regulations about the
24 collection of evidence that might incidentally
25 result in the gathering of intelligence, which I

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1 think looms pretty large for us here, and also the
2 types of approval processes and chain of command
3 issues that are going to require command and
4 control over those so they don't get away.

5 So those collection processes, those
6 evidence collection processes that may
7 incidentally collect intelligence don't get away
8 from either the officers or the department and
9 don't result in unintentional violations. We
10 believe that, in addition to the other items that
11 Your Honor has covered, we believe that we're
12 going to be very far along in those areas.

13 THE COURT: All right. I'll make my
14 checklist and hope that you hit it. I think --
15 this is all very helpful.

16 I'm going to make sure that ACLU has
17 a chance, to make sure that if there's a
18 particular item or items on this 90-day
19 accomplishment list that we have partly developed.

20 MR. CASTELLI: Yeah, I wanted to ask
21 a question about that. As far as the monitor
22 mentioned earlier about giving some -- having some
23 interaction with the public and some feedback, or
24 wanted to know what's going to be put in place
25 over the next 90 days to accomplish that and where

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1 we will be in the next 90 days with regard to that
2 part of your plan.

3 MR. STANTON, III: And that's
4 something we want to address with the Court,
5 whether that's a public -- but we have some ideas
6 with regard to whether that's a public forum or
7 soliciting input on a website. Again, we don't
8 want to get in front of the Court as that was a
9 key component of the monitor's plan that was
10 submitted to the Court to have community
11 communication, so to answer your question, we want
12 to get direction from the Court to how much,
13 whether that means one meeting or if that's a
14 session open to the public on multiple occasions
15 monthly.

16 Again, we have some ideas, but,
17 obviously, we want to get thoughts from the Court.

18 THE COURT: I think what needs to
19 occur in that regard is that it's important that
20 the parties in this case discuss how you're going
21 to do that. Obviously, there's going to need to
22 be a generally accessible forum for anybody who
23 wants to attend, because it's clear that it's an
24 opportunity to come and express opinions.

25 But just having a talk session is

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1 probably -- there may need to be some more focus
2 groups. I think you're not -- is that what you're
3 thinking about ACLU?

4 MR. CASTELLI: Yes, Your Honor. I
5 feel like maybe there needs to be a discussion
6 between the parties and the monitor.

7 THE COURT: I think that's exactly
8 right. Between the City, the ACLU, and the
9 monitor developing a process, and also how do you
10 notify the public that they have that opportunity
11 to speak, make sure that it's not put in a
12 location that makes it actually inaccessible to
13 lots of members of the public. We don't want to
14 do that, that's just not acceptable. So there's a
15 lot of moving pieces there. It needs to be
16 carefully thought out.

17 I'm not trying to make it terribly
18 complicated. I don't think it is terribly
19 complicated, but I think it needs to follow some
20 principles about making sure that there's actual
21 public access.

22 Mr. Cramer, I'm watching you back
23 there. Real public access, do you see what I'm
24 saying, versus pretend public access? We know in
25 Congressional hearings you can't go in and say

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1 things in a Congressional hearing. They just
2 invite people they want to hear or don't want to
3 hear and then they're going to yell at them --
4 which is not a useful process. I'm not saying
5 who's doing the yelling, but the point is, this is
6 a fact-finding process.

7 Mr. Cramer, will you participate in
8 giving some ideas on that -- not right now -- but
9 will you be willing to do it that?

10 MR. CRAMER: Absolutely, Your Honor.

11 THE COURT: It's got to be genuine --
12 and not all downtown at City Hall. And I'm not
13 picking on being down at City Hall, but I think
14 that that outreach gives real validity to the
15 process. So I'll let you work on that. I'm
16 certainly going to -- I'm not sure whether if
17 you're going to try to implement that during this
18 90-day period, or whether you're going to come
19 back and say, this is when you want to do it.

20 I'm going to let you submit something
21 on that from the three parties -- well, the
22 monitor and the parties on that in the next
23 30 days. I just think you can't wait too long to
24 ask for input. At the same time, we don't have as
25 many specific proposals that we might need to

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1 solicit public information on in the future. So
2 just think it through. I'll be looking for
3 something along that line in 30 days so that I'll
4 know we're making that effort.

5 And I know that you know that public
6 participation is part of what you do in a
7 democracy.

8 MR. LETTEN: Yes, sir. As a matter
9 of fact, and of course we've been in evolutions
10 before in which -- in every one of those I've been
11 working for in BJA and other governmental
12 functions, we have, in fact, gone through similar
13 evolutions in which we had community engagements
14 and solicited --

15 THE COURT: It's part of a public
16 comment period, but I'm not sure we're to public
17 comment on some of the policies, so I don't want
18 to confine it to that.

19 MR. LETTEN: Yes, sir, and we
20 understand its importance.

21 MR. STANTON, III: And, if I may,
22 Your Honor, along with the public engagement
23 process in dealing with the parties, the public
24 website that we talked about, as we talk about
25 social media, if we can incorporate that into the

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1 discussion --

2 THE COURT: Absolutely.

3 MR. STANTON, III: -- that would be
4 helpful.

5 THE COURT: Very important. It's an
6 important process. It's going to help us,
7 hopefully, achieve what we need to achieve.

8 Anything else that -- we're going to
9 work up that list, and I think we were making a
10 list over here of 90-day expectations. Do you
11 want to submit a very short, all of you in the
12 next two weeks, a 90-day goal?

13 MR. STANTON, III: Yes, sir. And
14 that would be a joint submission, Your Honor, or
15 are you suggesting from the monitor?

16 THE COURT: A joint submission would
17 be good because then I will see if you all -- and
18 if it's not joint and we don't all agree and the
19 ACLU says we want X, Y, and Z, then we'll add that
20 to -- and the City might do the same thing -- we
21 might want to add or subtract one or two for a
22 90-day report period.

23 Yes?

24 MR. PERRY: Sorry, Your Honor, as one
25 of the people who needs to track all these

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1 deadlines, I just want to be clear.

2 THE COURT: If you don't get them
3 right, we'll let you know.

4 MR. PERRY: Right. (Laughter.) So
5 I've got a 30-day deadline for a joint submission
6 about community engagement --

7 THE COURT: That's right.

8 MR. PERRY: And, then, a separate
9 two-week deadline about 90-day goals.

10 THE COURT: That's right, 90-day
11 goals -- and I've, obviously, already articulated
12 some of our 90-day goals, but I think it needs to
13 be a jointly reached set of goals, if we can do
14 that.

15 MR. STANTON, III: I think we can.

16 THE COURT: So it's not just the
17 Court saying what they are, which is not always
18 the best way to do it.

19 When do you want to come back and see
20 me again? I'm glad to see you anytime. But this
21 informs the public and informs the Court and it
22 helps us all stay moving in the appropriate
23 direction. We don't necessarily have to have
24 everybody here, but you do have a -- individuals
25 who answer specific questions. It's a little hard

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1 not to have a team. That's why I said 90 days,
2 because we don't want to waste time and money.
3 You don't want to do that. We want to make
4 progress every time we present.

5 For example, if we got to the 90-day
6 period and you said, Judge, we need another 25
7 days, then my inclination would be to wait versus
8 wasting time bringing everybody here.

9 MR. STANTON, III: Yes, sir.

10 THE COURT: But is 90 days
11 reasonable?

12 MR. STANTON, III: I believe so, Your
13 Honor, yes.

14 THE COURT: And you want us to pick
15 that day out right now? I'm not sure if I can get
16 to it. We may put it in the afternoon if it works
17 better for people's travel plans. I don't know.
18 Some people have further travel plans than others.

19 MR. STANTON, III: Your Honor, a
20 question: Would it make -- would the Court rather
21 have our submission and then set the date after,
22 giving the Court an opportunity to review the
23 submission, or --

24 THE COURT: That's not a bad idea.
25 It's perfectly fine, but we need to have at least

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1 some time period. Let's check that. You were
2 thinking you would make a 90-day submission and
3 probably have a report, probably, three weeks
4 after that, something in that general range?

5 MR. STANTON, III: That's reasonable,
6 Your Honor.

7 THE COURT: Ninety days and, then,
8 that's the report, detail report of where we are
9 with, hopefully, substantial progress. This is a
10 process we intend to pursue in a way that will
11 bring it to a conclusion as efficiently as
12 possible, but recognizing it may take some time.
13 Okay. I've got a date?

14 THE CLERK: July 24th.

15 THE COURT: July 24th. Okay. I
16 should be -- I'm moving a trial to the -- I will
17 not be here. I don't think they can do it -- this
18 is a date to submit. If that's the date to
19 submit, we're okay. So that's fine.

20 And, then, the 24th is the day for
21 that report. It will be more detailed, I
22 anticipate, and I'm supposed to be in Nashville on
23 a potentially somewhat lengthy trial, but hard to
24 know about how long it will go. That puts us into
25 either the very end of the week of the 12th of

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1 August, or the -- and there's supposed to be
2 another jury trial starting on the 19th here. Let
3 me check. I perceive that we might be missing the
4 date on that.

5 Let's put that on the 14th of August.
6 That is a Wednesday, and will be -- for travel
7 plans, I'm looking at everybody. I'm looking to
8 see what your situation is. And I won't know if
9 that's a bad time. I do want Ms. Levinson-Waldman
10 to be able to make a much more substantive report
11 at that time.

12 I think that's what you were
13 anticipating, right? So it's going to have to be
14 a day that works for you.

15 MS. LEVINSON-WALDMAN: I appreciate
16 that, Your Honor. Unfortunately, because it's the
17 end of our children's summer break, I will be out
18 of town starting early the week of August 12th
19 through about the middle of the week of
20 August 19th. I'll probably be returning to D.C.,
21 I believe, on August 20th, so I could probably
22 come out the end of that week, if that works for
23 the Court, or looking into the following week.

24 THE COURT: I think that's what we'll
25 do. I'm thinking in terms of travel, it might be

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1 better for us and for you on the 23rd. Is that
2 feasible or not feasible? Tell me if that's not.

3 MS. LEVINSON-WALDMAN: On
4 August 23rd?

5 THE COURT: Right. I need my
6 calendar from the back. I think it's okay.

7 What we can do is put that down and
8 we'll present the date and remain a little
9 flexible, and if I hear from Chief, or if I hear
10 from you that it's not going to work for you, we
11 will do some adjusting there.

12 Do you-all want -- I'll tell you
13 what, do you want to consult and then submit three
14 or four proposed dates?

15 MR. STANTON, III: That, if the Court
16 will indulge, it does look like we do have a
17 conflict.

18 THE COURT: It's almost impossible
19 with this many people. Why don't you-all consult
20 your calendars and submit three or four proposed
21 dates, and there will be some periods of time
22 where I may be in Nashville on court matters
23 there. So I'll let you consult. We will want to
24 get that date so individuals who are interested
25 will be able to be there.

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1 I think that is -- anything else?

2 MR. GLOVER: I do, Your Honor, if I
3 may, and you would indulge my question on this.
4 As Your Honor noted, we made a filing yesterday.
5 We really wanted the Court's instruction, and we
6 don't want to pester the monitor or the Court, but
7 when issues come up, before we finally resolved
8 all the training materials and how it works and
9 all, some situations come up, sometimes
10 operational with the police department that they
11 want to seek guidance -- and we can give guidance
12 and it might be wrong or our opinions sometimes
13 are wrong. So we don't know whether the proper
14 procedure is to go to the monitor's team to seek
15 their input and if they have a question --

16 THE COURT: The first step is always
17 to go to the monitor's team and seek their input,
18 but sometimes the monitor may say, on this issue
19 we need to petition the Court on it, and that's
20 fine. And, then, sometimes you may disagree,
21 either one of the parties in the case might
22 disagree with either the resolution -- or the
23 resolution, and so, in essence, it's like an
24 appeal, but you just need to say we request the
25 Court to review X, and we will.

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1 I did see all 11 scenarios. I
2 understand I'm not being asked to comment further
3 on those right now, I don't think.

4 MR. GLOVER: I think what we would
5 like to do, if we could, since we've gotten some
6 input from the monitor on those, is to narrow it
7 down to the questions that we will have --

8 THE COURT: Sure.

9 MR. GLOVER: And to submit those to
10 the Court for guidance to the extent the monitor
11 has given us information -- that doesn't usually
12 happen that we don't agree with their information
13 -- but whether we think there's something that is
14 not clear enough to all the parties as a group
15 that we still need to bring those before the
16 Court, to bring those smaller discrete issues to
17 Your Honor's attention.

18 THE COURT: When I receive the
19 report, then, if there are no objections to the
20 report, I'm going to be reviewing the report and
21 typically adopting the report. I say that with a
22 little bit of caution because I might not adopt
23 some portion of it, but that's going to happen as
24 to reports.

25 As to issues that develop and as to

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1 which there is a potential question that's raised
2 and one party or another is not satisfied with the
3 answer and wishes further review, the procedure is
4 to say, Well, we've consulted and we disagree --
5 we agree on these points and we disagree on this
6 point and we seek further guidance from the Court
7 and we're going to file, essentially, an appeal.

8 Now, recognizing on some types of
9 questions, the Court doesn't like to and typically
10 does not give strictly speculative-type of
11 comments, so it has to be a real question and not
12 something that is so hypothetical to not be useful
13 to anyone. And those circumstances actually
14 provide unclear guidance because it might answer a
15 question that's not useful, so I have the right to
16 say this is not a useful question. We'll have to
17 have a specific.

18 MR. GLOVER: Based on that, Your
19 Honor, we will reconvene and reengage the monitor
20 on the things that we feel they have an issue or
21 haven't resolved --

22 THE COURT: That's exactly the way to
23 do it.

24 And ACLU, the same thing. I know
25 that y'all have had some issues where you didn't

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1 necessarily agree on all points, but you do know
2 how to bring that to the Court's attention.

3 MR. CASTELLI: Yes, and just so I'm
4 clear, we, basically, will be following procedures
5 for report and recommendation?

6 THE COURT: It's essentially the same
7 thing.

8 MR. STANTON, III: And just to
9 piggyback on Mr. Glover, there have been items
10 that come up from time to time, Your Honor, that
11 sometimes take almost realtime responses and,
12 again, as the monitor, I'm happy to address those,
13 but I didn't want to get in front of the Court.

14 THE COURT: You certainly have -- and
15 that's part of the reason you have a monitor is to
16 get, essentially, a realtime response, and it's a
17 little more related to liberties -- sometimes it
18 can be almost realtime, but it's harder to do
19 that.

20 MR. GLOVER: Just so I know how our
21 team needs to operate in the next 90 days, my
22 understanding, first of all, is we have a set of
23 sanctions that require us to do certain things
24 under the Court's order --

25 THE COURT: That's correct.

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1 MR. GLOVER: And I think we're very
2 close to having all of that agreed upon. Our view
3 is we would immediately -- we would move to
4 resolve anything still remaining from the policies
5 and procedures, and then the 90 days and beyond,
6 we'll be talking about additional policies and
7 training, things that are part of the
8 recommendation of the monitor that go beyond what
9 the Court ordered in the sanctions.

10 THE COURT: Right.

11 That's it. All right. We didn't let
12 you out towards the end. Is there anything else
13 you wanted to add?

14 MR. LETTEN: Sir, no, thank you.
15 It's been an honor.

16 THE COURT: It's good to see
17 everybody. I do feel like, having had some
18 matters of this nature that did not proceed in an
19 orderly fashion with the good efforts -- lacked
20 the good efforts of everyone, this is different
21 from that, and that's a good thing. That's a good
22 thing. Everybody is at least moving in the right
23 direction.

24 Last question?

25 MR. PERRY: Your Honor, just to

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1 consolidate one of the deadlines: When we present
2 our 90-day goals in two weeks, may we just present
3 the proposed dates for the August status
4 conference at that time?

5 THE COURT: Yes. Yes, that's fine.
6 And everybody will be in a better position to
7 select. Give me, if you can, three days over a
8 three-week period so that we can make sure I'm
9 also available.

10 Thank you, all.

11 MR. STANTON, III: Thank you,
12 Your Honor.

13 MR. PERRY: Thank you.

14 (Mr. Letten excused.)

15 (Concluded at 11:33 a.m.)

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CERTIFICATE

STATE OF TENNESSEE:

COUNTY OF SHELBY:

I, DEBORAH J. PEARCE, Notary Public, Shelby County, Tennessee, CERTIFY:

1. The foregoing proceeding was taken before me at the time and place stated in the foregoing styled cause with the appearances as noted;

2. I then notated the deposition to the best of my skill and ability, and the foregoing pages contain a full, true, and correct transcript of my said notes then and there taken;

3. I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

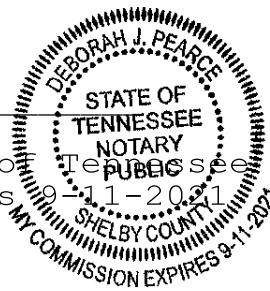
4. I FURTHER CERTIFY that this transcript is the work product of this court reporting agency and any unauthorized reproduction AND/OR transfer of it will be in violation of Tennessee Code Annotated 39-14-104, Theft of Services.

WITNESS MY SIGNATURE



13th day of May, 2019.

DEBORAH J. PEARCE
Notary Public State of Tennessee
My commission expires 9-11-2021



ALPHA REPORTING CORPORATION
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Memphis, Tennessee 38103

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