

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

ACLU OF TENNESSEE, INC.,)	
)	
)	
Intervening Plaintiff,)	
)	No. 2:17-cv-2120-JPM-jay
v.)	
)	
CITY OF MEMPHIS, TENNESSEE)	
)	
Defendant.)	

APRIL 2019 QUARTERLY REPORT OF THE INDEPENDENT MONITOR

I. Introduction.

In the December 19, 2018, submission by Edward L. Stanton III to serve as the Independent Monitor in this matter (Submission), Mr. Stanton “propose[d] both quarterly and annual reports to the Court.” (ECF No. 180-1, PageID 6561.) Regular reporting, as Mr. Stanton explained, is a consistent feature of “successful monitorships in other major urban areas like Baltimore.” (*Ibid.*)

Significant differences exist between this Monitorship and those in other areas. For one, violations of a federal consent decree—specifically, the 1978 *Kendrick* Consent Decree (*see* ECF No. 3, Case No. 2:76-cv-00449)—are at issue rather than violations of any federal constitutional guarantee.¹ Although the *Kendrick* Consent Decree “relate[s] to any person’s beliefs, opinions, associations, or other exercise of First Amendment rights” (*id.* § B(4)), it confers on Memphis

¹ Whether, and, if so, to what extent, independent constitutional violations resulted from the conduct found by the Court to violate the *Kendrick* Consent Decree is beyond the scope of this Report and the Monitor’s mandate.

residents, as this Court has recognized, “privacy rights above and beyond those guaranteed by the Constitution” (ECF No. 151, PageID 6276). For another, in its Order finding that Defendant City of Memphis, Tennessee, has violated the *Kendrick* Consent Decree, the Court explained that the violations appeared to have been inadvertent, “stem[ming] from a shared misunderstanding of the Decree’s requirements.” (ECF No. 151, PageID 6272.) Testimony offered by the Monitoring Team at this Court’s first hearing on the progress of the Monitorship (*see* ECF Nos. 189, 195), held on April 23, 2019 (April 23 Hearing), supports the initial assessment that the Memphis Police Department (MPD) “appears to lack the structural problems that have slowed compliance with consent decrees in other police departments elsewhere in the country.” (ECF No. 203, PageID 7038.)

Despite these differences, this Quarterly Report, like the Interim Report that preceded it (ECF No.197) and later reports that will follow, tracks the City’s efforts to remedy the violations identified in the Court’s Orders (*see* ECF Nos. 120, 151 / 152) and details the Monitoring Team’s assessment of those efforts. The City has worked extensively with this Team and with Intervening Plaintiff ACLU of Tennessee, Inc., to propose modifications to existing policies and practices and to create new ones as necessary to meet the Court’s requirements. (*See generally* ECF Nos. 151 / 152.) This Report notes those areas where there is now agreement between the City and the ACLU, as well as those areas in which this Team recommends that more work be done.

Nothing in this Report is intended to suggest that the City or members of the MPD “in any way lack integrity or dedication to duty.” (ECF No. 151, PageID 6267.) Rather, the Team has found, as this Court anticipated, that all of the City and MPD personnel with whom they have worked in this matter have “exemplified the character and commitment needed in law

enforcement professionals.” (*Ibid.*) The recommendations included in this Report thus strictly adhere to the Monitor’s mandate “to supervise the implementation of the sanctions” that this Court has imposed on the City and seek only to aid the Court in “ensur[ing] [the City’s] compliance with the Decree . . . and provid[ing] closer guidance [to the City] on what constitutes political intelligence.” (ECF No. 152, PageID 6290.)

II. Executive Summary.

This Report begins with a brief description of the Monitoring Team’s members, some, but not all, of whom were identified in Mr. Stanton’s Submission. (*See* ECF No. 180-1, PageID PageID 6555-59.) It then discusses the Team’s activities over the past four months—from December 21, 2018, when Mr. Stanton was appointed (*see* ECF No. 176), to April 23, 2019, when Mr. Stanton and the other members of the Monitoring Team testified at the April 23 Hearing (*see* ECF No. 203). The Report next briefly summarizes the Team’s findings to date. Finally, the Report concludes with an appendix of the documents that it references.

III. The Monitoring Team.

Mr. Stanton’s Submission identified roles for three categories of members on the Monitoring Team: (1) a monitor and deputy monitor; (2) four subject-matter experts (SMEs); and (3) legal and paralegal support. (ECF No. 180-1, PageID 6555-59.) Detailed descriptions and curricula vitae are available at Exhibits A-E to Mr. Stanton’s Submission (*id.* at PageID 6564-97) and will be available on the Monitoring Team Website, discussed in § IV(F), below, once it goes live. Brief descriptions of each Team member follow here:

A. Monitor & Deputy Monitor.

Monitor. Mr. Stanton is a Memphis native who brings vast civil, criminal, and investigative experience to the Monitorship. He is a Partner and Practice Group Leader for Commercial Litigation with Butler Snow LLP in Memphis, where his practice focuses primarily on complex litigation, government and internal investigations, civil rights,

fraud, and audits. From August 2010 to March 2017, Mr. Stanton was the U.S. Attorney for the Western District of Tennessee. In that role, he formed and launched a dedicated Civil Rights Unit; worked closely with a coalition of law enforcement officials to form a Multi-Agency Gang Unit; and supervised the prosecutions of hundreds of violent, white collar, and other high-profile criminal and civil matters. Mr. Stanton's prior experience includes nearly a decade as Senior Counsel for a Fortune 100 company, private practice with two of the City's most prominent law firms, and public service as an Assistant City Attorney. Mr. Stanton earned both a bachelor's degree and a law degree from the University of Memphis.

Deputy Monitor. Jim Letten joined Butler Snow's New Orleans office as a Partner in 2015, after having served some 36 years as a federal prosecutor. As U.S. Attorney for the Eastern District of Louisiana, Mr. Letten was the longest-serving U.S. Attorney in the nation and one of only three appointed by successive Presidents of different political parties. He has litigated hundreds of jury and bench trials in both state and federal courts. Mr. Letten oversaw, from inception through negotiation, settlement, and implementation, the Department of Justice (DOJ) consent decree that concerned oversight of the New Orleans Police Department (NOPD). He is a 14-year faculty member of the NOPD Training Academy and a former Assistant Dean of Tulane School of Law. He also is a retired Commander in the U.S. Naval Reserve, where he served as an NCIS Agent and Foreign Counter-Intelligence Officer. Mr. Letten earned a bachelor's degree from University of New Orleans and a law degree from Tulane University.

B. SMEs.

Law Enforcement and Police Practices. Theron L. Bowman, Ph.D., is President and CEO of The Bowman Group, a consultancy of researchers, technicians, and professionals with expertise in police accountability and reform and community policing. He is the former Deputy City Manager, Director of Public Safety, and Chief of Police of Arlington, Texas, and serves as a Director for the National Commission on Crime and Delinquency. Dr. Bowman is the court-appointed Deputy Monitor for a consent decree in Baltimore, Maryland, and a law enforcement expert on the monitorship team for New Orleans. He has led and coordinated regional public safety efforts for the NFL Super Bowl, the MLB World Series, and the NBA All-Star Game. Dr. Bowman holds a bachelor's degree in biology, a master's degree in public administration, and a doctorate in urban and public administration from the University of Texas at Arlington.

Public Policy and Social Media. Rachel Levinson-Waldman serves as Senior Counsel to the Liberty and National Security Program at the Brennan Center for Justice at New York University Law School. In addition to publishing reports and law review articles on issues related to the Fourth Amendment, privacy, surveillance, and national

security, she is a regular commentator for television, radio, and print media, and has been published in a wide array of popular media, including *The Washington Post*, *The Atlantic*, and *U.S. News & World Report*. Ms. Levinson-Waldman formerly served as counsel to the American Association of University Professors and as a Trial Attorney in the DOJ Civil Rights Division. She holds a bachelor's degree from Williams College and a law degree from the University of Chicago. She also is a former judicial law clerk for the Honorable M. Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit.

Constitutional Law & the First Amendment. John C. Henegan is a Partner with Butler Snow in Jackson, Mississippi, who represents broadcast, print, and entertainment media groups. He is a Fellow of the American Academy of Appellate Lawyers, the American Bar Foundation, and the Mississippi Bar Foundation, and has been listed in the First Amendment section of every edition of *The Best Lawyers in America* since 1988. Mr. Henegan has authored or co-authored articles for the Fifth Circuit Reporter, the Mississippi Press Association's *The Fourth Estate*, and the Media Law Resource Center's annual 50-State Surveys of the Law of Defamation and Privacy. He earned a bachelor's degree and a law degree (with honors) from the University of Mississippi, where he was Editor-in-Chief of the *Mississippi Law Journal*. He also is a former judicial law clerk for the Honorable Charles Clark of the U.S. Court of Appeals for the Fifth Circuit.

Compliance and Auditing. David N. McGriff, Sr., is the former Deputy Commissioner and Chief of Staff of the Tennessee Department of Safety and Homeland Security. In those roles, he was responsible for managing the Highway Safety Office and the Office of Homeland Security and supervised the administrative functions of the Department's Internal Audit, Budget, Fiscal Affairs, Driver Services, and Talent Management Divisions. Mr. McGriff had a 44-year career in law enforcement, serving as an officer in the Washington, D.C., and Memphis Police Departments; as director of the West Tennessee Drug Task Force; and as the Chief Criminal Investigator for the Shelby County District Attorney's Office. He is a graduate of the FBI National Academy and a veteran of the U.S. Marine Corps.

C. Legal & Paralegal Support.

Counsel. Gadson W. Perry, a Partner with Butler Snow in Memphis, specializes in complex commercial disputes, catastrophic events and major claims, and appeals. He has represented corporate, governmental, and insurance clients in 12 states and the territory of Puerto Rico, and his experience includes bench and jury trials and arbitrations; state and federal appeals; and class-action, multi-party, and multi-state litigation. Mr. Perry has been selected a Mid-South Rising Star in business litigation by *Super Lawyers*® every year since 2015 and was named "Ace Associate" by the *Memphis Business Journal* in 2018. He holds bachelor's and master's degrees from Wake Forest University and a law

degree from the University of Tennessee, where he was a legal writing fellow and Chair of the Moot Court Executive Board. He also is a former judicial law clerk for the Honorable Bernice Bouie Donald of the U.S. Court of Appeals for the Sixth Circuit.

Counsel. Shanell L. Tyler, an Associate with Butler Snow in Memphis, represents commercial clients in disputes involving personal injury, breach of contract, labor and employment, internal investigations, and construction. Her experience includes state and federal election law and higher education compliance. Ms. Tyler earned both her bachelor's degree (*summa cum laude*) and law degree (*magna cum laude*) from the University of Memphis, where she interned for the Office of Legal Counsel for the University and the Shelby County Schools Board of Education.

Paralegal. Terri L. Wiseman, a Senior Litigation Paralegal with Butler Snow in Memphis, has more than 20 years' experience in the legal field, including service as Executive Assistant to the U.S. Attorney for the Western District of Tennessee. Ms. Wiseman provides a suite of services that span the entire litigation process, from initial information-gathering, through discovery and trial, to the archiving of case material.

IV. Overview of the Monitoring Team Activities.

Three Core Principles, originally identified in Mr. Stanton's Submission, govern the Monitoring Team's activities and interactions with the ACLU and the City: (1) respect for the limited role of the Monitor; (2) clarity, consistency, and accountability in all communications with the MPD; and (3) rigorous transparency. (*See* ECF No. 180-1, PageID 6559.) As to the first Core Principle, Mr. Stanton has taken steps to make clear the boundaries of the Monitoring Team's role and to preserve the ultimate authority of the Court. (*See, e.g.*, ECF No. 197-3, PageID 6942-43 (Letter of February 22, 2019); Letter of April 22, 2019, attached as **Exhibit 1**.) Similarly, with respect to the second Core Principle, all analyses, recommendations, and other work product prepared by the Monitoring Team have been filed or otherwise submitted to the Court in the first instance; nothing has gone directly to the parties until it first has been reviewed and approved by the Court. The Team's fidelity to the third Core Principle is reflected in its preparation and submission of a budget (*see* ECF No. 180-1, PageID 6558) and submission of

monthly invoices to the Court, each of which describes the work completed by each member of the Monitoring Team and tracks that member's time to the nearest tenth of an hour (*see* ECF Nos. 184, 187, 190, 193, 204).

The following data points are useful for understanding the work that the Monitoring Team has undertaken since the appointment of Mr. Stanton on December 21, 2018 (*see* ECF No. 176):

- Requested, received, and reviewed 1.46 GB of data from the City—the equivalent of between 125,000 and 175,000 pages of text.
- Exchanged more than 1200 internal and external emails.
- Conducted 15 weekly Monitoring Team conference calls and additional ad hoc calls as necessary, as well as more than a dozen weekly and ad hoc calls with legal counsel for the City and MPD.
- Attended two in-person meetings on February 11-12 and April 22-23, 2019, and two video conference meetings on March 5 and March 27, 2019.
- Met in-person with more than a dozen members of the MPD Command Staff, Real Time Crime Center, and Training Academy.²
- Tracked more than 500 hours of Monitoring Team time in tenths of an hour. (*See* ECF Nos. 184, 187, 190, 193, & 204.)
- Coordinated with Legility, LLC (formerly Counsel on Call, website available [here](#)), Three(i) (website available [here](#)), and other vendors to establish a document management system accessible to the entire Monitoring Team and to design and

² Specific MPD personnel with whom the Monitoring Team has met are Police Director Michael Rallings; Deputy Director James M. Ryall; Deputy Chiefs Frank Garrett, Terry Landrum, Michael Shearin, Michael Hardy, Don Crowe, and Sharonda Hampton; Majors Stephen Chandler and Sharon Cunningham; Lieutenant Tracey Washington; and Manager John Williams. (ECF No. 197-1, PageID 6852 n. 1.) Additional meetings are being scheduled with Lt. Col. David L. Rudolph, who oversees the MPD Training Academy, and other MPD personnel as appropriate.

establish the Monitoring Team Website, which will go live, with the Court's approval, in the next ninety (90) days.³

- Produced three separate sets of analyses (*see* ECF Nos. 197-1, 197-2 & 197-3), and two reports (including this one) (*see* ECF No. 197).
- Presented a progress report by Mr. Stanton and testimony from Mr. Letten and every SME at the April 23 Hearing on the state of the Monitorship and the City's efforts to comply with the *Kendrick* Consent Decree.⁴ (*See* ECF Nos. 189, 195, 203; *see also* Summary of April 23, 2019, Hearing, attached as **Exhibit 2.**)

A. *Actions Taken by the MPD and Degree of Engagement with the Kendrick Consent Decree and the Court's Orders.*

Please see the Monitor's Interim Report, submitted on April 1, 2019 (ECF No. 197), and the revised recommendations attached as **Exhibit 3** to this Report, for the Monitoring Team's assessment of the actions taken thus far by the MPD to bring it into compliance with the *Kendrick* Consent Decree and the Court's other Orders.

B. *Data Analysis and Auditing Findings.*

As discussed at the April 23 Hearing, this Monitorship has not yet reached the auditing and data analysis phase. The Monitor expects to submit *in camera* or to file under seal, as the Court prefers, an auditing and compliance program that includes an auditing methodology and protocols within the next ninety (90) days.⁵

³ *See infra* note 4 and accompanying text.

⁴ At the April 23 Hearing the Court set several new deadlines, including May 7, 2019, when the Monitor must submit a list of goals to be achieved within the next ninety (90) days, and July 24, 2019, when the Monitor must submit his second quarterly report. (*See* ECF No. 203, at 2.)

⁵ *See supra* note 4 and accompanying text and forthcoming Joint Report of the Monitor and the parties.

C. Degree of Progress, or Lack Thereof, for the Quarter and Any Proposed Timelines for Compliance with Each Section of the Court's Orders.

The City's progress, as reported by the Monitor at the April 23 Hearing, is consistent with the Court's expectation that the MPD will continue to "exemplif[y] the character and commitment needed in law enforcement professionals." (ECF No. 151, PageID 6267.) The City and the ACLU have engaged in a robust exchange about the adequacy of the City's Court-ordered submissions (*see generally* ECF No. 152) and other efforts, and the Monitoring Team likewise has made recommendations regarding the City's efforts. The Team's understanding is that the City is working to remedy all remaining areas of disagreement between it and the ACLU and to resolve all outstanding questions of the Monitoring Team. (*See generally* ECF No. 197.) Additional timelines for compliance will be detailed in the Joint Report of the Independent Monitor and the Parties on or before May 7, 2019. (*See* ECF No. 203 at 2.)

D. Areas That Are Not Currently in Compliance with Proposed Timelines for Compliance.

None.⁶ (*See generally* ECF No. 197.)

E. Summary of Plaintiff's Positions During The Quarter.

Please see generally ECF No. 197.

F. Reports on Community Engagement and Any Comments or Reports of Complaints Received by the Monitoring Team.

To date, the Monitoring Team has not received any comments or complaints. That said, the Monitoring Team Website, which the Team anticipates will be its primary means of interacting with the public, is not yet live. Mr. Stanton expects to implement a plan for soliciting public input as to the City's efforts to comply with the *Kendrick* Consent Decree. He and the

⁶ *See supra* note 4 and accompanying text and forthcoming Joint Report of the Monitor and the parties.

parties jointly will prepare and present the plan to the Court no later than May 23, 2019. (*See* ECF No. 203 at 2.) Consistent with testimony at the April 23 Hearing, the plan may include focus groups and town-hall style meetings, and all public engagement will be preceded by appropriate notice and held in spaces that are easily accessible to the public. Information about public-engagement opportunities also will be available on the Monitoring Team Website, which the Monitor expects to be live within the next ninety (90) days.⁷

V. Findings.

The Interim Report submitted by Mr. Stanton on April 1, 2019, largely contains the findings and recommendations of the Monitoring Team to date. (*See generally* ECF No. 197.) Minor revisions to those recommendations are included in an internal Monitoring Team memorandum of April 22, 2019. (*See Ex. 3.*)

VI. Appendix of Documents Referenced in this Report

Doc.	Description	Page
Ex. 1	Letter of April 22, 2019	6
Ex. 2	Summary of April 23, 2019, Hearing	8
Ex. 3	Revisions to Interim Report (ECF No. 197)	8, 10
ECF No. 3, Case No. 2:76-cv- 00449)	<i>Kendrick</i> Consent Decree	1

⁷ *See supra* note 3 and accompanying text and forthcoming Joint Report of the Monitor and the parties.

Doc.	Description	Page
ECF No. 120	Order of August 10, 2019	2
ECF No. 151	Opinion and Order of October 26, 2018	1, 2, 8
ECF No. 152	Order Memorializing Sanctions (October 29, 2018)	2-3, 8
ECF No. 176	Order Appointing Independent Monitor	3,6
ECF No. 180-1	Independent Monitor Submission of Edward L. Stanton III and Butler Snow LLP	<i>passim</i>
ECF No. 184	Sealed Order on Costs of Monitor Selection Process	7
ECF NO. 187	Sealed Order on Costs of Independent Monitor	7
ECF No. 189	Order on City of Memphis Materials	2, 8
ECF No. 190	Order on Costs of Monitor Selection Process	7
ECF No. 193	Sealed Order on Costs of Independent Monitor	7
ECF No. 195	Order Expanding Scope of Hearing	2, 8
ECF No. 197	Interim Report of Independent Monitor	<i>passim</i>

Doc.	Description	Page
ECF No. 197-1	Ex. 1 to Interim Report	7-8
ECF No. 197-2	Ex. 2 to Interim Report	8
ECF No. 197-3	Ex. 3 to Interim Report	8
ECF No. 197-3, PageID 6942-43	Letter of February 22, 2019	6
ECF No. 203	Order Following Conference	<i>passim</i>
ECF No. 204	Sealed Order on Costs of Independent Monitor	7

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