

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

ACLU OF TENNESSEE, Inc.)	
)	
Intervening Plaintiff,)	
v.)	No. 2:17-cv-02120-jpm-DKV
)	
THE CITY OF MEMPHIS,)	
)	
Defendant.)	

**THE CITY'S MOTION FOR CLARIFICATION OF THE PURPOSE, PROCESS AND
THE METHODOLOGY RELATED TO THE INDEPENDENT MONITOR'S FOCUS
GROUPS**

The Defendant, the City of Memphis ("the City"), files this Motion for Clarification of the Purpose, Process, and Methodology Related to the Independent Monitor's Focus Groups. In support, the City states as follows:

I. Background

At a conference before the Court on April 23, 2019, the Court ordered the parties and the Independent Monitor to make a joint submission of a plan for soliciting public input as to the City's efforts to comply with the decree. (ECF No. 203, PageID 7039). On May 24, 2019, the parties and the Independent Monitor filed a Joint Public Engagement Plan. (ECF No. 211). As part of the Joint Public Engagement Plan, the parties and Monitor agreed that the Monitor will conduct focus groups as outlined below:

The Monitor will conduct meeting with community groups and leaders in the form of focus groups. Participation in each focus group will be by invitation of the Monitor; the Monitor will, in his discretion, contact groups and individuals recommended by the parties as well as community members who submit comments to the Monitoring Team. Focus groups will be scheduled in between the first and second community forums.

(ECF No. 211, PageID 7282).

During a second conference held with the Court on August 27, 2019, the Monitor explained that one of his next steps would be to "put together community focus groups to better engage with the community." (ECF No. 225, PageID 7646).¹

Throughout this time, the City has had several discussions and written communications with the Monitor in an effort to ascertain how the Monitor is going to select the persons (community groups and leaders) to participate in the focus group, the process and procedure the focus group conductor will follow, and the methodology to be used by the focus group conductor.²

While the Monitor has explained that he has engaged a vendor "in this space" to conduct the focus groups, he has not offered any further explanation.

During the November 7, 2019 Community Engagement Forum, the Monitor invited the attendees to participate in the focus groups. To date, the City is unaware of any other efforts to solicit any other participants. Typically, there is scientific method (such as used in polling) to get a statistical small sample to reflect the total community.

The City is concerned about the Monitor's selection process because there has been no proven methodology to suggest that the audience at the Community Engagement Forum represents a cross-section of Memphians³. In the City's experience, the selection criteria and

¹ On October 23, 2019, the Court ordered that the timeline for the creation of focus groups shall extend into the first quarter of 2020 with full reporting to be submitted to the Court no later than April 30, 2020. (ECF No. 241).

² See August 26, 2019 Letter from Monitor regarding City's request regarding focus groups, filed as **Exhibit A** under seal. See also City's August 28, 2019 Letter in response, filed as **Exhibit B** under seal.

³ It is unknown whether the participants at the Community Engagement Forum are residents of Memphis. The City requested that the Monitor seek that information, but that request was not utilized.

screening methods used in focus groups play a large role in ensuring that the opinion of a broad cross section of the community is captured.

Moreover, the Monitor has stated "that the City will not be allowed to watch, observe, and/or participate in the focus groups."⁴

II. The City seeks clarification to ensure that the focus group process is fair and equitable.

"The general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend." *United States v. Philip Morris USA Inc.*, 793 F. Supp. 2d 164, 168–69 (D.D.C. 2011) (quoting *Resolution Trust Corp. v. KPMG Peat Marwick, et al.*, No. 92–1373, 1993 WL 211555, at *2 (E.D.Pa. June 8, 1993)). *See also Regal Knitwear Co. v. Nat'l Labor Relations Bd.*, 324 U.S. 9, 15, 65 S.Ct. 478, 481–82, 89 L.Ed. 661 (1945) ("we think courts would not be apt to withhold a clarification in the light of a concrete situation that left parties ... in the dark as to their duty toward the court.").

Here, as a threshold matter, it is unclear what is the focus of the focus groups. Are the focus groups intended to provide a voice for individuals to express their views about the Consent Decree? Are the focus groups intended as a forum for the community to voice its opinions about the Memphis Police Department? Are the focus groups intended to gauge the community's appetite for the use of technology in policing? Or are the focus groups intended as a vehicle for members of the public to express their opinions about the Monitor and the Monitoring Team's performance? The City respectfully requests that the Court clarify the goal and purpose of the focus group process.

The City seeks further clarification as to the process and procedure for assembling and conducting the focus groups. It is of paramount importance to the City that the focus groups

⁴ See August 29, 2019 Letter from Monitor to City, filed as **Exhibit C** separately under seal.

contain a representative cross section of the community. If the entire community is not represented proportionally in the focus groups, the report from the focus groups back to the Court will be unavoidably unbalanced and possibly inaccurate as to the opinion of the Memphis citizenry.

Moreover, if the results of the focus groups will be used as evidence or as a basis for subsequent Court orders, the City respectfully requests permission for members of its legal team to observe the activities of the focus groups to ensure that the focus groups are being conducted in a fair and equitable manner, and that they be allowed to object if any part of the process is objectionable.

III. Conclusion

Because the focus groups are a Court-ordered part of this legal proceeding, the City respectfully requests clarification on the purpose, process and procedures of the focus groups as well as the proposed methodology to be used by the vendor conducting the focus group, and an opportunity to provide suggestions or objections to the proposal.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Mark Glover

Buckner Wellford (#9687)

R. Mark Glover (#6807)

Jennie Vee Silk (#35319)

Mary Wu Tullis (#31339)

165 Madison Avenue, Suite 2000

Memphis, Tennessee 38103

Telephone (901) 526-2000

E-mail: bwellford@bakerdonelson.com

mglover@bakerdonelson.com

jsilk@bakerdonelson.com

mtullis@bakerdonelson.com

*Attorneys for Defendant, The City of
Memphis*

CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a) (B), on November 12, 2019, counsel for the city, Jennie Silk, conferred with counsel for Intervening Plaintiff, Thomas Castelli, by telephone and email regarding the relief sought in this Motion. Mr. Castelli advised that the Intervening Plaintiff opposes the City's Motion.

s/ Mark Glover

Mark Glover

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November 2019, a copy of the attached pleading was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to all counsel of record.

Thomas H. Castelli
ACLU Tennessee, Inc.
P.O. Box 120160
Nashville, TN 37212
tcastelli@aclu-tn.org

Mandy Strickland Floyd
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219
mfloyd@bonelaw.com

Attorneys for Intervening Plaintiff

s/ Mark Glover

Mark Glover