

MONITORING TEAM

MEMPHIS POLICE DEPARTMENT

QUESTIONS FROM THE DECEMBER 9, 2021 COMMUNITY FORUM

1. Can you make the website functional and user-friendly? Many links on the website do not work.

The Team recognizes that the website has had its issues. We are working to ensure access to the website so that the community may stay engaged and informed, particularly during these difficult times.

2. It is important to maintain a sense of ongoing connection to the community. What are the Monitor’s thoughts regarding having a local outreach liaison to fill in gaps between the Team, MPD, the City, and the public?

The question of a member of the public being part of the Monitoring Team has consistently come up at engagement forums, one-on-one meetings with community members, emails, and other correspondence.

The Monitoring Team has communicated with the Court the idea of a member of the public being a part of the Monitoring Team. The Court would have to authorize a public liaison before the person could join the Team.

3. Can you publish a monthly update and post it on the website, and send it out to your email list?

As a reflection of the amount of activity occurring before the trial, the Team began publishing a quarterly report to update the Court and community. Because activity slowed, the Team ceased quarterly reports.

The Team plans to reinstate quarterly reporting to keep the community engaged and involved, especially during the pandemic.

4. The Court invited public comment at one time. What happened to those ‘comments?’

The Court invited direct public participation at the August 2019 hearing

by requesting that interested community members submit statements about their concerns to the Court through the Monitoring Team. The Monitoring Team submitted to the Court all such messages from community members on September 26, 2019, and October 4, 2019.

5. Is there any prospect of the initial four individual plaintiffs getting added back to the lawsuit? If so, would this, in effect, enable a class-action status to the case and open it for other similarly aggrieved plaintiffs to join?

Although there is pending litigation at the Sixth Circuit Court of Appeals, this question is not within the Monitoring Team's purview.

6. Any chance of the Court unsealing more of the sealed filings? Is the Court still keeping sealed the various costs of the lawsuit, e.g., the City's attorneys' fees and Monitoring Team fees and expenses?

The Court, not the Monitoring Team, determines which documents and information are sealed.

7. Where are we on the social media policy? Will the public have any input once it is proposed? Can we get a draft before the policy is brought before the Court?

The City and the Monitoring Team submitted social media policies to the Court. The Court decided to hold the matter in abeyance until trial.

The Modified *Kendrick* Decree reads much like a social media policy. Accordingly, the City is governed by the social media guidelines included in the Modified *Kendrick* Decree.

The Team anticipates that the City will draft its own social media policy at some point. If and when the City does, the Team will address it.

8. What type of policy or oversight is in place for license plate readers?

Section H (3) of the Modified *Kendrick* Decree states that the City can use devices to take photographs and video, as long as images or recordings are not for First Amendment-related purposes.

Because plates generally do not involve First Amendment-related speech, license plate readers are not governed by the Modified *Kendrick* Decree nor under the purview of the Monitoring Team.

9. Can you explain the auditing process? How much of auditing is proactive versus scheduled?

There are some routine audit and compliance reviews. For example, the Team reviews scheduled officer training. Additionally, MPD must turn over to the Team, via the Court, search term records. MPD submits these terms each quarter, and the Team reviews and audits these terms. These routine assessments do not necessarily require giving notice, as they involve routine MPD activities.

Any information or complaints that come to the Team's attention, such as a violation of the First Amendment, may require an immediate review of the Command Staff and investigation into whether a violation has occurred. This type of auditing also would not require notice.

10. President Biden announced that the DOJ might be looking into some of the older consent decrees across the country. Will this affect the 1978 Consent Decree?

Here, the President refers to those decrees in which the U.S. Department of Justice was the plaintiff and brought the action.

The Department of Justice is not a party to the *Kendrick* Consent Decree nor the Modified *Kendrick* Decree. Because the Department is not a party, the Department is not in a position to weigh in. Thus, the *Kendrick* Consent Decree or Modified *Kendrick* Decree will not be affected.

It is ultimately up to the U.S. District Judge who signs or presides over the Modified *Kendrick* Decree to determine the outcome or duration of the Decree.

11. What software, collators, etc., is MPD presently using to search citizens' social media accounts? What are the search terms used?

There are multiple ways to search for information on social media.

For example, one can go onto a social media website and search for information such as a name, location, or a hashtag.

A collator functions differently, as it is a third-party tool analyzing multiple types of social media across platforms. Collators present a more sophisticated analysis than a typical social media search.

The City, at this point, and for some time, has not been using collators, as stated throughout the City's court filings.

MPD's social media searches are filed under seal, so the Team may not share information regarding specific inquiries. Team members evaluate the search terms and assess any concerns or potential Modified *Kendrick* Decree violations.

12. Since the appointment of the Monitor, what violations of *Kendrick* have you discovered?

From the information available to the Team, the Team has not seen evidence of any violation or any intentional infringements or attempts to infringe the Modified *Kendrick* Decree.

13. Is the City presently in compliance?

With regards to compliance, the role of the Team has moved from establishing clarity between the original *Kendrick* Consent Decree and the Modified *Kendrick* Decree to now turning towards compliance with the Modified *Kendrick* Decree.

At this point, the Team cannot fully say the City *is in* compliance or *is not* in compliance because the Team and the City are still actively working to ensure that every aspect of the Modified *Kendrick* Decree is implemented into the fabric of MPD.

The Modified *Kendrick* Decree requires the City to implement several measures to comply and incorporate the Decree. The City is actively working towards putting these steps in place while the Team works to ensure that the City takes these proper steps.

14. Does the existence of the Multi-agency Gang Unit (“MGU”) comply with the Modified *Kendrick* Decree?

The MGU is a joint operations center hosted by MPD. It incorporates the efforts of many local, state, and federal agencies. This is a very common model used throughout the United States. Law enforcement agencies often use similar models as a force multiplier to give agencies the ability to accomplish greater law enforcement feats.

Sections H & I of the Original *Kendrick* Decree and Modified *Kendrick* Decree specifically are meant to address and prevent any abuses or any improper receipt, dissemination, or sharing of information that was improperly obtained potentially in violation of anyone's First Amendment rights.

These sections mean that MPD cannot do anything that the Decree prohibits with or through surrogates or other agencies.

Accordingly, the Decree governs MPD's actions when working through the MGU.

15. When police photograph or video-record an assembly of citizens, is that a violation?

There is not a blanket prohibition on the use of recording devices. Instead, restrictions on recording an assembly, or other exercises of First Amendment rights, would depend on if the recording violates the Modified *Kendrick* Decree.

MPD may record photos and videos with City-owned recording and photographic devices, including body cameras, as long as the devices are not used for the purpose of First Amendment-related intelligence. Section H of the Modified *Kendrick* Decree provides more information about what MPD can and cannot do with recording devices.

Source: Sections H(3),(4) Modified *Kendrick* Decree, September 21, 2020.

16. What do you expect to be the duration of the Monitor's existence?

Duration is up to the Court, but the Team will continue to work until or unless the Court advises otherwise.

17. Has Chief Davis shown updated knowledge about the consent decree?

Chief Davis has been continuously briefed and informed on the Decree and has demonstrated knowledge of the Decree.

About a month after Chief Davis took her role, the Team met with her regarding the Decree. During that time, Chief Davis demonstrated thoughtful concern, asked questions about where MPD fell short and discussed the Team's efforts. Chief Davis shared that commitment to the Decree comes from the top down.

18. What percentage of officers could take a test on the Consent Decree and pass?

We currently do not have any measures to answer this inquiry.

The Team is constantly working with the City to ensure that the officers are thoroughly trained on the Decree. As the City works to inform its officers during in-service training, the Team has shared with the City some protocols and procedures that would improve training.