

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 4:16-CV-180-CDP

CITY OF FERGUSON, MISSOURI,

Defendant.

STATUS CONFERENCE

**BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE**

SEPTEMBER 19, 2017

APPEARANCES:

Monitoring Team Natashia Tidwell, Esq.
HOGAN LOVELLS US LLP

For Plaintiff: Jude J. Volek, Esq.
 Amy Senier, Esq.
 Sharon I. Brett, Esq.
UNITED STATES DEPARTMENT OF JUSTICE

For Defendant: Aarnarian (Apollo) D. Carey, Esq.
LEWIS RICE LLC

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 United States District Court
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(Produced by computer-aided mechanical stenography.)

(Proceedings commenced at 1:03 p.m.)

THE COURT: All right. Good afternoon. We are here in the case of United States of America versus the City of Ferguson. This is Case No. 4:16-CV-180, and we are here for our quarterly status conference.

The United States is here through Mr. Volek, and let's see. Would you each introduce yourselves, Mr. Volek, starting with you and your team?

MR. VOLEK: Jude Volek for the United States.

THE COURT: All right.

MS. BRETT: Sharon Brett for the United States.

THE COURT: Ms. Brett.

MS. SENIER: Amy Senier for the United States.

THE COURT: Ms. Senier.

MS. SENIER: Yes.

THE COURT: And for the City of Ferguson?

MR. CAREY: Apollo Carey, City of Ferguson.

THE COURT: All right. And then I have here today on behalf of Monitoring Team Ms. Natasha Tidwell.

And before I hear the reports of the parties, I did want to state that I want to thank Clark Ervin for his service on the Monitoring Team and leading the Monitoring Team. He has requested to be relieved of his duties as the lead of the team, and so I appreciate Ms. Tidwell being here today to fill in for him, and I do want to, you know, thank him for the

service he has rendered in this case, and he will not be working on it anymore. And so for today at least, Ms. Tidwell will be reporting for the Monitoring Team.

We have a really good Monitoring Team in this case with many qualified people with different areas of expertise, and so I do not believe that this change will cause any delays or problems.

So I will hear from the parties. Mr. Volek or Mr. Carey, should you go first? Which one of you wishes to go first?

MR. CAREY: Plaintiff, Your Honor.

THE COURT: All right. The Plaintiff usually does. So, Mr. Volek, I'll hear from you.

MR. VOLEK: Thank you, Your Honor. We appreciate the Court holding these public hearings, and we also appreciate the members of the public who are in attendance today. We know that it's been a difficult time in the region over the last week, but we're grateful that this hearing is being held and that we have this opportunity to update you and the public on the status of the Consent Decree.

A year ago, in September 2016, we had our first status conference during which the parties and the Monitor updated the Court and the public on progress on the newly enacted Consent Decree. In the year since that first status conference, the City has worked in good faith to try and

implement the requirements of the Consent Decree, including by bringing on new personnel to take on that task. And the United States and the Monitoring Team have both tried to support the City's efforts by helping with policy development, the delivery of training, and other forms of technical assistance.

We're still very early on in this process, but because of the City's efforts, there are many ways in which police and court practices in Ferguson already do look different than they did a year ago. As we've noted at hearings in the past, progress in some areas has been particularly strong. Progress in other areas has not been as quick as anticipated. In some ways, this is by design. The parties have been mindful throughout this process that the decree can't be implemented at once, and so we've identified priority areas to focus upon. To be clear, however, it does remain the priority of the United States to ensure that each provision of the Consent Decree is fully implemented.

And so today at this hearing, rather than provide strictly an update on the events of the past three months, I'll quickly go through each section of the decree, including key areas of progress and the challenges that still need to be overcome. I'll begin, however, with the last section of the decree that covers monitoring. As that section of the decree makes clear, the Monitoring Team plays a really vital role in

this process by providing technical assistance to the City, assessing the City's efforts, and reporting those assessments out to the public. That credible oversight really is essential to meaningful reform.

And in this case, we're really fortunate to have an excellent Monitoring Team, which has been led by Clark Ervin. As Your Honor has just mentioned, after a year of committed work on the matter, Mr. Ervin has elected to step down, and the Department of Justice wants to express our appreciation of Mr. Ervin and the entire Squire Patton Boggs team for their service, which has really been indispensable in this initial phase of reform.

We're confident that even with Mr. Ervin's departure, the important work of the Monitoring Team will get done without delay. Monitoring Team member Natasha Tidwell has agreed to continue working on developing a strategic plan for monitoring the Consent Decree going forward, and she has already proved an invaluable part of this process. For instance, she designed and began to implement the court audit, the municipal court audit, which hopefully we'll hear about in some time.

Ms. Tidwell and other members of the team remain committed to this process, and as Your Honor mentioned, it really is a terrific team with a diverse range of subject matter experts, and we are confident that the team is in

strong shape as we turn a page and enter the next phase of this process.

I know that one of the Monitoring Team's priorities is issuing public reports on the status of implementation. We look forward to those detailed reports in the near future. In the meantime, we'll now provide our overview of the main areas of progress and the obstacles that we've encountered in each area of the decree. Now, there's 19 sections of the decree, and so our summary will have to be quite brief, but we are hopeful that this brief summary, as it is, is still helpful to the Court and to the public.

Starting with community policing and engagement, this is obviously a central part of the Consent Decree, and there's been real progress in developing both a community policing policy for within the Ferguson Police Department as well as a community outreach plan. Now, the policy sets forth principles of community engagement, and the outreach plan really gets at the specific steps FPD is going to take to ensure that community members are engaged. There's been a solicitation of initial feedback from community groups like the Neighborhood Policing Steering Committee, and that feedback solicitation will continue before these policies and plans go into full effect. In the meantime, I know that the City is working to foster better relationships between the police department and the Ferguson community, including by

creating better opportunities for police and community interactions. So I know that there's been a new "Coffee with a Cop" program that's been put in place that's been helpful at creating those opportunities for interaction.

This section of the decree also contains requirements regarding the Neighborhood Policing Steering Committee, which I've just mentioned. That committee has been formed, and there are many dedicated individuals who show up each month to try to advance the NPSC's mission. As we've learned from our own observations at NPSC meetings and as was made clear through public comments at the last hearing, there are organizational challenges within the NPSC. We're all aware of those. After the June status conference, we've tried to take additional steps to help the NPSC move forward to address those challenges.

Based upon reports from NPSC members, we identified a list of possible resources that could be provided to assist the NPSC with making the organization more efficient. Cost-free resources. At the July 20th NPSC meeting, we offered the NPSC two groups as options to conduct an assessment of the NPSC's needs and identify possible solutions. We also arranged for both of those entities to speak by phone with the NPSC Facilitation Committee in a subsequent meeting.

At its general meeting on August 17th, the NPSC

Facilitation Committee presented a list of possible consultants to assist the NPSC. It appears that the NPSC favors a more local consultant and not the options that we offered, and there are still some things to finalize with that plan, but we're hopeful that at this coming NPSC meeting on Thursday that that plan will be finalized. For our part, you know, the options we presented remain at the ready, and we're willing to help the NPSC however we can, including by helping any consultant that they elect to bring on board.

Throughout this time, members of the NPSC have also been contacting us to offer their comments about how to chart a productive path forward. In order to provide an opportunity for all members of the NPSC to provide that feedback, we've set up an online survey for current and former members of the committee to provide feedback. The survey asks for member insights about the committee's strengths and challenges and recommendations for how to move forward. We received comments from approximately 29 respondents, and once an external resource will be identified to provide assistance, we look forward to using the results from that survey to work collaboratively to address those challenges.

Turning to municipal code reform, not to be confused with municipal court reform, obviously, the Consent Decree contains two different sections. This section is really focused on the Ferguson Municipal Code, and I'm happy to

report that the City has really made significant progress here. There's a number of ordinances that are identified within the Consent Decree, most of which have been rescinded or amended as required by the decree.

There is one additional provision, which is the comprehensive review of the Ferguson Municipal Code. That provision requires the City to come up with a plan to assess the code and make sure that it's in line with community policing priorities and the priorities of the broader Ferguson community. The NPSC, I understand, has a committee that's working on that project and that the -- and I also understand that the City is working to support and participate in those efforts. So we look forward to continued work on that.

Turning to the policies and training section, obviously, every substantive section of the Consent Decree needs to be incorporated into official department policy, and we've been working very hard with the City on developing those policies, and there's been great progress, which I'll report as I go through each substantive section. In general, the process that we've developed has really been productive, and I think that we're in much better place than we were a year ago, and we've reported on that process in the past, but it's very collaborative in the initial stages, soliciting technical assistance from the Monitoring Team as appropriate, and then at the end of that process, the City submits the policy to the

Monitoring Team for review and approval.

On the training side of things, the Ferguson Police Department has designated a training coordinator, which is a positive step, and they've established a Training Committee, which consists of FPD members and members of the NPSC, and they've also verified that new recruits are receiving 900 hours of basic training, which is excellent. Obviously, first come policies and then come training on those policies. So a lot of the progress in the training area still needs to come, but we are encouraged by the progress there.

The next section of the decree covers bias-free policing and court practices, and while the entire agreement is really designed to prevent bias from shaping law enforcement conduct, this section really looks at two specific things -- one, collecting data in order to ensure that bias is not infusing law enforcement practices and, two, bias-free training. As I'll discuss a bit later, data has been a continued challenge for the department, and that's going to be a real focus in this next coming year. The bias-free training is something that has already been delivered to the Civilian Review Board, and so that was a really good way to pilot that program. The reports from that training were very encouraging, and so in the coming year, we look forward to that training being delivered to the entire department.

Next is the stop, search, citation, and arrest

substantive provisions which set forth guidelines for how officers conduct those activities. We have -- the parties have not spent a lot of focus and attention on this area of the decree yet. We focused on some of the other priority areas, including force and accountability, but we look forward to turning to this as soon as the force policies are completed. There has been some progress. We've received a draft of the correctable citations policy. What that policy does is it sets forth a mechanism for people who have equipment violations, for instance, to fix the actual problem that led to the violation instead of incurring fines and fees because of that violation. There is some revision that's required, but we were encouraged to see that draft. There's also been some revision within the department on the practice of using what are called wanteds, which are basically investigatory holds. In earnest, the parties have not done much in this area, but this is the next area of priority.

Turning now to force, in June, we reported that we had worked with the City to draft a revised general order regarding lethal and less lethal force and that we were turning then to drafting policies regarding certain types of force. So there are policies for the use of batons, OC spray, tasers, K-9s. That process is well underway, and we've made really incredible progress thanks in large part to the Consent Decree coordinator within FPD, Commander Frank McCall.

The next step will be to solicit community feedback on those policies and make additional revisions, and we're working on a plan for this stage of the process to ensure that we can solicit community feedback in a productive way. There still needs to be development of policies regarding force reporting and force review. That's a very complicated area. There's a lot of different steps as a force report goes up through the chain of command, and so that's something that we continue to work on. Once those policies are put into place, at that point, we will focus our attention on ensuring officers are trained on those policies appropriately.

Turning to First Amendment protected activity, I know that this is an area of priority for Chief Moss, and he's done some very good work to ensure that officers respond to protected activity in a productive and lawful manner. There has not been any audit conducted yet of this area of the Consent Decree, and there still needs to be some policy development.

The next section is crisis intervention. FPD has designated a crisis intervention coordinator. Just to provide a little bit more context, what the crisis intervention coordinator does is ensure that there's a team that's readily available to respond to individuals in crisis, mental health crisis, and the fact that there's been a coordinator designated allows us to take the next steps required by that

area of the decree, including providing appropriate training and putting together those teams.

The School Resource Officer Program areas of the decree are really designed to rework Ferguson's existing School Resource Officer Program in order to turn it into an opportunity to bridge the divide between police and youth in Ferguson and to avoid unnecessary criminalization of students. The parties have made real progress on the first step, which is developing a Memorandum of Agreement between the Ferguson Police Department and the Ferguson-Florissant School District. That Memorandum of Agreement is in very good shape. The next step, once that's finalized and once that's worked out with the district, is coming up with an actual manual. The manual gets into a bit more detail about the actual activities that school resource officers are expected to take. We look forward to working with community stakeholders as we develop those items.

The next section is body-worn and in-car cameras. Obviously, body-worn cameras are an important tool in accountability. They're not the answer in their entirety, but they are extremely helpful. And, thankfully, through a grant, Ferguson has body-worn cameras at its disposal, and the parties have been working diligently to create an appropriate policy regarding those cameras. As the Court heard at the last hearing, there is also, separate and apart from the

Consent Decree process, a charter amendment regarding body-worn cameras, and we've worked diligently to try and make sure that, where there is no conflict, areas of that charter amendment are incorporated into Ferguson policy. That policy is in the same boat as the use-of-force policies. It's pretty far along, but we'd really like to solicit some community feedback before making those final steps.

The parties have also begun revising the in-car camera policy. So officers will wear body-worn cameras, and also, there will be dash cams for cars, and so the parties are working on that as well. Hopefully, that will be a little bit quicker than the body-worn camera policy. There's a lot of overlap on the issues in terms of retention issues, for example, and so we're hopeful that that process will proceed quickly.

With respect to supervision and performance evaluations and promotions, that has not been an area of focus for us. I know that the department, the police department, has been looking hard at staffing patterns. The Monitoring Team has as well. And I know that there are going to be efforts to look at supervision and staffing to ensure that there's appropriate close and effective supervision as required by the decree. More needs to be done by the parties in this area, but it's something that we look forward to working on in year two.

Officer assistance and support is a really critical element of the decree that ensures that officers and their families have the support that they need. Everybody knows how difficult a job law enforcement is, and so this area of the decree really just seeks to make sure that resources are available to people in the profession. And I know that Chief Moss has made this a priority, and that's been really, really prioritized throughout the whole department, and so we're encouraged by the steps that we've seen thus far. I think that that is, hopefully, something that we can audit in the coming year, that the Monitoring Team can audit to make sure that all the details are being executed appropriately.

The next section is recruitment. The Consent Decree acknowledges that Ferguson can only police constitutionally and effectively if they have highly qualified officers and a sufficient number of them to police in that way, and so there's been a lot of focus from the City, from the department, and from the Department of Justice on this issue. The City has finalized a recruitment plan, which has been submitted to the NPSC for comment, and the NPSC has reviewed it and provided very helpful input, and so the parties are working to incorporate their suggestions, and they'll report to the NPSC at the next meeting regarding what that revised policy looks like.

There is, separate and apart from the recruitment

plan, a Background Investigations Manual, and the City's finalized and DOJ and the Monitoring Team have approved that manual, and Ferguson has begun using that new Background Investigations Manual as a part of the hiring process, and so we're really encouraged by that. Obviously, it's critically important that every officer who joins the force in Ferguson is highly qualified and a suitable candidate for the job.

Part of the recruitment effort to ensure highly qualified officers is ensuring that Ferguson offers salaries that are competitive, and the City has taken really productive steps on that front. There has already been planning for an increase in pay for officers that was discussed at the last hearing. There needs to be a more comprehensive plan, of course, but we've done a lot of work on that front. The City has done a lot of work on that, and we're really in a -- we think that we're in a very good place on that.

The next section of the agreement is supplemental recruit and in-service training. Now, there was a training section before, policies and training section. That just sort of dealt with the general policy and training requirements. This section goes into the specific requirements for each substantive area, so the specific requirements for use-of-force training, for bias-free training, for instance. As I mentioned earlier, obviously, the first step is to come up with policies and then train on those newly revised

policies, and so there's not been that much progress on this area, but that's to be expected. That's how this process was planned.

I do want to highlight one aspect of this, though, that's been really productive, and that is the Blue Courage training that was provided to officers in June. The Office of Justice Programs provided Blue Courage training to the department free of charge. It's a -- the Office of Justice Programs is a component of the Department of Justice. And the reports from that training have been really incredible. Officers seem to have really loved the training, felt that it really addressed a lot of their concerns and also was a great experience for them, and so I think that's going to really help the department moving forward. And we will continue to identify any training opportunities or training resources that we can provide to the department.

Next is municipal court reform. There has really been a lot of focus on this area and really been a lot of progress as well. So the Ferguson Municipal Court is no longer under the Finance Director's domain, and it's no longer under the Chief of Police. The Ferguson Municipal Court reports directly to the City Manager. And, of course, the judge reports directly through the judicial chain in Missouri courts. There is a new judge that's been appointed, Judge Brown, who has really brought a fresh sensibility to the court

that we've witnessed firsthand has been met very positively from members of the community. There's also a new City Prosecutor who has done a very good job from our estimation so far.

THE COURT: Tell me the name of the new City Prosecutor. I think I asked you that before, but I forgot.

MR. VOLEK: It's Lee Goodman, Your Honor.

THE COURT: All right. Thank you.

MR. VOLEK: So together, the new judge, the new prosecutor, and court staff have really made a lot of key advancements. There's been good progress on ensuring ability-to-pay determinations are provided and that community service options are available. There has been movement on the online payment system, making sure that people have multiple ways of paying their fines. There's been some revisions made to procedures for missed appearances and bond, and there's overall an effort to provide greater transparency. As we highlighted at the last hearing, there's still a real need, I think, to work on the City's website. The City acknowledges that, and I know that they're thinking of how to really address that wholesale.

I should say, of course, that in talking through each of these sections, this is our vision or our view of where things are at. Ultimately, it is the Monitor's responsibility to assess compliance, and so while we're providing this update

to the Court, the Monitor's assessment is really what matters, and I'm -- I'm very happy to report that the first audit of the municipal court provisions by the Monitoring Team is underway. Ms. Tidwell was instrumental in developing a methodology for that, for that audit, and we -- through that, Ms. Tidwell has reviewed documents, observed court hearings, and the audit will really help identify which reform areas are working and which still need significant attention.

The next step in this section of the decree is really to focus on the amnesty provisions. The amnesty provisions are designed to provide some relief to people with older cases. There have been a lot of great efforts from the City on this already. There have been literally thousands of cases that have been dismissed. Nonetheless, there are still older cases from before January 1st, 2014, that fall under the amnesty provisions of the Consent Decree, and there needs to be a comprehensive approach to addressing those cases and ensuring that those cases are handled as the Consent Decree envisions. The City Prosecutor, Lee Goodman, has worked to develop sort of a framework for how to review those cases, but that review still needs to happen, and it's one of the more pressing issues that still needs attention.

The next section of the decree is accountability, and what this section acknowledges implicitly is that, you know, we all want a perfect police department but we all realize

that that isn't going to happen, and so the purpose of the decree is to minimize misconduct but also to ensure that misconduct is identified and properly dealt with when it does occur. There have been -- there's been a lot of progress in this area. So the first policies that the parties focused on was the duty-of-candor policy and the duty-to-report-misconduct policy, and those policies are in place. There's an overall internal investigations policy that the parties have reached agreement on, and we've recently solicited and received very helpful feedback from the Civilian Review Board. So we're going to work on incorporating that.

One outstanding issue is making sure that the department has awareness of previous accountability investigations. The department obviously needs to understand the actions of its officers and to ensure appropriate recordkeeping for misconduct investigations going forward, and so that's something that we will work with the department on collaboratively in the very near future.

The next section is civilian oversight. This has been talked about at previous hearings and is a real -- a real asset to the Consent Decree process thus far. Getting the Civilian Review Board in place, there was a lot of work that went into that from the City, and we really commend them for their efforts there. They've drafted a Civilian Review Board ordinance that establishes the board that's consistent with

the decree. The board was formed, and Mr. Carey is in the process of ensuring that the board is fully trained. And so just returning to the accountability policy, we've tried to make sure that the Civilian Review Board is properly looped into the accountability process, and so at this stage, we're really ready for the civilian oversight board to take on its responsibilities and start executing those.

The last section of the decree, substantive section, pertains to data collection, reporting, and transparency, and this -- admittedly, I think everybody's on the same page that this has been a bit of a struggle. Every single system that law enforcement agencies use has its complexities. There has been some recent efforts to bring in another system to bolster the existing system within Ferguson, and we're hopeful that there will be better integration and progress in the coming year, but that's an area of the decree that needs our collective attention.

So I know that was a bit of a whirlwind, and I apologize for that, but we did want to update the Court and the public on -- sort of give a snapshot of where each section of the decree was. We really look forward to the year ahead and anticipate an even more positive report in September 2018, and we look forward to working collaboratively with the City, the police department, and Ms. Tidwell and the rest of the Monitoring Team.

THE COURT: All right. Thank you.

Mr. Carey, I'll hear from you on behalf of the City.

MR. CAREY: Thank you, Your Honor.

Again, as you know, I'm Apollo Carey, here on behalf of the City of Ferguson, and as I always do, I just kind of want to start off by introducing some of the folks --

THE COURT: I would appreciate that. Thank you.

MR. CAREY: -- from the City that we do have in the audience. You'll see to my left Commander McCall, who is our Consent Decree Coordinator. And you'll see in the middle there is De'Carlton Seewood, who is the City Manager. And of course, the esteemed Chief Moss, Delrish Moss, who is our new Police Chief. And then behind those folks, in the second row, you'll see two of our councilwomen, Laverne Mitchom and Ella Jones, who are here from the City. As you know, every time we have these, we have a big contingent from the City who comes, and they're interested in, you know, our progress.

THE COURT: I do appreciate that both from the officials and also from the people on the elected council or aldermen. I think that's very important that they do continue to come, and it shows how interested you are in seeing these reforms go through.

MR. CAREY: Right. And we appreciate that, Your Honor.

And also just so that, you know, if the Court ever

wants to know what the actual day-to-day face of implementing the Consent Decree looks like --

THE COURT: They're sitting there on the front row. Yeah.

MR. CAREY: -- myself and the front row.

THE COURT: Yeah.

MR. CAREY: And that's that day-to-day face --

THE COURT: Yeah.

MR. CAREY: -- in terms of the City's part of implementing the Consent Decree and working with the Department of Justice and the Monitor. So we're all dedicated to that process.

So the approach that I'll take here today will not be as global and comprehensive as Mr. Volek. I think he did a great job of presenting a snapshot in terms of where we are globally, but what I'd like to address is kind of, you know, the actual -- some of the nuts and bolts of the work that the City has done since our last status hearing, and that work revolves mainly around municipal court reform as I announced and also as the Monitor announced in our last status hearing.

You know, the City of Ferguson had its first audit process under the Consent Decree in August of this year, and so that process entailed a number of provisions of the Consent Decree that were looked at and examined by the Monitoring Team. Now, we have yet to receive the results of that audit

from our Monitoring Team. I know they're hard at work, you know, looking at and analyzing the materials that they've gathered and basically organizing a presentation that they're going to put together for us to kind of let the City know where we are with regard to compliance, but I did want to just kind of let you know, let the Court know and let the public know some of the nuts and bolts work that kind of went into the City's preparation for this audit because that's been our focus, like I said, since our last status hearing.

One of the main provisions that we dealt with with regard to the court audit, the municipal court audit, was paragraph 333 of the Consent Decree, which talks about citation revisions. All right. One of the criticisms we had in the Department of Justice report was that, you know, our citations were not -- they weren't updated; they didn't have the proper information that the citizens needed when they were receiving municipal citations or traffic tickets for, you know, who do they call, where do they call, how do they pay, can they make partial payments, this type of thing. So what we did as part of the Consent Decree implementation process related to this audit -- we simply updated our citation, and we put all that information on the back of our citation. So now every citation that our police officers or municipal officials give out will have on the back the information needed, you know, to give to folks who receive these citations

of where to call, you know, where to pay, how to pay, those types of things, and I think that goes to some of the themes in the Consent Decree about adequate notice and just giving, you know, citizens as much notice as possible about how to resolve some of these municipal complaints because I know that was a theme that the City was criticized for in the report.

THE COURT: And is that also on the City's website?

MR. CAREY: It is, yes, ma'am. Yes, ma'am. And a number of the -- well, actually, everything I'm going to talk about today with regard to what we did for purposes of the audit has been updated and placed on the website. Now, I will admit Mr. Volek did say that, you know, our website still is not the most user-friendly website, and we certainly can use some work in terms of making it more user-friendly, but with regard to our obligation under the Consent Decree to post these things on the website, we've done so with regard to what it is I'm talking about here today.

Another paragraph in the Consent Decree, paragraph 353, deals with trial procedures, and essentially what the Consent Decree required from the City was to make sure that we had trial procedures that treated our citizens fairly and impartially, and I think there are two kind of themes with regard to that. One was the independence of the City Prosecutor, and the other was the impartiality of the Municipal Judge. Well, as Mr. Volek did say, we've hired, you

know, Judge Brown, we've hired Prosecutor Lee Goodman, and we've implemented these trial procedures designed to make sure that Prosecutor Goodman is independent from the City and also from the Court and that, you know, Judge Brown is adjudicating cases in a fair and impartial manner, not leaning one way towards the prosecutor or towards the citizens. He's just simply following the law, and we think we've taken great strides in doing so by creating this policy or -- excuse me -- the trial procedures.

Paragraph 334 of the Consent Decree required the City to come up with a methodology for auditing citations. Essentially, what it was designed to remedy was citations that got to the court that were incomplete, didn't have the correct municipal code violation, or wasn't, you know, signed properly, didn't have, you know, the right information that was needed for the Court to actually process them. So we came up with, basically, a policy that -- you know, what it does is it basically kicks those back down to the police department for further processing and then comes back up to the court, and so we had to put that policy in writing, and that was also part of the audit, the municipal court audit.

Paragraph 341 deals with the uniform fine schedule, and this was pretty much -- this was a simple one, Your Honor. We have -- you know, St. Louis County has a uniform fine schedule for municipal codes violations, and essentially, the

City of Ferguson adopted -- the court issued an order basically adopting the uniform fine schedule. So you don't have in Ferguson fines on the uniform fine schedule that are any different than any other municipality in St. Louis County. It's the same fine schedule for all municipalities, and Ferguson follows that fine schedule.

The court operating rule. Now, the court operating rule actually deals with several paragraphs in the Consent Decree, but recently, there was a court operating rule that the state courts kind of passed down, and all of the various different state courts were made to adopt this court operating rule, and it dealt with basically removing the obstacles to municipal court resolution. This operating rule deals with various different aspects of the municipal court process, notification to folks who receive municipal citations. It deals with, you know, requesting continuances, making those more easy for folks to obtain. So, really, the court operating rule was designed to remove barriers and obstacles to municipal court issue resolution. And I mean I think that's really consistent with, you know, what the whole -- one of the themes of the Consent Decree. And so we've taken steps and submitted that operating rule to the Monitor for feedback.

Again, we did update the website. Some of the updates to the website outside of the ones we've already talked about -- we put our community service and pay option

plans up on the website. So, you know, when someone receives a citation, they can go to our website and find the community service option. They can also find the other pay options. Then there's also a link that links directly to the payment system whereby payment can be made online. And also partial payment can be made online. That was a -- a thing.

THE COURT: That was a big deal in the Consent Decree as I recall it. Yeah.

MR. CAREY: That's right. Absolutely. So we've done that.

The ability to pay or our -- the ability to pay, our indigency form -- we have placed that also online, and so now, you know, folks who may doubt their ability to pay municipal fines can go to our website, download that form, and fill that form out and provide that to the court and have the court make a determination as to their ability to actually pay, and then obviously, you know, if the court does make a determination of indigency or that someone doesn't have the ability to pay, then, you know, we have the option for community service.

I mentioned our online payment system had been revised and also mentioned that we accept partial payment.

One of the other, I think, important parts of the municipal court audit was the City was required to develop good-cause criteria, and this is related to kind of the backlog of cases that Mr. Volek referenced, our pre-January 1,

2014 cases that are, you know, still kind of in the hopper, so to speak. The City is required under the Consent Decree to go through those cases and apply this good-cause standard to, basically, determine whether or not there's good cause to continue prosecuting these cases, and if these cases -- if there is not good cause to continue prosecuting these cases, then the City is required to dismiss them.

You may have, in the news, recently heard about the Fred Watson --

THE COURT: Yep, it was in the news.

MR. CAREY: -- yeah, dismissal and that type of thing. Well, those charges were dismissed pursuant to the City's requirements under the Consent Decree.

And so, you know, it simply -- it causes our prosecutor to have to basically go through -- now, there are challenges with that because we do have a backlog of -- although we've gone through thousands of cases, we have a backlog of thousands of cases, and so --

THE COURT: And are these still just -- as I recall from prior hearings being told, they're just really in boxes somewhere; right? Some of them?

MR. CAREY: More or less, Your Honor. More or less. There are just -- there are just so many of them, and so we've been charged with developing a process by which and a framework by which to get through those, but of course, we

have one prosecutor, and we -- you know, so we -- the City has to come up with some sort of alternative way of doing so. I can tell you that we have discussed adding manpower to our prosecutorial team to potentially have someone that exclusively focuses on that backlog of cases and applying that good-cause standard to those cases to kind of speed up the process of going through those cases, but the Department of Justice is right, you know, that we do need to take some steps to -- to actually implement the standard that we've developed, and it is rather pressing for us, for us to do so.

I did mention requesting continuances, but I'll mention it again. Again, this is all about removing the barriers to folks being able to request those continuances, and we've developed a new policy and placed that online and also placed that information on the back of the citation, which allows folks to understand what they need to do if they need to request a continuance, how to do so, and we've made it a little bit easier for you to do so. You don't actually have to show up in court to request the continuance.

So from, you know, a municipal court audit standpoint, the City has developed all these policies, implemented all of these various different requirements, and where we are is we're just waiting for the Monitoring Team to respond to those and say, you know, either, "Yes, City, you did this right" or, you know, "You need to do this

differently" or that type of thing.

So that's kind of been the focus of the City's efforts over the last couple months. However, you know, the Consent Decree is vast. So that's not the only thing we have been doing. I won't get into a lot of the policy development and that type of thing that Mr. Volek so aptly covered already, but I will say -- I do want to mention a couple things that we have been working on.

I know at our last status hearing there was some citizen comment, and one of the comments was about the importance of our SRO Program. That's the School Resource Officer Program, and, you know, basically, the citizens were concerned about us focusing some attention on that program. Well, recently, in the last week or so, to be quite frank with you, the City and the Department of Justice have worked together in moving that Memorandum of Understanding between the City and the School District along. We've received recently and approved comments from the Department of Justice with regard to our draft MOU, and we expect in the next couple of weeks or maybe in the next week to be able to provide that MOU to the School District for their feedback. So we have made some progress on that, and I just wanted to make sure we addressed that because that was something specific that was mentioned in the last hearing.

Mr. Volek mentioned staffing and recruitment and

background investigations. I know I can tell you that Chief Moss has been tirelessly working over the last -- you know, since he's been here actually -- to, you know, get good officers, hire good officers within the Ferguson Police Department. Obviously, I know you know --

THE COURT: What's the status of the pay raise?

MR. CAREY: Well, the pay raise -- well, was it a six percent?

CHIEF MOSS: Seven percent.

MR. CAREY: Seven percent across the board is what we did, and that was just part of our --

THE COURT: And has that been implemented then?

MR. CAREY: It has, yes, ma'am.

THE COURT: Yeah. Okay.

MR. CAREY: And that was -- you know, obviously, you know, that does -- the City has taken great strides in terms of, you know, compliance with the Consent Decree, but we do need more of an overall plan, but, you know, the Prop P funds helped with that, you know, and our ability to be able to give those raises, and we are in the process of developing, you know, more of a comprehensive plan that will get us up to that average marker that we -- that the parties have decided is where we think salaries should be, and it may be something we have to do in steps, and the Department of Justice has shown

25 willingness to work with us in that regard.

THE COURT: Okay. Thank you.

MR. CAREY: But, you know, kind of back to the point I was trying to make about the hiring is, you know, we -- when I first started as City Attorney, I think we were 37, 36, 37 police officers.

Chief Moss, how many do we have now?

CHIEF MOSS: We're at 42.

MR. CAREY: Forty-two. And so, you know, we've gone from, you know, 36, 37 to 42 within the last year or so, and I may be underestimating that, the bottom number there, but I know that the hiring process has just been so -- has been a source of controversy within the City because, you know, we have our citizens who are wanting more police officers on the street, and, you know, we have our council meetings, and they come forth, and they voice their opinion about that, but then we also have the requirements under the Consent Decree that make sure we hire the right people and that make sure we do investigate their backgrounds and make sure that we do take the steps necessary to make sure that we're getting quality police officers and not just putting bodies in uniforms and putting them out on the street. So I'm just -- I'm really, actually, very proud of us for the -- and specifically Chief Moss -- for the work he's put in in moving our department in the direction of -- of, you know, hiring more officers.

And what's the capacity? What's the goal, Chief

Moss, with regard to -- 50. So if the goal is 50 and we're at 42, you know, I think we're moving in the right direction.

The last thing I'll mention, Your Honor, is -- and Mr. Volek did touch on this, but, you know, it's something that I have been spending a lot of time on in the last six months -- is the Civilian Review Board, and I'm happy to report that, you know, they are -- we aren't in a situation where -- where -- well, let me say this. They have been fully trained with regard to the requirements of the Consent Decree, and so they are --

THE COURT: They received all that anti-bias training --

MR. CAREY: Yes, ma'am.

THE COURT: -- as well as other training; right?

MR. CAREY: Yes, ma'am. They've received all of that, and so they are actually ready Consent Decree-wise to actually start hearing complaints as they actually are filed and come in.

Now, I will say training is much more of a comprehensive, ongoing thing, and it has to be, and so we have to develop a system to make sure that not only are they getting the training that's required by the Consent Decree but that they get a much broader scope of training. And we're using resources such as NACOLE, which is a national law enforcement civilian oversight organization, and those folks

have been really helpful and really generous with their time and resources to, you know, provide the City guidance, direction, templates, ideas for additional training, and it's really crucial and critical because, as you know, our Civilian Review Board -- some of them will -- you know, some of them will cycle off of the board.

THE COURT: Right.

MR. CAREY: And so then we'll have new people come on who will need to be trained. So it's critical that we develop that process, and we've -- you know, by completing training for this inaugural board, we have kind of a template now that we can work with that will help us continue to develop and continue to meet the needs of the board as people cycle off the board and that type of thing.

So with that, you know, I think that pretty much concludes my portion of the presentation unless you had any questions for the City.

THE COURT: I don't believe I have any additional ones. I mean -- oh, I guess the -- well, I mean you said you know; you're working on it. The issue about the data and the older court files is just a problem, and you're going to keep working on it; right?

MR. CAREY: Well, we have to. And like I said, one of the --

THE COURT: Yeah.

MR. CAREY: You know, I've had maybe two meetings in the last week with the City Manager about how are we going to address this because the issue with the Watson case, I think, highlights the need for this to happen because if you have these cases kind of sitting out there and we aren't going through them earnestly to make sure that, you know, we try to apply this good-cause criteria to make sure we either dismiss it or keep prosecuting it, then the cases are in limbo and things like this tend to happen, and then you get media coverage, and then all of a sudden, it's blown out of proportion. So it's a pressing need, and it's definitely something that the City is aware of and wants to take immediate steps to try to remedy.

THE COURT: All right. Thank you.

MR. CAREY: Okay. Thank you.

THE COURT: Ms. Tidwell, I'll hear anything you wish to say on behalf of the Monitor, and I appreciate your being here today to fill in.

MS. TIDWELL: Thank you, Your Honor.

I just want to echo the comments of Mr. Volek and Mr. Carey that the intention is to move forward with the progress that was made in the first year of the monitorship, and one of the things that the team has prioritized moving forward is building off of some of the work and looking to create a realistic framework for the parties, the City in

particular, as to where we hope to go in year two and beyond. And so developing that strategic plan is one of the things that I'm hoping to start working towards in addition to taking the results of the audit conducted in August and incorporating that into a report to the Court in the next month or so. So those are the -- the most pressing things.

I am hoping that in year two -- I think Mr. Volek identified and talked about each of these topic areas. The parties had agreed on some priority areas for year one. You know, more progress has been made in some than in others, although substantial progress has been made in areas that weren't identified as priorities, like body-worn cameras, the School Resource Officer Program, the municipal code reform, and most significantly, municipal court reform. I'm hoping that even though -- in the areas that are not yet completed, where policy review hasn't been completed, that we can start doing some auditing in those areas just to get a baseline as to where things currently stand, with the police department in particular. So some of those areas include stop, searches, and arrests, just to look at reports and see how things are going now. And so when we start to develop policies and training, we know what are some of the areas and what are some of the knowledge gaps, what are some of the policy gaps, and so just took it as the Monitoring Team just looking at some of those reports that have been generated in the previous years

would be extremely helpful.

Similarly, with accountability, we can't know where we need to go with internal investigations until we look at how internal investigations were done in the past, and so that's an audit area, at least a baseline assessment area that I think the Monitoring Team can look at in year two and including use-of-force reporting. That's an area Mr. Volek spoke of that we're looking to develop policies in that area, but we can certainly take a look at the use-of-force reports as they exist now in the reporting requirements and the review process to, once again, help the City and the police department to build policies and build training that actually speaks to the needs that are already there.

Some of the work that we've done in this since the June status hearing include the police surveys. Some work was done by Delores Jones-Brown, one of the team members, to conduct or to implement or -- what's the right word for -- give -- to administer a survey --

THE COURT: Administer the survey.

MS. TIDWELL: -- administer a survey for members of the FPD. I think she still has four or five officers who were on vacation during the August administration that she still needs to get to, but she plans to do that in the coming weeks, and so we would be able to report on the results of that survey at that time.

As the parties have identified, I was tasked mainly with the municipal court audit work in August. It began in the spring when the Monitoring Team gave the parties a methodology and a plan and a schedule for how audits would be conducted in the municipal court. Prior to my arrival in Ferguson in, I think, late August, around the 20th, I submitted a plan to the parties that identified the 20 or so provisions that would be audited in August and set out, you know, how I anticipated the City would demonstrate compliance or at least show the work that it has done towards compliance, and so the -- we divided the work into six categories.

There was document review, and those are the policies and procedures that Mr. Carey spoke about.

There was city ordinance review, which, you know, as the name suggests, just there were certain ordinances that the City was required to either rescind or amend as part of the Consent Decree, and most of that work, if not all of it, has been completed.

Database review. And I think everyone has spoken about the challenges that go into review of the ITI database. So some of that work, that audit work, has not been completed. There were some issues regarding making the ITI database available to the Monitoring Team. So we have to sort of iron out those issues.

Website review. Mr. Carey spoke about items being

posted. Mr. Volek spoke about, you know, some of the user-friendliness of the website. So I won't belabor that.

But the most significant parts of the audit, the most intensive were certainly case file review, which was actual identifying cases, particularly, under the amnesty provision of paragraph 326(d) of the Consent Decree that says if a defendant has paid certain amounts in fines and fees related to failure to appear those monies are to be deducted from his balance, his or her balance going forward, and the case either dismissed or the monies owed reduced.

And then some other cases were just dismissed because they were old, and, you know, we certainly had some discussion about old cases. You know, I'll follow up with that a little bit, but those were the kinds of cases that -- the case files that I reviewed.

So in advance of the audit, the Court Clerk has been extremely helpful in now she has identified a unique code for cases where FTA fines were paid, where failure-to-appear fines were paid.

THE COURT: Right.

MS. TIDWELL: So that the Monitoring Team can actually look at those and see that the cases have been dismissed or the fines reduced. And so she provided the list to us prior to my coming on-site to Ferguson, and under the auditing methodology, the Monitoring Team would review 10

percent of those cases, one out of every 10, randomly selected. So I provided her with a list of the case files to pull for me to look through, and I did that while we were in Ferguson.

There were substantial amounts of money that were dismissed or reduced during this past six-month period, and the cases that I reviewed indicate that, you know, people -- cases have been dismissed altogether or fines have had significant reductions, but the issue remains that a lot -- all -- some, if not all, of those cases are pre-January 2014 and need to be assessed under the good-cause criteria that has been identified by the parties and that Mr. Goodman worked with the Monitoring Team to put into place.

The other part of the on-site review included observation of municipal court proceedings, and I would just like to echo what Mr. Volek mentioned that Judge Brown is just a breath of fresh air. Now, it could be -- I didn't monitor or observe any court hearings prior to his appointment to the bench here, so I may be grading on a curve, but I will say that his -- the empathy that he shows to individual litigants -- you know, he addresses everyone individually. They go up to the bench, so it's impossible to hear from the gallery exactly what's going on, but you can read on the faces of the people who appear before him that they feel respected, they feel heard, and they feel like he is really working

diligently to help them resolve their individual cases. So that was part of our observation.

Some of it went into the independence of the City Prosecutor. As Mr. Carey said, there are policies in place that require certain things from the City Prosecutor as to maintaining the Court's independence from him and his independence from the Court. Those provisions have been implemented. They're not all necessarily put into policy.

You know, where Mr. Carey spoke about the policy development, there are several areas where the Consent Decree says this policy is supposed to be developed and implemented in consultation with the Monitoring Team, and so the City has, to its credit, drafted some of these policies, some of which -- one of which was not due to be audited until February 2018, but Mr. Carey was just, you know, so eager to get it done that he got it done early, but now the Monitoring Team needs to work with the City to sort of fine-tune those individual policies.

I think paragraph 353 is one. 341, which deals with the preset fine schedule -- I know that the City has adopted the County's fine schedule, but the Consent Decree specifically says that the fine schedule is to be adopted in consultation with the Monitor and with DOJ and that it's not only to be consistent with county-wide fines but also to reflect a consideration of the relative income level of

Ferguson residents. And, you know, there was a point made by the court personnel that people who are stopped coming in and through Ferguson aren't necessarily Ferguson residents, and so maybe the functionality of setting fine schedules to meet the income levels of Ferguson residents might not be practical, but as the Monitor, we're -- you know, the language of the Consent Decree says that this is what the fine schedule should include. So I would invite the parties, you know, for things like that just to talk those things through because certainly --

THE COURT: Right.

MS. TIDWELL: -- there are arguments to be made on both sides.

Paragraphs 333 and 334 which deal with the charging documents and citations -- and I should say, Your Honor, that prior to the audit, before my coming to Ferguson for the audit, the City could not have been more collaborative, more responsive to my questions in getting me documents in a timely manner. I know that Christine, the Court Clerk, did yeoman's work in getting case files pulled for me before I was there. Everything was ready for me when I got there. So kudos to them on that point, but I'm not here to be nice, so I have to say, you know, reflect what was there.

So some provisions, particularly, where the impact of the operating rule that Mr. Carey spoke of -- it is a

statewide rule that the court in Ferguson has adopted. We, the parties, the Monitoring Team and the parties, will need to discuss how that is -- how that applies to Ferguson specifically and to the provisions of the Consent Decree that the City identified the operating rule as covering because I think there's going to be some room. They need to -- there's going to be some gaps between what the state operating rule has and what the Consent Decree requires, but we can certainly work with them through that, and I think there's no doubt that we can get to where we need to be on those.

So I think that's -- you know, finally, I would say with regards to the good-cause criteria and the amnesty program, to me, that is the most pressing area within the court reform provision process. There are thousands of people who may or may -- may or may not still live in the area that have arrest warrants right now in the -- out of Ferguson, and it's an impediment to their job search, their living. You know, some of them could be living in constant fear that they could be picked up at any time.

When we were there at the court, observing the night court session, there were a substantial number of cases that were pre-January 1st, 2014. So people who had been arrested on warrants who were there in court to appear -- some of them pled guilty and agreed to do community service for their balance owed, but by right, these cases should have at least

been reviewed prior to the litigant coming to court, certainly, before they were arrested.

So I think that viewing these cases one by one as people come through the door is just not going to work. It shouldn't take someone being arrested on a case from 1998 or 2004 for someone to look at their case to see if there's good cause to keep it open. It certainly shouldn't take someone appearing in the *New York Times* for the City to look at their case. So we really -- you know, I applaud Mr. Carey for trying to figure out how we're going to get this done, but we really need to get this done. I think at last count we were in, you know, the tens of thousands of cases that had open warrants. So I would hope and, certainly, the Monitoring Team is committed to working with the parties and the City to get that done.

And I'll conclude there unless Your Honor has some questions.

THE COURT: No. It's very helpful, and I do appreciate all the work you've done, especially on the municipal court audit work because that's one of the biggest areas where we need to -- where the Consent Decree requires a lot of changes, and so that's very important. So thank you.

MS. TIDWELL: Thank you, Your Honor.

THE COURT: Is there anything further from the Department of Justice, Mr. Volek?

MR. VOLEK: Nothing from us, Your Honor.

THE COURT: Mr. Carey, anything further from the City?

MR. CAREY: No, ma'am.

THE COURT: All right. Well, I will simply comment that I think this has been very informative. You've gone through a lot, and I think that you are making good progress. I know there's a frustration level sometimes because it's not all happening as quickly as everybody would like it to happen, but it's a lot of work, and the Department of Justice has said that they believe the City's working in good faith to meet all of these things. We appreciate the things that the City has done, and I think that -- you know, I think we -- we just need to keep doing this work. I mean you all. I say "we." That's a fairly -- you know, that's not so easy, is it, for me to say? Or it is easy for me to say, but, you know, you all need to keep doing the work you are doing, and I think progress is definitely being made. There are obvious steps that need to be taken, but I think that it is -- it is definitely moving in the right direction, and I do appreciate that.

I will consult with you all about setting the next quarterly hearing. It will be sometime in December. I will try, to the extent possible, to set it in conjunction with when you might be here for the municipal court proceedings or for other, you know, things where people will be here anyway,

and so I think that is a good way to do it, and I'll let you all know about that. And when I do set an order regarding the hearing, we'll put that on the website as well as sending it out publicly so it is available to the public. And then, of course, I appreciate the City putting it on their website as well so that people know when the hearing will be.

All right. With that said, I appreciate the progress. I want to thank the members of the City policymakers and employees who are here. I want to thank the Department of Justice for sticking to this. I do -- you know, I read something or I heard someone on the news in the last week or so saying the Department of Justice has indicated they're not going to push this as hard as they were, and that's just not true, and I wanted to make sure that everyone knew that Mr. Volek has assured me repeatedly that the Department of Justice is absolutely committed to this process just the same as they were when the Consent Decree was first entered, and I know the City is, and I believe the Monitoring Team is. So we have full commitment from everyone, and I think whoever said that on the news was just somebody talking, but that is something I think that everyone needs to understand that this is -- we are all fully committed to this process moving forward as it should.

Okay. Thank you, all, very much. Court's in recess.

(Proceedings concluded at 2:07 p.m.)

CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 47 inclusive.

Dated at St. Louis, Missouri, this 29th day of 2017,
2017.