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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 4:16-cv-00180-CDP  
 )  
 CITY OF FERGUSON, MISSOURI, )  
 ) July 8, 2021  
 Defendant. )

**TRANSCRIPT OF STATUS CONFERENCE  
VIA VIDEOCONFERENCE**

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

**APPEARANCES**

**INDEPENDENT MONITOR:** Natasha Tidwell, Esq.  
Saul, Ewing, Arnstein & Lehr, LLP

**FOR PLAINTIFF:** Amy Senier, Esq.  
U.S. Department of Justice

**FOR DEFENDANT:** Aarnarian (Apollo) D. Carey, Esq.  
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***(Proceedings convened via Zoom videoconference at  
11:00 a.m.)***

**THE COURT:** All right. Good morning. We are here in the case of the *United States of America vs. the City of Ferguson*. This is Case No. 4:16-CV-180.

We are here for the quarterly public hearing regarding the Consent Decree that was entered into in this case, and so we do have members of the public who are able to watch, listen to this on the telephone line or the Zoom line, and then also it is being broadcast on the Court's YouTube channel.

We are doing this virtually. The lawyers are with me on the video conference. We're doing this because of the pandemic and the difficulty we are still having and the restrictions we still have on in-person hearings. I am happy, however, to tell everybody that our next public hearing will actually be a real in-person hearing. And although I'll talk about this, I'll mention this again at the end of this hearing, but it will be on October 7th at 11 a.m. here in the courthouse, and I believe it will be on the third floor courtroom, but everyone needs to check that to be sure because that could change. It will not be in the same courtroom it was in before, so -- and I do, as -- I know the clerk has already done this but I do need to remind

1 everyone that, although we are providing this audio stream  
2 for members of the public, that it's the policy of the  
3 United States Judicial Conference, which is the governing  
4 body of the federal courts, that broadcasting or recording  
5 of the hearing is forbidden. And so although you are  
6 allowed to listen to it, you may not record or broadcast it.

7 So now I would ask the counsel to identify themselves  
8 for the record for who is here. Let me start with the  
9 plaintiff, the Department of Justice. Would you please  
10 identify yourself.

11 **MS. AMY SENIER:** Good morning, Your Honor. This is  
12 Amy Senier from the Department of Justice.

13 **THE COURT:** All right. And for the City of Ferguson,  
14 would you please identify -- Counsel, please identify  
15 yourself for the record.

16 **MR. APOLLO CAREY:** Good morning, Your Honor. This is  
17 Apollo Carey with the City of Ferguson, Missouri.

18 **THE COURT:** All right. And then for the Monitor,  
19 would you please identify yourself for the record.

20 **MS. NATASHIA TIDWELL:** Good morning, Your Honor.  
21 Natasha Tidwell on behalf of the Monitoring Team.

22 **THE COURT:** All right. And I would remind all of the  
23 lawyers to keep your voices up so that the public will be  
24 able to hear what we're saying.

25 And I'll go ahead -- I know -- one thing I wanted to

1 mention to the members of the public: There were some  
2 public comments received by the Monitor in advance of this  
3 hearing. I did review those. They raised some issues that  
4 I have been discussing with the lawyers, some of them which  
5 have been raised in prior hearings, and I wanted people to  
6 know that we are -- you know, we're paying attention to  
7 those issues and trying to discuss them and make sure that  
8 there are resolutions. And I don't know, the parties may  
9 address them to some extent in their updates. In any event,  
10 that's what I wanted to say, and welcome you all here. And  
11 this is the opportunity for the public to hear from the  
12 parties as to the progress we're making under the Consent  
13 Decree, and so we'll proceed.

14 And, as usual, I will call on Mr. Carey, on behalf of  
15 the City, to proceed and, you know, as usual, to introduce  
16 your -- the other people who are with you who are, you know,  
17 from the City or -- and, you know, I know some of them will  
18 probably wish to speak or maybe you're going to speak, so  
19 whatever -- however you wish to do this.

20 So, go ahead, Mr. Carey.

21 **MR. APOLLO CAREY:** Thank you, Your Honor. I  
22 appreciate it.

23 As is -- as you mentioned, as is customary, I will  
24 introduce the folks that you see here in the room on the  
25 camera. We have our acting interim city manager,

1 John Hampton, is present. We have our assistant chief,  
2 Frank McCall, who's present. We have our police chief,  
3 Jason Armstrong, who is also present in the room. Our  
4 consent decree coordinator, Nicolle Barton, who is actually  
5 the -- who will be the star of our show, of course, she will  
6 give the most substantive update. She's obviously here.  
7 And then a new addition to our team and the replacement for  
8 Courtney Herron is Ms. Tonya Weber, who is our new courts  
9 administrator, and she's in our room as well, kind of  
10 sitting in on her first hearing, so we'd like to definitely  
11 welcome her to the team.

12 You did mention that we, the parties, were able to  
13 receive the public comments that were, you know, sent in by  
14 the public prior to the hearing, and we have for the most  
15 part endeavored to address most of those topics in our  
16 presentation. So just, you know, similar to what you said  
17 before I started talking, we will try our best to address  
18 those topics in our presentation. You know, without, you  
19 know, too much -- I don't want to steal Nicolle's thunder,  
20 but as you know, this is the fifth year, we're entering our  
21 fifth year of -- we're actually in our fifth year of  
22 compliance under the Consent Decree and progress is still  
23 being made.

24 You know, through the various different meetings we've  
25 had, that we've recently experienced some personnel

1 challenges, and obviously Ms. Weber is here to help fill,  
2 you know, some of those holes.

3 So, without further ado, we will -- I'll let  
4 Ms. Barton sort of take over and give the substantive  
5 updates, and if we need any help we have a room full of  
6 people here who can back her up, so --

7 **THE COURT:** All right. Go ahead, Ms. Barton.

8 **MS. NICOLLE BARTON:** Good morning, Your Honor, and  
9 thank you for allowing me to give an update on the Consent  
10 Decree progress.

11 First, I would like to begin with policy revisions.  
12 After giving the Consent Decree updates to council last  
13 month and informing the council and community members that  
14 there had been some language changes made to our  
15 use-of-force policy, it was brought to my attention that  
16 some citizens were concerned that the community was not  
17 given the opportunity to provide input on these revisions  
18 and concerns that there was not proper notice given to the  
19 public regarding the changes that were made.

20 As a reminder, these policies were initially written  
21 in consultation with FPD and the DOJ and they were approved  
22 by the Monitor. They were placed on the website for  
23 committee input, and community input was incorporated into  
24 these policies. These policies were finalized back in 2019.

25 Some changes were made to these policies throughout

1 the year, as was needed to provide clarification that came  
2 up in training; also, working with Benchmark Software  
3 Systems to customize our use-of-force forms, our vehicle  
4 pursuit forms, and our supervisor review changes were  
5 necessary. These language changes were made in compliance  
6 with the Consent Decree. I worked directly with the  
7 Department of Justice to incorporate the needed language  
8 changes, and these changes were approved by the Monitor Team  
9 as well. The community was notified of the changes during  
10 the last status hearing and at the council meeting.  
11 However, because concerns were raised by members of the  
12 community, I immediately took those concerns back to FPD and  
13 to the Department of Justice to discuss ways that we can  
14 improve on the need for more transparency.

15 In response, members of the DOJ team and myself and  
16 Assistant Chief McCall attended the NPSC general meeting  
17 last month to hear concerns from all community members. It  
18 is FPD's desire to be more transparent, and in response to  
19 calls from the public to be more transparent, the following  
20 changes have been made since we have met with the NPSC:

21 First, I have posted the revisions, the revised  
22 policies, to the FPD's post-Consent Decree policy page and I  
23 have highlighted the changes that were made. Original  
24 effective dates, along with the revision dates, are located  
25 on the policies. The original versions of the policies are

1 still located on the interactive dashboard so community  
2 members can refer back to those policies, if necessary.

3 Second, we have developed an online form for community  
4 input that has also been placed on the FPD's web page under  
5 the Policy Center information page so that community members  
6 can easily submit comments and feedback on an ongoing basis.

7 In addition, per paragraph 45 of the Consent Decree,  
8 it is required that we have an annual review of our policies  
9 to insure that policies remain consistent with the Consent  
10 Decree, best practices, and the relevant area and current  
11 law. FPD will be reviewing all of our use of force GOs,  
12 even those that have not been revised, and we will invite  
13 members of the public to comment on all of these policies  
14 during that process. Much like when we place a draft policy  
15 online for community input, these policies will be open for  
16 public comment for a period of 30 days. FPD is  
17 collaborating on a notification process and a date to begin  
18 this annual review. We will announce the kick-off date to  
19 the community well in advance so community members can  
20 actively participate in this process.

21 Next I would like to give an update on training.  
22 During the last status hearing it was announced that FPD  
23 obtained a "Train the Trainer" model of implicit bias  
24 training from several county police departments. All our  
25 command staff and four of our certified trainers from FPD

1 attended this training. During the last day of the training  
2 we invited members of the community to attend a portion of  
3 this training to gain their feedback. It is our goal during  
4 the next quarter to continue working with members of the  
5 community on gaining additional feedback, whether we are  
6 able to tweak this implicit bias training to fit the needs  
7 of our community. After finalizing this training with our  
8 community this will become Ferguson's very own in-service  
9 training and our entire FPD staff will be trained according  
10 to compliance efforts.

11 In addition, FPD is required by the State of Missouri  
12 Peace Officer Standards and Training, otherwise known as  
13 POST, to complete continuing education credits each year.  
14 FPD is in compliance with these training requirements and  
15 have attended the mandatory training requirements each year.

16 FPD have also just completed roll call trainings  
17 during this quarter on the following policies: In-car and  
18 body-worn cameras, search warrants, warrantless search and  
19 seizures, citations and arrests, and we have begun community  
20 policing training this week.

21 In addition, we have been training with Benchmark  
22 Software on our new use-of-force forms, our vehicle pursuit  
23 forms, and our supervisor review forms. Once all staff have  
24 completed this training we will be online with those forms.

25 I have been working closely with our Training

1 Committee and Assistant Chief McCall over the past almost  
2 two years on the current training plan. After gaining a few  
3 volunteers, including professors from our local university,  
4 we have decided to work on reenvisioning what this plan will  
5 look like, including the framework for a master plan, which  
6 will be an overview of what all training will look like in  
7 the future, and it will include an annual training  
8 assessment in addition to annual training plans for 2022 and  
9 2023.

10 We are excited to be working collectively on this new  
11 plan with members of our community. We also appreciate the  
12 addition of subject matter experts and training to help  
13 provide additional technical assistance that was greatly  
14 needed, as Ferguson does not have its own training academy.

15 Next, I would like to talk about community engagement.  
16 During this quarter we finished our first series of small  
17 dialogues between community members and police officers. We  
18 will begin our next series of small group dialogues in the  
19 upcoming months. I would like to encourage any citizens to  
20 sign up for these dialogues on our website or they can  
21 contact me directly.

22 Also, during the past year we have been working with  
23 CRITAC, the Collaborative Reform Initiative Technical  
24 Assistance Center, to enhance our community engagement  
25 efforts. In June, two subject matter experts in this area

1 visited Ferguson in an effort to meet with FPD staff and  
2 members of our community to discuss our community engagement  
3 efforts and strategies. While they were here we met with  
4 all FPD command staff, line officers, faith-based leaders,  
5 business associations, members of our council, the Ferguson  
6 Florissant school superintendent, members of the Civilian  
7 Review Board, PROUD, NPSC, students from our Ferguson Youth  
8 Initiative, and directors from organizations such as Save  
9 our Sons, Fathers Through Court Center, and other resources  
10 to provide input on our community needs. We are excited to  
11 hear back from CRITAC on next steps to further our community  
12 engagement efforts.

13 Next, regarding court, we have finalized Ferguson  
14 Municipal Court Policies 3.0, "Fines and Fees," and we are  
15 working to finalize Ferguson Municipal Court Policy 1.0,  
16 "Court Proceedings and Trials," in the upcoming months. We  
17 are happy to have hired a new court clerk who is with us  
18 today. She is being trained on practices and Show Me  
19 Courts.

20 FPD is also in the middle of a use-of-force audit, and  
21 we have turned over all requested documentation for all  
22 phases of the audit thus far, and we look forward to the  
23 outcome of audit.

24 Finally, policies. During this quarter we have placed  
25 our First Amendment policies on our website for public

1 comment. The public comment period has just recently closed  
2 and we are working on incorporating public comments for this  
3 final draft. In addition, we have been working diligently  
4 to come up with a good draft for our correctable citations  
5 and our persons of interest policies. We hope to have these  
6 drafts completed within the next few months for community  
7 review and input on those policies as well.

8 We continue working on meeting the goals for this year  
9 and the upcoming year and we look forward to continuing  
10 efforts working with the communities.

11 That is all I have for today. Thank you, Judge.

12 **THE COURT:** Thank you, Ms. Barton.

13 And, so, Mr. Carey, you can proceed.

14 **MR. APOLLO CAREY:** Thank you, Your Honor.

15 I wanted to provide you, as well as the public, with  
16 several updates. I know the last time we met we talked a  
17 little bit about the personnel situation and our city  
18 manager position. We obviously have -- Chief Hampton is  
19 serving as our interim city manager, but we are extremely  
20 close and very, very excited about the potential of hiring  
21 our next permanent city manager.

22 Last night the council voted to conclude some contract  
23 negotiations with a gentleman from Clamot Falls, Oregon,  
24 who is currently their assistant city manager, or assistant  
25 to the city manager, and his name is Mr. Eric Osterberg.

1 And Eric Osterberg is -- you know, after, I think, a  
2 nationwide search that the council underwent, Mr. Osterberg  
3 sort of stood out as the best candidate for the City of  
4 Ferguson at this point in time, so we are in the process of  
5 finalizing those contractual negotiations and we expect to  
6 be entering into an Employment Agreement with Mr. Osterberg  
7 within the next month. So that is very exciting and will  
8 bring some much needed stability, I think, to the City's  
9 city manager position.

10 The other sort of elephant in the room at this point  
11 that I have been receiving all kinds of communications about  
12 this morning is -- I'm sure Your Honor knows, and maybe the  
13 public -- a lot of the members of the public know already  
14 that our current chief of police, Jason Armstrong, has been  
15 part of a selection process for -- to become the new chief  
16 in Apex, North Carolina. And, you know, Chief Armstrong was  
17 selected and Chief Armstrong has accepted the position to be  
18 the next chief of Apex, North Carolina. So I have some  
19 mixed feelings about that, obviously, because I've worked  
20 very closely with Chief Armstrong here over the last two  
21 years and we've made some great progress together, but  
22 certainly I think we understand, you know, Chief Armstrong's  
23 reasons, and certainly we want to thank Chief Armstrong for  
24 his dedication and service to the City of Ferguson over the  
25 last two years.

1           The other part of that news is that our assistant  
2 chief, Frank McCall, will be promoted to our -- to become  
3 the chief, the next chief of police for the City of  
4 Ferguson, Missouri, and that information was just, you know,  
5 decided by the council last night in an emergency meeting.  
6 And so there will be press releases going out today about  
7 this information that I'm sharing with you now, but I wanted  
8 to, you know, just make sure you, Your Honor, heard directly  
9 from me, as well as the members of the public and the DOJ  
10 and Monitoring Team, who are part of this call. So we  
11 have -- again, you know, we've got change coming but we  
12 think we have some stability, and certainly with  
13 Chief McCall taking over for Chief Armstrong when he leaves  
14 we feel, Consent Decree-wise, we have, you know, sort of  
15 stabled the ship. Obviously, Assistant Chief McCall has  
16 been with us since the beginning of the Consent Decree  
17 implementation. He's been instrumental in helping us get  
18 this far and we are real excited about the potential of him  
19 helping us across the finish line with the Consent Decree.

20           **THE COURT:** Let me just stop you, Mr. Carey, and add  
21 my voice to that and say, first of all, Chief Armstrong,  
22 thank you for your service here the last two years. I know  
23 you worked hard to help implement the Consent Decree and  
24 deal with the issues we had coming up, and none of them,  
25 including the budgetary issues, have been easy. And I

1 really do want to thank you for the way you have helped move  
2 us forward in the last two years.

3 And then, now, I guess Chief McCall, I want to  
4 congratulate you on your being moved into that position. I  
5 know that you will do a great job, and you have been so  
6 wonderful in all your work for the Consent Decree as well as  
7 the other things that the chief has to do in the police  
8 department, and so I know you'll be a great asset. So,  
9 congratulations to you. And I want to commend the City for  
10 making the decision so quickly so that we'll be ready to  
11 keep moving forward and have the stability that, as you  
12 mentioned, is really important for the Consent Decree.

13 So, thank you, Mr. Carey, for that report.

14 **MR. APOLLO CAREY:** You're welcome, Judge. I think --  
15 and I don't think we have anything else from our end.

16 **THE COURT:** All right. Thank you.

17 I'll hear from the Department of Justice. Ms. Senier?

18 **MS. AMY SENIER:** Good morning, Your Honor.

19 DOJ appreciates the opportunity to address the Court  
20 and the public on the status of decree implementation. And,  
21 as always, we're very grateful to those members of the  
22 public who took the time to submit thoughtful comments on  
23 the implementation process. I'm going to try to address as  
24 many of those comments as I can during my remarks.

25 I'd like to begin with the last point that Mr. Carey

1 addressed, and say that we're encouraged to hear that the  
2 City is finalizing hiring of a permanent city manager. And,  
3 of course, we want to thank Chief Hampton for his service in  
4 the interim. I also want to thank Chief Armstrong for his  
5 service to the implementation process over the past two  
6 years. Progress was made under his watch and we wish him  
7 well in his next endeavor. And we are grateful to  
8 Chief McCall for assuming the reins of FPD. Having worked  
9 with him in the past, we look forward to working with him  
10 once again.

11 I next want to acknowledge the valid concerns  
12 expressed by some members of the public about the process  
13 for posting policies that have been revised under the  
14 Consent Decree. DOJ agrees with those who submitted  
15 comments that transparency during the policy revision  
16 process is important, and we appreciate FPD responding to  
17 this concern by taking the steps that Ms. Barton outlined  
18 earlier in this morning's hearing. While these steps are  
19 over and above what the decree requires and, indeed, over  
20 and above what many other departments under Consent Decrees  
21 do, we nonetheless agree that these additional steps are  
22 consistent with the spirit of the decree. And, again, we  
23 appreciate FPD taking these measures, particularly when it  
24 is so under-staffed.

25 We sincerely hope that members of the Ferguson

1 community continue to avail themselves of the many  
2 opportunities available to comment on FPD's revised  
3 policies. Their input, which we know takes considerable  
4 time and effort, has been taken seriously and, without  
5 question, has made these policies better.

6 I'd like to next address training, Your Honor. We  
7 appreciate and agree with the concern raised in the public  
8 comments that FPD is far behind the training requirements of  
9 the decree. As we've reported at prior status hearings,  
10 this has been a long-standing concern of DOJ's because  
11 training is so critical to operationalizing the reforms that  
12 FPD and the community have worked so hard to bring about on  
13 paper. To be sure, the public is right to raise concerns  
14 about the time it is taking FPD to comply with the  
15 in-service training provisions of the decree, particularly  
16 training in the areas for which FPD has implemented revised  
17 policies. And, here, I'm speaking about topics such as use  
18 of force, stops, searches, and arrests. DOJ shares these  
19 concerns and has long urged the City to provide FPD with the  
20 resources it needs to meet the decree's training  
21 requirements. We view one reason for this delay to be the  
22 lack of a training coordinator. The City's Consent  
23 Decree -- the City's Consent Decree coordinator is doing an  
24 admirable job of trying to make progress in this area from  
25 bringing the bias-free training from Suffolk, reaching out

1 to other police departments that have been or are under  
2 Consent Decrees for lessons learned, helping the Training  
3 Committee write a training plan, but it is just not  
4 practicable for her to create and administer a training  
5 program for the police department. We're encouraged to hear  
6 during the September status hearing that the City was  
7 discussing hiring a training coordinator and we hope that  
8 happens soon for the reasons articulated by the public in  
9 advance of today's hearing and DOJ in the past.

10 And, finally, we did want to assure members of the  
11 public that DOJ has provided FPD with technical assistance  
12 in the area of training, notably on the requirement that  
13 they develop a training plan. So technical assistance is  
14 certainly something DOJ has provided to FPD in the past and  
15 we will continue to do so where necessary and appropriate.

16 Your Honor, we wanted to take today's hearing as an  
17 opportunity to report out on our review of FPD's response to  
18 protest activity in May of last year. You may remember that  
19 last summer there were protests in Ferguson, and DOJ had  
20 sought documentation and camera footage of those protests in  
21 order to assist with the development of the draft First  
22 Amendment policies.

23 Last month the parties and the Monitoring Team met to  
24 discuss DOJ's review of that documentation and footage, in  
25 particular for the events that took place late on the night

1 of May 30th and into the early hours of May 31st. As in all  
2 implementation efforts, our focus is insuring long-term  
3 compliance with the decree, and to that end, we shared with  
4 FPD and the Monitoring Team some questions and concerns in  
5 several areas that we believe can be addressed in the policy  
6 that will govern FPD's response to protests.

7 The parties have already developed policy responses to  
8 some of these concerns and are still working on others, but,  
9 Your Honor, given the public interest in both policy  
10 development and this review, we thought it would be helpful  
11 to report out on some of these measures here today.

12 The first concerns use-of-force reports. There were  
13 delays in the completion of use-of-force reports following  
14 the protests, which can impede the investigation of such  
15 force. The decree requires use-of-force reports to be  
16 completed by the end of shifts, but this event underscored  
17 for the parties that there can be certain circumstances,  
18 such as multi-day demonstrations, that can make it difficult  
19 to meet the end-of-shift deadline. Specifically, there can  
20 be times when FPD officers work their regular 12-hour shift  
21 responding to calls for service and then are called to  
22 respond to a protest or unrest that can last several more  
23 hours into the night. Those same officers may then have to  
24 begin another 12-hour shift the following morning responding  
25 to calls for service and, again, have to respond to another

1 evening of protests and unrest, and so on and so forth.

2 In addition to the end-of-shift reporting requirement  
3 in the decree, the decree also requires FPD to implement  
4 measures that give officers adequate time off to rest and  
5 recover during periods of public demonstrations or civil  
6 unrest, so there's a need to balance the requirement for  
7 timely use-of-force reports with that provision of the  
8 decree as well.

9 The draft protest policy had said that use-of-force  
10 reports would need to be completed as soon as is safe and  
11 feasible to do so, but in light of the events in May 2020,  
12 we thought that some outside boundary was necessary in the  
13 policy, so the parties developed language for the protest  
14 policies to the effect of use-of-force reports will be  
15 required to be completed as safe and feasible to do so, but  
16 in any event, no later than the end of the shift following  
17 the day of the protest, or if the protest goes on for many  
18 days, the end of the shift following the last day of the  
19 protest or demonstrations. And, again, this delay would  
20 require supervisory approval. But this was an intention to  
21 balance those two provisions of the decree, insuring that  
22 reports are completed in a timely fashion but that FPD is  
23 able to comply with the rest and recovery provision of the  
24 decree.

25 The second area of concern was body-worn camera usage.

1 Camera use was inconsistent during the events of May 30th  
2 and into the early hours of May 31st. Ideally, officers  
3 would be able to activate and leave their cameras on to  
4 insure complete coverage, but there are limits to battery  
5 life, particularly when some officers need to cover hours of  
6 protests following a regular 12-hour shift. In order to  
7 preserve batteries as long as possible and insure that  
8 they're available to capture enforcement activity during a  
9 protest, the parties agreed, and the Monitor approved,  
10 language for the protest policies that will require  
11 body-worn camera activation only when certain conditions  
12 arise, and these are conditions that we all thought could  
13 precede law enforcement response. For example, officers  
14 will have to activate their body-worn cameras if individuals  
15 engage or threaten to engage in activity that will create an  
16 immediate danger of or result in damage or injury to person  
17 or property. Officers will have to activate their cameras  
18 if FPD officers or officers from another agency engage in  
19 enforcement actions, such as making arrests or taking steps  
20 to control or disperse a crowd or if officers attempt to use  
21 or indicate that they'll use force. Cameras will have to be  
22 activated if there's a determination or announcement that an  
23 assembly has become unlawful if a supervisor orders it.  
24 And, as always, as required by the existing body-worn camera  
25 policy, officers can activate their policies if ever they

1 believe that doing so would be appropriate and valuable.

2 And the final area that we discussed last month was  
3 the use of force during protests and unlawful assemblies.  
4 The video we reviewed thus far indicates that on the night  
5 of May 30th, FPD used less lethal ammunition -- these are  
6 known as beanbag rounds -- in response to some individuals  
7 who were throwing large rocks in the direction of FPD  
8 officers.

9 As members of the public rightly pointed out during  
10 the 30-day comment period on the protest policy, this policy  
11 needs guidance regarding the use of less lethal weapons in  
12 crowd situations. The parties continue to work on that  
13 language, including the warnings that need to be issued  
14 before such weapons are used. We don't have final language  
15 to share today but we are working on it.

16 And, again, just to situate the Court and the public  
17 as to where these policies are, they remain under  
18 development, but once they are finalized we anticipate that  
19 FPD will post them online, and, as always, as repeated here  
20 today, members of the public will be free to provide input  
21 at any time and again when they come up for annual review  
22 under paragraph 45 of the decree.

23 I just want to add that we did recently receive the  
24 incident report and body-worn camera footage from protests  
25 that took place on August 9th of last year. We will review

1 those materials, and if there are additional policy  
2 responses that need to be developed in light of that review,  
3 we will update the Court and the public just as we have done  
4 today.

5 Finally, Your Honor, as everyone is certainly aware,  
6 we have just passed the five-year mark of the decree, and  
7 the public undoubtedly has questions about what this means,  
8 so we wanted to just provide a little refresher on that  
9 point.

10 Paragraph 462 of the decree states that the decree  
11 will end when the City has been in full and effective  
12 compliance for two consecutive years. The decree also  
13 explains that "full and effective compliance" means that the  
14 City will achieve both sustained compliance with all  
15 material requirements of the decree and sustained and  
16 continuing improvement in constitutional policing and public  
17 trust as demonstrated under the decree's outcome measures.

18 And just to back up for people what "compliance"  
19 means, it's a -- there are three elements to compliance:  
20 The first is that the requirement in the decree is  
21 implemented into policy; the second is that all relevant  
22 personnel are trained on that requirement; and the third and  
23 most important is that the City and FPD are able to  
24 demonstrate that they are carrying out that requirement in  
25 actual practice. So those are the elements of what

1 constitutes compliance, and as is clear from prior status  
2 hearings and the Monitors sending annual reports to date,  
3 the City is not yet in full and effective compliance with  
4 the decree, so the decree will continue until the City can  
5 demonstrate that compliance and then sustain it for two  
6 consecutive years.

7 Your Honor, that's all I have for today. I'm happy to  
8 answer questions.

9 **THE COURT:** All right. Thank you, Ms. Senier. And I  
10 don't have any questions at this time, but I would ask the  
11 Monitor then, Ms. Tidwell, to state anything you wish, and  
12 then if there's any -- you know, if any of the parties wish  
13 to respond to one another once she's done that, we'll be  
14 glad -- you know, we'll do that.

15 Ms. Tidwell?

16 **MS. NATASHIA TIDWELL:** Thank you, Your Honor, and  
17 thank you to members of the public who have shared public  
18 comment, and thank you to everyone who has joined the audio  
19 stream.

20 I want to, on behalf of the Monitoring Team, join the  
21 echos of thanks to outgoing Chief Armstrong for his  
22 leadership these past two years. I particularly appreciated  
23 his candor throughout this process and his steadfast  
24 determination to not only get staffing levels at FPD to a  
25 point where implementation was possible but also his

1 leadership of the department in setting priorities and  
2 working towards the goals of the Consent Decree while  
3 maintaining public safety for the community.

4 I would also like to congratulate incoming  
5 Chief McCall. We look forward to continuing our strong  
6 working relationship with you and we are thankful that the  
7 City council has seen fit to make this move rather quickly  
8 so that, hopefully, implementation isn't stalled and  
9 progress and momentum can continue.

10 We'd also like to welcome the new court administrator.  
11 We look forward to working with you. I've got a lot of  
12 things to do on the court side to keep momentum there and to  
13 finalize various aspects of the municipal court  
14 Consent Decree process, so we look forward to -- we'll give  
15 you a few minutes, a few days to get settled in, but then,  
16 you know, be advised, we're coming, and we look forward to  
17 working with you.

18 Your Honor, as the -- as Ms. Senier mentioned, we are  
19 heading into year six of the Consent Decree. There are some  
20 projects that were on tap for completion in year five that  
21 will continue in year six, and I think Ms. Barton reflected  
22 on them a bit, one being the training plan and the  
23 implementation of the training components of the Consent  
24 Decree. We're heartened to learn that DOJ has added some  
25 technical assistance to the efforts in that regard. We

1 continue to call for or to recommend the addition of a  
2 training coordinator. As Ms. Senier noted, asking  
3 Ms. Barton to be the person who sees through implementation  
4 of the training -- not only leads the drafting of the plan  
5 but also coordinates the implementation of the plan and sort  
6 of is the watcher of that -- is a lot to ask of Ms. Barton,  
7 and so we think that a training coordinator -- even with the  
8 addition of technical assistance from the department, a  
9 training coordinator would be beneficial for those purposes.

10 One other area of the Consent Decree that was on track  
11 for completion or at least additional progress in year five  
12 was around community engagement, specifically the  
13 development of the community policing and prevention plan.  
14 As Ms. Barton mentioned, the City has received technical  
15 assistance from CRITAC in hopes of furthering the  
16 development of its community policing and prevention plans.  
17 I'm also heartened by the City's plan to incorporate  
18 information from the small group dialogues into the  
19 community engagement plan, and so we understand that the  
20 development of the plan will take a little bit more time  
21 while we incorporate these important voices and these  
22 important ideas into the plan itself.

23 The Monitoring Team's subject matter expert,  
24 Dr. Leigh Anderson, was able to participate or at least to  
25 observe some of the community dialogue sessions. She noted

1 that, while the conversationist did not address, at least  
2 initially, issues of police accountability, transparency,  
3 and sort of overall engagement, there are many shared  
4 concerns and comments regarding quality of life issues  
5 within the City of Ferguson, and those issues serve as sort  
6 of a coalescing mechanism for the entire group. She -- in  
7 her report back to me and the other team members, she noted  
8 that the conversations were productive in that they allowed  
9 a neutral space to exist for exchanges of information  
10 regarding the role of the police and the community and how  
11 they can individually and collectively make efforts to  
12 address the topics that are of great concern to the  
13 community.

14 She noted that the officers showed a level of  
15 commitment to dialogues and to the process of increasing  
16 engagement. And, of course, there's still more work to be  
17 done in that space, but hopefully we're working towards  
18 establishing relationships built on trust. And although  
19 this was just a first step, it is an important and a solid  
20 one, and so we look forward to these dialogues continuing,  
21 Ms. Barton's work continuing in that regard.

22 Again, we would add our -- once again, our  
23 recommendation that the City engage someone to spearhead its  
24 community outreach and engagement efforts, not only to  
25 lessen the load on Ms. Barton but also to coordinate and to

1 bring together the various sort of pieces of community  
2 engagement that the City is working towards, whether it be  
3 relationships with neighborhood associations or the small  
4 group dialogues, but sort of the overall coordination of  
5 those efforts in a way that is operationalized so that the  
6 Monitoring Team and the Department of Justice can measure it  
7 and note whether or not it meets with the requirements of  
8 the Consent Decree in terms of achieving substantial  
9 compliance. All of this is going to need to be  
10 operationalized at some point and coordinated, and having a  
11 person sort of on staff in charge of that would be helpful  
12 to the community from the Monitor's perspective.

13 And, finally, Your Honor, I would just note that the  
14 Monitoring Team did close the most recent community  
15 surveying, the results of which will be published in the  
16 semiannual report, which will be coming later this summer or  
17 early fall. Just some sort of high-level results of that,  
18 one of the things, as Your Honor knows, that we did in hopes  
19 of increasing participation in the survey was the mailing of  
20 postcards announcing the survey to a sample of registered  
21 voters within the City of Ferguson. We tried to over-sample  
22 for those communities that -- where participation was low  
23 last year. The postcards, although it's hard to tell sort  
24 of what emphasis they had in terms of increasing  
25 participation, they certainly didn't have -- for the number

1 of postcards we sent out it did not result in the kinds of  
2 increased participation that we had hoped. I think last  
3 year we had around 230 or so respondents to the survey.  
4 This year it was around 450 or 460, so a higher number but  
5 clearly not where we want to be. Obviously, the pandemic  
6 and the public health concerns impacted and completely  
7 stopped our ability to conduct any sort of -- any real  
8 in-person outreach in terms of survey-taking, and we can --  
9 we hope to remedy that next year.

10 We did see some increases in the areas that we didn't  
11 hear from last year. So we had -- about 39 percent of the  
12 respondents were from Ward 1; about 38 or 39 percent were  
13 from Ward 2; and about 20 percent were from Ward 3, which is  
14 an increase from last year. Sixty percent -- or, I'm  
15 sorry -- about 70 percent of the respondents identified as  
16 white; 22 percent identified as black or African-American,  
17 which is a modest increase from last year, or a modest  
18 change from last year where 75 percent of respondents  
19 identified as white and less than 20 percent identified as  
20 black or African-American.

21 In terms of educational level, 31 percent had some  
22 college; 29 percent graduated with a BA or higher; and about  
23 9 percent graduated from high school, which is an increase  
24 from last year where only two-and-a-half percent of the  
25 respondents had a high school degree.

1           In terms of the responses or sort of some of the  
2 themes that we saw in the written responses to questions,  
3 respondents expressed concerns about understaffing at FPD,  
4 which is something that the parties have spoken to the  
5 Monitoring Team and to the Court about. We're hopeful that,  
6 with the latest budget within the City, that some of these  
7 staffing concerns will be taken care of or will be remedied.

8           The respondents noted a lack of funding and resources  
9 for FPD, a lack of enforcement from officers, and issues  
10 with FPD's inability to do its job, which -- and often  
11 citing about 10 percent of the respondents who cited the  
12 inability of FPD to do its job. The Consent Decree and/or  
13 the Monitor, DOJ was cited as the reason why FPD was sort of  
14 being held back from being able to do its job.

15           The -- for the most part, the -- 61 percent of the  
16 respondents thought that the police do a good job of  
17 treating people fairly regardless of who they are;  
18 57 percent responded that they think the police are doing a  
19 good job of being available when needed; and 52 percent  
20 think that the police do a good job responding promptly to  
21 calls for assistance.

22           So, you know, it was sort of a mixed bag as it were in  
23 terms of people's responses. I think the majority indicate  
24 that the police are doing a good job, but I think there is  
25 sort of a recognition of the limitations on the department

1 both within -- in terms of staffing, things that are within  
2 their control and things that are outside of their control.  
3 And a lot of the responses sort of echoed what we or what  
4 Dr. Anderson was hearing in the community dialogues,  
5 specifically sort of the quality of life issues, whether it  
6 be traffic enforcement or people speeding down streets or  
7 whatever it would be, or tall grass or things of that nature  
8 were also expressed in the survey.

9 I should note that, in addition to the survey results  
10 in the upcoming semiannual report, Dr. Anderson will be  
11 working with Ms. Barton. There was a survey that went out  
12 to the youth with regards to the bias-free policing  
13 policies, and so Ms. Barton has collected the youth's  
14 responses to questions about the bias-free policing policy  
15 in Ferguson, and Dr. Anderson will collect those responses,  
16 analyze the data, and issue a report as to what's contained  
17 in the data that we will publish in our semiannual report,  
18 along with the community survey results.

19 The use-of-force audit is still ongoing. I think some  
20 of the things that Ms. Senier raised in the -- from the  
21 after-action report that DOJ conducted are things that we're  
22 seeing within the use-of-force audit right now. We are  
23 conducting the phase of the audit where we are testing  
24 whether force is unreported, so we are looking at incident  
25 reports where, based on the charge, the offense charged, it

1 would seem as if force was -- might have been a part of the  
2 arrest, but there is no use-of-force report, so we have to  
3 look through the narratives and the body camera footage from  
4 those particular arrests to see if force should have been  
5 reported.

6 The previous part of the audit concerned review of  
7 body camera footage in use-of-force investigations where  
8 force was reported and investigated. And I think, you know,  
9 some of the things that Ms. Senier noted about delays in  
10 reporting, there were some -- the sort of thoroughness or  
11 depth of force investigations was an issue. There were some  
12 things around, you know, appropriate levels of charging, so  
13 those things will report out when -- in the full results of  
14 the use-of-force report later this year. But there were --  
15 seemed to be, at least on the front end, less issues around  
16 sort of whether the force used was objectively reasonable.  
17 It was more sort of how it was reported and how it was  
18 investigated sort of after the fact. But we'll have a  
19 fuller report of that later this year.

20 And, as I mentioned, we're looking forward to working  
21 with the new municipal court administrator to get in this  
22 fall to conduct our municipal court audit and looking at  
23 other areas such as the accountability provisions of the  
24 Consent Decree.

25 And I think that's all we have today, Your Honor,

1 unless you have questions.

2 **THE COURT:** I do not have questions now. I think, you  
3 know, I, obviously, as I've said before, share your concerns  
4 about the need for a community engagement person and a  
5 training coordinator, or both, and hope that those things  
6 can come to pass and those positions can be filled.

7 I guess, Mr. Carey, on behalf of the City, do you wish  
8 to make any further statements or respond to anything said  
9 by either of the other lawyers?

10 **MR. APOLLO CAREY:** Thank you, Your Honor.

11 As you know, just really briefly, in response to the  
12 concerns about the community engagement position as well as  
13 the training coordinator, as you know, we've been taking  
14 steps to identify candidates to fill those positions. We  
15 just, you know, haven't been as successful as we'd like to  
16 do -- to be in terms of filling those positions.

17 Recently -- I know you just -- last time we spoke you  
18 were made aware of us, you know, sort of having to go back  
19 to the drawing board at least as it comes to one of our  
20 positions, but the determination and resolve to get those  
21 positions filled remains here with the City, with the police  
22 department, and obviously with the transition to Assistant  
23 Chief McCall becoming the chief. He is in-the-know and  
24 understands where we need to be moving forward, so we're  
25 very confident and very hopeful that those -- the efforts in

1 filling those positions will be ongoing and continuing until  
2 we do.

3 The only other comment I wanted to make -- and I'm  
4 doing this because it's something that I would be remiss if  
5 I didn't do it now because we have council people on the  
6 line, Your Honor, who I didn't mention when I introduced  
7 earlier today, and they've been, you know, contacting me  
8 saying, "Make sure the judge knows that we're on the line."

9 So I just wanted you to know that our mayor,  
10 Ms. Ella Jones, is on the line. One of our new council  
11 members, Ms. Phedra Nelson, she's from Ward 1. She was  
12 recently elected in April. She's on the line as well, Ms.  
13 Phedra Nelson. And also Ms. Fran Griffin, who is our Ward 3  
14 council person, is also on the line. I haven't been  
15 contacted by any other council members, so if they are on  
16 the line, you know, it's I guess a little too late now, but  
17 those three wanted me to make sure that you knew that, you  
18 know, our Council is still participating, still very  
19 interested, and still making sure that they take the time  
20 out of their day to attend these hearings.

21 **THE COURT:** Well, thank you for mentioning that. I  
22 know you usually do tell me who's on the line from the other  
23 City officials, and I am, as always, very pleased that the  
24 Council has been as involved in this process as they have  
25 been and that they continue to push to work on it, and so I

1 appreciate their being there.

2 I also appreciate having the members of the public who  
3 are listening as well because I think it's -- you know,  
4 that's who this is for, as well as for all of us, to make  
5 sure we do, you know, take stock and make sure we really  
6 know what we are doing and where we're proceeding.

7 And, again, I do want to thank everybody and be  
8 glad -- welcome, I guess I should, the new hires, new  
9 promotions, including acting city manager and the new court  
10 administrator as well as the people in the police  
11 department. So, thank you all.

12 And I think, you know, what this -- as with most of  
13 these hearings, we continue to look at it and say, okay, we  
14 haven't proceeded as fast as everyone would like. We know  
15 why. We know there are some areas that do need more work  
16 but we also know what the challenges have been. But  
17 everybody knows that it's necessary to meet those challenges  
18 and to move forward, and I am optimistic that we will  
19 continue to do that.

20 I know that, as expressed by the letters that did come  
21 in this time and as has been expressed in the past, often  
22 members of the public do think that we should, you know, be  
23 pushing harder. And I guess I would just say, you know, I  
24 hear that and I think we are trying to push in an  
25 appropriate manner so that there is -- so that this can be

1 achieved, so we can actually reach the results that we want,  
2 and so I think we're moving in the right direction.

3 I do want to again say that we will have an in-person  
4 hearing our next one. There will be an order sent out, but  
5 it would be October 7th at 11 a.m., and that will be a  
6 hearing where we will use the same public comment proceeding  
7 that we used in our past hearings where, if members of the  
8 public wish to speak, they will be given the five minutes to  
9 speak. And there will be a sign-up sheet ahead of time so  
10 that people -- you know, I guess half an hour or so ahead of  
11 the hearing so that people can come and sign up so we will  
12 know who is speaking. So if you do wish to speak, please  
13 get there early so you'll be able to sign up ahead of time  
14 so that we all can become aware of who is speaking. And it  
15 will be the five minutes, the same system we've done in the  
16 past.

17 I think we're all eager to get back to in-person  
18 hearings. I mean the Court in general is. We haven't had  
19 enough of them, obviously, like everybody else. And,  
20 obviously, if something were to change and there should be  
21 some kind of a public health emergency that made it not safe  
22 for us to gather personally, then we would change that, but  
23 I am -- I don't -- right now our intention is to be meeting  
24 in person in October.

25 So -- oh, and I do want to remind the members of the

1 public -- this is oral. I wish this were not the way it is,  
2 but it is. Once we meet in public there are many advantages  
3 to the in-person meeting that we will have in court but it  
4 will not be broadcast because the allowance of the broadcast  
5 is because we're virtual. And a lot of people think the  
6 federal judiciary should change its rules. I'm not one of  
7 the people who makes the rules, but I'm a judge, I follow  
8 the rules. So, that's where we are. But I just wanted to  
9 let people know, we are open to the public, that's what a  
10 court is, and, as always, there will be transcripts prepared  
11 for people who cannot attend in person, and -- but when it  
12 it is an in-person hearing in the courthouse we are not  
13 allowed to broadcast the proceedings, and so we will follow  
14 that procedure.

15         Again, thank you to all the citizens for continuing  
16 your interest in this and being concerned and being active  
17 in the improvements of your city. And thank you to the City  
18 and the police department for all the efforts you all have  
19 made, including the people who are here on this call today.

20         And, as always, many thanks to the court-appointed  
21 Monitor as well as the Department of Justice and the City  
22 attorney. I think you all have been working hard, and I  
23 hope -- the public doesn't know all the things you all do,  
24 but this is our chance to tell them, so I appreciate you  
25 doing that.

1           So, with that said, thank you all, and this hearing is  
2 concluded, and the Court will be in recess, so we will turn  
3 off the video conference as well as the broadcast.

4           Thank you. Court's in recess.

5           ***(Proceedings adjourned at 12:00 p.m.)***

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**REPORTER'S CERTIFICATE**

I, Laura A. Esposito, Registered Professional Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter for 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, that said transcript contains pages 1 through 39, inclusive, and was delivered electronically. This reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 12th day of July 2021.

*Laura A. Esposito*  
\_\_\_\_\_  
Laura A. Esposito, RPR, CRR, CRC  
Official Court Reporter