

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

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4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) May 8, 2015
Joseph M. Arpaio, et al.,) 9:01 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (Status Conference)
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20
21

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25 Proceedings taken by stenographic court reporter
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(Telephonically) Deputy Monitor Raul Martinez
Ms. Sandi Wilson
Karen Clark, Esq.
Ms. Cari Shehorn

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for status conference.

09:01:18

Counsel, please announce your appearances.

MR. YOUNG: Good morning, Your Honor. For plaintiffs,
Stanley Young, Covington & Burling.

MR. BENDOR: Josh Bendor, ACLU of Arizona.

MR. POCHODA: Dan Pochoda, ACLU of Arizona.

09:01:30

MS. IAFRATE: Good morning, Your Honor. Michele
Iafrate, and with me is my law clerk, Cari Shehorn, on behalf
of Sheriff Arpaio.

THE COURT: Good morning.

MR. BIRNBAUM: Good morning, Your Honor. Gary
Birnbaum. I'm appearing specially for Deputy Chief John
MacIntyre.

09:01:39

THE COURT: Good morning.

MR. BIRNBAUM: Thank you.

MR. WALKER: Good morning, Your Honor. Richard Walker
appearing on behalf of that portion of the Maricopa County
government embodied by the board of supervisors, the county
manager, and the appointed county officers reporting to them.

09:01:46

THE COURT: Good morning. Is Ms. Wilson here this
morning?

09:02:01

1 MR. McDONALD: Good morning, Your Honor.

2 Mel McDonald, special appearance for Sheriff Arpaio. Your
3 Honor, I have to leave at about five after 10:00. If we're
4 still in process, Linda Tivorsak will replace me, with your
5 permission.

09:02:13

6 THE COURT: Certainly. Thank you.

7 MR. WALKER: To answer your question, yes, Ms. Wilson
8 is in the courtroom, Your Honor.

9 THE COURT: All right. Thank you.

10 Ms. Wilson, I might, when we get to the end of the
11 hearing, in light of your objections filed yesterday, which
12 were helpful, I'd like to invite you to participate in the
13 discussion if you can stay till the end.

09:02:21

14 MS. WILSON: Absolutely.

15 THE COURT: Thank you.

09:02:32

16 MR. COMO: Good morning, Your Honor. Greg Como
17 appearing on behalf of former Chief Brian Sands.

18 MR. WOODS: Your Honor, I'm Terry Woods, a new
19 arrival. I'm from Tucson. I noticed yesterday --

20 MR. EISENBERG: Good morning, Your Honor. This is
21 David Eisenberg making a special appearance telephonically on
22 behalf of Lieutenant Joseph Sousa, and I would waive his
23 appearance.

09:02:44

24 THE COURT: Thank you, Mr. Eisenberg. You didn't
25 realize it, I'm sure, but Mr. Woods was talking, so we'll let

09:02:54

1 him finish now.

2 MR. EISENBERG: All right.

3 MR. WOODS: Thank you, Your Honor. I'm here on behalf
4 of Mr. Liddy, Ms. Uglietta, and Mr. Schwab in connection with
5 their motion to withdraw. I'm going to stick around
6 anticipating that there might be some discovery requests
7 involving these people.

09:03:06

8 THE COURT: All right.

9 MR. MITCHELL: Good morning, Judge. Barry Mitchell on
10 behalf of Chief Gerard Sheridan, special appearance, Chief
11 Gerard Sheridan.

09:03:19

12 THE COURT: Let me just say, too, that we have at
13 times referred to the chief as Gerald Sheridan. My fault. And
14 we need to correct the record in that respect.

15 My apologies, Chief. It's Gerard Sheridan. And we'll
16 make corrections in the record.

09:03:29

17 DEPUTY CHIEF SHERIDAN: Thank you, sir.

18 MR. MITCHELL: Thank you, Your Honor.

19 THE COURT: Anybody else who needs to announce
20 appearance?

09:03:43

21 CHIEF WARSHAW: Yes. Good morning, Judge. This is
22 Chief Warshaw. I also have on the phone Chief Martinez and
23 Commander Girvin.

24 THE COURT: Good morning, Chief.

25 MS. WANG: And, Your Honor, good morning. It's

09:03:52

1 Cecillia Wang for plaintiffs. We also have Andre Segura and
2 Hyun Byun from plaintiffs' team on the phone as well.

3 THE COURT: Good morning. I have listed topics that I
4 want to discuss today and everybody's aware of them. There are
5 a few other matters that have come up, such as Ms. Wilson's
6 objections, timely filed, also joined by you, Mr. Walker, as to
7 the cancellation of Ms. Wilson's monthly review. And I think
8 you had some helpful things to say. I have some thoughts and
9 want to discuss that. We'll do it at the end if that's okay.

09:04:12

10 I'm going to handle some other things first that I think can be
11 handled expeditiously.

09:04:31

12 The motion to withdraw by Tom Liddy and the
13 supplemental motion, which also included Ms. Uglietta and
14 Mr. Schwab, I gave a time limit for anybody who wanted to
15 object to that withdrawal to file objections and I have none.
16 Thus, unless anybody has anything they want to raise now, I am
17 going to grant that motion.

09:04:45

18 Anybody want to be heard on that?

19 Going once. Going twice.

20 Mr. Liddy, your motion to withdraw is granted, as is
21 Ms. Uglietta's and Mr. Schwab's.

09:05:02

22 It occurs to me, at least as I saw, Ms. Iafrate, some
23 of your good faith attempts to comply with my orders, that
24 there's going to be issues that come up between now and the
25 resumption of the hearing. And it seems to me to make sense to

09:05:22

1 schedule a weekly status conference at which these matters can
2 be resolved, refined, and, hopefully, issues eliminated and
3 disputes handled in a timely fashion, so that we don't have
4 happen to us what happened last time, which is we get up to
5 hearing and there isn't time to respond or to otherwise take
6 depositions that may prove necessary. So I would propose to
7 the parties that we just count on gathering every Friday from
8 now on until we have the hearing.

09:05:44

9 My schedule, which has already partially been set,
10 requires a little bit of variance. I would suggest May 15th at
11 9:30, May 22nd at 9:30, May 29th at 10:00 a.m., June 5th at
12 9:30 a.m., and June 12th at 9:30 a.m.

09:06:04

13 Any objection?

14 MS. IAFRATE: Your Honor, I have an out-of-state trip
15 for next Friday because I did not anticipate this. I can try
16 to get it rearranged, but that's the only one that I'm
17 concerned about.

09:06:26

18 THE COURT: Okay. Well, we can try --

19 When does your trip start, Ms. Iafrate?

20 MS. IAFRATE: Thursday night.

09:06:41

21 THE COURT: My staff is looking, and we'll see if we
22 can schedule maybe a Thursday.

23 MS. IAFRATE: That would be great.

24 THE COURT: Because let me tell you, one of the things
25 we're going to get to, you have timely filed your opposition to

09:06:49

1 the response on the attorney-client privilege issue, but you
2 did it last night after close of business. I waited around a
3 little while; I didn't wait around that long. I tried to read
4 part of it overnight. I really haven't had time to
5 thoughtfully give it the consideration it deserves, so I'm not
6 going to have a ruling on that this morning. And clearly, that
7 is going to be an issue that needs to be timely resolved.

09:07:08

8 How about Thursday at 9:30? May 14, 9:30?

9 MS. IAFRATE: Thank you, Your Honor.

10 THE COURT: All right.

09:07:26

11 There's going to be some other issues that we can
12 resolve at that hearing, and I anticipate, actually, that some
13 others may come up between here and now, and I'll cover those
14 with you as we go. But we will then -- that will then be the
15 status conference schedule, the one I just announced, assuming
16 that nobody has a problem with it.

09:07:39

17 MS. WANG: Your Honor, this is Cecillia Wang for
18 plaintiffs. May out-of-town counsel participate by telephone
19 in general on those status conferences?

20 THE COURT: Absolutely. I want to do whatever is
21 economical and convenient for everyone.

09:07:54

22 MR. WALKER: Your Honor --

23 MS. WANG: Thank you, Your Honor.

24 MR. WALKER: Sorry. Your Honor, I am likely to be out
25 of the country on May 22nd and the following Friday, but I

09:08:05

1 believe I'll be able to arrange to have someone else from my
2 office attend the status conferences on those dates.

3 THE COURT: Thank you, Mr. Walker. Let me repeat what
4 you just said, and the reason I'm going to repeat it is because
5 if you don't speak in the microphone, you'll notice our court 09:08:20
6 reporter has earphones in his ears. That's because he's
7 listening to the microphone; he's not listening like you and I
8 are.

9 If I understood what you said, you said it's possible
10 you may be out of town May 22nd and 29, but you can arrange to 09:08:32
11 have someone from your office present and cover those hearings,
12 is that correct?

13 MR. WALKER: Yeah, I believe so, Your Honor.

14 THE COURT: Thank you.

15 MR. COMO: Your Honor, I'm in somewhat of a similar 09:08:41
16 situation. I know for a fact I won't be able to make the May
17 22nd one, I'm not sure about the other dates, but I will
18 arrange to have someone else here from my office.

19 THE COURT: Thank you. And we will accommodate that
20 to the extent we can and, of course, if the happy occasion 09:08:53
21 arises that we don't have to have a status conference, I'll be
22 happy to cancel it, but I think we need to presume those.

23 As well, it strikes me that some of the matters
24 that -- I do think that it's possible that many of the matters
25 and many of the new documents that are being produced -- and 09:09:12

1 we'll get to that -- may result in additional requests for
2 depositions. It does strike me that the volume of material
3 involved may involve things that are, you know, may be of
4 interest, but not particularly relevant to this lawsuit.

5 So it strikes me that once you've all had a chance to 09:09:32
6 review the material, there may be large portions of it that we
7 don't really need to discuss and everybody will agree on that.
8 It may highlight additional witnesses whose depositions you may
9 want to take and everybody may agree on that. There may be
10 disputes about that; we'll resolve those. 09:09:52

11 But because there may be additional witnesses than
12 earlier anticipated, I would propose going the additional week.
13 After the 16th through the 19th I would propose having all of
14 you hold -- what would that be? -- the 23rd, 24th, 25th and
15 26th. It is my desire to make the determination as quickly as 09:10:11
16 possible, and I would propose that we continue on those dates.

17 Now, there are two mornings on those dates when I have
18 to be absent, but we made accommodations for Mr. McDonald, you
19 can make accommodations for me, and we can go through and have
20 the hearings on those dates so that I can issue rulings and 09:10:31
21 resolve this matter and not have it go along all summer long.
22 And that way, if we need to take depositions on the first day
23 scheduled, we can do that and still have the next following
24 week.

25 Any problem with that? 09:10:43

1 MR. YOUNG: None from plaintiffs, Your Honor.

2 MS. IAFRATE: No, Your Honor.

3 MR. WALKER: That's fine with the County, Your Honor.

4 MR. McDONALD: No problem, Judge.

5 MR. COMO: No problem, Your Honor.

09:10:57

6 THE COURT: All right. Then we will do that and we
7 will set -- the resumed hearing is set on those dates.

8 The first item, then, is the status of defendants'
9 Maricopa County Sheriff's Office and Maricopa County --

10 Mr. Walker, if you -- I noticed in one of your
11 pleadings you're a little sensitive about us calling you "the
12 County." What do you want us to call you?

09:11:14

13 MR. WALKER: I think it's fine as a convention, as
14 long as we understand that it's only a portion of Maricopa
15 County government that I represent.

09:11:30

16 THE COURT: All right. Well, if it's all right then
17 we'll call you the County, we'll call the other defendants
18 either the Sheriff's Office, Maricopa County Sheriff's Office,
19 Sheriff Arpaio, whatever.

20 MR. WALKER: That's fine, Your Honor. Thank you.

09:11:42

21 THE COURT: So we discussed compliance with the
22 February 12th, 2015, order. Where are we at on that?

23 Ms. Iafrate?

24 MS. IAFRATE: Your Honor, we had a telephonic with
25 Chief Girvin regarding some of these issues in an attempt to

09:12:05

1 resolve some of the outstanding discovery requests. In
2 addition to the February order, there have also been subsequent
3 requests not only by the monitor, which was voluminous, but
4 also by plaintiffs regarding further documents.

5 And so as of yesterday, one of the suggestions by 09:12:27
6 plaintiff was to -- instead going through all of the CAD data
7 to tie it to certain instances, just do a CAD data dump for the
8 time period in question. And so that is being done; I should
9 have it today.

10 Regarding the new request for the photo -- no, not 09:12:51
11 photo -- the video library of anything -- any interview that
12 was ever done by Sheriff Arpaio within that time frame, that is
13 likewise being copied.

14 Regarding the e-mail searches, as far as MCSO is
15 concerned, we believe that we did do the individual computers 09:13:18
16 that were affected, and I manually went through and either
17 supervised or did it myself regarding what was left on those
18 computers.

19 As of the telephonic with Chief Girvin, there was a
20 suggestion that I go back to find the hard drive, the original 09:13:39
21 hard drive of Lieutenant Sousa and Sergeant Palmer. Those have
22 been identified and will be delivered to my office so that
23 those will be searched as well.

24 Regarding the database search, MCSO does not have that
25 capability, and that's why I was attempting to rely on Maricopa 09:13:58

1 County to do the search of those e-mails.

2 THE COURT: Mr. Walker, grab a microphone, please, or
3 approach the podium.

4 MR. WALKER: Your Honor, during the telephone
5 conference to which Ms. Iafrate just referred, and 09:14:23
6 contemporaneous therewith, I sent a letter to plaintiffs'
7 counsel and to the monitors' representatives explaining what
8 I've been able to determine that we have in fairly readily
9 searchable form in terms of e-mail database.

10 To give a very brief description, there was a decision 09:14:52
11 made shortly before the Department of Justice litigation began,
12 which was May or June of 2012, I believe, that monthly
13 snapshots would be taken of the Outlook mailboxes of all MCSO
14 employees. That was not done as consistently as was intended
15 because the employee charged with that responsibility wasn't as 09:15:22
16 conscientious as he needed to be, and he's no longer with the
17 County. But we do have a collection of PSTs for a number of
18 months in the period beginning the end of May 2012 through I
19 believe it's February of 2013, and we've advised both the
20 monitor and the plaintiffs' counsel what those PSTs are. 09:15:48

21 In the conference call -- we had understood up to the
22 time of the conference call that there were nine individuals
23 who were of interest. In the conference call there was
24 discussion that the plaintiffs may want to add a few additional
25 individuals, and we're certainly open to doing that. Once we 09:16:06

1 have those names, we will determine what PSTs we have for those
2 individuals.

3 We also discussed getting search terms from the
4 plaintiffs. We have a sort of preliminary list of search
5 terms. The plaintiffs agreed that they would get back to us 09:16:28
6 with a more definitive list of search terms. The search terms
7 that we've seen, and I don't mean to speak for Ms. Iafrate, but
8 I don't find them objectionable, and I think she indicated that
9 she did not, either. So that process can be gotten underway
10 once we have the final list of people whose PSTs the plaintiffs 09:16:50
11 are asking us to search and we have the search terms that we're
12 to use in the search.

13 I just got yesterday a rather lengthy list of
14 documents that the monitor is requesting. I have not had an
15 opportunity, really, to study that carefully, but I intend to 09:17:16
16 do that today. I think in general terms what the County is
17 likely to have is the e-mail database, which we can search to
18 whatever extent needs to be done, and there are probably some
19 expense records that would be within the ambit of what the
20 Court was expressing interest in on April 23rd and 24th. 09:17:43

21 But the search for the expense records is going to
22 require a certain amount of joint effort, because my
23 understanding is the way those are filed, if the County just
24 looks at those without -- looks for those without any help from
25 the Sheriff's Department, it's like looking for a needle in a 09:18:09

1 haystack.

2 So we have discussed on a very preliminary basis how
3 we would need to coordinate that so that the search undertaken
4 by my client could be done in a meaningful way and in a way
5 that maximizes the likelihood of finding anything responsive
6 that may be there.

09:18:27

7 Other than those two categories of documents, as far
8 as I know as I stand here, those would be the only things in
9 the County's possession, custody, or control that are relevant.

10 THE COURT: All right. And I assume, Ms. Iafrate,
11 that you're cooperating with Mr. Walker to the extent the
12 financial records sought by the monitor are in the custody of
13 the MCSO.

09:18:49

14 MS. IAFRATE: Yes, Your Honor, we are coordinating
15 efforts.

09:19:01

16 THE COURT: All right. Thank you.

17 Mr. Young.

18 MR. YOUNG: Your Honor, I agree with the summary of
19 the discussions that have occurred. We do have on our list
20 getting an additional list of names. There are a few
21 additional names that we're going to submit to Mr. Walker and
22 Ms. Iafrate, and also some additional search terms based on
23 more recently produced documents.

09:19:12

24 There are a couple of items relating to the document
25 production that we did want to raise. One of them I understand

09:19:29

1 is being considered which is a set of documents relating to
2 Internal Affairs or PSB files relating to investigations of
3 alleged misconduct involving race discrimination. And
4 actually, I'm going to allow Ms. Wang, with your Court's
5 permission, to address that issue.

09:19:55

6 THE COURT: All right. Ms. Wang.

7 MS. WANG: Thank you, Your Honor. We have advised
8 Ms. Iafrate that we would seek discovery or disclosure of any
9 IA files from the 2008 time period forward that have to --
10 include an allegation of either race discrimination or illegal
11 detentions by MCSO personnel.

09:20:15

12 The basis for that request is that in the discovery
13 that we have received and the information we've gathered since
14 the search on Deputy Armendariz's home it's become clear that,
15 on plaintiffs' behalf, we believe additional remedial measures
16 are needed, new injunctive relief is needed in order to protect
17 the rights of the plaintiff class, and that the Internal
18 Affairs investigative processes that MCSO has had in place were
19 not sufficient either to detect, or to prevent, or to deal
20 with, the kinds of constitutional violations that Your Honor
21 found after the trial in this case.

09:20:37

09:21:03

22 We do intend to pursue that additional relief as we go
23 forward, and we believe it would be in the inherent power of
24 the Court to issue that injunctive relief. We've tried this
25 issue even last year when the Armendariz issues came to light,

09:21:25

1 and that's why we're making the request.

2 Ms. Iafrate did advise yesterday that she is still
3 considering our request for those documents, and so we have not
4 received defendants' position on that yet.

5 THE COURT: Ms. Iafrate.

09:21:44

6 MS. IAFRATE: Your Honor, I received this request on
7 May 5th in a letter. I would beg your indulgence --

8 THE COURT: You have it. We're going to meeting every
9 week. Let me just say, and I was going to raise this later,
10 and perhaps I will raise it later, but it strikes me that
11 plaintiffs do have the opportunity, in light of the deficits
12 that have been discovered, to seek to reopen the nature of the
13 injunctive relief that I have requested. It does strike me
14 also that, you know, Maricopa County can resist that, has the
15 right to resist it.

09:21:59

09:22:24

16 It seems to me the practical reality of that, though,
17 is I either make a determination based on this record that we
18 develop over the next couple of months or I reset this matter
19 for a whole new trial. It strikes me as being worth the effort
20 for the -- whatever else you're going to say, it seems to me
21 that civil contempt -- a civil contempt order is going to be --
22 at least a civil contempt order is going to be entered here at
23 least against some defendants. They've confessed it.

09:22:43

24 And again, I don't want to prohibit your rights,
25 Ms. Iafrate, I don't want to prohibit your rights, Mr. Young, I

09:23:00

1 don't want to prohibit your rights, Mr. Como, or anybody
2 else's, but it seems to me that it would be worthwhile for you
3 to talk and see what kind of remedies, Mr. Young, you would
4 propose, and see if those are acceptable to Ms. Iafrate.

5 And if they are -- and I realize that you may not be 09:23:23
6 able to provide specific ones until the evidence is developed,
7 but at least the general types of remedies -- because if they
8 are, I think it would be, arguably, to the benefit of all
9 parties, because I'm going to give, at a minimum, if Maricopa
10 County fights everything, I'm going to give a new trial to the 09:23:39
11 plaintiffs as -- it's extremely likely, and I'm not going to
12 make them wait and submit a fee award. Since the trials have
13 been very expensive, I will require monthly payments to be made
14 to the plaintiffs' counsel to pay for that trial since they
15 should not have to pay for it, in light of the fact that 09:23:58
16 this -- it would be part of a civil contempt award.

17 And I don't say that to be threatening, I'm just
18 telling you what I'm thinking, so that it might make sense from
19 your perspective and from their perspective to either stipulate
20 to a field of discovery that they want, to discover this and 09:24:12
21 see if you can arrive at remedies that you can all live with,
22 because it does seem to me like, and we'll discuss this in
23 others respects, too, the option is a whole new trial of this
24 case from the beginning, or at least that's certainly one
25 option. So I'd like to sort of set that in place so that you 09:24:33

1 can consider it.

2 But Ms. Iafrate, as you consider their request, I
3 guess to the extent any of that sort of musing of mine is
4 helpful, I wanted to give it to you. And I think I wanted to
5 raise it a little bit later on as it pertains to other issues,
6 because I think there are issues that we can do something about
7 and there are issues that we can't do much about, and of course
8 I want to have counsels' input on that.

09:24:45

9 And if we can't do much about them in this hearing,
10 then I think that we need to figure out what the appropriate
11 response is but not waste a lot of time on it. If we can do
12 something about it and can agree, then we can eliminate issues,
13 and then we can try the issues that deserve to be tried and get
14 this matter resolved.

09:25:01

15 Mr. Young.

09:25:19

16 MR. YOUNG: Your Honor, I assume the new trial you're
17 referring to would be on the subject of remedies.

18 THE COURT: That's correct.

19 MR. YOUNG: Yes. There is one more issue relating to
20 the February 12 order, and I'm going to ask Ms. Iafrate's
21 forgiveness, since this was in the May 5th order -- the May 5th
22 letter that we sent her, but I have not spoken to her about it
23 since then, which is the scope of disclosure with respect to
24 individuals who were detained outside the traffic stop context.

09:25:30

25 We did request in our May 5th letter that we receive

09:25:52

1 full information with respect to those, for example, who were
2 detained during the course of the worksite raids. And I
3 believe Your Honor's ruling has been that those are part of
4 this proceeding. For one thing, they're class members if they
5 were transported in vehicles while under detention; and second,
6 their cases go to the policies that were in place that affected
7 other people who are indisputably class members.

09:26:14

8 We've requested, for example, that we obtain the
9 criminal employment unit analogs of the spreadsheets that were
10 introduced during the hearing earlier as Exhibits 207 to 209,
11 and I might request some clarification on that and, hopefully
12 we can get those expeditiously.

09:26:35

13 THE COURT: All right. And again, that was just
14 raised with Ms. Iafrate?

15 MR. YOUNG: It was in the May 5th letter that she
16 referred to.

09:26:50

17 THE COURT: All right. Well, I do think Mr. Young has
18 fairly summarized my rulings, but, Ms. Iafrate, if you have an
19 objection, I think you're entitled to be heard on that as well.

20 MS. IAFRATE: Your Honor, I do have an objection
21 regarding expanding this class as it was certified. I have
22 argued this to you previously. I believe that you solicited
23 questions from witnesses as well as questioning me regarding
24 how this could be expanded. Plaintiffs have never requested
25 that the class be expanded to include this. However, I do

09:27:00

09:27:20

1 believe that in previous discussions with you, you believed
2 that these individuals did fit within the class. Sheriff
3 Arpaio would object.

4 THE COURT: I do have the class here, I think.

5 MS. IAFRATE: Beg your pardon?

09:27:35

6 THE COURT: The class is, quote, all Latino persons
7 who, since January 2007, have been, or will be in the future,
8 stopped, detained, questioned, or searched by MCSO agents while
9 driving or sitting in a vehicle on a public roadway or parking
10 area in Maricopa County, Arizona.

09:28:00

11 It does seem to me -- and again, I'm going to give you
12 a full opportunity to make your argument -- but it does seem to
13 me that if MCSO is detaining someone to take them to Border
14 Patrol because they have no state charge and they're doing it
15 in a motor vehicle on a public roadway, they're the ones that
16 have made them a member of the plaintiff class by definition.

09:28:14

17 And I did ask, I think I recall, I think you're right,
18 I think I recall asking, was it Lieutenant Jakowinicz that?

19 MS. IAFRATE: I don't recall which witness, but I know
20 that it was solicited from your questioning, Your Honor.

09:28:31

21 THE COURT: Well, yeah, I did question him about that.

22 MS. IAFRATE: Right.

23 THE COURT: And it -- just because it does seem to me
24 that when you've done, that you've created a -- I mean, it
25 seems to me that fits within the plaintiff class. But I'll

09:28:46

1 allow you more time to make an objection on that point.

2 MS. IAFRATE: Well, Your Honor, would you like me to
3 do it orally or would you like me to do it in writing,
4 because if it's --

5 THE COURT: I want to give you the chance to do it in 09:28:56
6 writing --

7 MS. IAFRATE: Thank you.

8 THE COURT: -- and we can take it up.

9 MS. IAFRATE: Thank you. Just for a brief statement,
10 Your Honor, of course, I was not part of the original trial. 09:29:01

11 THE COURT: Right.

12 MS. IAFRATE: However --

13 THE COURT: Hardly anybody was any more.

14 MS. IAFRATE: Right. Few people left standing, but --

15 THE COURT: Um-hum. 09:29:13

16 MS. IAFRATE: -- I can tell you that in my review of
17 not only the pretrial discovery, but also the testimony at
18 trial, and even afterward, everything was anticipated that it
19 was resulting from traffic stops and the --

20 THE COURT: Well -- 09:29:25

21 MS. IAFRATE: -- interdiction patrols that were being
22 done by the Sheriff.

23 MR. SCHWAB: I don't think that's a misstatement of
24 the record, and so I'll let you make your argument, but the
25 class is what the class is and the class certified is the class 09:29:36

1 certified. And the class was certified for a reason, and it
2 just seems to me that that fits within the definition of the
3 class. But I'm not arguing with you, and so I'm going to give
4 the chance to make your -- make your record, and give you the
5 chance to do it in writing.

09:29:54

6 MS. IAFRATE: Okay.

7 THE COURT: All right?

8 MR. YOUNG: Your Honor, will there be a timetable for
9 that, given the hearings that are set for June?

10 THE COURT: Yes. When do you think you'll be able to
11 make it?

09:30:03

12 MS. IAFRATE: As to that issue?

13 THE COURT: To file your objection to the discovery
14 request filed by the plaintiffs.

15 MS. IAFRATE: Friday.

09:30:16

16 THE COURT: Okay. So if you will make it Friday, then
17 we will resolve it the following status conference, if you can
18 get a response on.

19 MR. YOUNG: So --

20 THE COURT: So it would be Friday the fif- -- let's
21 see, today is what?

09:30:25

22 MS. IAFRATE: Today is the 8th, Your Honor.

23 THE COURT: Okay. So it would be Friday the 15th
24 you'll have it filed by.

25 MS. IAFRATE: Yes.

09:30:34

1 THE COURT: And we will resolve it at the May 22nd.

2 MS. IAFRATE: Very well.

3 MR. WALKER: Your Honor, just for the record, and I'm
4 sure you recall at our last hearing, my client also objects and
5 respectfully disagrees that the operations, what we call
6 worksite operations are within the scope of the class as
7 defined --

09:30:47

8 THE COURT: All right. You know, this raises another
9 issue. I've been trying -- and I was going to discuss this
10 later, but I might as well raise it now since it's the issue.
11 I do think that one of the purposes of contempt is
12 compensation. Clearly, there have been lots of victims, and
13 clearly it's to the defendants' interests to argue about how
14 broad or how narrowly those interests are defined.

09:31:05

15 But I'm trying to think, is there any way I can
16 compensate the victims of the sheriff's contempt in a realistic
17 way, and I'm having trouble with it. I told the plaintiffs
18 this earlier. I mean, I don't -- I don't know that there is
19 anything I can do in this lawsuit that would restrict the right
20 of anybody to bring a class action or anything else they want
21 to bring.

09:31:27

09:31:44

22 And I suppose that I could compel the creation of a
23 fund as against which claims could be made if somebody wanted
24 to surrender their claims, but I'm not sure -- you know, if I
25 were to do that, that would not have the benefit to the

09:32:09

1 defendants of eliminating liability. And if it wouldn't have
2 the benefit of eliminating liability, then perhaps the
3 plaintiffs ought to either determine whether or not they wanted
4 to bring their own class action, whether they want to associate
5 class counsel, whether they want to provide some sort of
6 procedure whereby we could, if necessary, sever the
7 compensatory aspects of this in a class action that then would
8 be reassigned to me where arguments like this can be made.

09:32:25

9 MR. YOUNG: Well, Your Honor, I can report --

10 THE COURT: And you wouldn't have to -- you wouldn't
11 have to reinvent the wheel with a judge who isn't very familiar
12 with what's going on here.

09:32:44

13 I mean, it seems to me we have a lot of possibilities,
14 but they require some thinking. And I will say, you know, as
15 to whether or not I'm going to -- just so nobody's confused by
16 it, if I feel like I can't give, and I'm not likely to be able
17 to give, any sort of adequate remedy to persons damaged by the
18 sheriff's violation of my preliminary injunction, that does
19 make some difference to me as to whether or not I ought to
20 order up this matter for criminal contempt, just so it's on the
21 table.

09:32:59

09:33:20

22 So Mr. Young?

23 MR. YOUNG: Well, I can -- I appreciate the Court's
24 thoughts on this issue. I can report on where we are.

25 We do intend, in the June hearings, to present

09:33:36

1 evidence on this issue of compensation. We do believe that's
2 an important, very important part of this proceeding, and we
3 appreciate, actually, the expedition that the Court has
4 expressed its desire to achieve.

5 So we have also had some discussions with Mr. Walker 09:33:53
6 and Ms. Iafrate about having a discussion Monday, actually,
7 starting a discussion on whether we can agree on a process for
8 compensation of class members, the people who are victims of
9 the injunction. We haven't yet fleshed that out, but
10 obviously, I mean, I don't think it's too much of a leap to say 09:34:23
11 that if someone obtains compensation in the course of that
12 process, whether it's agreed upon or imposed as a remedy by
13 this Court, that they wouldn't be free in some other lawsuit to
14 seek additional compensation.

15 So it would be our desire to have that compensation 09:34:38
16 for those people who were detained unlawfully in violation of
17 the injunction to obtain compensation as part of the remedy
18 process in this case.

19 THE COURT: All right. Well, I'd suggest, then, that
20 that be a matter that you discuss with defendants and see if 09:34:56
21 you can arrive at a procedure that I will buy. And I'm going
22 to advise you that even if you buy it, and even if they buy it,
23 I might not buy it.

24 MR. YOUNG: Understood.

25 THE COURT: But I think it is worthwhile for you to 09:35:08

1 pursue. Have we resolved that topic? Are we ready to go on to
2 another?

3 The next is the status of defendants' compliance with
4 the Court's April 23rd-24th, 2015 orders relating to document
5 production.

09:35:27

6 I have noticed, Ms. Iafrate, that over the last day or
7 maybe two days, you've started to produce those documents and
8 provide them to all sides. The monitor started to review them
9 and he gave me a couple of concerns that, frankly, I hadn't
10 been aware of, and I want to raise them with you, and I gather
11 that you'll probably have a couple of both logistical and
12 perhaps other concerns you want to raise.

09:35:42

13 Apparently, the materials that you are providing
14 involve records that I -- and, Bob, if I misstate this, tell
15 me -- but I believe the monitor on first cut thinks, based
16 partly on Chief Deputy Sheridan's testimony, there was
17 something I hadn't anticipated. I had not anticipated that
18 Mr. Montgomery would have done a file dump with the MCSO of
19 those files that he apparently procured without authoriza- --
20 or claims to have procured without authorization from the CIA.

09:36:04

09:36:25

21 Is that an issue?

22 MS. IAFRATE: That is an issue, Your Honor.

23 THE COURT: All right. And in those files, at least
24 according to the initial review of my monitor, there is a
25 number of names, addresses, telephone numbers of individuals.

09:36:43

1 So I'm just going to instruct the parties, I've
2 instructed Ms. Iafrate, and I think she's doing her best to
3 comply, to review this material for attorney-client privilege
4 or work product immunity and do a privilege log, but if she
5 doesn't, but all the other documents she's providing in Bates 09:37:04
6 stamped order, and I gather that we may some need to discuss
7 and work that through to all parties so you're all getting
8 material that has peoples names, addresses, and telephone
9 numbers --

10 MS. IAFRATE: As well as Social Security numbers and 09:37:18
11 banking documents, Your Honor.

12 THE COURT: Okay. So there are some banking documents
13 and Social Security numbers. None of that material can be
14 released without authorization of the Court. All right? You
15 can have it. You can review it. You can use it in preparing 09:37:31
16 for this action. But you cannot review it -- or you cannot
17 release it without authorization of the Court.

18 Ms. Iafrate, it occurred to me that if in -- and I
19 know that Chief Deputy Sheridan said that -- and again, Chief,
20 you're here. I don't mean to put words in your mouth; I'm just 09:37:48
21 trying to summarize essentially what your testimony was -- that
22 Mr. Montgomery, the MCSO has determined that he was not
23 credible. And again, you can correct that characterization if
24 you wish to.

25 And so it may be that -- well, I'm sorry. It may be 09:38:06

1 that the doc -- it may be that his assertion that these
2 actually were documents that are a CIA dump are not correct.
3 But it occurs to me that if there is a chance that you believe
4 that you did receive CIA files, if you haven't already done it,
5 if you have not already done it, I'm going to ask you to
6 contact the chief counsel for the CIA and inform him that you
7 received these documents, the date you received these
8 documents, and see if they wish to intervene in this action and
9 take any protective measures with respect to these documents.

09:38:31

10 Do you have any problem doing that?

09:38:48

11 MS. IAFRATE: I do not have any problem doing that,
12 Your Honor. I think, I think that that would be prudent.

13 THE COURT: All right. Any objection by anybody if I
14 order Ms. Iafrate to do that?

15 MR. YOUNG: None from plaintiffs, Your Honor.

09:38:59

16 MR. WALKER: No objection, Your Honor.

17 MR. McDONALD: None, Your Honor.

18 MR. COMO: I have none, Your Honor.

19 THE COURT: All right. Other issues that you have,
20 Ms. Iafrate.

09:39:08

21 MS. IAFRATE: I do have other issues regarding --
22 regarding that production. I received a call from Chief Girvin
23 yesterday very concerned regarding the release of these
24 documents to others rather than the monitors, and I advised
25 them that I was ordered to do so by Your Honor in --

09:39:27

1 THE COURT: And you were.

2 MS. IAFRATE: -- docket 1032. So --

3 THE COURT: No, no, you clearly were. I hadn't
4 anticipated that you had a document dump like this, so you're
5 right, I did make that order.

09:39:40

6 MS. IAFRATE: So the monitors have received documents
7 well before plaintiffs, because we were given the opportunity
8 to then review them and Bates stamp them and get them in order
9 to send them out to plaintiffs as well as the other attorneys.
10 There is a hard drive that has over two terabytes of data dump
11 on it in sub-folders.

09:39:59

12 THE COURT: Are these the alleged CIA documents?

13 MS. IAFRATE: Yes. This has --

14 THE COURT: Let me ask, are you -- and I'm sorry to
15 interrupt you -- are you able to segregate what the alleged CIA
16 documents are from other documents that were prepared by
17 Mr. Montgomery?

09:40:16

18 MS. IAFRATE: To a point, Your Honor. This hard drive
19 is the one that's most troubling, and I think that it -- I
20 think that the monitors would agree that it would be the most
21 troubling, not only the content that's on this hard drive is
22 personal in nature to hundreds of thousands of alleged victims
23 of identity theft, but also to duplicate it and get it in a
24 process that would be usable for plaintiffs and other attorneys
25 would require weeks of effort on the part of our third-party

09:40:33

09:40:58

1 vendor, and each shot would be approximately \$87,000.

2 So the paper and the thumb drives and the other
3 information that has been provided to us, we have pushed that
4 out to plaintiffs, but this hard drive that I believe is
5 concerning -- and I won't speak for Chief Girvin, but he
6 expressed concern, too -- this is the bulk of the data dump
7 that I think that we should be most cautious about.

09:41:22

8 THE COURT: All right. Let me -- well, does anybody
9 have anything else they want to say before I venture some
10 thoughts?

09:41:42

11 It seems to me that we can do this. In addition to
12 the concern that the monitor raised, he's also indicated to me,
13 at least based on a rough initial look, that there are clearly
14 documents in that file that are very relevant to this
15 litigation. And I believe that the plaintiffs have to have a
16 chance to look at that, and I guess -- so I don't want to
17 prevent them from looking at those things, but I see your point
18 that, you know, this data dump -- whether it's real, whether
19 it's false, whether it's partly real, partly false -- may be
20 very large, and may have lots of information.

09:42:01

09:42:24

21 Does anybody object if I have my monitor coordinate
22 with Ms. Iafrate in terms of attempting to characterize
23 documents that you have in your possession, but I -- I guess
24 I'll just say just set them aside until the monitor coordinates
25 with Ms. Iafrate, looks at them, determines if their --

09:42:46

1 determines what their contents is in general, can disclose to
2 you what their content appears to be in general, and then you
3 can determine, or we can all determine in these status
4 conferences, what parts of that larger document file, if any,
5 are relevant to the ongoing proceeding here. And that will not 09:43:11
6 prevent you from looking at other documents that are not part
7 of that file.

8 Does that work for you, Ms. Iafrate?

9 MS. IAFRATE: Yes, Your Honor. However, just to
10 complicate matters, I think that there are duplications from 09:43:31
11 the paper documents that have been provided --

12 THE COURT: Already?

13 MS. IAFRATE: Already, and there is some data dump in
14 those documents as well.

15 THE COURT: All right. Well, I think -- I think, and 09:43:43
16 tell me if you object to this, to the extent that you've
17 already done paper documents and put Bates stamps on them that
18 have been disclosed, we will let the plaintiffs look at those
19 subject to the protective order I just entered, which is they
20 are not to release them without order of this Court. 09:43:59

21 And then I guess I'm going to ask you, Ms. Iafrate,
22 would you please, unless you have an objection to doing so,
23 copy all counsel -- and the Court -- on your letter to -- or on
24 your communication, whatever it is, to counsel for the Central
25 Intelligence Agency? 09:44:23

1 MS. IAFRATE: Your Honor, I feel comfortable copying
2 you. I need to think about whether I can be as candid as I
3 would like to be if you're ordering me to also provide it to
4 plaintiffs' counsel.

5 THE COURT: All right. Well, is there an issue you
6 want to talk to me about at sidebar on this?

09:44:37

7 MS. IAFRATE: No, I'm just thinking out loud, Your
8 Honor, that this is a very sensitive matter that relates to CIA
9 intelligence, and potentially Mr. Montgomery's motive or
10 technique. I'm just concerned that --

09:44:53

11 THE COURT: Well --

12 MS. IAFRATE: -- I'd like to be as candid as possible,
13 but I'm in an adversary position with plaintiffs' counsel as it
14 relates to my client.

15 THE COURT: Mr. Young?

09:45:06

16 MR. YOUNG: Well, Your Honor, plaintiffs have no
17 interest in receiving sensitive information that isn't relevant
18 to this case. If it is relevant to the case, obviously, we
19 would be interested in it, and your suggested -- the Court's
20 suggested procedure to have the monitor make that
21 determination, or make it with the plaintiffs -- with the
22 defendants is fine with.

09:45:21

23 THE COURT: All right. Then I'm asking you about the
24 letter. Do you care to receive the letter that Ms. IafRATE's
25 going to send to CIA counsel?

09:45:35

1 MR. YOUNG: If Ms. Iafrate thinks that she can write a
2 better letter that's more informative to the CIA without
3 copying us on it, we're fine not getting it.

4 THE COURT: All right. How about you, Mr. Como?

5 MR. COMO: I don't need to be copied on that letter,
6 Your Honor.

7 THE COURT: Mr. Walker?

8 MR. WALKER: Your Honor, I don't think I need to have
9 a copy, although I must say I'm confused by this whole
10 discussion, probably primarily because I'm hearing a lot of
11 this for the first time. But the letter --

12 THE COURT: You were here, sir, with all the rest of
13 us; you were here.

14 MR. WALKER: But to answer the Court's question
15 directly, I don't believe that I need to receive the letter.

16 THE COURT: All right. Well, you know, I think,
17 Ms. Iafrate, if you can't send it to the parties, I probably
18 ought not to receive it, either, but will authorize you to send
19 it to CIA counsel, ask you to retain a copy because it may
20 become relevant.

21 And it does seem to me -- and I think that if you
22 would, and you can refer to the minutes of this hearing, you
23 can tell the CIA in a letter that we have an ongoing hearing.
24 It's my determination that allegations are relevant to the
25 ongoing hearing, and we're going to proceed with this ongoing

09:45:49

09:46:01

09:46:11

09:46:28

09:46:41

1 hearing. So if it has interests that it wants to assert, it's
2 going to be too late if it tries to assert them three or four
3 weeks from now.

4 MS. IAFRATE: Well, Your Honor, would you like me to
5 relay a deadline for them? I mean, they're just going to be
6 made aware of this by my letter.

09:46:57

7 THE COURT: Well you can make them aware of it by the
8 letter and however else you want to do it. And perhaps if the
9 press is here they'll make them aware of it, too, but -- well,
10 I -- but we can't rely on that. And so you can tell them that
11 they should notify -- they should notify us within two weeks if
12 they want to assert any privilege.

09:47:19

13 MS. IAFRATE: Very well. I will let them know.

14 THE COURT: All right.

15 Anything else relating to those matters, if we have
16 the monitor work these matters through with plaintiffs'
17 counsel?

09:47:39

18 MR. YOUNG: Your Honor, there's one detail, and I'm
19 not sure whether Ms. Iaftrate is the right person or not, but we
20 did notice in the sealed order that was filed yesterday by
21 Judge Boyle that there were some interview transcripts that
22 were referred to in the correspondence which were not part of
23 that set of documents that was given to Magistrate Boyle, and
24 it would seem to us and it would be our assumption that as part
25 of the production of the documents that Your Honor ordered

09:47:59

09:48:17

1 produced in this regard that those would also be part of --
2 transcripts and there were audio files as well.

3 THE COURT: I believe they're all subject to the
4 production order. And I assume, unless Ms. Iafrate's going to
5 claim privilege or immunity, that they've been provided.

09:48:32

6 Do you know, Ms. Iafrate?

7 MS. IAFRATE: No, Your Honor. I think that we're
8 mixing up a couple things. These were the two letters that
9 Ms. Clark and Mr. Liddy submitted to Magistrate Boyle, and I
10 was asked before Court this morning by Mr. Young whether the
11 transcripts were also provided to Magistrate Boyle. To my
12 understanding, they were not, and so --

09:48:46

13 THE COURT: I think what you've just said is correct.

14 But what I understood Mr. Young to be asking was
15 those -- apparently, Judge Boyle's determination was to redact
16 part of those letters, give them in the attached order to all
17 parties. And in the unredacted portion it refers to
18 transcripts of the interviews with Mr. and Mrs. Grissom, and
19 maybe their son, too, I can't remember. And I think what
20 Mr. Young is asking is: Are they going to get those materials
21 consistent with my order that everything pertaining to that
22 investigation be disclosed? That's what I understood him to be
23 asking.

09:49:10

09:49:33

24 MS. IAFRATE: May I have a moment?

25 THE COURT: Yes.

09:49:46

1 MR. YOUNG: Yes. If I could supplement that, I also
2 think there's a reference to a follow-up investigator's report
3 that would also fall within the Court's order.

4 MS. IAFRATE: Your Honor, we did provide a privilege
5 log with the documents that are being referred to right now
6 when we did assert work product.

09:50:00

7 THE COURT: Work product privilege as to the --

8 MS. IAFRATE: The investigation.

9 THE COURT: Okay.

10 MR. YOUNG: We'll take another look at that log. I
11 don't remember whether the transcripts were listed on that, but
12 if they were, we'll raise the issue as needed in response to
13 the log.

09:50:15

14 THE COURT: Okay.

15 MR. WALKER: Your Honor, a small housekeeping matter
16 related to this. My understanding is that Magistrate Boyle's
17 order indicated that it was provided to defense counsel.
18 However, when my office tried to open it we weren't able to,
19 so -- it shows up as a sealed order to which we did not have
20 access.

09:50:27

09:50:49

21 (Off-the-record discussion between the Court and the
22 clerk.)

23 THE COURT: Yeah, sealed orders are sent by the mail.
24 When they're sealed, you can't open them up on the computer.
25 But Magistrate Judge Boyle did indicate that the orders would

09:51:07

1 be unsealed by Tuesday, I think, unless he got any objections.

2 Is anybody here going to object?

3 MS. IAFRATE: Your Honor, I'm not in a position to
4 make that determination yet.

5 THE COURT: That's fine.

09:51:22

6 Mr. Como?

7 MR. COMO: I won't be objecting, Your Honor.

8 MR. WALKER: Your Honor, I'm sorry. I missed the
9 question.

10 THE COURT: That's all right. We're not going to deal
11 with it today. I can give Ms. Iafrate the time to object.

09:51:31

12 But do remember, I think, Ms. Iafrate, that I think
13 Judge Boyle set a Tuesday deadline.

14 The status and schedule for MCSO's completion of its
15 internal investigations.

09:51:55

16 Oh, Ms. Clark, you wanted to be heard?

17 MS. CLARK: Yes, good morning, Judge Snow. And I
18 don't believe I've appeared of record, but I am --

19 THE COURT: And if you're going to speak, you gotta
20 find a microphone.

09:52:08

21 MS. CLARK: Good morning, Judge Snow. Karen Clark on
22 behalf of Tim Casey. I had not appeared prior because we're
23 nonparties, non-defendants, but this matter relates to my
24 representation of Mr. Casey, and I did just want to make a
25 record that we're reviewing Magistrate Boyle's order, sealed

09:52:26

1 order, and determining whether Mr. Casey would be filing any
2 type of objection based on that order.

3 THE COURT: All right.

4 And you have the same Tuesday deadline, Ms. Clark.

5 MS. CLARK: Yes. Yes, Your Honor.

09:52:44

6 THE COURT: Status on the schedule for MCSO's
7 completion of its internal investigations.

8 Ms. Iafrate, I did read your summary, and I thank you
9 for it. I will tell you that my monitor also read your
10 summary, and he said to me -- and if I get this wrong, the
11 monitor's on the line, he can correct me -- that you indicate
12 that there are -- of the 62 investigations, 41 are completed.
13 He only has a record of 31 being completed.

09:52:59

14 So I guess what I would ask you to do in the next day
15 or so is please provide and file an enumerated list of those
16 investigations that are completed by investigation numbers so
17 my monitor can be aware of which ones you have completed.

09:53:19

18 And you indicate it does not include the appeal
19 process. Just out of curiosity, how long do they -- do folks
20 have to appeal a determination?

09:53:41

21 MS. IAFRATE: Your Honor, I want to say 10 days.
22 However, because of these deadlines, we are attempting to
23 truncate everything that we possibly can.

24 THE COURT: Well, you can't truncate somebody's right
25 to appeal.

09:54:05

1 MS. IAFRATE: No, no. I'm not talking about the
2 appeals; I'm talking about getting these remaining ones done.

3 THE COURT: Um-hum.

4 MS. IAFRATE: So, for example, you saw that the normal
5 process is to check line by line accuracy of the transcripts. 09:54:13
6 There are still 222 transcripts that need to be checked for
7 accuracy. We have pulled as much manpower as possible in order
8 to make those steps happen, but as far as how long they have to
9 appeal, I do not know the answer to that question.

10 THE COURT: Can you provide us with that answer when 09:54:43
11 you file the reconciliation with which ones have been made
12 final?

13 MS. IAFRATE: Yes.

14 THE COURT: And I also, you know, I gather that
15 although Mr. Vogel, or Detective Vogel, did an investigation of 09:54:59
16 Sheriff Arpaio, that's not included, because there's no
17 statutory authority for him to be investigated by the MCSO.

18 MS. IAFRATE: The investigation itself does include
19 Sheriff Arpaio. It does not include findings, because no one
20 can discipline Sheriff Arpaio. So yes, the actual 09:55:17
21 investigation of Sheriff Arpaio has been completed by
22 Mr. Vogel, and it is now at MCSO for the final discipline of
23 the principals.

24 THE COURT: Has Mr. Vogel's report been provided to
25 the plaintiffs and to Chief Sands? 09:55:34

1 MS. IAFRATE: No, because discipline had not been --
2 those are the two cases that Mr. Vogel did complete, and they
3 are now with Chief Olson for the final determination, and I
4 show in -- in my notice to you that they will be completed by
5 May 18th, which also includes the meeting out of discipline. 09:55:59

6 THE COURT: Well, I think we've battled over this even
7 before you were involved, but I don't see that there's any
8 privilege that attaches to those. I did agree that we should
9 hold them under seal so that we wouldn't interfere with the
10 investigation. 09:56:19

11 Do you anticipate turning those over to plaintiff on
12 May 18?

13 MS. IAFRATE: No, Your Honor.

14 THE COURT: Okay. Well --

15 MS. IAFRATE: I anticipate turning them over to the
16 monitors. 09:56:25

17 THE COURT: Mr. Young.

18 MR. YOUNG: Your Honor, as I understand it, these
19 reports are -- whatever they say, will be highly relevant to
20 the current contempt process, and we believe we should receive
21 them. 09:56:36

22 THE COURT: All right. Well, we will resolve that,
23 and I'll give both parties a chance to be heard, but it does
24 seem to me they're very relevant, and I don't know that there
25 is an applicable privilege, but I'll allow you one more time to 09:56:48

1 make that argument, Ms. Iafrate.

2 MR. YOUNG: Your Honor, just to expedite, will there
3 be a schedule for that? Do we go first? Does Ms. Iafrate go
4 first? How will that happen?

5 THE COURT: Well, if she says she's not going to 09:57:00
6 provide them, you can move to compel and I'll entertain that as
7 soon as I get it.

8 MR. YOUNG: Thank you, Your Honor.

9 THE COURT: I think that, Ms. Iafrate, your filing was
10 otherwise comprehensive enough that I understood what you said. 09:57:16
11 I don't have any more questions for you on it.

12 Does any other party have any questions for
13 Ms. Iafrate pertaining to that?

14 MR. YOUNG: I'm sorry, Your Honor, I didn't hear what
15 you just said. 09:57:31

16 THE COURT: Well, Ms. Iafrate filed a notice two days
17 ago regarding the completion of MCSO investigations. And I
18 just reviewed with her the questions I had regarding that
19 notice. I don't have any more questions, and I was just
20 inviting any other party that may have had questions to raise 09:57:45
21 then.

22 MR. YOUNG: Well, I think we just covered our concern,
23 which is that we think we should get those reports that are
24 relevant to this proceeding, so we'll file our motion.

25 THE COURT: All right. Thank you. 09:57:57

1 Whether any counsel of record believes steps are
2 necessary to comply with his or her obligations under
3 ER 3.3(a)(3). Does any counsel believe such steps are
4 necessary? I take it no.

5 MS. IAFRATE: Well, Your Honor, I do have a concern. 09:58:14
6 This was something that you and I discussed at the end of the
7 last hearing. It was my decision to correct the record using
8 Chief Deputy Sheridan's testimony because at the end of the
9 day, the sheriff appeared to conflate two investigations and
10 wasn't the person most knowledgeable regarding the 09:58:45
11 investigations. Therefore, I chose to put Chief Sheridan on
12 the stand in an attempt to correct the record.

13 You said to me -- I don't remember the exact words.
14 What I heard you say to me was: That's not good enough.

15 THE COURT: Well, let me just say, Ms. Iafrate, that 09:59:05
16 it strikes me that if you believe that Sheriff ar- -- I'm going
17 to give you general instruction as to how I view the matter.

18 But what we're talking about here is your ethical
19 obligation. It isn't really -- it isn't this trial, it's your
20 ethical obligation, so the obligation is your own as to how to 09:59:24
21 correct it.

22 Let me just say, if it provides you with any guidance,
23 if you believe that the sheriff gave inaccurate testimony, it
24 is not sufficient for you to attempt to correct that testimony
25 through Chief Deputy Sheridan's testimony, particularly when 09:59:43

1 you haven't indicated what testimony you think needs to be
2 corrected. And you haven't done any of those things, but I do
3 recognize that the ethical obligation is yours, and you have to
4 make that call.

5 But as far as I'm concerned, if you believe that the 10:00:00
6 sheriff rendered inaccurate testimony, then you need to
7 indicate -- well, however you choose to do it, and you may
8 choose to do it in a number of ways, you need to indicate what
9 that inaccurate testimony was and who gave it, and what you
10 believe is necessary to correct it, and what you've done to 10:00:19
11 correct it.

12 MS. IAFRATE: Very well.

13 THE COURT: Okay. So have you yet made a
14 determination whether you think any steps need to be made?

15 MS. IAFRATE: Well, based on what you are providing 10:00:29
16 me, it appears that I need to delineate what I was attempting
17 to correct through the testimony of Chief Sheridan, so yes,
18 there are steps that I will need to take.

19 THE COURT: All right. Do you want to consider -- do
20 you want to take a day or two to consider how you want to do 10:00:45
21 that?

22 MS. IAFRATE: Yes, please.

23 THE COURT: All right. And then I will ask you --
24 this will be a matter we'll raise next time, or we'll discuss
25 next time. 10:00:56

1 Any other counsel believe that they have any
2 obligations under ER 3.3(a)?

3 MR. COMO: No, Your Honor.

4 MR. WALKER: I'm not aware of any, Your Honor.

5 MR. YOUNG: No, Your Honor.

10:01:13

6 MR. McDONALD: No, Your Honor.

7 MS. CLARK: Judge? Thank you, Judge. I believe that
8 Mr. Casey may or may not have further duties, depending on
9 Ms. Iafrate's record on that issue.

10 THE COURT: All right. Well, then, Ms. Clark, I'm
11 going to ask Ms. Iafrate to decide what she needs to do and to
12 do -- and if we need to schedule testimony or whatever we need
13 to do, we're going to take this up next time, so you may want
14 to be here next time.

10:01:33

15 MS. CLARK: I will be, Judge.

10:01:50

16 THE COURT: All right. I've already indicated that
17 whether the depositions of Mr. Casey, Mr. Liddy, Ms. Stutz, or
18 other relevant attorneys may be scheduled I can't resolve
19 today. I have not given Ms. Iafrate's response significant
20 thought. If you want to file a reply, an expedited reply,
21 Mr. Bendor, you may do so. I'm going to rule on it next week,
22 which will be the 14th of May.

10:02:09

23 Whether other depositions are or -- well, does anybody
24 else have anything they want to say on that one?

25 All right. Whether other depositions are or may be

10:02:26

1 justified and/or sought by the parties to include Maricopa
2 County in light of the above issues and Maricopa County's entry
3 into the case.

4 Obviously, I don't expect you to know that at this
5 point. You haven't yet got the discovery, you haven't yet 10:02:40
6 reviewed or had a chance to review, and we may not even have
7 determined which materials are appropriate to review from the
8 document disclosures of the 23rd and 24th.

9 But I do ask all parties if they want to add
10 additional depositions, I'm going to require that you be given 10:02:56
11 those documents as quickly as possible. You review them and
12 determine whether or not you wish to take depositions.

13 I think at this stage in the game depositions may be
14 the way to go. Early on, my monitor was conducting some
15 interviews pursuant to his investigative authority under the 10:03:15
16 injunction and its supplement. He still has that authority
17 and, if necessary, we may use it. But I think it's preferable,
18 to the extent that the parties want to depose witnesses, that
19 they -- that they do it in that manner.

20 If in fact -- because I have asked questions of 10:03:35
21 witnesses -- if, upon my review of the material, I believe that
22 witnesses need to be deposed that nobody wants to depose, I
23 will say so, so that everybody has adequate notice of my view
24 of who and what needs to happen.

25 But I don't think -- consistently with how I've tried 10:03:55

1 to operate, I'm not going to say so unless the parties don't --
2 don't request the depositions and I think it's absolutely
3 necessary.

4 In conjunction with that, and I'm not sure how many
5 parties will have received this and how many parties will not 10:04:21
6 have received this, but I received a request for admission
7 pro hac vice from a Jonathan Alden Moseley. The reason I raise
8 it is he indicated that he had provided copies of this request
9 for admission to all parties of record. He also provided me a
10 letter with that request for admission pro hac vice. 10:04:46

11 There are some parts relating to confidential matters
12 pertaining to whether or not I would admit him to practice
13 here, and he requests that they, for the most part, be kept
14 confidential unless they need to be known, and I think I want
15 to honor that request. I don't see any reason that it -- that 10:05:08
16 it's relevant, but my concern is this.

17 Pursuant to Arizona rules, I admit somebody
18 pro hac vice only if I'm going to admit them as a party to a
19 particular action. Now, I have -- although there are a lot of
20 people here that are representing others, they are not parties 10:05:29
21 to the action. And Mr. Moseley I'm not sure -- well, he's --
22 he's provided inconsistent information, because in his
23 application he says -- I ask -- in his application for his
24 admission pro hac vice, he says I ask that the Court and the
25 parties consider that I, Jonathan Moseley, am not proposing to 10:05:57

1 actually participate in the conduct of this case, but merely to
2 sponsor the filing of an amicus curiae brief for Sheriff Joe
3 Arpaio by attorney Larry Klayman of Freedom Watch.

4 And then, in a letter dated the same date, he says
5 that he wants to enter an appearance on behalf of Dennis 10:06:16
6 Montgomery because he says without naming who, but it must
7 either be Sheriff Arpaio or Sheriff Sheridan, that one of the
8 witnesses doesn't know what they're talking about with respect
9 to some of the testimony he's heard that they issued about
10 Dennis Montgomery's work, and that he wants to correct the 10:06:35
11 record and answer any questions, and he will be happy to do
12 that however the Court deems best fit.

13 Now, he tells me that he's copied all counsel of
14 record. Have you all received this letter?

15 MR. YOUNG: Plaintiffs have not, Your Honor. 10:06:53

16 MS. IAFRATE: I have not, Your Honor.

17 MR. WALKER: I have not, Your Honor.

18 MR. COMO: I'm not aware of receiving it.

19 THE COURT: Well, my concern, I'll just say it, is I
20 know that Mr. Klayman is representing Sheriff Arpaio in the 10:07:02
21 D.C. Circuit action, and it seems to me that if he's trying to
22 represent, and he may be trying to represent Sheriff Arpaio
23 here, he says he is. But then he says he's trying to represent
24 Dennis Montgomery here, and he says that he's an associate with
25 Mr. Klayman in Freedom Watch. 10:07:22

1 Well, as I understand it, Freedom Watch is a special
2 interest law firm that's representing Sheriff Arpaio in another
3 action and cannot then take positions adverse to his
4 representation here.

5 So I have some real concerns about granting this 10:07:37
6 pro hac vice application. I will, if you haven't received this
7 application, copy it and provide it to all parties. But I
8 propose, unless anybody has an objection, that we set the
9 opportunity at our next status hearing for Mr. Klayman to
10 appear if he wishes to and seek to be admitted pro hac vice and 10:07:57
11 clarify who and what and why he wants to be admitted
12 pro hac vice; and how, if in fact he wishes to represent Dennis
13 Montgomery and be critical of testimony offered by the
14 defendants in this matter, he can do so without a conflict.

15 And that may be something, Ms. Iafrate, you may wish 10:08:14
16 to explore prior to that hearing. So I will make copies
17 available to all parties. I assume at least that that
18 indicates he's willing to be deposed in this matter if any of
19 the parties believe that that deposition would be beneficial.

20 I've already discussed with you some of my thoughts 10:08:38
21 about whether or not it wouldn't be worthwhile for you to talk
22 and see if there's ways to simplify this action in terms of
23 possible remedies, be they damages remedies to individual
24 plaintiffs, be they expansion of the relief that this Court is
25 entitled, and the scope of the injunction that needs to monitor 10:09:00

1 the Sheriff's Office.

2 And frankly, I have some thoughts on that, but, of
3 course, those thoughts abide the final -- any final thoughts
4 abide the end of the testimony. But it does seem to me that
5 you can -- it's possible, at least conceivable, that you could
6 agree at least on some things that would simplify this action.
7 We've already raised them, and so I'll just observe that here.

10:09:17

8 The only other question I have, I guess that I would
9 like some thought about, it does seem to me, Ms. Iafrate, and
10 we haven't heard all the testimony, and I'm not going to make
11 any decisions until I hear all the testimony and I do want to
12 guaranty you that, but in this case spoliation of evidence,
13 lack of effort on discovery, perhaps lack of any policies
14 relating to discovery and documents, seem to be evident so far
15 in the Maricopa County Sheriff's Office. Clearly, we've
16 already had an adjudicated spoliation problem.

10:09:38

10:10:07

17 What this proceeding is really all about is trying to
18 assist the Maricopa County Sheriff's Office to operate the way
19 it should be operating. So we've talked about what some of the
20 remedies are for some of the other contempts, but there's been
21 an admission also that discovery was really wholly inadequate
22 in this action.

10:10:27

23 I'm not really sure that there's a basis for ongoing
24 injunctive relief. I do think I have pretty broad inherent
25 authority to sanction the Sheriff's Office for that. What I

10:10:46

1 really would rather do -- or what I would like to do as part of
2 that is make sure that policies are in place so that this kind
3 of thing doesn't happen again, and I guess that's something
4 that might also bear some thought in your settlement
5 discussions.

10:11:06

6 I hope that as we go along in these status
7 conferences, as I've said, we can eliminate issues, limit
8 issues, and refine them, so that we can bring this matter to a
9 conclusion. I assume that all parties want that as much as I
10 do and I'll expect that we will continue to do that.

10:11:29

11 I don't have anything else except for I do want to
12 address an objection filed by Maricopa County and by Ms. Wilson
13 individually to my order issued a day or two ago terminating
14 the procedure by which Ms. Wilson and Ms. Kate Baker, who were
15 her counsel, came in and reviewed the detailed billings of the
16 monitor to make sure that they were in compliance with
17 accountability.

10:11:53

18 And I guess I want to say that -- a couple of things,
19 and Mr. Walker, mostly for your benefit, because you're
20 brand-new to this action. However, the County is not new to
21 any of this. Last year at this time we were discussing what
22 could be done, and Mr. Irish provided me the letter that you
23 provided, because obviously, much of what the -- what my
24 monitor does has to be confidential to my monitor. Otherwise,
25 his ability to confidentially monitor the Sheriff's Office

10:12:20

10:12:41

1 isn't of much value.

2 And when we discussed this, we agreed that it made
3 most sense for Ms. Wilson to come in and review the entire
4 detailed billings. And I will say that in my experience,
5 Ms. Wilson has been a benefit to the County and a benefit to
6 this process by reviewing those billings.

10:13:02

7 She did not want to do it. She did do it. I believe
8 that she and the monitor had some disagreements, but they
9 resolved -- I think for the most part resolved them pretty
10 well. And I will tell you -- and Ms. Wilson, you're here; you
11 can correct me -- in terms of a lot of what you've argued in
12 your brief, Mr. Walker, it's partly right and it's partly not
13 right.

10:13:25

14 I do recognize that the County has procurement
15 regulations that pertain to those with whom it goes through a
16 procurement process. That's a little bit different than when I
17 order a monitor and order the County to pay for it.

10:13:43

18 Nevertheless, it's extremely important that that monitor be
19 accountable to the County, and I recognize that, too. I also
20 recognize that an independent voice is good, and again,
21 Ms. Wilson, I think, did that very well.

10:14:02

22 My concern and why I terminated temporarily the policy
23 is it seems to me the County's entry back into the case makes
24 any communication that I have with Ms. Wilson an ex parte
25 communication, and thus not acceptable.

10:14:29

1 And I guess I'll also say over the course of the year
2 in which she's been doing this, the contract that existed has
3 now expired. There is no contract between the County and the
4 monitor. The County has just agreed to continue to -- to pay
5 pending the renewal of the contract negotiations between the 10:14:45
6 monitor and the County.

7 But the contract did require a reasonable level of
8 accountability to Ms. Wilson, and she and the monitor, I think,
9 have arrived at a process where they have certain categories of
10 information. She has detailed information within those 10:15:07
11 categories. Where she views that as insufficient, she asked
12 the monitor for supplementation and he's given it to her. And
13 for reasons I've already stated, I think she's done so very
14 professionally, and it's been a help to the process.

15 And I think her input has saved the County money 10:15:23
16 because she requested, for example, that we use
17 tenth-of-an-hour billing increments rather than
18 quarter-of-an-hour billing increments, and other things that
19 we've implemented that I think have been beneficial to the
20 County. 10:15:35

21 My thought was this, though. If she can no longer do
22 that because she's now represented, and I don't believe a
23 magistrate judge can do it because a magistrate judge isn't
24 really familiar, as I am, with my interactions with the
25 monitor, nevertheless, it seems to me that we could have an 10:15:49

1 independent person.

2 Perhaps, Ms. Wilson, you can give us three or four
3 that you think have good accounting ability that have nice
4 detail. That you and I or -- and everybody can be invited --
5 you and I can sit down and explain the process and sort of how
6 we have arrived at the appropriate level of detail that
7 Mr. Warshaw and his staff need to give you.

10:16:10

8 We can then have that person be subject to the same
9 confidentiality that you've been subject to to date, come in
10 and do the same thing that you've been doing every month, and
11 if they have objections or requests for detail, they can do
12 that sort of informally as you have done, or they can file an
13 objection and it will be placed and maintained in my file.

10:16:27

14 I can then determine, if there are any disputes, who's
15 right, and why, and place that in my file. And then I can
16 order the County -- and I do apologize. I didn't mean to
17 offend your personal sense of professional integrity by
18 ordering you to do it, and I understand what you've told me --
19 I'll then order the County to pay the bill on every -- on an
20 every monthly basis.

10:17:04

21 I offer that as an alternative. As I said, your
22 objections have been helpful. I do believe it's very important
23 that the County have accountability here, but we have to
24 balance that with the need for confidentiality when a monitor
25 is monitoring the Maricopa County Sheriff's Office.

10:17:18

1 Because what we've been doing I think works fairly
2 well, I would propose that we merely transfer that from
3 Ms. Wilson to an independent person, it would have to be paid
4 for by the County, but if you wanted to name three or four
5 people, we could pick from those three or four people, you and 10:17:34
6 I could sit down, subject to everybody else being here who
7 wants to be here, and we could sort of talk about the level of
8 particularity that we have discussed that you have found
9 acceptable and that I have -- I have not required the monitor
10 to give the level of specifics that you usually require for 10:17:52
11 your folks that are subject to your regulations, but I have
12 nevertheless required him to be pretty specific so that you can
13 be aware and be accountable.

14 Does that strike you as something that might work,
15 Ms. Wilson? 10:18:08

16 MR. WALKER: Your Honor, may I have a moment to
17 consult with Ms. Wilson?

18 THE COURT: Sure, you may.

19 (Pause in proceedings.)

20 MR. YOUNG: Your Honor, may I -- 10:18:45

21 THE COURT: We don't have counsel for the County here.

22 MR. YOUNG: Oh.

23 THE COURT: He stepped out. So if you'll just hold on
24 to your thought, Mr. Young.

25 (Pause in proceedings.) 10:18:57

1 MR. WALKER: Your Honor, both Ms. Wilson and the
2 County find your suggestion acceptable, and we're perfectly
3 willing to proceed as you have proposed.

4 THE COURT: All right. Then unless any other party
5 has an objection, Ms. Wilson, can I ask you, can you get 10:19:28
6 maybe -- give us a list of three or four people that would be
7 acceptable to you.

8 MS. WILSON: (Nodding.)

9 THE COURT: And here's what I would propose to do.

10 You did indicate in your objection that I should have 10:19:40
11 reviewed the billings, and I want you to know I did review the
12 billings; I just didn't say so. And so I'll just enter an
13 order requiring the County to pay the bill.

14 But as you've suggested, we can have that person, when
15 newly appointed, review the bill I've just reviewed and 10:19:53
16 authorized to be paid, and if they need additional
17 documentation they can request it from the monitor or we'll
18 make adjustments.

19 Any objections to that?

20 MS. WILSON: (Shaking head.) 10:20:03

21 MR. WALKER: No objection, Your Honor.

22 THE COURT: All right. So Ms. Wilson, if you'll just,
23 in conjunction with the County, give us three or four names,
24 and if it's all right with you we'll just pick one, and if
25 they're willing, I'll enter the order requiring the same 10:20:15

1 confidentiality of them that I've required of you.

2 MS. WILSON: (Nodding.)

3 THE COURT: Although I do understand, and I want you
4 to know that I respect you, I didn't mean to impugn your
5 integrity in any way by ordering you to prepare the payment for 10:20:26
6 filing, I still am going to order you and Ms. Baker to keep
7 confidential any of the material that you have viewed from the
8 detailed billing records that you've had access to. I hope
9 that doesn't offend you.

10 MS. WILSON: (Shaking head.) 10:20:42

11 THE COURT: All right. Is there anything else that we
12 should discuss? Mr. Young, you approached the podium earlier.

13 MR. YOUNG: Yes, Your Honor. A mechanical issue with
14 respect to the scheduling for the briefing on the dispute
15 relating to the worksite raids. And I have in mind that you, 10:20:56
16 Your Honor, received a brief yesterday, and, you know, I
17 understand that there are limits to -- you need time to read
18 these things.

19 So you, I think, instructed Ms. Iafrate to file a
20 brief on May 15 and you said that you would resolve the issue 10:21:11
21 on May 22. We may want a chance to respond to the brief that
22 the sheriff files on that issue, and I'm seeking the Court's
23 guidance on when and how we do that.

24 THE COURT: Well, here's my deal. I think if
25 Ms. Iafrate needs to hire more help, the County, I'm going to 10:21:34

1 tell you this, Mr. Walker, you need to give Ms. Iafrate more
2 help. She's a one-person law firm. Well, I don't know that.
3 You're a small law firm. I'm mindful of the fact that
4 Ms. Iafrate can only do so much as well.

5 But I don't want that, Ms. Iafrate, to slow down this 10:21:47
6 procedure; I'm sure you don't want to as well. But I can't
7 really see, with everything else that I'm asking her to do,
8 that I can ask her to get that on file any earlier than the
9 15th if that's when she tells me she can get it on file.

10 MR. YOUNG: I'm not asking that. I'm just asking when 10:22:02
11 Your Honor would like us to file our response to that brief.

12 THE COURT: Well, how long is it going to take you?

13 MR. YOUNG: Well, I haven't seen it yet, but we can
14 try to file it as early as possible, but I have in mind your
15 experience with the brief that was filed yesterday and we'll 10:22:15
16 try to file -- we'll try to file it as early as we can.

17 THE COURT: All right. Tell you what: As early as
18 you file it, I will determine it the next status hearing unless
19 you file it the night before.

20 MR. YOUNG: Thank you, Your Honor. 10:22:26

21 THE COURT: All right. Any other questions?

22 Mr. Liddy, been a pleasure.

23 MR. LIDDY: As well, Your Honor.

24 THE COURT: Anything else?

25 MR. COMO: I have nothing further, Your Honor. 10:22:41

1 MR. WALKER: Nothing further for the County, Your
2 Honor.

3 THE COURT: We'll see you next Thursday.

4 THE CLERK: All rise.

5 (Proceedings concluded at 10:22 a.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of May, 2015.

s/Gary Moll