

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3  
4 Manuel de Jesus Ortega )  
Melendres, et al., )  
5 )  
Plaintiffs, ) CV 07-2513-PHX-GMS  
6 )  
vs. ) Phoenix, Arizona  
7 ) October 28, 2014  
Joseph M. Arpaio, et al., ) 3:04 p.m.  
8 )  
Defendants. )  
9 \_\_\_\_\_ )

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (Status Conference, Pages 1-80, Sealed Proceedings Omitted)

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20  
21  
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25 Proceedings taken by stenographic court reporter  
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P R O C E E D I N G S

THE COURT: Thank you. Please be seated.

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

15:04:40

Counsel, please announce your appearances.

MS. WANG: Good afternoon, Your Honor. Cecillia Wang  
and Andre Segura of the ACLU Immigrants Rights Project for the  
plaintiff class.

THE COURT: Good afternoon.

15:04:52

MR. SEGURA: Good afternoon.

MR. CASEY: Your Honor, Tim Casey. Along with me from  
my law firm is James Williams and Maricopa County deputy  
attorney Tom Liddy.

Also with us, Your Honor, from the MCSO is Chief Jerry  
Sheridan. Also is Sergeant Dave Tennyson. Going from left to  
right. Ser -- excuse me, Captain Steve Bailey. Deputy county  
attorney Christine Stutz. Also from the MCSO is Chief Scott  
Freeman.

15:05:05

I'd also like to have on the record that the Chairman  
of the Maricopa County Board of Supervisors, Denny Barney, is  
here, along with the county manager, Tom Manos, sitting to his  
immediate right.

15:05:31

At the counsel table, I don't want to be presumptuous,  
but Doug Irish from the Maricopa County Attorney's Office is

15:05:48

1 here with his client, deputy county manager Sandi Wilson, and  
2 her counsel, Kate Baker, in her law firm.

3 THE COURT: All right. Thank you. We have a lot to  
4 do this afternoon. I'm going to pretty much keep it under my  
5 control. If we don't finish what we have to do this afternoon  
6 I will reschedule. But I would like to, if I possibly can, get  
7 it done this afternoon.

15:06:08

8 Let me tell you how I plan to proceed. There are  
9 really five separate matters. The first has to do -- the first  
10 that I want to address has to do with -- I'll ask a question to  
11 the plaintiffs, but then I want to get into the recovery of  
12 recordings made by MCSO personnel that were not disclosed  
13 during the course of the underlying lawsuit, and to the --  
14 explore the extent to which we have any disagreements about the  
15 monitor's report.

15:06:25

15:06:42

16 I will probably have the monitor make a summary of his  
17 report in the first instance unless the plaintiffs have an  
18 objection to the disclosure of that report. After we do -- or  
19 handle matter relating to the recovery of the recordings I will  
20 then get into the report itself, the monitor's report. It has  
21 four or five distinct categories, and I'll hear anything you  
22 want to say about that from the MCSO.

15:07:02

23 After that, we will discuss the contact between the  
24 monitor and the Maricopa County Administration. After that,  
25 we'll talk about Sheriff Arpaio's statements that he'd do the

15:07:22

1 Guadalupe operation all over again. After that, I'm going to  
2 close and seal this hearing and only parties will remain as we  
3 will have some specific questions -- as I will have some  
4 specific questions about ongoing matters that I think are  
5 appropriately kept privileged.

15:07:41

6 Everybody clear how I intend to proceed?

7 MR. CASEY: The defense is, Your Honor.

8 THE COURT: All right. Ms. Wang?

9 MS. WANG: Yes, Your Honor.

10 THE COURT: Ms. Wang, let me first ask, and you may  
11 have read my report yesterday, you did file your response to  
12 the monitor's report under seal. Maricopa County did not. I  
13 assume that they don't mind if it's public, I don't mind if the  
14 monitor's report is public, I don't mind if your response is  
15 public, but because you'd filed your report under seal, I  
16 wanted to give you the opportunity to object.

15:07:49

15:08:05

17 MS. WANG: Your Honor, plaintiffs do not object to  
18 either the monitor's report or the plaintiffs' response to it  
19 being part of the public record.

20 As we noted in our notice that we filed at the time we  
21 lodged our response under seal, we filed it under seal merely  
22 in an abundance of caution, given the defendants' pending  
23 objection. I believe we filed it before defendants filed their  
24 response. If they had filed theirs first, I probably would  
25 have just filed ourself publicly. So at this time I would ask

15:08:17

15:08:38

1 that the Court deem our response to be part of the public  
2 record of the Court.

3 THE COURT: All right. I will sign an order, then,  
4 unsealing your response, and I will file the Maricopa County --  
5 or I will file the monitor's report to me.

15:08:50

6 Mr. Casey.

7 MR. CASEY: Your Honor, as to the monitor's report, we  
8 request that you allow us to submit to the Court within 24  
9 hours appropriate redactions, because there are matters in  
10 there, particularly names, that need, under Title 38, to be  
11 excluded. We understand --

15:09:06

12 THE COURT: Well, I'm not sure that you haven't waived  
13 any right to request that now.

14 MR. CASEY: No. Your Honor, with all due respect --

15 THE COURT: Guess what? I get to make the call,  
16 Mr. Casey.

15:09:19

17 MR. CASEY: Yes, Your Honor, but I'm allowed to make a  
18 record. I just wanted to point out for the Court that in our  
19 filing we did not identify any names or enough information that  
20 would be able to connect.

15:09:30

21 THE COURT: All right. I'll give you 24 hours to  
22 submit proposed redactions.

23 MR. CASEY: Okay. Thank you, Your Honor.

24 THE COURT: I'm not sure that I'll take them, but --  
25 but I think that -- I respect the fact that you're trying to

15:09:36

1 protect an ongoing investigation, and certainly I want to do  
2 that, too.

3 MR. CASEY: Thank you, Your Honor.

4 THE COURT: To the extent, I think, that you've  
5 legitimately done that and the plaintiffs have no objection, we  
6 will make that redaction.

15:09:45

7 I, however, am going to invite the monitor to  
8 summarize his report, and if in the summary you are concerned  
9 that he names any names that shouldn't be named, you better be  
10 on your feet pretty quickly.

15:10:00

11 All right. Monitor Warshaw, could I please have you  
12 give us a brief summary of your report and what we're  
13 addressing here today.

14 MONITOR WARSHAW: Yes. Good afternoon, Your Honor.

15 The monitors were advised on April 30th that the  
16 Phoenix Police Department, in response to a burglary call at  
17 the home of Deputy Charlie Armendariz, found drugs and other  
18 items that appeared to be evidentiary in nature. We learned  
19 that MCSO was dispatched to the scene, which ultimately led to  
20 a May 1st search warrant.

15:10:14

15:10:34

21 At that time, a variety of items were found, none the  
22 least of these being hundreds of DVDs which captured traffic  
23 stops made by Deputy Armendariz.

24 On May 2nd, Deputy Armendariz was interviewed as part  
25 and parcel of a criminal statement, at which time he made

15:10:51

1 reference to other members of the Maricopa County Sheriff's  
2 Office who had deposited items, videos and perhaps other items,  
3 through a third person at his house, that's Armendariz's house.

4 On the 4th of May, Armendariz had barricaded himself  
5 in his house. He was taken to a hospital. On the 5th of May, 15:11:17  
6 he was booked on drug and other charges. On the 7th of May,  
7 the Probation Department drew a warrant. On May 8th, during  
8 the execution of this warrant, which was done by units from the  
9 Maricopa County Sheriff's Office, entry was made into the  
10 house, during which time they discovered the body of Deputy 15:11:33  
11 Armendariz. On the evening of May 8th I received a phone call  
12 from Chief Deputy Sheridan, who advised me of this development.

13 Our first concern was the decision by the Maricopa  
14 County Sheriff's Office to essentially seize the investigation  
15 of the Armendariz death from the Phoenix Police Department, as 15:11:53  
16 Mr. Armendariz's home was clearly within the limits of the City  
17 of Phoenix. The monitoring team kept in touch regularly with  
18 the Maricopa County Sheriff's Office from that point  
19 thereafter.

20 On May 14th, this Court held a hearing during which 15:12:09  
21 the monitoring team was ordered by the Court to assist the  
22 Maricopa County Sheriff's Office in the conduct of its  
23 investigation. Specific details as to what our mandate was was  
24 committed in writing by the Court on May 15th.

25 But getting back to May 14th, during a lengthy meeting 15:12:28



1 in the afternoon, I, and other members of the monitoring team,  
2 met with Chief Deputy Sheridan, then-Captain of Internal  
3 Affairs Captain Kenneth Holmes, and Ms. Christine Stutz from  
4 the Maricopa County Attorney's Office. That was a long  
5 exchange at which time, or by its conclusion we had reached an  
6 investigative course of action.

15:12:51

7 Late that afternoon we came to this Court to report to  
8 the Court on the status of our dialog with the Sheriff's  
9 Office, only to be interrupted by a phone call from  
10 Chief Deputy Sheridan, who advised me that earlier in the day a  
11 different course of action, one that was specifically contrary  
12 to what we had mutually agreed upon, had been hatched.

15:13:09

13 We were perplexed that present at the Maricopa County  
14 Sheriff's Office meeting in which we were in attendance were  
15 Ms. Stutz and Chief Sheridan, and we learned eventually that  
16 the decision that had been made taking the department in a  
17 different direction included their attendance as well.

15:13:33

18 We learned that at that meeting earlier in the  
19 afternoon it was determined that Deputy Chief Trombi would  
20 issue a survey via e-mail to all personnel in the police  
21 department, this being contrary to what we earlier had decided.  
22 There were many turning points in this investigation, but  
23 unfortunately, the greatest turning point was right at the  
24 outside when we believe that against our specific advice, the  
25 Maricopa County Sheriff's Office compromised its ability to

15:13:56

15:14:22

1 determine if other members of the Maricopa County Sheriff's  
2 Office had in fact engaged in videoing or audioing of traffic  
3 stops.

4 In the report I filed with the Court and in subsequent  
5 responses filed by the parties, specifically the defendants, 15:14:42  
6 there have been numerous references to administrative and  
7 criminal investigations. In sum and substance, there has been  
8 only one criminal investigation that we're aware of which I  
9 shall discuss in a moment. But from the inception, I would ask  
10 that the Court be made aware that it was the original thinking 15:15:05  
11 of the Maricopa County Sheriff's Office that an attempt to  
12 determine the -- the process through which Deputy Armendariz  
13 had came into possession of licenses, passports, and assorted  
14 other identifications, that it was the MCSO's thinking that a  
15 community satisfaction survey be undertaken, which we felt was 15:15:32  
16 a ruse as a means to determine how all of these items came into  
17 the possession of Deputy Armendariz. We wholly rejected that.

18 During the course of this investigation other  
19 information came to the attention of the MCSO and the  
20 monitoring team, specifically information relevant to a former 15:15:56  
21 deputy who had alleged that members of the Human Smuggling Unit  
22 had, quote, pocketed items from, quote, safe houses that had  
23 been raided and taken them back to the HSU office. This led to  
24 the opening of a criminal investigation in which 46 personnel  
25 were given their Miranda rights. 15:16:22

1 I'd like to at this time emphasize in our collective  
2 judgment as a monitoring team, and we have hundreds of years of  
3 experience, we have never seen, having viewed a good number of  
4 the interviews that occurred as part and parcel of that  
5 criminal inquiry, we had never seen a more deficient, 15:16:39  
6 unprofessional set of aimless interviews, interviews replete  
7 with extraordinary familiarities, informalities, and apologetic  
8 treatment towards those who were being interviewed. This, in  
9 our view, Your Honor, called into question seriousness in which  
10 the Maricopa County Sheriff's Office had taken the order of 15:17:05  
11 this Court.

12 We learned that there were no policies on the use of  
13 videos. We learned that the handling of evidence was at best  
14 done loosely. And notwithstanding the exchange of general  
15 cordialities between our team and members of the MCSO, we would 15:17:28  
16 have to say that our interaction with the MCSO as it pertains  
17 to this investigation we felt they displayed a cavalier, if not  
18 a contemptuous, attitude towards our assistance, and, by  
19 extension, the order of this Court.

20 We were perplexed that they had removed Captain Holmes 15:17:50  
21 from Internal Affairs. Captain Kenneth Holmes had been the  
22 original commander of Internal Affairs with whom we had dealt.  
23 We were led to believe that this had been done presumably  
24 because of his leadership on this matter, but we were somewhat  
25 puzzled by the fact that he was removed and promoted to a 15:18:14

1 chief's position.

2 We were equally puzzled that Chief Trombi, who was  
3 instrumental in the dissemination of the e-mail that was  
4 contrary to our directions, and who's been in front of this  
5 court on another matter and has been NOI'd. A notice of  
6 investigation for an administrative matter relevant to this  
7 case was also --

15:18:33

8 MR. CASEY: Excuse me, Your Honor. I'm going to  
9 object on Title 38, privacy matters.

10 THE COURT: All right.

15:18:48

11 MONITOR WARSHAW: We were concerned --

12 THE COURT: I'm going to just indicate that the  
13 record, to the extent that it contains any names there, will be  
14 stricken.

15 MR. CASEY: Yes. Thank you, Your Honor.

15:19:05

16 MONITOR WARSHAW: We were also concerned that the  
17 department moved into the command of internal affairs the  
18 incumbent, Captain Bailey, from his previous position as the  
19 commander of the Special Investigations Division, especially  
20 considering that the Special Investigations Division was the  
21 parent component that oversaw the Human Smuggling Unit, and  
22 these personnel assigned to the Human Smuggling Unit and their  
23 activities would be the specific subject of the inquiry being  
24 made by Internal Affairs. At all times relevant to our  
25 interaction with MCSO there was a representative from the

15:19:27

15:19:52

1 Maricopa County Attorney's Office present, and to the best of  
2 our recollection, we can think of no time that there was any  
3 concern that even approximated the kind that was articulated in  
4 the defendants' response to us during the course and conduct of  
5 our interaction with the Maricopa County Sheriff's Office to  
6 date. We cannot recall her objections or concerns regarding  
7 any of the points that have been raised in the defendants'  
8 response to us.

15:20:19

9           Regarding the closeout of a criminal investigation  
10 that was specifically referenced to the possible taking of  
11 property, we are also perplexed that an official closeout of a  
12 criminal investigation is accomplished through an internal  
13 memorandum sent from an investigative sergeant to a captain of  
14 police with no signatories or approvals from anyone above that  
15 particular position of captain of police.

15:20:35

15:21:01

16           We have worked diligently to be of assistance to the  
17 Maricopa County Sheriff's Office in the pursuit of the truth,  
18 but as we have indicated on our report, that our best efforts  
19 have been consistently met with resistance and displeasure.

20           THE COURT: Thank you.

15:21:28

21           You care to address any of that, Mr. Casey?

22           MR. CASEY: I'm not sure where to begin, Your Honor.

23           THE COURT: Well, I'll tell you how I'd like to focus  
24 the proceeding.

25           MR. CASEY: Please.

15:21:37

1 THE COURT: As I indicated, let's talk about the May  
2 14th events first, and then we can move on to the report as a  
3 whole.

4 Do you have anything to say with respect to the May  
5 14th events? 15:21:47

6 MR. CASEY: You're talking specifically about the  
7 Sheridan-Trombi?

8 THE COURT: Well, I'm talking about the whole event.  
9 We had a proceeding here under seal.

10 MR. CASEY: Yes. 15:21:59

11 THE COURT: That seal has since been removed.

12 MR. CASEY: Yes.

13 THE COURT: You've withdrawn any objection to the  
14 removal of the seal. And in that hearing you came forward, and  
15 I commend you for it, you came forward and said that you had 15:22:09  
16 found that in -- well, and let me just state this Deputy  
17 Armendariz was a principal witness and had a lot of evidentiary  
18 matters involved in the trial which resulted in the current  
19 operation, the current exec -- well, current injunctive order  
20 under which we're operating, and so his misconduct was alleged, 15:22:31  
21 and then you informed us that upon his -- the investigation of  
22 his apartment or his home after his decease, you uncovered a  
23 number of self-recorded videos that he'd done in his  
24 eyeglasses, and that you had been able to review a few of them,  
25 and a few of them were what you called problematic -- 15:22:54

1 MR. CASEY: Yes, sir.

2 THE COURT: -- meaning that they were in violation --  
3 the videos showed stops in violation of department policy;  
4 perhaps stops that were even illegal; perhaps stops that even  
5 violated somebody's civil rights. At that point you had not  
6 reviewed anything close to all the stops.

15:23:07

7 You did note that on occasion, the few stops you'd  
8 reviewed there were supervisors -- you were able to identify  
9 one in which one of the HSU supervisors was present during the  
10 stop, and so you had concerns that others administratively may  
11 have been aware of these problematic stops and not taken  
12 appropriate action.

15:23:25

13 You indicated as well that in addition to the videos  
14 there were narcotics, there were a large number of driver's  
15 licenses, credit cards, identification cards, other matters  
16 that -- that posed some real concerns, that you wanted to keep  
17 track of that investigation.

15:23:42

18 We had Deputy Sheridan, Chief Deputy Sheridan, avow  
19 that -- I asked him if in fact it was possible that other  
20 deputies were recording videos, and he indicated that it was  
21 not in violation of department policy for deputies to record  
22 their own videos; and, in fact, he had reason to believe that  
23 that may have been happening, that there were other deputies  
24 recording videos. He, I think, came forth at that time with  
25 other body mount videos that he was aware of that had been

15:24:06

15:24:22

1 recording -- been used by I think he said Lake Patrol.

2 In the video that you showed us that -- one of the  
3 videos you showed us that Deputy Armendariz took with his  
4 eyeglasses, we saw that there was a dash-mount camera in the  
5 vehicle, and so Chief Sheridan couldn't tell me how many  
6 dash-mount cameras there could have been out there.

15:24:41

7 I did express my surprise at the time, because  
8 plaintiffs had asked for the recordings, all the recordings in  
9 the earlier action, and the sheriff had requested that the  
10 County fund all the vehicles and perhaps -- deputy chief,  
11 perhaps he was unaware, and so he was unaware of how many more  
12 videos there may have been out there that should have been  
13 disclosed to plaintiffs and what they may have disgorged.

15:24:58

14 I think I acknowledge, and stop me if I say -- if I  
15 missummarize anything. I think I acknowledge that although I  
16 could use my coercive power to make sure that we -- or to try  
17 to recover from deputies any videos that they might have, that  
18 we needed to operate quietly, so that we weren't alerting  
19 deputies that might have been taking records -- and I didn't  
20 say there were any; I'm not saying now there were any -- so we  
21 would not be alerting deputies who might have problematic  
22 recordings that they should ditch their recordings because  
23 they're being collected. I emphasized that I think a couple of  
24 times; I've marked up the transcript if you want to see it.

15:25:14

15:25:38

25 I then directed the sheriff, who was here, and Chief

15:25:56



1 Deputy Sheridan cooperate with the monitor and together to  
2 formulate a plan in which they could quietly go forward, the  
3 monitor approve the plan, they would quietly go forward and do  
4 their best to quietly see if they could get in all the videos  
5 that may have been recorded by deputies without advertising  
6 that we were collecting them.

15:26:13

7 I then believe that a meeting was set for a few hours  
8 later in which you were to discuss and come to a course of  
9 operation. And then it's my understanding that the chief and  
10 the sheriff went back and directed Chief Trombi, who was not  
11 here, and, thus, you couldn't disclose to him anything that we  
12 discussed here, they directed Chief Trombi to send out a memo  
13 to all of the people under his command, one of which was one of  
14 the people identified as -- in one of the problematic -- as the  
15 supervisor in one of the problematic Armendariz videos and  
16 informed them that we were going -- that you were going -- they  
17 were responsible for collecting all the personal videos. And  
18 then, when the monitor came, you went through three hours, you  
19 came up with a different plan. Nobody told the monitor that  
20 the plan you came up with was not possible because of what had  
21 already happened. In fairness to Chief Sheridan, he called  
22 when he realized that he'd already messed that up and the  
23 monitor was back in my chambers. Do you disagree with any of  
24 that?

15:26:33

15:26:54

15:27:15

25 MR. CASEY: There's -- Your Honor -- no is the short

15:27:33

1 answer.

2 THE COURT: Well, let me ask you, then. And we don't  
3 have to spend a whole lot of time worrying about this if "no"  
4 is the short answer.

5 The plaintiffs have asked for certain remedies; you've 15:27:47  
6 probably seen what those remedies are.

7 MR. CASEY: Yes.

8 THE COURT: I made a note of them. They request a  
9 finding that MCSO committed numerous and serious additional  
10 discovery violations that resulted in the failure to provide 15:27:57  
11 plaintiffs with relevant evidence prior to trial, and that that  
12 resulted in the destruction of much of that evidence. That all  
13 of these discovered recordings that are still in existence in  
14 response to plaintiffs' discovery requests should be produced  
15 to them immediately, and that they should be awarded their 15:28:14  
16 attorneys' fees for that failure.

17 Do you have any dispute with any of the relief that  
18 they request?

19 MR. CASEY: Yes, two -- a couple of points, Your  
20 Honor. First of all -- 15:28:28

21 THE COURT: Oh, by the way --

22 MR. CASEY: Sure.

23 THE COURT: -- before I forget --

24 MR. CASEY: Yes, sir.

25 THE COURT: -- in the ensuing -- in the end, the 15:28:33

1 monitor and MCSO was not able to implement the plan that they  
2 arrived at with the monitor, but they did do a survey; they did  
3 get some -- some recordings in.

4 In addition, they found that virtually every  
5 detective -- or every deputy and every sergeant had audio 15:28:51  
6 recording devices, and had during the period. They found that  
7 HSU, since 2008, had required recordings and had still kept  
8 some of those recordings and they were there; and there were  
9 other recordings that were found that have since been turned  
10 over. But it does seem to me, at least by my review of -- and 15:29:14  
11 I realize that there's some problematic stuff, there has been  
12 since from the beginning, because the date stamps on the --

13 MR. CASEY: Yes, sir.

14 THE COURT: -- on the films are not always accurate,  
15 but it seems to me quite likely that there was known to the 15:29:25  
16 MCSO that they were recording these traffic stops, it looks to  
17 me based on the discovery that plaintiffs have again provided  
18 that that was squarely requested and that there was never  
19 provided. So I guess I invite you to address that question.

20 MR. CASEY: Well, yeah, and I will be brief. 15:29:43

21 I've gone through the discovery. There is no doubt  
22 that video existed at the time that discovery was outstanding.  
23 It was broad enough in order to include videos. If you go  
24 through --

25 THE COURT: And audios. 15:30:02

1 MR. CASEY: And audios. I didn't mean to make a  
2 distinction there. In fact, when I reviewed the October,  
3 November, and December of 2009 depositions -- which, in  
4 fairness to these counsel, they weren't there, it was the  
5 Steptoe & Johnson law firm -- was the first reference of them 15:30:17  
6 first coming online was the testimony. And that was in '09,  
7 and that many of the officers had testified that they hadn't  
8 even taken out of the packaging the videos. So I'm -- I see  
9 the Court's hand gesturing, I have trouble reconciling, quite  
10 frankly, that with that testimony. 15:30:46

11 There's no question that some video exists before the  
12 discovery cutoff. Based on our preliminary review, and there  
13 are thousands of them, the vast majority are after the  
14 discovery cutoff date, for whatever that is worth to the  
15 Court -- 15:31:01

16 THE COURT: Well, let me -- let me just tell you one  
17 thing that causes me some --

18 MR. CASEY: Yes, sir.

19 THE COURT: -- concern. The monitors have provided me  
20 with this. It's the Maricopa County Sheriff's operational 15:31:08  
21 manual dated February 2008, and it has in here directions that  
22 every traffic stop will be recorded. And so it looks to me  
23 like even though -- even though many of those are presumably  
24 destroyed by now, there was, when these discovery requests were  
25 issued, -- yeah, it's page 3 and 4, Use of Scorpion Micro 15:31:35

1 video cameras by the Human Smuggling Division. HSU deputies  
2 will record their traffic stops when practical. It just looks  
3 to me like in addition to what you have -- have provided, and I  
4 don't question that you've now provided everything you have --

5 MR. CASEY: Yes, sir.

15:31:54

6 THE COURT: -- there was a lot that was destroyed that  
7 would not have been destroyed if you would have responded  
8 fairly to that request when it was issued.

9 MR. CASEY: I cannot conclude that right now, but I  
10 can conclude that while we determined the vast majority of the  
11 videos were recorded after the discovery cutoff date --

15:32:09

12 THE COURT: The existing videos.

13 MR. CASEY: The existing videos. That's all -- that's  
14 all I can say, the existing videos. I don't know if it's the  
15 universe; I can't vow one way or the other.

15:32:22

16 THE COURT: You can't avow now.

17 MR. CASEY: Certainly, I cannot. And I don't think  
18 anyone can.

19 THE COURT: You can't avow that the best method has  
20 been used to recover those videos against -- from officers that  
21 may have been self-recording.

15:32:35

22 MR. CASEY: I cannot, but I can, in answer to one of  
23 your questions, say that the conversation as I understand it  
24 between Chiefs Trombi and Sheridan occurred before the meeting  
25 with the honorable Warshaw -- monitor Warshaw and his crew, and

15:32:47

1 there was clearly a snafu that occurred.

2 So, you know, the practice that was agreed upon did  
3 not take place.

4 THE COURT: It was more than agreed upon. Let me read  
5 my order from the hearing that occurred just prior --

15:33:07

6 MR. CASEY: It was your order, Your Honor.

7 THE COURT: All right. Well, I'm going to direct the  
8 monitor to work with you on a plan that he can approve that  
9 your best thinking about how you can, without resulting in any  
10 destruction of evidence, gather all the recordings, and then  
11 based on what you find, and/or maybe beginning before you can  
12 assess what you find, depending upon your thoughts, you result  
13 in an appropriate and thorough investigation.

15:33:21

14 So I ordered --

15 MR. CASEY: You did.

15:33:35

16 THE COURT: -- I ordered you to consult and get the  
17 approval of the monitor before you proceeded in a way that now  
18 we have no way of knowing if -- I'm not saying there is, but  
19 certainly it wasn't the best way, it wasn't the way that was  
20 agreed on, to make sure that we would get all the recordings  
21 that officers may have done that may have been incriminating.

15:33:50

22 MR. CASEY: It was not pursuant to your order.

23 THE COURT: All right. Let me raise one other concern  
24 I have, and it's a concern based on your response. I'm going a  
25 little bit afield, and I do want to give you the opportunity to

15:34:09

1 say what you want to say.

2 MR. CASEY: Yes, sir.

3 THE COURT: But I noticed language in your response  
4 that concerns me which says that the MCSO has and will continue  
5 to resist the monitor's recommendation that MCSO ambush its own  
6 deputies in violation of their due process rights. 15:34:21

7 MR. CASEY: Yes, sir.

8 THE COURT: Let me just tell you that in that hearing,  
9 and again I found it today, Chief Deputy Sheridan assured me  
10 that there was no policy that prevented officers from recording 15:34:35  
11 their own videos. If there is no policy that prevents officers  
12 from recording their own videos, there is no way that an  
13 administrative hearing can be held against an officer for  
14 recording his own videos.

15 And so to the extent that you have suggested in your 15:34:53  
16 response that you have the right to disregard my orders --

17 MR. CASEY: No.

18 THE COURT: -- that were then filed on May 2015, and  
19 impose a whole bunch of procedural requirements that do not  
20 come from my order, but come from an argument that has no 15:35:10  
21 merit, that this sort of investigation amounts to an  
22 administrative process, I am very concerned that the MCSO is  
23 subverting my orders.

24 MR. CASEY: And Your Honor, let me, for --

25 THE COURT: And to the extent -- 15:35:29

1 MR. CASEY: Yes.

2 THE COURT: -- that you say you're going to continue  
3 to do it, I don't like it.

4 MR. CASEY: That is not, and I apologize to the Court,  
5 because we have failed in our ability to write clearly and 15:35:35  
6 communicate effectively, because that is not what we would as  
7 counsel nor would we ever have our client do. We're not in the  
8 business of disobeying intentionally or otherwise the Court's  
9 order. I apologize to you for that lack of clarity.

10 THE COURT: All right. 15:35:54

11 MR. CASEY: I will tell you that when a monitor  
12 suggests ambushing -- our word --

13 THE COURT: Did he ever use the word "ambush"?

14 MR. CASEY: I understand that the monitor's team  
15 suggested that we corner people without due process notice in 15:36:05  
16 parking lots, coming out from behind whatever location to ask  
17 them about videos. That is a violation of Title 38.

18 THE COURT: Then how come Deputy Chief Sheridan  
19 thought that also would be the best plan?

20 MR. CASEY: I can only share with you, after 15:36:22  
21 consulting with human relations, HR people, that the law in  
22 Arizona is such --

23 THE COURT: Well, let me talk --

24 MR. CASEY: -- that we cannot.

25 THE COURT: If HR people think that they can remand my 15:36:30



1 order on a meritless argument that this is -- this constitutes  
2 an administrative hearing, then I want to see them, and I'm  
3 going to issue an order to show cause why they shouldn't be  
4 held in contempt.

5 MR. CASEY: Your Honor, the only point that I think 15:36:43  
6 we're trying to suggest to the Court is not a disobedience that  
7 is not even within the realm of what I understand or any of my  
8 co-counsel. And we can say that sincerely to the Court. That  
9 is not -- that wouldn't do that. They're suggesting that when  
10 a suggestion is being made -- 15:37:03

11 THE COURT: So you tell me --

12 MR. CASEY: Yes.

13 THE COURT: -- Mr. Casey --

14 MR. CASEY: Yes.

15 THE COURT: -- what about a procedure that I think 15:37:07  
16 Deputy Chief Sheridan in his own language in the report agreed  
17 was the best procedure, what about an Internal Affairs officer  
18 talking individually to deputies that they believe have been  
19 recording their own videos, what about that invokes any sort of  
20 administrative process under state law? Especially when, as 15:37:25  
21 Chief Deputy Sheridan indicated to me, there is no policy  
22 against deputies recording their own traffic stops?

23 MR. CASEY: I'm going to have to defer to -- I'm going  
24 to have to defer to HR counsel on that. I cannot tell you  
25 other than telling you -- 15:37:45

1 THE COURT: Well, I'll tell you what: I'm going to  
2 order HR counsel to show cause why she or he should not be held  
3 in contempt to the extent that they're asserting that that  
4 constitutes an administrative process. We can move on.

5 MR. CASEY: Is there anything else, Your Honor?

15:38:02

6 THE COURT: You can -- you can say what you want to  
7 say. Are you saying that administrative -- or that counsel  
8 wants to address me now, Mr. Liddy?

9 MR. LIDDY: If it would help the Court, yes, Your  
10 Honor.

15:38:17

11 MS. STUTZ: Your Honor --

12 THE COURT: Please.

13 MS. STUTZ: Certainly, Your Honor.

14 THE COURT: Do you understand my concern, Ms. Stutz?

15 MS. STUTZ: Yes, I do, Your Honor, very much so, and I  
16 appreciate your concern. I would like to provide clarity to  
17 what I recall happened at that particular meeting with the  
18 monitor team on that afternoon, if I may --

15:38:24

19 THE COURT: Well, let me ask you: Did you sit through  
20 the previous meeting?

15:38:38

21 MS. STUTZ: Your Honor, I did. There was --  
22 obviously, it was an attorney-client privileged conversation.

23 THE COURT: You weren't asked about anything.

24 MS. STUTZ: Yes, I was -- I was present at that  
25 meeting, yes, sir.

15:38:50

1 (Off-the-record discussion between Ms. Stutz and  
2 Mr. Liddy.)

3 MS. STUTZ: Okay. Your Honor, I was there for a  
4 portion of the meeting, and apparently there was a meeting  
5 that, excuse me, occurred prior to my coming into the meeting.

15:38:58

6 THE COURT: All right. Thank you for that  
7 clarification, Mr. Casey.

8 MS. STUTZ: So Your Honor, to address your concern,  
9 which is that we would be advocating that something was an  
10 administrative proceeding when in fact it was not, it was my  
11 understanding, Your Honor, having been obviously also at your  
12 under-seal hearing that day, that the intention and purpose was  
13 to identify whether other recordings had been made, but there  
14 was also a presumption or supposition, it appeared, that  
15 misconduct would be there comparable to the misconduct or  
16 violations of civil rights.

15:39:10

15:39:27

17 THE COURT: Well, you heard Ms. -- you heard Deputy  
18 Chief Sheridan say there was to policy against recording.

19 MS. STUTZ: Yes, Your Honor, and I don't -- and we're  
20 not disputing that there was no policy against recording.

15:39:40

21 THE COURT: Has there been any administrative  
22 proceeding begun against any of the deputies who turned in  
23 their recordings?

24 MS. STUTZ: Your Honor, with respect to simply making  
25 a recording --

15:39:51

1 THE COURT: Yes.

2 MS. STUTZ: -- if that's your --

3 THE COURT: Yes.

4 MS. STUTZ: No, Your Honor. There has not been any  
5 proceeding with respect to making --

15:39:58

6 THE COURT: -- this court, correct?

7 MS. STUTZ: That's correct.

8 THE COURT: All right.

9 MS. STUTZ: Your Honor, it --

10 THE COURT: Thank you.

15:39:59

11 MS. STUTZ: If I may explain, though, Your Honor, what  
12 the basis was. Obviously, the videos that had been brought  
13 forward with regard to Armendariz's misconduct were, you know,  
14 potential violations of the very rights that were at issue in  
15 the underlying litigation.

15:40:11

16 THE COURT: Certainly.

17 MS. STUTZ: And so Your Honor --

18 THE COURT: And that merits an administrative  
19 investigation.

20 MS. STUTZ: Correct. However, requiring someone to  
21 undertake or turn over those particular videos, if in fact they  
22 revealed that level of misconduct, could also invoke those  
23 protections, sir.

15:40:17

24 THE COURT: I have the statute right here.

25 MS. STUTZ: Yes, sir.

15:40:29

1 THE COURT: And it is only when, and I'm quoting from  
2 the statute, you can tell me if I'm quoting a bad version,  
3 because the federal government doesn't give us enough money to  
4 update our state statutes.

5 MS. STUTZ: And I don't have it in front of me, Your 15:40:41  
6 Honor, but I --

7 THE COURT: All right. It says: If an employer  
8 interviews a law enforcement officer or probation officer and  
9 the employer reasonably believes that the interview could  
10 result in dismissal, demotion, or suspension -- now, just 15:40:49  
11 asking for recordings you made that were pursuant to policy  
12 gives you no basis to have a reasonable belief that the  
13 interview could result in dismissal, demotion, or suspension,  
14 does it?

15 MS. STUTZ: Well, sir, certainly the 15:41:04  
16 impression that --

17 THE COURT: The content -- if you've recorded --

18 MS. STUTZ: Correct.

19 THE COURT: -- something bad, the content might. But  
20 that -- just because you have done a recording does nothing to 15:41:13  
21 that end.

22 MS. STUTZ: Your Honor, we're in complete agreement  
23 with that.

24 THE COURT: All right. Let me ask you, Ms. Stutz --

25 MS. STUTZ: Um-hum. 15:41:18

1 THE COURT: -- the plaintiffs filed a request for all  
2 recordings. Is it your posi -- and that was not responded to.  
3 Is it your position that before seeking to collect those  
4 recordings from every officer, every officer was entitled to  
5 the protections of an administrative hearing in what is a  
6 discovery process in federal litigation?

15:41:32

7 MS. STUTZ: No, Your Honor, that is not my position.  
8 And in fact, I had a specific discussion with Chief Warshaw on  
9 that very day which was the one that I would like to share what  
10 I believe occurred during that meeting, sir --

15:41:47

11 THE COURT: All right.

12 MS. STUTZ: -- if you would so indulge me.

13 THE COURT: Go ahead.

14 MS. STUTZ: Your Honor, during that meeting I  
15 specifically did discuss the issues about notices of  
16 investigation, the possibility of misconduct being contained  
17 within the content of those very videos. And it was for that  
18 reason that I expressed concern about the notice of  
19 investigation process. In fact, Chief Warshaw references that  
20 in one of his other filings with this Court, Your Honor. And  
21 at that time --

15:41:53

15:42:07

22 THE COURT: Which one?

23 MS. STUTZ: I'm sorry?

24 THE COURT: Which one?

25 MS. STUTZ: That item, I believe, Your Honor, may

15:42:15

1 still be under seal, so I'm not sure whether you would  
2 prefer --

3 THE COURT: Well, you can identify it for me later.

4 MS. STUTZ: Okay. Yes, sir. I will do so.

5 THE COURT: All right.

15:42:22

6 MS. STUTZ: And so the particular approach that was  
7 suggested and what has been advised by the monitor here today I  
8 have a different recollection of events. Chief Warshaw stated  
9 that it's the position of the monitor team that I had never  
10 discussed those particular issues with them or had any concerns  
11 raised about the notice of investigation process. And in fact  
12 I did discuss those concerns with them.

15:42:33

13 THE COURT: I thought he was referring to concerns  
14 related to other matters raised in the report.

15 MS. STUTZ: Sir, my understanding of what he said was  
16 in connection also with the May 15 discussion and our approach  
17 to take a different direction.

15:42:48

18 THE COURT: All right. So you tell me what your  
19 understanding was.

20 MS. STUTZ: Sir, at that time the approach that had  
21 been suggested by the monitor team as I understood it was that  
22 they believed that we should surreptitiously approach deputies  
23 and essentially demand their recordings and require them to  
24 turn those over without notice. And under those circumstances  
25 I believe that because potential misconduct could exist, in

15:42:59

15:43:14

1 fact because of the very concerns that everyone has expressed  
2 here about the conduct by those other potential deputies, that  
3 that could result in disciplinary action. And so I was  
4 concerned about how --

5 THE COURT: Do you have any reasonable belief that 15:43:26  
6 that particular question will result in administrative action?  
7 Just getting the recording --

8 MS. STUTZ: That was the position that was being  
9 advocated by the monitor team. So if that's not a reasonable  
10 belief, then that's -- that's perfectly acceptable to me, Your 15:43:38  
11 Honor. Obviously, the position that was articulated by myself  
12 was that I didn't -- I didn't believe so. I didn't believe so,  
13 Your Honor. But that being the case, I also think that the law  
14 enforcement officers' Bill of Rights should be taken very  
15 seriously. 15:43:53

16 THE COURT: Well, if you didn't believe so, then the  
17 law enfor -- then the statute doesn't apply, does it?

18 MS. STUTZ: Sir, I believe that the possibility exists  
19 that that could happen.

20 THE COURT: Possibility, but that's not what the 15:44:00  
21 statute says. It says a reasonable belief that it will result  
22 in discipline. And asking an officer for the recordings that  
23 he made that he's allowed to make does not give rise to a  
24 reasonable belief that it's going to result in discipline of  
25 the officer, does it? 15:44:15



1 MS. STUTZ: Your Honor -- Your Honor, my personal  
2 belief in a situation would not constitute what is or isn't a  
3 reasonable belief. That being said, Your Honor --

4 THE COURT: No, a legal --

5 MS. STUTZ: -- I think that the --

15:44:26

6 THE COURT: -- a legal opinion.

7 MS. STUTZ: The coercive power that was being  
8 suggested to be used was that there should be an element of  
9 surprise, that those deputies should be shocked by what was  
10 going to happen, and that they should be essentially attacked  
11 in the parking lot. And I did not believe that in the -- in  
12 the defense of those law enforcement officers' rights --

15:44:35

13 THE COURT: All right.

14 MS. STUTZ: -- that they should be attacked in such a  
15 way.

15:44:47

16 THE COURT: I've got you. Thank you, Ms. Stutz.

17 MS. STUTZ: Yes, sir.

18 THE COURT: Anything else, Mr. Casey?

19 MR. CASEY: No, Your Honor. With -- at the sound  
20 of -- risking sounding like a broken record, I wanted to -- I  
21 want to assure you that the comment that you quoted that  
22 elicited very strong response from you is never and will never,  
23 by the legal team or our clients at our advise under any  
24 circumstances, ever be used to try to thwart, undermine, or  
25 undercut your orders.

15:44:55

15:45:19

1 THE COURT: All right. Thank you.

2 MR. CASEY: We will -- okay.

3 THE COURT: Now, how would you like to respond to  
4 plaintiffs' request?

5 MR. CASEY: To plaintiffs' request, there's no -- I 15:45:22  
6 think we need briefing. I'm not sure, there's no doubt that  
7 something --

8 THE COURT: All right. I'll give you briefing.

9 MR. CASEY: Yeah. Well, and I -- I want -- I mean,  
10 all I have is their thing saying we ought to be getting some 15:45:33  
11 sort of sanctions. I don't even know what the fees would be  
12 for. Is it for filing their response?

13 THE COURT: That's fine. That's fine.

14 MR. CASEY: You know, so that's what I think --

15 THE COURT: But let's -- listen -- 15:45:42

16 MR. CASEY: -- need to do.

17 THE COURT: -- is there any dispute that to the extent  
18 you have existing recordings that are responsive to their  
19 original discovery requests that you turn those over now?

20 MR. CASEY: They have been turned over. 15:45:52

21 THE COURT: All right. Do you have any question --

22 MR. CASEY: They just weren't turned over in  
23 litigation.

24 THE COURT: Ms. Wang, do you have any question about  
25 that? 15:45:59

1 MS. WANG: I do, Your Honor. My understanding is that  
2 the universe of records that have been uncovered through the  
3 investigation of Deputy Armendariz's death and other related  
4 matters has not all been turned over. I thought that the  
5 defendants were continuing to withhold some of those documents  
6 from the plaintiffs as being privileged under A.R.S. 38-1101  
7 and 1104.

15:46:13

8 THE COURT: All right.

9 MS. WANG: If that's not the case, then I'd like to  
10 follow up with Mr. Casey just to ensure that -- that we have  
11 everything. I believe they've given us some form of privilege  
12 log that indicates there are documents outstanding that have  
13 not been disclosed.

15:46:28

14 MR. CASEY: Your Honor --

15 THE COURT: All right. You will follow that up. To  
16 the --

15:46:41

17 MR. CASEY: Yes.

18 THE COURT: -- extent that there are responsive  
19 documents that you have not provided, you'll provide them?

20 MR. CASEY: Yes, and I --

15:46:46

21 THE COURT: And the rest of the matters can be subject  
22 to briefing. Ms. Wang, I invite you to initiate the briefing  
23 at your convenience.

24 MS. WANG: Thank you, Your Honor.

25 THE COURT: All right. Do we need to do anything else

15:46:55

1 about this first issue?

2 MR. CASEY: No. No, Your Honor.

3 THE COURT: All right. Second issue. As it pertains  
4 to the report, the other aspects of the report, the report is  
5 divided into essentially five subcategories, and each one has  
6 initial observation, preliminary findings, and recommendations.  
7 Just let me say -- let me point out a couple of things.

15:47:14

8 Chief Warshaw came to me and said that it was their  
9 understanding that the only criminal investigation that  
10 resulted from the Armendariz matter had just been closed. He  
11 told me that when he received the memo from Dave Tennyson and  
12 then subsequently received a follow-up memo from  
13 Captain Bailey.

15:47:34

14 And that memo, I looked at it, says, quote: The  
15 following memorandum is a written summary of the Maricopa  
16 County Sheriff's Office Human Smuggling Division criminal  
17 inquiry. It was my concern that the only criminal inquiry that  
18 you had ongoing -- undergoing, had now been closed. And what  
19 deputy -- what Monitor Warshaw told me about the substance and  
20 quality of that investigation concerned me considerably. So I  
21 directed him to write me a report so you could be allowed to  
22 respond and we could initiate this process.

15:47:51

15:48:09

23 In the middle of writing the report, Chief Warshaw  
24 told me that you had subsequently informed him of additional  
25 things that he previously had not realized or been aware of or

15:48:22

1 noticed of, and he asked me if I wanted him to revise the  
2 report. And I said: No, we will be revising the report  
3 forever. Let's just get the report down so that the Maricopa  
4 County Sheriff's Office can know where we believe they're  
5 inadequate, and if they want to update the investigation we can 15:48:39  
6 deal with it then. So that is what I told him; that is why he  
7 filed the report; that's why I gave it to you.

8 I still think, by the way, even after reading your  
9 response, that much of it has purchase and gives me great  
10 concern, and to the extent that the ongoing order requires us 15:48:54  
11 to monitor supervision of deputies, it requires us to monitor  
12 Internal Affairs processes and requires us to monitor those  
13 processes, I think much of what is said needs to be considered,  
14 but I do want to hear your responses to it. I suggest we take  
15 it one by one and we not talk about what we don't need to talk 15:49:15  
16 about.

17 First, after the document stuff was the suicide  
18 investigation, and the monitor's report, I think, in terms of  
19 the suicide investigation, was nothing but complimentary. It  
20 said -- I forget the officer's name, I'm sorry. Kim Seagraves? 15:49:32

21 MR. CASEY: Seagraves.

22 THE COURT: Lieutenant Kim Seagraves said that she had  
23 done an exemplary investigation. The only thing the monitor  
24 recommended is she apparently was removed from the  
25 investigation before it could be complete into the suicide 15:49:44

1 investigation, and the monitor recommended that Lieutenant  
2 Seagraves be allowed to finish the suicide investigation.

3 Is there anything you want to say about that?

4 MR. CASEY: Your Honor, I'm going to introduce you  
5 formally on the record to Captain Steve Bailey, the head -- he 15:49:59  
6 took over from Ken Holmes. He is the head of the Professional  
7 Standards Bureau, formerly known as Internal Affairs, to  
8 address that.

9 CAPTAIN BAILEY: Good afternoon, Your Honor. In  
10 reference to Kim Seagraves, I didn't order her to stop; I 15:50:14  
11 merely sent her back to her original division, where she could  
12 continue to type and finish the remainder of that  
13 investigation.

14 THE COURT: All right. So she'll finish the remainder  
15 of the suicide investigation? 15:50:26

16 CAPTAIN BAILEY: Yes. It's completed now, sir.

17 THE COURT: It is. I gather that there was some  
18 things relating to the search of Armendariz's computer and  
19 maybe his blood chemistry and some other things that were  
20 relatively minor? 15:50:37

21 CAPTAIN BAILEY: Yes, Your Honor. His toxicology has  
22 not been returned by the medical examiner's office at this  
23 time.

24 THE COURT: All right. So you still have the  
25 toxicology report? 15:50:45

1 CAPTAIN BAILEY: Yes.

2 THE COURT: Okay. She'll finish that part of the  
3 report?

4 CAPTAIN BAILEY: Yes, Your Honor.

5 THE COURT: All right. The evidence collection  
6 analysis. Do you have anything you want to say on that,  
7 Mr. Casey? Mr. -- or Captain Bailey?

15:50:49

8 Is it Captain Bailey or Commander Bailey?

9 CAPTAIN BAILEY: Captain Bailey --

10 THE COURT: Okay.

15:51:00

11 CAPTAIN BAILEY: -- Your Honor.

12 MR. CASEY: Your -- Your Honor, as an initial matter,  
13 we had some deficiencies, unquestionably, in the collection of  
14 evidence. With that, I can allow the -- allow Captain Bailey  
15 to explain what happened after we recognized there were some  
16 initial collection issues.

15:51:13

17 THE COURT: All right.

18 CAPTAIN BAILEY: When District II originally  
19 responded, it was clear to us shortly afterwards that they had  
20 made a number of missteps in the collection of evidence from  
21 Deputy Armendariz's home. I ordered -- or requested Special  
22 Investigations detectives to reconcile all those pieces of  
23 evidence. The 618 items eventually turned into 1657 items as a  
24 part of that reconciliation, and when I realized the missteps,  
25 I ordered an administrative inquiry be done in my unit.

15:51:24

15:51:47

1 District II was explaining that they felt it was PSB  
2 was responsible for the miscommunication, I felt like it was  
3 District II, so I ordered an administrative investigation to  
4 occur, which has now been given an IN number.

5 THE COURT: So it's ongoing.

15:52:04

6 CAPTAIN BAILEY: Yes, sir.

7 THE COURT: All right. Have you informed the monitor  
8 of that?

9 CAPTAIN BAILEY: I believe so.

10 THE COURT: Okay. Chief Warshaw, you're saying yes,  
11 you've been --

15:52:10

12 MONITOR WARSHAW: Yes.

13 THE COURT: -- informed of that.

14 MONITOR WARSHAW: Yes.

15 THE COURT: When were you informed of that?

15:52:14

16 MONITOR WARSHAW: I'm not full -- I'm not fully  
17 certain, but I --

18 THE COURT: But you have been informed.

19 MONITOR WARSHAW: -- within the approximate time in  
20 which it was accomplished.

15:52:22

21 THE COURT: All right. So you're able to consult with  
22 Captain Bailey on that.

23 MONITOR WARSHAW: Yes.

24 THE COURT: All right. Thank you.

25 Videos and reviews.

15:52:29



1 MR. CASEY: Your Honor, the -- the video review has  
2 been an enormous undertaking. We can give you data about that.  
3 We also have here present in the room a non-sworn peace  
4 officer, Jennifer Johnson, who has created a spreadsheet  
5 hopefully of enormous value that I believe has been shared with  
6 the monitor, but let's -- we have Captain Bailey just --

15:52:49

7 THE COURT: You know, I don't want to deprive you of  
8 the opportunity to say what you want to say. I will say I  
9 was -- although I think the monitor's criticisms deserve  
10 consideration, because you have preserved all the videos and  
11 the monitor doesn't say otherwise, it seems to me that we're  
12 going to be able to eval -- we'll have time to evaluate whether  
13 or not your criteria exists and whether or not they were  
14 appropriate by looking at the reviews. So I'm not particularly  
15 concerned about this, we're spending a great deal of time on  
16 it --

15:53:08

15:53:23

17 MR. CASEY: Okay.

18 THE COURT: -- because -- I am concerned to the  
19 extent, however, let me tell you, I'm concerned to the extent  
20 that you are not continuing to review those videos, and to the  
21 extent that you have closed out any investigations, criminal,  
22 administrative, or otherwise, that may rely on the review of  
23 those videos. I am not satisfied, and I'm not saying you  
24 haven't done this, but I don't know that you've reviewed those  
25 videos to determine whether other officers, supervisors, and

15:53:33

15:53:53

1 others were present during problematic behaviors, and whether  
2 in fact if they were, they've been identified and  
3 investigations, whether criminal or administrative, are  
4 ongoing. That's what concerns me.

5 MR. CASEY: Yes, Your Honor. It is a legitimate 15:54:10  
6 concern, and it is also shared with -- or by the MCSO. In  
7 fact, on Friday when you -- we had something in camera  
8 delivered to you, without getting into specifics, because I  
9 don't want to waive what we believe is subject to privacy under  
10 Title 38, is we have identified -- now, when I say "we," my 15:54:30  
11 client has identified. I've also -- it's been -- some have  
12 been shown to me that are clearly problematic and there are  
13 other MCSO personnel that are in there, and in the judgment of  
14 counsel or others, not only does there appear to be a violation  
15 of office policy, but it also appears to me as an outside 15:54:49  
16 lawyer, for what it's worth, to perhaps extend beyond just an  
17 office violation.

18 My understanding, and I'm going to look over my  
19 shoulder, is that on Friday we submitted to the Court and  
20 identified some investigations of other people that were 15:55:05  
21 present in those, because we're determining what you knew, when  
22 you knew it, what you saw, all those things, because there were  
23 violations of office policy.

24 And so at least --

25 THE COURT: Let me just say -- 15:55:17

1 MR. CASEY: -- administratively it has gone in that  
2 direction.

3 Is that a correct --

4 THE COURT: Yeah. Let me just say one thing. I was  
5 concerned, and I think I can raise -- if you have concerns that  
6 I've encroached -- encroaching, you can tell me before I say  
7 this.

15:55:29

8 MR. CASEY: Yes, sir.

9 THE COURT: But I was concerned when I looked at your  
10 in camera submission that it dealt with, from what I could  
11 tell, only administrative investigations.

15:55:40

12 MR. CASEY: No.

13 THE COURT: And those administrative investigations  
14 have a clock that's running that's tolled when there's criminal  
15 investigations. And it seems to me that matters pertaining to  
16 the video, as well as matters that pertain to the property in  
17 Armendariz's house, could give rise very easily and should be  
18 the subject of active criminal investigations.

15:55:54

19 Is that happening?

20 CAPTAIN BAILEY: I'm not sure I understand the  
21 question, Your Honor.

15:56:14

22 THE COURT: All right.

23 MR. CASEY: Well, Your Honor, let me -- let me address  
24 one thing so -- I'm going to ask Christine Stutz to address it.  
25 Let me point out one thing without naming something. Beyond

15:56:23

1 administrative issues we as counsel, not the MCSO, have  
2 identified and then alerted our client without waiving any  
3 privilege, a concern on one of those stops that it's a  
4 violation of your order from December of 2011.

5 THE COURT: Yes, I'm aware of that and I'll discuss --

15:56:39

6 MR. CASEY: Yeah.

7 THE COURT: -- it with you later.

8 MR. CASEY: But as to whether or not --

9 Can you answer the criminal?

10 MS. STUTZ: I believe so, Your Honor. If I understood  
11 the question correctly, your question is whether the items of  
12 misconduct that are identified in the in-camera review as the  
13 subject of administrative inquiry should also have been  
14 identified as criminal --

15:56:47

15 THE COURT: Yes.

15:56:59

16 MS. STUTZ: -- misconduct? To my knowledge, Your  
17 Honor, no, there's no potential criminal misconduct with regard  
18 to those items.

19 THE COURT: Well, it certainly seems to me possible  
20 that there could be criminal misconduct both from the items  
21 seized, or at least in the possession of Sergeant Armendariz,  
22 and if I don't miss out, Sergeant Armendariz claimed -- and  
23 again, I'm not accepting his claim at face value any more than  
24 I'm accepting Cisco Perez's claim at face value.

15:57:08

25 MS. STUTZ: Yes, sir.

15:57:27

1 THE COURT: But he claimed that that was a result --  
2 those materials were not his alone, but they were collected by  
3 the entire HSU. When you have Cisco Perez making a similar  
4 allegation -- maybe garbage, maybe true -- I think you need to  
5 continue investigating where those items came from, and even 15:57:44  
6 finding the people and asking them who took their credit cards?  
7 Who took their driver's licenses? Who took their license  
8 plates? And that is criminal behavior. So I think a criminal  
9 investigation ought to be open.

10 And one of the reasons why I was disappointed with the 15:57:58  
11 closure of the Perez criminal investigation is you were just  
12 dealing with what Perez said, even though you knew that  
13 Armendariz said the same thing and he had hundreds of licenses  
14 and credit cards and license plates that had to come from  
15 somewhere. That's my concern. 15:58:15

16 MS. STUTZ: Yes, Your Honor. Certainly understood.

17 I believe what we identified in the response that was  
18 filed, Your Honor, to -- the public response, did indicate that  
19 with regard to the overall Armendariz investigation, there is  
20 still the possibility that items of evidence for which we have 15:58:30  
21 not been able to identify the source of why that information is  
22 in the possession of the MCSO has the potential to still have  
23 ongoing administrative or criminal outcome for those items.  
24 There's a --

25 THE COURT: Well, let me tell you my concern about 15:58:45

1 that, Ms. Stutz, and I appreciate it, and we can talk about it  
2 more when we're under seal.

3 MS. STUTZ: Yes, sir.

4 THE COURT: But my concern about that is -- and I  
5 re -- that's why I requested: Is there a time limit on  
6 administrative investigations?

15:58:54

7 MS. STUTZ: Yes, sir.

8 THE COURT: I do not want all those potential  
9 administrative investigations to be tolled by time because you  
10 haven't initiated a criminal investigation that would toll it  
11 when you should have initiated a criminal investigation that  
12 would toll your ability to subsequently bring an administrative  
13 investigation.

15:59:05

14 Do you understand what I'm saying?

15 MS. STUTZ: I do understand that, Your Honor, and --  
16 and I think that with respect to that, Your Honor, those items  
17 of evidence for which we have yet to ascertain why they were in  
18 the possession of Deputy Armendariz or otherwise, those items  
19 we could not be running a statute of limitations in either  
20 direction --

15:59:17

15:59:34

21 THE COURT: All right. If you're satisfied that  
22 that's true --

23 MS. STUTZ: Yes, and --

24 THE COURT: -- and if you can satisfy me that that's  
25 true, I'm all right with it.

15:59:40

1 MS. STUTZ: Yes, sir.

2 THE COURT: All right.

3 MS. STUTZ: I would be happy to do so and answer any  
4 further questions you have.

5 THE COURT: All right. Thank you.

15:59:44

6 Anything else you want to say on that?

7 MR. CASEY: No, other than it has -- at least  
8 administratively, Your Honor, it has gone off in a number of  
9 directions to find out --

10 THE COURT: Yeah.

15:59:53

11 MR. CASEY: -- that -- that very issue.

12 THE COURT: Well, we can discuss the administrative  
13 investigations, but I was a little --

14 MR. CASEY: Concerned about the criminal.

15 THE COURT: Yeah, and I am concerned about some of the  
16 administrative; we can talk about that later.

16:00:00

17 MR. CASEY: Yes, sir.

18 THE COURT: All right. We're moving on to personal  
19 history and again -- personnel history.

20 MR. CASEY: Yes, sir.

16:00:08

21 THE COURT: It seemed to me like even though they  
22 didn't explicitly say it, the monitor's report was quite  
23 complimentary of the work done by Sergeant Fax in this respect.

24 MR. CASEY: It was.

25 THE COURT: But I got to say the conclusions that

16:00:17

1 Sergeant Fax came up with were a little disturbing about the  
2 number and nature of complaints that were registered against  
3 Armendariz, and the relative lack of department action to take  
4 action on his behalf, or related to him --

5 MR. CASEY: Yeah.

16:00:35

6 THE COURT: -- for years.

7 MR. CASEY: Yes, sir. Your Honor, two things in  
8 response to that. There's no doubt that your assessment is  
9 shared by many, and what proverbially -- what is often called  
10 red flags existed for this officer.

16:00:58

11 I will tell you that there are --

12 What's the number, 221?

13 221 is an investigation currently ongoing to find out  
14 in those that were in the chain of command that those -- how  
15 did this person with these issues miss the identification  
16 process that should have been inherent in the supervision at  
17 the time even before the Court supplemented that level of  
18 supervision with your -- with your order?

16:01:15

19 It's troubling to my client, and administratively they  
20 are investigating it right now. If anything else comes out of  
21 it, we've heard what you said about your concern about perhaps  
22 not focusing enough on the criminal end or potential. This  
23 transcript obviously will be ordered and shared with everybody  
24 on the defense side. But I can tell you that that is a  
25 recognition shared by my clients and that they are -- currently

16:01:33

16:01:52



1 have a dedicated investigation to try to determine: How did  
2 that happen?

3 THE COURT: Have you informed the monitor of these  
4 administrative investigations?

5 MR. CASEY: I'm going to look over my -- my shoulder,  
6 but my -- my understanding is every investigation that is  
7 ongoing has been informed multiple times to the monitor.

16:02:05

8 THE COURT: Chief Warshaw?

9 MONITOR WARSHAW: Yes, that's correct.

10 THE COURT: All right. Thank you.

16:02:16

11 All right. Then we raise the HSU administrative  
12 investigation and the HSU criminal investigation. I've already  
13 raised my major concern about that.

14 MR. CASEY: Yes, sir.

15 THE COURT: It seems to me that you have -- when  
16 you're only looking at the Cisco Perez allegations and you're  
17 dealing with that in isolation, and you're completely ignoring  
18 the similar allegations made by Armendariz, not saying that  
19 either one of them are true, but they're both saying the same  
20 thing, and there was some evidence both under Perez and under  
21 Armendariz that lots of things have been seized, I'm a little  
22 concerned that there was a myopic approach on the Cisco Perez  
23 thing.

16:02:25

16:02:40

24 I've also gotta say I read the four questions that  
25 Sergeant Tennyson was asking in his criminal investigation

16:02:55

1 before he was coached by the monitor to add 33 or 34 more.

2 I've seen videotapes of what Sergeant Tennyson did. That is  
3 not a criminal investigation. Those four questions, I don't  
4 even think you have to graduate from high school to know that  
5 that, nobody is going to confess or give you any information of  
6 any value if you only ask four questions.

16:03:13

7 Those are my concerns.

8 MR. CASEY: Your Honor, I think the appropriate  
9 response from me is on behalf of my clients your concerns are  
10 noted, the emphasis is noted, and with the representation that  
11 it will be thoroughly evaluated by my client, the command  
12 structure, with defense counsel.

16:03:29

13 THE COURT: Okay. Captain Bailey, anything you wanted  
14 to say on that?

15 CAPTAIN BAILEY: Your Honor, the four questions  
16 weren't the only questions we were going to ask. We were asked  
17 to provide a set of baseline questions that would start the  
18 interview. What Sergeant Tennyson informed me of is he would  
19 take the interview in the direction that it went if he asked  
20 the appropriate interview questions you would ask in a criminal  
21 investigation.

16:03:42

16:03:55

22 THE COURT: Do you have something you wanted to say to  
23 that, Chief Warshaw?

24 MONITOR WARSHAW: No, Your Honor.

25 THE COURT: I was wondering if you were turning around

16:04:04

1 looking at me.

2 MONITOR WARSHAW: No.

3 THE COURT: I've seen -- I've seen some videotapes,  
4 though. Actually, I shouldn't lie. I've seen one videotape  
5 of -- of an investigation, and it did not seem to me to be --

16:04:12

6 CAPTAIN BAILEY: Can I answer that, Your Honor?

7 THE COURT: You can.

8 CAPTAIN BAILEY: Sergeant Tennyson was concerned that  
9 if he was asking administrative questions inside of a criminal  
10 investigation that it would violate the deputy's 38-1101  
11 privileges.

16:04:25

12 THE COURT: You know, I have not been very happy with  
13 Ms. Stutz. I think she knows I'm not very happy with her. But  
14 if -- in at least that one respect, Ms. Stutz. But if -- but  
15 if the sergeant has questions he can ask Ms. Stutz. And if  
16 Ms. Stutz has questions, I'd suggest, Ms. Stutz, that you raise  
17 it with me under seal, and we can resolve those things.

16:04:41

18 But it sure seems to me that the items put forth in  
19 the report, or in the response to the report that you had  
20 concerns about, could well have been legitimate questions for a  
21 criminal investigation.

16:04:58

22 CAPTAIN BAILEY: And those that we thought were  
23 legitimate we asked, Your Honor. We did ask all of those  
24 questions, to be clear.

25 THE COURT: All right. Well, it didn't seem that way

16:05:09

1 from -- and again, I only saw one.

2 CAPTAIN BAILEY: With the exception of two, I'm sorry.

3 THE COURT: -- some of the others. It can be  
4 improved, for sure.

5 Chief, did you have anything you wanted to say on  
6 that?

7 MONITOR WARSHAW: No. We concur.

8 THE COURT: All right.

9 MR. CASEY: Your Honor, let me say one thing, because  
10 you mentioned displeasure with Ms. Stutz and I --

11 THE COURT: That was unfair.

12 I apologize, Ms. Stutz. It's obvious I was not happy  
13 with your determination in that one respect, but I'm not trying  
14 to impugn your integrity or otherwise.

15 MR. CASEY: And I just wanted to point out, Your  
16 Honor, working, obviously, with all the people at that table, I  
17 know that it is just one lawyer's perspective telling you, and  
18 you can count it for whatever you wish, but I will tell you --

19 THE COURT: Let me just say --

20 MR. CASEY: Yes, sir.

21 THE COURT: -- you don't have to tell me that -- you  
22 know, I've had very positive interaction with Mr. Liddy; I  
23 think he's trying to implement this order. Despite my  
24 disapproval of Ms. Stutz' legal advice, the monitor tells me  
25 that she has been very cooperative and very facilitative, and I

16:05:16

16:05:23

16:05:36

16:05:51

16:06:05

1 want you to know, Ms. Stutz, that he's told me that. But it  
2 still disturbs me when I think that an erroneous legal advice  
3 is interfering with my order.

4 And so that's why I've grilled you today, Ms. Stutz; I  
5 hope I won't have to do it again in the future. 16:06:18

6 Mr. Casey, for what it's worth, I do not believe that  
7 you would misrepresent anything to me, and I do believe that  
8 the -- I mean, I am not satisfied with some of what's happened  
9 in the Maricopa County Sheriff's Office. But I -- and we'll  
10 talk about this in a minute -- I have seen real efforts there, 16:06:35  
11 too, in terms of training. And we're going to talk about that.

12 There are efforts that I recognize are being made.  
13 I'm not saying you're trying to undermine everything at every  
14 step. But I will say that certain things certainly give that  
15 appearance, and to the extent they do, they need to be 16:06:52  
16 corrected and rectified.

17 MR. CASEY: And Your Honor, fair. And I -- and I  
18 understand because that appearance, not that you need Tim  
19 Casey's imprimatur on legitimacy, that's a real appearance  
20 that's there. But what I'm sharing with you is that, you know, 16:07:10  
21 we made a mistake in how we characterized that about assisting  
22 or resisting, but our job as counsel is to give the best advice  
23 that we can and to comply with the letter and the spirit. And  
24 I can only represent to you that that is what we're doing with  
25 our client and I was -- I'm pleased that you recognize there 16:07:29

1 are some positive developments. There are problems that you've  
2 identified. Having a hearing like this is valuable to identify  
3 them and let everyone know, particularly my clients understand  
4 the importance of it --

5 THE COURT: All right. Are we ready to move on to the  
6 next item?

16:07:48

7 MR. CASEY: Yes, Your Honor.

8 THE COURT: All right. Next item is contact between  
9 the monitor and the Maricopa County Administration.

10 MR. CASEY: Yes, sir. I'm going to call Chief Freeman  
11 up, please, because he'll have specific information for you.

16:07:58

12 THE COURT: Well, and let me just tell you, I don't  
13 intend to spend a whole lot of time on this.

14 MR. CASEY: Sure.

15 THE COURT: I'll tell you why. Chief Deputy Sheridan  
16 will remember, and I suspect Ms. Wang will remember as well,  
17 that when I had the hearing with the parties about the  
18 injunctive order before I entered it, long before there was  
19 even a monitor in this action, I asked Chief Deputy Sheridan, I  
20 think we ought to use body cams, or we ought to at least use  
21 the ability to use body cams because they're cheaper. And  
22 while we want -- while I recognize that this order is going to  
23 require a lot of money, I don't want it to require any more  
24 money than it has to require.

16:08:11

16:08:27

25 And you consulted with the chief and you responded:

16:08:43

1 The chief says that body cams are worth what you pay for them.  
2 They're cheaper because they're garbage. The plaintiffs didn't  
3 object. I said, Well, I would like to leave it open for body  
4 cams, but if you're both saying you need dash cams even though  
5 they're more expensive, I'll put dash cams in the order.

16:09:01

6 Then when I did my order appointing the monitor, I  
7 told everybody in the order that I checked with all the monitor  
8 candidates and all the monitor candidates said body cams are  
9 the way to go, so I said I'm still open to changing this to  
10 body cams and by the way, because a thought had occurred to me  
11 in the meantime, that as any good politician would, the  
12 Sheriff's Office might be inflating the cost of what this order  
13 actually takes in order to get better funding, I indicated in  
14 that order that if Maricopa County Administration had any  
15 suggestions or concerns about how we could more effectively  
16 implement this order to be cost effective, they could consult  
17 the monitor about that.

16:09:18

16:09:38

18 I am glad to see, frankly, that after that happened,  
19 you determined that body cams work and they'll save Maricopa  
20 County a lot of money. I've read your order. I mean, I've  
21 read your submission saying, you know, we're going to take this  
22 much overtime. You know, I'm sorry, I'm -- I'm sure you're not  
23 dealing in bad faith, Captain Freeman, but that's all smoke and  
24 mirrors.

16:09:57

25 I've talked to my monitor and my monitor talks about

16:10:10

1 the requirement that everybody have the reports done by the end  
2 of shift. That's just a standard requirement. It's built into  
3 every law enforcement officer's obligation. Some of the things  
4 that you're requiring in your reports are not things required  
5 by my order. We already had that dispute. To the extent that 16:10:24  
6 Maricopa County Administration wants to consult with my monitor  
7 about whether or not this is really a cost from the order, then  
8 I'm going to allow them to consult with my monitor. And  
9 believe me, it is not in my interest to undercut your ability  
10 to comply with my order. And I don't care if Maricopa County 16:10:42  
11 supervisors want to give you \$500 million. But you're not  
12 going to be doing it if you're saying it comes from my order  
13 and my monitor thinks otherwise.

14 Do you understand what I'm saying?

15 MR. CASEY: Yes, and -- yes, Your Honor, I do. 16:10:58

16 THE COURT: All right, so doesn't mean he's right.

17 And we'll be more than willing to talk -- talk with you about  
18 things.

19 MR. CASEY: Your Honor --

20 THE COURT: And the decision is not mine. I don't 16:11:09  
21 intend to make this a budgetary proceeding. But I want -- I  
22 want you, Chairman Barney, I want you, Ms. Wilson, to know that  
23 if you want to, you have absolute access to my monitor to get  
24 his take on what it really will take to comply with this  
25 orders. 16:11:26



1 I don't want to shut you out of that, too, Ms. Wang.  
2 If you think we're cutting you too much, you can make your beef  
3 known, too. But I will promise you, I'll make sure that  
4 Maricopa County complies with my order. I've always made that  
5 clear to Chief Warshaw and to Sheriff Arpaio. But in the  
6 meantime, we can do it as inexpensively as possible.

16:11:37

7 Captain Freeman, do you have anything you want to say  
8 about that?

9 CAPTAIN FREEMAN: I would agree wholeheartedly, Your  
10 Honor: as inexpensively as possible.

16:11:51

11 THE COURT: All right. Anything else to be said on  
12 that? Ms. Wang?

13 MS. WANG: Your Honor, I did have a few observations  
14 about the defendants' response on this point that I wanted to  
15 make. First, I agree with the Court that all reasonably  
16 necessary expenses to comply with the Court's order should be  
17 undertaken and paid for by the County. And second, we also  
18 agree that if there are expenses that are -- that make it  
19 possible for MCSO to comply with the best practices in the law  
20 enforcement profession, those are not items that should be  
21 counted as complying with the Court's order.

16:12:00

16:12:24

22 There are a couple things I do want to observe,  
23 though. One is that I have personally observed, and I've heard  
24 reports in the media, that MCSO command staff have made  
25 comments to the effect that this Court's order gives the agency

16:12:40

1 all the resources it has long wished for in order to modernize.  
2 And I took some of those statements to imply that in fact, the  
3 efforts to comply with the Court's order were not out of a  
4 desire to comply with the Constitution and were not  
5 acknowledging the Court's finding that this agency violated the 16:13:06  
6 Fourth Amendment and Fourteenth Amendment rights of the  
7 plaintiff class.

8           So to the extent that statements like that have been  
9 made, I would just observe that those -- we believe as  
10 plaintiffs are inappropriate, and there should be a recognition 16:13:20  
11 that these are not just matters of having resources to live up  
12 to the best practices of law enforcement in this country, but  
13 also to redress the constitutional violations that MCSO  
14 committed.

15           A couple of details I wanted to note. I did look at 16:13:37  
16 the spreadsheet of expenses that -- that the defendant  
17 submitted. I noted that there was \$109,479 attributed to the  
18 appointment of the community liaison officer, Hector Martinez.  
19 We had objected to the appointment of that individual, and our  
20 understanding was that the Court had relieved MCSO of that 16:13:57  
21 responsibility, so I was puzzled by that expense.

22           A couple of other things that I wanted to note is that  
23 there are some expenses, significant expenses undertaken by  
24 MCSO that don't appear to have been pre-approved by the  
25 monitor. And a couple of the ones I would note is that MCSO 16:14:17

1 hired the Randy Means law firm in order to draft the training  
2 curriculum that's required in the Court's order. Counsel for  
3 both parties in this case have spent countless hours, along  
4 with members of the monitor team, rewriting and reworking that  
5 curriculum. And at the end of the day, Mr. Means himself was  
6 removed as a trainer because of a conflict of interest, as he  
7 is now serving as an expert witness for MCSO in a pending case  
8 brought by the United States Department of Justice.

16:14:41

9 A similar expense that MCSO's undertaken was prior to  
10 the appointment of the monitor, Chief Warshaw, MCSO purchased  
11 some IT systems in order to implement various provisions of the  
12 Court's order, including an application called IA Pro in order  
13 to deal with the early identification system and E-Ticket  
14 system.

16:14:59

15 I don't know, based on the monitor's first quarterly  
16 report -- actually covering the first two quarters of the  
17 compliance period -- whether at the end of the day those will  
18 turn out to be wise expenses. We don't know yet whether those  
19 systems are adequate. And so I do think it's appropriate for  
20 there to be oversight and for the monitor to continue to look  
21 at those expenses and to decide whether they are, number 1,  
22 properly attributable to the Court's -- compliance with the  
23 Court's order; and number two, whether they are in fact  
24 allowing the agency to comply with the Court's orders.

16:15:22

16:15:37

25 THE COURT: Thank you, Ms. Wang.

16:15:57

1 I don't take it you want me to act on anything you've  
2 just said. It just seems to me like you've expressed your  
3 position and I've understood it, I believe.

4 MS. WANG: Yes, Your Honor. We're not requesting any  
5 action at this time. 16:16:09

6 THE COURT: All right. I thank you.

7 With that being said, since you're here, Mr. Barney, I  
8 want you to know that I do not make any judgments if this case  
9 about what is necessary or even wise for the successful and  
10 good operation of the MCSO. They may make all kinds of 16:16:24  
11 meritorious requests for budgetary funding.

12 What I am requiring is what is required by my order to  
13 make sure that this agency meets constitutional standards. You  
14 can fund them however you want, that's not my concern, except  
15 that I'm not going to get involved in disputes about whether or 16:16:41  
16 not you will fund what is required by this order. And if I  
17 order it you will fund it. Is that clear?

18 CHAIRMAN BARNEY: Very clear, Your Honor. Thank you.  
19 We'll continue to work with the monitor and the Sheriff's  
20 Department in that regard. 16:16:56

21 THE COURT: Would you repeat that again for the court  
22 reporter.

23 CHAIRMAN BARNEY: I'm very clear, Your Honor, I thank  
24 you. We will continue to work closely with the Sheriff's  
25 Department and the monitor in fully implementing the order. 16:17:07

1 THE COURT: All right. Thank you.

2 CHAIRMAN BARNEY: Thank you very much.

3 MR. CASEY: So it's clear on the record, that was  
4 Chairman Denny Barney.

5 THE COURT: All right. Anything more we need to say  
6 about the contact between Maricopa County Administration and  
7 the monitor?

16:17:15

8 MR. CASEY: No, Your Honor.

9 THE COURT: All right. Let's talk, then, about  
10 Sheriff Arpaio's comments that have been attributed to him.

16:17:27

11 The press says what he said. You can understand my  
12 concern, I've said it before. Sheriff Arpaio can say what he  
13 wants. But there isn't any doubt that he is the chief  
14 policy maker for the Maricopa County Sheriff's Office. I think  
15 the Maricopa County Sheriff's Office has spent much money in  
16 implementing a training program that ex -- and by the way,  
17 Maricopa County Sheriffs know this, I think you know this, I  
18 spot checked. I want to the train -- the trainers and I went  
19 to two sessions in which one of them, Chief Deputy Sheridan was  
20 in taking the training himself. And I appreciate that, Chief,  
21 I want you to know that. But they were pretty good training  
22 sessions. They were not cheap; they were accurate and they  
23 were well done.

16:17:47

16:18:11

24 I also had attended some community meetings where  
25 we're trying to reach out -- and I attended the Guadalupe

16:18:25

1 community meeting -- we're trying to reach out or trying to  
2 have the sheriff's office reach out and repair relations with  
3 the community against whom he's committed the constitutional  
4 violations. And Chief Sheridan also was there as well as  
5 Captain Hastings, was it?

16:18:42

6 MR. CASEY: Hawthorne.

7 THE COURT: Hawthorne, Captain Hawthorne and some  
8 others. That was helpful. When they do that, and then when  
9 you have the sheriff saying, "I would do it all over again,"  
10 when I found that constitutional violation three or -- on three  
11 or four different grounds, even assuming he still had 287(g)  
12 authority, I think he's completely undoing what the Maricopa  
13 County Sheriff's Office is spending a great deal of time  
14 building.

16:18:55

15 And so I just wanted to give parties an opportunity to  
16 express their view about whether or not you're in compliance  
17 when despite -- and I have no reason to question the training  
18 compliance to date. When you have training compliance like you  
19 have, but you also have the sheriff saying, "I would do it all  
20 over again" in a very public way. So I'm anxious to hear your  
21 comments, Mr. Casey.

16:19:11

16:19:31

22 MR. CASEY: Your Honor, the short answer is the  
23 sheriff's comments that are protected, as you have indicated  
24 before by the First Amendment, even though he's the  
25 policy maker, should not, under any circumstances, be

16:19:44

1 considered by this Court, or by the monitoring team, in making  
2 recommendations about whether or not there is compliance. And  
3 the argument is simple. Compliance under your order is a pure  
4 factual matter; it either exists or it doesn't exist.

5 THE COURT: I think that I could abide that, but I'm 16:20:03  
6 still not sure that it gives me much comfort when the chief  
7 policy making officer of the Maricopa County Sheriff's Office  
8 says he'd do it all over again. What kind of training is that?

9 MR. CASEY: Okay. Well, let me give you an anal --  
10 what comes to my mind. I'm wearing lace shoes. I'm under an 16:20:20  
11 order to lace my shoes. It doesn't matter who laced them,  
12 doesn't matter how they're laced, they're laced. I'm factually  
13 compliant. I may tell you I don't like the fact that I'm under  
14 an order; I may say I would never wear these shoes again; I may  
15 even say I prefer slip-ons, it's immaterial, because if in fact 16:20:39  
16 you connect a public statement that we've all said is First  
17 Amendment protected to finding somehow that there's compliance  
18 when there's factual compliance --

19 THE COURT: So there's no good faith obligation that  
20 accompanies my order? 16:20:54

21 MR. CASEY: That -- that's not what I'm saying. What  
22 I'm saying is this: If you require, if you require speech to  
23 be acceptable to the Court in addition to factual compliance,  
24 you're now chilling speech. And the whole point is if there is  
25 good faith, doesn't that -- isn't that represented by the fact 16:21:14

1 that we have the training implemented that was found acceptable  
2 by the Court? That we have supervision that's there? That we  
3 have an EIS system that's up? That we're going to have a BIO  
4 that's actually going to help us police ourselves --

5 THE COURT: Bottom line, though, if you were a Latino 16:21:33  
6 in Maricopa County and the sheriff of Maricopa County said he  
7 would do it all over again, would you feel like you had  
8 adequate protection for your constitution -- the deprivation of  
9 your constitutional rights?

10 MR. CASEY: I don't think it's -- well, the answer to 16:21:47  
11 your question is the full context of the quote, as I  
12 understand, was relayed by the sheriff to Mr. Warshaw, and he  
13 asked Mr. Warshaw to relate to you what he meant.

14 THE COURT: Well --

15 MR. CASEY: I assume that was done to explain what the 16:22:03  
16 context was.

17 THE COURT: You know, let me tell you that the context  
18 was apparently -- and the reporter, I've got the report here,  
19 says it was in response to his request about the Guadalupe town  
20 meeting. What the monitor passed on to me that the sheriff 16:22:18  
21 said to him was that he only meant if he had 287(g) authority  
22 again. Well, if he read my order --

23 And by the way, Chief Deputy, you took the training.  
24 Has Sheriff Arpaio taken the training?

25 CHIEF DEPUTY SHERIDAN: No, Your Honor. 16:22:37



1 THE COURT: All right. Well, I think you better take  
2 the training before you're in compliance. What he said was he  
3 would do it all over again. And then he told my monitor that  
4 he would -- he only meant if he had 287(g) authority, but if  
5 you read my order, it would still be unconstitutional under two 16:22:50  
6 or three different grounds. And finally, he told my monitor  
7 that he understands I'm a nice guy, but he thinks I lack a  
8 sense of humor.

9 I understand that. I try to be a nice guy, and I try  
10 to have a sense of humor. But I don't think it's very funny 16:23:04  
11 when we're talking about the Constitution, or about my -- about  
12 the injunctive orders that I have specified.

13 MR. CASEY: No.

14 THE COURT: And so I would ask you, if nothing else,  
15 that you have this portion of the transcript transcribed, and 16:23:16  
16 because Sheriff Arpaio chose not to attend I'd ask you to  
17 review it with him personally.

18 MR. CASEY: Your Honor, I can avow to you that that  
19 will happen. But I -- again, please, your courtroom, tell me  
20 to shut up if I've gone too much, but the point is you asked if 16:23:31  
21 good faith requires. Good faith exists in the deed, not in the  
22 spoken word. And I respectfully submit to you that if you  
23 condition a formal imprimatur of approval by this Court on  
24 compliance on whether or not you agree with an elected  
25 official's public speech -- 16:23:50

1 THE COURT: That is not at all what I'm conditioning  
2 it on.

3 MR. CASEY: Well, that's what --

4 THE COURT: I'm conditioning it on what he is saying  
5 as the chief policy maker of Maricopa County.

16:23:59

6 MR. CASEY: Then what I would respectfully submit --  
7 okay. I understand that. I would respectfully submit that if  
8 that is the case, then there ought to be some evidence by these  
9 good, honorable people, by these folks, by these folks, that  
10 will come in and tell the Court: You know what? Joe Arpaio  
11 was saying this. And look at the effect on it. There's no  
12 cause and effect. Right now, right now we're in the baby --  
13 the infancy of this whole matter. The issue is whether we're  
14 going to be compliant or not compliant. And if in fact we come  
15 to a day that items 4, 7, 72 were not compliant, it's not  
16 appropriate to believe that it's due to Joe Arpaio's comment;  
17 it's not appropriate to guess or speculate. There ought to be  
18 some evidence showing a causal link --

16:24:14

16:24:30

19 THE COURT: You need to move closer to the microphone.

20 MR. CASEY: I apologize, Your Honor. I get carried  
21 away. There ought to be a causal link that the monitor that we  
22 come forward, all this. And ultimately good faith, I believe,  
23 results in action.

16:24:48

24 THE COURT: All right. Anything else you wanted to  
25 say on that point?

16:25:00

1 MR. CASEY: I'm trying to read a note real quick, Your  
2 Honor. You know, the final -- yeah, the final -- the final  
3 point is this on good faith. Sheriff Arpaio himself and his  
4 chief deputy have directed that everyone in their office,  
5 orally and in writing, especially after the early hearings we 16:25:18  
6 had, comply with your order. And I wanted to reiterate that to  
7 you because of the strong feelings, the strong position the  
8 Court had that it was mentioned in the monitor's quarterly  
9 report and we respect that assessment. We're not interested in  
10 technical compliance; it is factual, good faith compliance. 16:25:39

11 And we understand that this is a new road that we're  
12 traveling down. There will be hiccups; some we wish didn't  
13 exist. But I will tell you that everyone wants to see that  
14 happen. It is not gamesmanship; it's not dotting the I's and  
15 crossing the T's. It means we get it done. And it's either 16:26:02  
16 done or it's not.

17 And it's irrelevant, whoever is the elected official,  
18 whatever he says, because the sheriff is going to disagree  
19 about certain findings. That's his constitutional right. But  
20 whether or not we have actual compliance, Your Honor, ought to 16:26:15  
21 rest on its own --

22 THE COURT: All right.

23 MR. CASEY: -- and if there's good faith, there ought  
24 to be a causal link.

25 THE COURT: I've got your message, I think. 16:26:25

1 MR. CASEY: Yes, sir.

2 THE COURT: Do you have anything else you want to say?

3 MR. CASEY: No, sir.

4 THE COURT: All right. I'm going to hear from

5 Ms. Wang, and then I see that Chief Warshaw would want like to 16:26:29  
6 make a comment. Ms. Wang?

7 MS. WANG: Thank you, Your Honor.

8 Your Honor, the sheriff, as the head of the law  
9 enforcement agency, does not have a First Amendment privilege  
10 to make public statements and statements to his rank and file 16:26:45  
11 that countermand this Court's orders and the good faith efforts  
12 of others in MCSO to comply with this Court's orders. The case  
13 law makes that clear.

14 Under the Spallone versus United States case in the  
15 Supreme Court, Stone versus City and County of San Francisco in 16:27:05  
16 the Ninth Circuit, Hook versus Arizona Department of  
17 Corrections in the Ninth Circuit, and a Sixth Circuit case most  
18 on point because it addressed specifically the issue of  
19 expressive conduct that countermanded a court's injunction,  
20 quote: The right to speak is not absolute and may be regulated 16:27:23  
21 to accomplish other legitimate objectives of government. The  
22 First Amendment does not confer the right to persuade others to  
23 violate the law. And that's a quote from Kasper versus  
24 Brittain in the Sixth Circuit.

25 Your Honor, all these cases teach that it is relevant, 16:27:43

1 in considering whether any conduct of an agency that's under a  
2 court's injunction, has a record of past violations of the  
3 Court's orders. And with the sheriff's latest statement which,  
4 with all due respect to Mr. Casey, was not merely expressing  
5 disagreement, but was saying "I would do it all over again," 16:28:04  
6 you look at the record of what's happened before and I think  
7 it's worth taking a moment to go through all of the instances  
8 in which the sheriff or other command staff at MCSO have  
9 violated this Court's orders.

10 First there was the spoliation of evidence during the 16:28:21  
11 litigation of this case resulting in the Court sanctions  
12 orders.

13 Second, as the Court noted in its trial findings of  
14 fact and conclusions of law, MCSO violated the Court's summary  
15 judgment order and preliminary injunction. 16:28:36

16 Third, in a video statement made after the Court made  
17 its findings of fact, the sheriff said, I will abide by the  
18 Court's decision, but he blamed all of the findings on the  
19 federal government, which was contrary to the specific findings  
20 of the Court that MCSO engaged in intentional discrimination. 16:28:55

21 Fourth, in August of 2013, the sheriff sent out a  
22 fund-raising letter which was reported in the media in this  
23 city, where he said again, I will abide by the Court's order,  
24 but the rest of the statements were all defiant. He said,  
25 Ultimately, the Court wants me to have a federal monitor in my 16:29:16

1 office looking over my shoulder making sure everything I do is  
2 politically correct. I was elected by the people and won't  
3 stand for it. And he insinuates that despite what this Court  
4 found about the source of all of the constitutional violations,  
5 the Sheriff's Office would continue to enforce the immigration  
6 laws. 16:29:33

7 Fifth, days after this Court issued its remedial  
8 injunction and supplemental permanent injunction in October of  
9 2013, the sheriff was quoted in the press saying, Some people  
10 want more community outreach, as he was standing out doing a  
11 saturation patrol. Well, I just started it. 16:29:48

12 Sixth, we all know very well, after having been in  
13 this court on other status conferences, that at the  
14 preoperation briefing before that October saturation patrol  
15 days after the Court's supplemental permanent injunction, Chief  
16 Deputy Sheridan made statements that were very derogatory of  
17 this Court's power and its orders, and Sheriff Arpaio expressly  
18 endorsed those statements. 16:30:06

19 Seventh, after the October saturation patrol, Sheriff  
20 Arpaio stated to the media that he was not concerned about  
21 being in violation of the Court's order, and that, quote,  
22 No one is going to take my authority under the Constitution,  
23 end quote. 16:30:26

24 Eighth, we had Chief Deputy Sheridan's op-ed in the  
25 Arizona Republic in January which again was very derogatory of 16:30:41

1 the Court's orders.

2 Ninth, in March, in an unofficial community meeting,  
3 Chief Trombi made again statements that mischaracterized the  
4 Court's findings of fact, and summarized the Court's finding as  
5 being based on the fact that the ACLU prevailed because we 16:31:00  
6 showed only that people with Hispanic surnames were held 14  
7 seconds longer than people without; and also, that the Court  
8 found that the MCSO had violated the constitutional rights of  
9 the plaintiff class only because two MCSO deputies  
10 unconstitutionally used race as one factor, both false 16:31:18  
11 statements and mischaracterizations of the Court's orders.

12 Tenth, it was reported in the media that in March of  
13 2014 the sheriff sent out a fund-raising letter. This was just  
14 two days after another status conference that addressed the  
15 Arpaio and Sheridan comments before the October saturation 16:31:37  
16 patrol, and the requirement for a corrective statement. In  
17 that fund-raising letter in March of 2014 the sheriff stated  
18 that, and I quote, There have been rampant unfounded charges of  
19 racism and racial profiling in my office. He also said, We  
20 don't racially profile. I don't care what everybody says. 16:32:00  
21 We're just doing our job. We have the authority to arrest  
22 illegal aliens under the federal program. Again, the letter  
23 mischaracterized this Court's findings.

24 Eleventh, MCSO and the defendants continue to insist  
25 on the appointment of Hector Martinez as the community liaison 16:32:14

1 officer under this Court's orders, even though he had been  
2 involved in the circulation of racist anti-Mexican and  
3 anti-Latino e-mails among MCSO deputies on agency e-mail.

4 And we've learned today that Hector Martinez, despite  
5 being relieved of the responsibility for being a community  
6 liaison officer under this Court's order, is still listed as  
7 the community liaison officer of the MCSO on MCSO's website  
8 today.

16:32:36

9 Twelfth, the sheriff has continued to blame the  
10 federal government for the Court's findings. For example, he  
11 sent a well publicized letter publicized by his own press  
12 office to the Attorney General of the United States again  
13 blaming the federal government for its liability in this case  
14 and demanding payment from the federal government.

16:32:52

15 Thirteenth, and this will circle back to the first  
16 subject we addressed today in the status conference, we see in  
17 the information contained in the monitor's report on the  
18 Armendariz and related investigations, and I would submit in  
19 the defendants' response to this Court, literal contempt for  
20 the monitor as an arm of this Court and for the Court's orders.

16:33:10

16:33:33

21 Based on that record, Your Honor, and under the case  
22 law that I've cited, I think that it is time to issue remedies  
23 to prevent the countermanding of MCSO's other compliance  
24 efforts and the corrosive effect of statements of the sheriff  
25 and other command staff that are derogatory toward the Court's

16:34:01



1 orders and dismissive of the power of the federal judiciary to  
2 correct constitutional violations.

3 As the Court noted, the sheriff made his most recent  
4 comments in response to a question about the Guadalupe raid, or  
5 saturation patrol, in 2008. This Court made specific findings 16:34:20  
6 about that 2008 operation. In Your Honor's trial order at page  
7 53, you found that the MCSO considered race as one factor among  
8 others in selecting Guadalupe as the site for a large-scale  
9 saturation patrol. And that is what the sheriff was referring  
10 to when he said recently that he would do it all over again. 16:34:43

11 Your Honor, I think that plaintiffs have a list of  
12 remedies that we would urge the Court to adopt at this point to  
13 address the repeated statements and other conduct of the MCSO  
14 that undermine the Court's orders. And in thinking about what  
15 some of those options are, we see exactly why the sheriff's 16:35:05  
16 comments are not merely expressing disagreement and not  
17 privileged First Amendment expression.

18 The first option that I think needs to be addressed  
19 is, as the Court noted, other personnel in MCSO, with counsel  
20 for the parties and members of the monitor team, have spent an 16:35:29  
21 enormous amount of time and energy in making a training program  
22 to implement this Court's provisions in supplemental permanent  
23 injunction. That training is undermined and countermanded by a  
24 sheriff saying that he would do it all over again.

25 And when you think about what the remedy should be, 16:35:50

1 additional training to say, Don't listen, MCSO rank and file,  
2 to your sheriff, to the head of your agency, we need to do what  
3 we're training you to do now --

4 THE COURT: Let me ask you, Ms. Wang --

5 MS. WANG: Yes.

16:36:09

6 THE COURT: I would ask you to consider, Sheriff  
7 Arpaio is an elected official. He's got to be allowed to say  
8 what he wants to say, doesn't he, to get elected?

9 MS. WANG: Um-hum.

10 THE COURT: But that assistant mean that if I let him  
11 say what he wants to say, that there aren't corresponding  
12 sanctions.

16:36:26

13 MS. WANG: That's right, Your Honor. I don't  
14 believe -- plaintiffs are not asking at this time that the  
15 Court enjoin the sheriff from saying anything --

16:36:40

16 THE COURT: All right.

17 MS. WANG: -- but there should be consequences.

18 THE COURT: And in fact, he has a broad range and a  
19 presumptively broad range of being able to say whatever he  
20 wants. It is only to the extent that he frustrates the  
21 provisions of my order as the chief policy maker of Maricopa  
22 County that I have the authority to do anything, isn't it?

16:36:48

23 MS. WANG: That's right, Your Honor, and that is our  
24 position.

25 THE COURT: So do you have sanctions that you -- not

16:36:59

1 sanctions, but do you have an appropriate response by this  
2 Court that you think is indicated?

3 MS. WANG: Yes, Your Honor. We believe that  
4 additional new training and new policy guidance needs to be  
5 issued in order to keep --

16:37:15

6 THE COURT: Well, what do you want me to train them to  
7 do, ignore their sheriff?

8 MS. WANG: Essentially, Your Honor, that's the  
9 position that the sheriff and other command staff had put the  
10 Court into in order to --

16:37:28

11 THE COURT: I will order today, and I think I've  
12 already ordered it, that Sheriff Arpaio --

13 Is the training done?

14 MR. CASEY: No.

15 THE COURT: I'll order that Sheriff Arpaio, I think  
16 he's already required to take the training and he hasn't taken  
17 it yet, I'll order that today as a result.

16:37:37

18 And then, you know, MCSO, again, we've recognized that  
19 they've made significant efforts, but they're not close to  
20 being in compliance yet. So their three-year compliance period  
21 hasn't even begun.

16:37:59

22 I would ask you, I would invite you to file a brief  
23 whenever you file it appropriate, you feel like the sheriff is  
24 undermining the training required by the order and in his  
25 directions to his department. But I would invite you when you

16:38:17

1 do that to consider carefully, very carefully, the actions you  
2 wish this Court to take. I do not wish to in any way prevent  
3 Sheriff Arpaio from being able to say what he wants to say as a  
4 candidate. But I do have to be careful about that effect both  
5 on his department and the effect on the community which --  
6 against which he has engaged in discriminatory conduct.

16:38:45

7 MS. WANG: Yes, Your Honor.

8 THE COURT: So I'd invite you to give that some  
9 thoughtful consideration.

10 MS. WANG: Yes, Your Honor, we will. And one thing I  
11 will mention before sitting down is that we do believe that it  
12 is time, in light of the litany of conduct that I just  
13 outlined, for the Court to issue an order that specifies that  
14 if MCSO command staff, including the sheriff, make statements  
15 to MCSO personnel, or publicly, that, number one, express an  
16 intent or a desire to disobey any order of the Court, or to  
17 countermand MCSO's compliance with any order of this Court,  
18 other than pursuing legal relief such as their pending appeal,  
19 that there will be consequences attached to those statements.

16:38:56

16:39:23

20 Again, plaintiffs do not ask the Court to prevent the  
21 sheriff from saying anything he wishes. But fact is, as the  
22 Court has noted, the sheriff's words as the chief of the law  
23 enforcement agency will have an impact and in fact are orders  
24 to the rank and file.

16:39:45

25 And with all due respect to Mr. Casey, the sheriff's

16:40:05

1 most recent comment, like those that preceded it, were not  
2 merely disagreeing with the Court's orders; it was a statement  
3 of a desired action. And we ask the Court to keep that in mind  
4 and we will submit briefing on this as well.

5 THE COURT: All right. Thank you.

16:40:27

6 Chief Warshaw, do you have something you wanted to  
7 say?

8 MONITOR WARSHAW: Very briefly, Your Honor. As the  
9 Court is aware, I am not an attorney, so I'm not in a position  
10 to comment on First Amendment issues. But as the Court is also  
11 aware, I have been a monitor for 15 or 16 years, and we do  
12 bring hundreds of years of police experience.

16:40:34

13 I respectfully disagree with what Mr. Casey said,  
14 though I'm certainly not in a position to contest his First  
15 Amendment argument on behalf of his client. But it has been  
16 our experience that the utterances of chief executives of  
17 police agencies, and in this case we've had other executives of  
18 the agency here before this Court regarding their comments, has  
19 a chilling impact on the reform process in any police agency.

16:41:01

20 And while I don't disagree with what Mr. Casey's saying about  
21 at the end of the day it's the deed that counts, I think  
22 certainly in the presence of Chairman Barney, Mr. Manos,  
23 Ms. Wilson, who do not want this project to go on in  
24 perpetuity, attitudes as expressed by executives of police  
25 agencies are the final determining factors as to whether or not

16:41:23

16:41:43

1 these projects come to a close after three years or after seven  
2 years. These organizations are very, very difficult to move.  
3 Reform does not come easily. Even the comments that -- that  
4 Mr. Casey indicated were perhaps not artful in their response  
5 to us feeds a certain resistance factor that already exists 16:42:05  
6 within the ranks of the department, and I think it would be  
7 very good for the welfare of this project, but most importantly  
8 for the welfare of this community if we can be prudent in these  
9 kinds of comments or else our job, and ultimately the job of  
10 those who are committed to making these reforms, becomes that 16:42:25  
11 much more difficult.

12 THE COURT: Mr. Casey.

13 MR. CASEY: Yes, Your Honor. May I briefly reply?

14 THE COURT: I'm going to require it be brief, because  
15 I do want to finish today, and I still had some stuff that I 16:42:36  
16 want to talk to you about under seal.

17 MR. CASEY: Yes, sir. Your Honor, briefly, I've heard  
18 the words from plaintiffs "undermine," "frustrate the order,"  
19 "minimize the order"; I've heard from the monitor "attitude."

20 And I respect these individuals, but the fact of the 16:42:52  
21 matter is there needs to be a burden of proof to make a causal  
22 link. This is not about attitude; this is about compliance.

23 What we're also hearing being suggested by the ACLU is  
24 for the first time in its history it is against the First  
25 Amendment of anyone -- excuse me, it's in favor of the First 16:43:12

1 Amendment except for my client. It's advocating a prior  
2 restraint. A penalty for speech it disagrees with and the  
3 Court may disagree with. The Court has done an exceptional job  
4 of not politicizing this. That interjects the politics back  
5 into this.

16:43:28

6 So I guess there needs to be a burden of proof in  
7 showing a link between whatever comments, if the Court  
8 disagrees with them, doesn't like them, the plaintiffs don't,  
9 and somehow a noncompliance issue. It's not about attitude.  
10 Attitude helps, but not the sheriff's attitude.

16:43:44

11 THE COURT: Well, I appreciate what you say. It's  
12 clear that what we're talking about here mostly is a status,  
13 the status of how the Maricopa County Sheriff is doing under  
14 the monitor. He's issued his first of many reports.

15 I expect that there will be extremely positive change  
16 as a result of this meeting. I expect it not only from  
17 Internal Affairs, from Investigations, from Administration, but  
18 I expect it from Sheriff Arpaio. And to the extent it doesn't  
19 come, I will take it into account when I am determining whether  
20 or not this agency is in compliance, because I can't ignore  
21 things that he says when they are as direct and provocative as  
22 they are.

16:43:59

16:44:27

23 Now, I'm not going to make that determination now. I  
24 will allow Ms. Wang to file whatever motion she wants. The  
25 sheriff is allowed to say whatever he wants. But to the extent

16:44:48

1 as the chief administrative officer and policy maker of the  
2 Maricopa County Sheriff's Office he suggests that there should  
3 not be complete compliance with this order and that he's not  
4 willing to comply, I'm willing to take that into account in  
5 making a determination whether the MCSO is in compliance with 16:45:03  
6 my order. And I'm just advising him now so that when the time  
7 comes that I have to make that determination, he'll be aware  
8 and he can make his choices. He can continue to be the  
9 sheriff. But if he violates my orders, he'll continue to do it  
10 under the sanction of this Court. And I'm not talking simply 16:45:22  
11 about what he says; I'm talking about what he does more than  
12 what he says. But that also factors in.

13 With that being said, and I do appreciate your  
14 willingness to stay, I have some questions for you about the  
15 material that you submitted to me under seal and so this 16:45:38  
16 hearing is now going to be closed to the public. The parties  
17 may remain, my monitors may remain, and the Court security  
18 staff may remain. Everyone else must leave.

19 (The courtroom is cleared.)

20 THE COURT: Sir, who are you? 16:47:26

21 MR. BENDOR: I'm with the ACLU of Arizona, Your Honor.

22 MS. WANG: Your Honor, this is Josh Bendor. He's a  
23 new attorney with the ACLU of Arizona and is not yet admitted  
24 to the bar but has joined our plaintiffs' team.

25 MR. CASEY: No objection. 16:47:43



(Page 81, line 1, through page 118, line 23, are  
omitted and sealed by order the Court.)

## 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 3rd day of November, 2014.

s/Gary Moll