

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) February 26, 2015
Joseph M. Arpaio, et al.,) 1:34 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)
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21

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P R O C E E D I N G S

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

Counsel, please announce your appearances.

13:34:53

MS. WANG: Good afternoon, Your Honor. Cecillia Wang
of the ACLU for the plaintiffs. Also with met at counsel table
are Stan Young of Covington & Burling and Dan Pochoda and Josh
Bendor of the ACLU of Arizona.

THE COURT: Good afternoon.

13:35:07

MS. IAFRATE: Good afternoon, Your Honor. Michele
Iafrate on behalf of Sheriff Arpaio and the MCSO.

Also with me at the table is Tom Liddy, Sheriff
Arpaio, and Mel McDonald.

THE COURT: Good afternoon to you all. To some
extent -- oh.

13:35:20

MR. MITCHELL: Good afternoon. Barry Mitchell and Lee
Stein on behalf of Chief Jerry Sheridan, who's with us here
today in the courtroom.

MR. OUIMETTE: David Ouimette, Your Honor, on behalf
of Deputy Chief MacIntyre, who is also here.

13:35:33

MR. COMO: Greg Como on behalf of Executive Chief
Brian Sands, Retired, who is present.

MS. IAFRATE: Your Honor, just one more person to
announce. Lieutenant Sousa is also here.

13:35:46

1 MR. WILENCHIK: Dennis Wilenchik and John Wilenchik,
2 Your Honor, for former Executive Chief Sands, special
3 appearance.

4 THE COURT: Thank you. Anyone else who wants to
5 announce their presence?

13:36:01

6 I do note, Ms. Strange, that you're here.

7 MS. STRANGE: Yes, Your Honor, I'd love to announce my
8 presence. Elizabeth Strange from the U.S. Attorney's Office.

9 THE COURT: And it's perfectly appropriate for you not
10 to announce as a nonparty, but I do recognize that you're here
11 at my invitation, as are a number of other people who've just
12 announced.

13:36:24

13 Well, the first thing I want to do, and I have some
14 things I want to get through, and I realize the parties will
15 have some things that they might want to get through, I want to
16 clear up who is what we have referred to as special --
17 specially appearing nonparties and who are actually appearing
18 for purposes of the civil contempt hearing which is noticed in
19 the end of April, for instance, Mr. Como and Mr. Wilenchik.

13:36:38

20 It looked to me, Mr. Como, from your notice of
21 appearance, that you are actually representing Chief Sands in
22 the civil contempt hearing, is that correct?

13:37:00

23 MR. COMO: That's correct, Your Honor.

24 THE COURT: All right. And Mr. Wilenchik, you're
25 specially appearing on behalf of Chief Sands?

13:37:13

1 MR. WILENCHIK: Yes, Your Honor.

2 THE COURT: Is there anyone else, Ms. -- well, now,
3 Ms. Iafrate, you have been representing not only Maricopa
4 County and the sheriff, but, as far as I am aware, all of the
5 other individually named -- and I assume they're parties now -- 13:37:30
6 individually named parties for the civil contempt hearing, is
7 that correct?

8 MS. IAFRATE: That is correct, Your Honor.

9 THE COURT: All right. And so you are no longer
10 representing former Chief Sands. That representation is being 13:37:43
11 done completely by Mr. Como?

12 MS. IAFRATE: For the civil would be handled by
13 Mr. Como, correct.

14 THE COURT: All right. Mr. Como, can I have you come
15 inside the bar here and take a seat? Looks like there's a seat 13:37:57
16 right over here.

17 Now, is there -- just for the crowd, just for purposes
18 of the assembly, is there anyone else who is representing any
19 of the other specifically named parties in the civil contempt
20 hearing? 13:38:20

21 All right. That was my understanding.

22 Mr. Como, then I think the first thing we need to do
23 is take up your discovery request. I realize that the parties
24 haven't had a chance to brief it, but it did seem to me when I
25 reviewed it that it's the sort of thing that might require some 13:38:37

1 briefing. And so if we're going to need to brief it and if
2 we're going to need to do that on an expedited basis, I want to
3 raise that right now and get an expedited hearing set.

4 The first thing you've asked for is the attorney
5 records of Tim Casey, notes and correspondence reflecting his 13:38:55
6 communications with the Sheriff's Office.

7 Are you waiving privilege?

8 MS. IAFRATE: I am not, and neither is the sheriff,
9 Your Honor, so we would like time to brief that issue if you
10 would like briefing, because we will be objecting to the 13:39:12
11 release of that material.

12 THE COURT: All right. And I guess -- that doesn't
13 surprise me much. But I guess as I thought about it, I thought
14 about how I'm likely to approach this issue, which doesn't mean
15 that I think I'm necessarily right, and I'm certainly willing 13:39:30
16 to receive whatever briefing, Ms. Iafate, Ms. Wang, you might
17 want to give on the question, but I did have some thoughts that
18 are going to be at least preliminarily of most interest to me,
19 and I think I'm going to set them out so that you can address
20 them. 13:39:49

21 First off, Mr. Como, I assume that your client is
22 waiving any right he has in the attorney-client privilege that
23 he might have with Mr. Casey and/or Mr. Liddy.

24 MR. COMO: That would be correct, Your Honor.

25 THE COURT: All right. If he is waiving that right, 13:40:04

1 then I guess the first thing I want to raise is a case that
2 actually I authored when I was over at the Arizona Court of
3 Appeals, and that case is State Ex Rel. Thomas versus
4 Schneider, and it is at 212 Ariz. 292, 130 P.3d 991. And it
5 involved a case in which criminal prosecution had been brought 13:40:47
6 against a -- against individual officers of the City of
7 Glendale, and the city attorney of Glendale had made
8 disclosures to the county attorney which resulted in an
9 indictment. And then the question was whether the individual
10 city councilman had an attorney-client privilege with the city 13:41:08
11 attorney with whom he had consulted, and I determined that in
12 addition to the city attorney's job to represent the city as a
13 whole, according to city ordinance, he had an obligation to
14 provide representation to individual councilmen, and therefore,
15 the individual council member had an attorney-client privilege 13:41:32
16 with the city attorney.

17 So I guess my first question is: Does Chief Sands
18 have an individual relationship with you, Mr. Liddy, and with
19 Mr. Casey? And I've looked at county statute, I'm not sure
20 I've done a very thorough review, but it looks to me like 13:41:51
21 county privilege statute and county representational statute --
22 and I haven't looked at all the ordinances -- may give rise to
23 some similar issues here, because it looks to me like you have
24 an obligation to provide advice not just to the
25 Sheriff's Office, but to the individual officers within the 13:42:10

1 Sheriff's Office. And to the extent that you may have done
2 that with Chief Sands, I believe that it's certainly
3 conceivable that Chief Sands has the right to waive that
4 privilege and disclose that information.

5 If in fact that is true and he has waived the 13:42:23
6 privilege, then the question is whether or not there can be any
7 other preservation of the privilege on that topic as it applies
8 to other persons with whom -- or in other communications that
9 may not have occurred between Chief Sands and you and/or
10 Mr. Casey. And those are going to be the questions that I'm 13:42:43
11 really interested in being briefed.

12 Any questions about that, Mr. Como?

13 MR. COMO: No, Your Honor.

14 THE COURT: All right. Obviously, I want this
15 information to the extent that it -- well, it's -- it occurs to 13:43:00
16 me that it is not inconceivable that some of this information
17 may have to be subject to in-camera review, and it may take
18 some time to go through what Mr. Casey has, what he doesn't
19 have; what you may have, Mr. Liddy; what members of your office
20 may have who may have had communication with Chief Sands. And 13:43:21
21 I want to have this all done in plenty of time so that we don't
22 have to postpone this hearing, and so let's talk about briefing
23 schedules.

24 Ms. Wang, you had something you wanted to say?

25 MS. WANG: Yes, very briefly, Your Honor. 13:43:35

1 Plaintiffs' position would be that, number one, we do
2 not oppose Chief Sands' request. We would ask further that if
3 the documents are disclosed to Chief Sands, the plaintiffs also
4 should be entitled to have it as well, and I throw that out
5 there so that all -- all the parties can include that issue in 13:43:51
6 the briefing.

7 THE COURT: Well, I appreciate that, and I guess I had
8 assumed it but it shouldn't have been assumed.

9 To the extent that the privilege belongs to
10 Chief Sands and he waives it, it's waived, and it's waived to 13:44:03
11 all parties including the plaintiffs, and that's my
12 understanding. But if you have a different position, you
13 certainly can brief that and it should be briefed.

14 Anybody else have any questions or concerns before we
15 set a briefing schedule on that issue? 13:44:21

16 MS. IAFRATE: I do, Your Honor.

17 I don't have that request in front of me --

18 THE COURT: Oh, the actual request?

19 MS. IAFRATE: I recall it to be quite broad.

20 THE COURT: Yes. Yes. 13:44:33

21 MS. IAFRATE: This case --

22 THE COURT: It's too broad, in fact --

23 MS. IAFRATE: Yes.

24 THE COURT: -- and -- yeah.

25 MS. IAFRATE: So I was hoping that if we were going to 13:44:40

1 have to do some sort of disclosure for an in-camera inspection,
2 we have hundreds of boxes. And so I don't know if the
3 intention was to go back to the beginning of time or if it was
4 to deal specifically with the contempt allegations.

5 I guess I would just like some clarification and some
6 ability to minimize it so that this doesn't take over the
7 issues before the Court.

13:45:03

8 THE COURT: Well, I think that's a reasonable request.

9 Let me read it. You actually made three requests,
10 Mr. Como, and I'm going to take them one at a time here.

13:45:17

11 The first one is Sands seeks to obtain Mr. Casey's
12 notes and correspondence reflecting his communications with the
13 Sheriff's Office regarding what steps were discussed to ensure
14 compliance with the Court's December 2011 preliminary
15 injunction, including the distribution of the Court's order.

13:45:30

16 Would it be your position, Mr. Como, that you have the
17 right to all such information in the possession of Mr. Casey
18 whether or not it was limited to communications with
19 Chief Sands?

20 MR. COMO: Yes, Your Honor, I -- in fact, you had
21 asked me whether I am waiving the privilege with respect to --
22 whether Mr. Sands is waiving the privilege with respect to his
23 communications, and that would be, I guess to clarify that,
24 Mr. Sands doesn't intend to request this information just to
25 waive his own privilege and then not get the communications

13:45:53

13:46:16

1 that might otherwise relate to other individuals that Mr. Casey
2 spoke with, so the answer is yes to that question, and I
3 think -- and I'm getting a little bit ahead of the Court, so I
4 apologize.

5 But I think one thing that perhaps what I would 13:46:37
6 suggest is that Ms. Iafrate and I get together for a meet and
7 confer to see if we can narrow the scope of the request, if
8 necessary, as part of this process of briefing.

9 THE COURT: Well, that certainly makes sense to me,
10 but -- so you say that you want, I think you say discovery. 13:46:57
11 But it looks to me like what you're really talking about here
12 is a document production request.

13 MR. COMO: Correct, Your Honor.

14 THE COURT: And the document production request would
15 be -- and I'm sorry, because I included Mr. Liddy in this; you 13:47:18
16 haven't included Mr. Liddy in this.

17 MR. COMO: Correct.

18 THE COURT: So it would be Mr. Casey's notes and
19 correspondence reflecting his communications with the
20 Sheriff's Office. 13:47:32

21 Does that sufficiently tee up the issue so that you
22 can brief it, Ms. Iafrate, or not?

23 MS. IAFRATE: Your Honor, may I look at your copy?

24 THE COURT: Sure. I need it back, though. In fact, I
25 don't need it back because Kathleen will print me off another 13:47:51

1 one, if you'll give her the document number, because we have
2 three different issues.

3 Do you need a copy, Ms. Wang?

4 MS. WANG: No, Your Honor. I have one. Thank you.

5 THE COURT: Thank you.

13:48:00

6 MS. IAFRATE: Now that I read it in total, Your Honor,
7 I think that I -- it is sufficient for me to brief it. It
8 looks like it is a little bit narrower than I understood when I
9 first read it. I didn't understand Mr. Como's last statement
10 to you regarding Mr. Sands' desire to waive not only his
11 communications, but others'.

13:48:42

12 THE COURT: Let me tell you how I interpret his --
13 what he said. And then, Mr. Como, you can correct me but
14 you'll know how I interpret it.

15 I interpret what Mr. Como said to be that
16 Chief Sands -- that either there is no attorney-client
17 privilege that attaches between the communications between
18 Mr. Casey and the MCSO, or that to the extent there is such a
19 privilege, Chief Sands has the right to waive it in its
20 entirety.

13:48:59

13:49:19

21 Did I understand that correctly, Mr. Como?

22 MR. COMO: I guess what my point was, Your Honor, is
23 that I believe that the proceedings, there may be some waiver
24 that's already occurred as a result of some disclosure of this
25 information, or just because of the nature of this proceeding.

13:49:39

1 And so that I believe we may be entitled to those documents
2 with respect to others in the office --

3 THE COURT: Oh, okay.

4 MR. COMO: -- as well.

5 THE COURT: So, in other words, you believe that
6 disclosures made by the MCSO or perhaps by Chief MacIntyre in
7 his affidavits or other things have already waived the
8 privilege.

13:49:54

9 MR. COMO: Correct, Your Honor.

10 THE COURT: And so you're not asserting a blanket
11 waiver.

13:50:03

12 MR. COMO: Correct.

13 THE COURT: You also, I assume -- well, then let me
14 get specific, because this might help us all.

15 Are you asserting that Chief Sands has the right to
16 waive the privilege in communications to which he was not a
17 party? Or was not present in a meeting, for example?

13:50:13

18 MR. COMO: That was not my contention. I would
19 honestly have to consider that more and research that to see if
20 that's a viable position to take.

13:50:32

21 THE COURT: Well, we're going to start re -- we're
22 going to start considering it right now.

23 MR. COMO: I understand, Your Honor. That was not my
24 contention coming in, that he has the ability to waive
25 privilege to communications that he wasn't a party to.

13:50:42

1 THE COURT: All right. It looks to me like your
2 request would implicate communications to which he was not
3 necessarily a party.

4 MR. COMO: That's correct, Your Honor.

5 THE COURT: All right. Well, how are we going to tee
6 this up? Are you going to fashion requests that you then want
7 to give to Ms. Iafrate, and then we'll allow Ms. Iafrate to --

13:50:56

8 Here's the deal. I'm going to authorize you to issue
9 discovery to Ms. Iafrate, okay? And to the extent that there
10 may have been a waiver of the attorney-client privilege, first
11 off, I am taking what you've just said on the record as binding
12 that to the extent Chief Sands has any such privilege, it is
13 waived, for any and all communications to which he was a party;
14 that you are reserving the right to determine whether or not
15 you believe that other aspects or other communications may or
16 may not have been waived. But I'm going to let you fashion
17 your document production requests to Ms. Iafrate, and then I'm
18 going to allow her to move for a protective order.

13:51:16

13:51:34

19 How many requests do you want?

20 MR. COMO: I would just make the three that we've
21 already made.

13:51:52

22 THE COURT: Well, you haven't -- I mean, I think I
23 agree with Ms. Iafrate on this. You haven't made any request.
24 You've sort of vaguely discussed what you intend to make, and
25 it doesn't -- and I'm not sure -- I'm going to, of course,

13:52:06

1 check with all parties -- I'm not sure that the second and
2 third requests are going to be objectionable at all. It's the
3 first one that I expected would draw objections, and that
4 involves documents that you're going to request that implicate
5 at least the attorney-client privilege.

13:52:23

6 So how many -- how many documents -- production
7 requests do you want to implement that --

8 MR. COMO: I think I can do it in five requests, Your
9 Honor.

10 THE COURT: All right. I'll give you five document
11 production requests.

13:52:33

12 When can you have those document production requests
13 served?

14 MR. COMO: By next Tuesday.

15 THE COURT: All right. You have them served by next
16 Tuesday.

13:52:41

17 Ms. Iafrate, if you're going to object to those and
18 move for a protective order, how much time is reasonable to
19 give to you to respond?

20 MS. IAFRATE: Your Honor, that's an awfully difficult
21 question to ask me when I don't even know what the RFPs are, or
22 where I'm going to have to go to first find the responsive
23 documents, so I would ask for one to two weeks.

13:52:53

24 THE COURT: I'll give you two weeks.

25 MS. IAFRATE: Thank you.

13:53:18

1 THE COURT: Two weeks after next Tuesday to respond.

2 Ms. Wang, all of these are going to be served on you.
3 If you want to weigh in, you need to weigh in within that two
4 weeks.

5 And I will say, since I haven't restricted specially 13:53:28
6 appearing nonparties, I'm not sure that I'll consider anything
7 you have to say, but if you want to weigh in, you have the same
8 two weeks. All right?

9 That take care of that request, that first request, or
10 is there anything else we need to take up with respect to that? 13:53:42

11 I will probably order oral argument on this, in case
12 you -- and I'm going to issue my ruling, but there are a couple
13 of things that I consider here. One is that we may end up in
14 sort of a split-the-baby situation in which I will find -- I
15 don't know, and I'm not trying to prefigure this, but it seems 13:54:03
16 to me possible, as I indicated earlier, that it might require
17 some in-camera review, and that as a result of that
18 in-camera review if it happens, I might find that there has
19 been a waiver with respect to some but not all of Mr. Casey's
20 documents, and I'm going to want to -- there may be other 13:54:20
21 issues raised in the briefing.

22 So I'm going to want to have time for the parties to
23 do a privilege log to do the in-camera review, and to get you
24 the documents you're entitled to, so that you can prepare for
25 the hearing in plenty of time. But I do not -- and I want to 13:54:41

1 make it clear: I do not want and I do not intend to move the
2 hearing dates. So parties, if you're going to have to spend
3 the effort, you're going to have to spend the effort, and that
4 includes you, Mr. Como.

5 We clear about that?

13:54:57

6 MR. COMO: Yes, Your Honor.

7 THE COURT: All right.

8 Your second request was for discovery to the
9 Sheriff's Office requesting all documents and electronically
10 stored information which indicates that Brian Sands was
11 responsible for ensuring compliance with the Court's
12 preliminary injunction.

13:55:15

13 Is there going to be any objection to such discovery,
14 Ms. Iafrate? It doesn't seem to me like -- I mean, it might
15 implicate -- some of the documents might implicate the
16 attorney-client privilege. You've just heard that Chief Sands
17 has waived that privilege, so I think that takes care of a lot
18 of that potential problem. And it certainly seems to me like
19 in light of the charges that are pending against Chief Sands,
20 he's entitled to those documents.

13:55:27

13:55:43

21 MS. IAFRATE: Your Honor, my only caveat would be that
22 there may be some others that have attorney-client privilege
23 that might be implicated in this, and so I would like at least
24 the opportunity to include this in my brief if so needed.

25 THE COURT: Well, that's absolutely permissible. How

13:56:03

1 many -- is that going to be a request for production as well?

2 MR. COMO: Yes, Your Honor.

3 THE COURT: Can you do that within the five, or do you
4 need some additional ones for that one?

5 MR. COMO: I think that all three of them combined I 13:56:20
6 think I can do within seven requests.

7 THE COURT: All right. So you'll get seven requests
8 total. The third, I don't -- I mean, I suppose that
9 Ms. Iafrate has these things when you've asked for the monitor
10 to disclose the transcripts of interviews conducted by the 13:56:38
11 monitoring team, but that doesn't seem to me to be a request
12 you need to give to Ms. Iafrate. I believe that we have dis --
13 we have had no objection by any either party or specially
14 appearing nonparty, and those transcripts have been disclosed
15 to both parties, and I imagine you can obtain those transcripts 13:56:53
16 from either party as soon as you want them.

17 Any objection by anybody to that?

18 MS. IAFRATE: No, Your Honor.

19 MS. WANG: No, Your Honor.

20 THE COURT: All right. So don't waste your RFPs. 13:57:04

21 MR. COMO: Thank you.

22 THE COURT: Just check with Ms. Iafrate or Ms. Wang
23 and they'll give you those transcripts.

24 That take care of your discovery requests?

25 MR. COMO: It does, Your Honor. 13:57:17

1 THE COURT: All right. So you're going to have a
2 total of seven requests. You're going to make them by Tuesday.

3 Ms. Iafrate, you'll have two weeks in which to file
4 any protective order.

5 And we'll ask you, Ms. Wang, if you're going to weigh 13:57:30
6 in to weigh in in the same two-week time period.

7 But I've indicated the cases and the statutes, the
8 Arizona state -- and I do realize that this is federal law, or
9 may be federal law and not necessarily state statute, but as I
10 said before, I am going to give some consideration to state law 13:57:50
11 because it's the state law that the MCSO, for the most part,
12 has to operate under, in determining what is and is not
13 privileged. That does not mean, however, that that is
14 definitive. And I -- so I've indicated what I'm interested in
15 on those topics. 13:58:09

16 Anybody else need to weigh in on those topics?

17 All right. Now, we have the discovery -- discovery
18 orders that I've already entered for the plaintiff, and I
19 notice that you filed a subpoena just before this hearing,
20 Ms. Wang. Is there any other follow-up that's needed in terms 13:58:24
21 of discussing the discovery orders I've already entered?

22 MS. WANG: I don't believe so, Your Honor.

23 There is one issue that relates to discovery -- well,
24 a general issue and then a specific one. We anticipate that
25 once we get the defendants' remaining document production, 13:58:41

1 which is due tomorrow, and the privilege log, there may be
2 issues that come up, and we wonder if the Court will be
3 available and how you'd like to handle any discovery disputes,
4 if we could do those telephonically by telephone, should we
5 just call Your Honor's --

13:58:59

6 THE COURT: Yes.

7 MS. WANG: -- deputy --

8 THE COURT: The way I generally do discovery disputes
9 is set forth in the case management order in this case, and if
10 not, I'll -- I'll supersede it here.

13:59:08

11 If you have discovery disputes, get all the parties on
12 the line -- and that includes, at this point, Mr. Como, so
13 don't forget him -- and call my judicial assistant. She can
14 usually arrange within a day or two for me to take the
15 telephonic discovery.

13:59:27

16 What I ask you to do before I do this, though, is
17 confer in good faith. See if you can't resolve the issue. If
18 you can't, sharpen it, because I won't have you here if I'm on
19 the telephone, so I'll expect you to be able to tell me what
20 the discovery request was, what the response was, and why it is
21 deficient in its particulars.

13:59:42

22 And I'll expect the other side -- in this case,
23 presumably the MCSO -- to give me their particular answer and
24 why they believe that in light of the applicable discovery
25 rules it's appropriate. Okay?

14:00:04

1 MS. WANG: Yes, Your Honor.

2 THE COURT: Usually, I can resolve those matters just
3 over the telephone. If I can't, then I'll authorize expedited
4 briefing, as I've done here today.

5 MS. WANG: All right. 14:00:12

6 THE COURT: All right.

7 MS. WANG: The specific issue, Your Honor, is
8 something that I've alerted Ms. Iafrate and Mr. Casey to
9 earlier today. Based on the submissions that have been made by
10 the defendants and the specially appearing individual MCSO 14:00:23
11 personnel and former personnel, we believe that Tim Casey is a
12 fact witness in this case, and we've alerted Ms. Iafrate and
13 Mr. Casey that the plaintiffs do intend to depose Mr. Casey and
14 potentially to call him as a witness at the April hearing.

15 We're alerting the other side, Mr. Casey, and the 14:00:44
16 Court today because we do imagine that defendants or Mr. Casey
17 might take issue with that, or raise issues concerning that
18 deposition, and we want to make sure that there's adequate time
19 to schedule any briefing and argument about that without
20 derailing the schedule the Court has set forth. 14:01:05

21 THE COURT: All right. I appreciate that, and let's
22 take that up now.

23 Ms. Clark, I notice you're in the courtroom.
24 Mr. Casey indicated to me, I believe, in a previous hearing
25 that he had hired you as his counsel in this matter, is that 14:01:17

1 correct?

2 MS. CLARK: That is correct, Your Honor.

3 THE COURT: All right. Do you want to come inside the
4 bar for a few minutes?

5 (Pause in proceedings.)

14:01:26

6 MS. CLARK: Good afternoon, Judge.

7 THE COURT: Good afternoon.

8 Somebody make a seat available for Ms. Clark while she
9 has to be here. You can -- yeah.

10 (Pause in proceedings.)

14:01:51

11 THE COURT: All right. I assume, and maybe this is a
12 wrong assumption, Ms. Wang, that you would probably wait to do
13 Mr. Casey's deposition until --

14 MS. CLARK: I couldn't hear you, Judge. I'm sorry.

15 THE COURT: Can you not hear?

14:02:14

16 MS. CLARK: I couldn't hear you where the chair was
17 moving. I'm sorry.

18 THE COURT: All right. I assume, Ms. Wang, without --
19 without knowing, that you would wait until you have received
20 what documents, if any, are going to be made available pursuant
21 to Mr. Como's request before you take the depo -- or seek to
22 take the deposition of Mr. Casey.

14:02:28

23 Is that a correct assumption?

24 MS. WANG: That's right, Your Honor. And so I think
25 there may be issues, given the briefing deadline the Court has

14:02:43

1 just set out, to make -- both for the -- for Chief Sands'
2 deposition and for Tim Casey's deposition to happen before
3 March 27th.

4 THE COURT: Which was -- what's March 27th?

5 MS. WANG: It's the deadline for depositions. 14:03:04

6 THE COURT: All right. Well, we'll move that back --

7 MS. WANG: Okay.

8 THE COURT: -- since we have a whole month.

9 MS. WANG: Great.

10 THE COURT: We'll move that back if necessary. But 14:03:12
11 let's look at what's happening here.

12 Today is the 27th of February. I've given Mr. Como
13 till the 4th of March to get his requests on file, and then
14 I've given Ms. Iafrate to the 18th to do the privilege log and
15 any other protective order that she might seek. 14:03:33

16 MS. WANG: Your Honor, I think you're off by a day. I
17 think Mr. Como's discovery requests were due on the 3rd, and
18 then any briefing from either party is due on the 17th.

19 THE COURT: Oh, is that correct, Mr. Como?

20 MR. COMO: Yes, Your Honor. 14:03:52

21 THE COURT: All right. Thank you for the correction.
22 So that would be the 17th.

23 And I do appreciate that Ms. Iafrate's not going to be
24 able to tell me today everything that may be involved on the
25 17th, so I think what I'm going to do is I will look at matters 14:04:07

1 on the 17th, and I assume that one of the things you will be
2 able to tell me, Ms. Iafrate, without waiving any ability to
3 contest any and all disclosure, I assume that your position may
4 be that if you believe that any disclosure is authorized, even
5 if you continue to oppose it all, that you would -- that you 14:04:29
6 would designate certain documents for in-camera review, is that
7 correct? Or, in other words, you would want the Court to do an
8 in-camera review.

9 MS. IAFRATE: I'm not so certain that I would want the
10 Court to do an in-camera -- I'm not so certain that I would 14:04:46
11 request the Court to do an in-camera review by the 17th
12 because --

13 THE COURT: No, no, no, no, no. I mean by the 17th
14 you'll be able to tell me if that's your position.

15 MS. IAFRATE: Oh. Yes. 14:04:59

16 THE COURT: Okay. Thank you.

17 I am in trial that week, is that correct, Kathleen?

18 (Off-the-record discussion between the Court and the
19 clerk.)

20 THE COURT: I'm going to tentatively set it in the 14:06:13
21 afternoon of the 20th. I may have to move this. I'm going to
22 tentatively set a hearing on the afternoon of the 20th.

23 Well, before I do that, Ms. Wang, can you think -- do
24 you think this issue's going to be sufficiently teed up by the
25 request for production of documents, or do you want to file 14:06:39

1 your own briefing with respect to whether or not you have the
2 right to take the deposition of Mr. Casey?

3 MS. WANG: Your Honor, I think -- right. Your Honor,
4 our view would be that we've already put Ms. Iafrate and
5 Mr. Casey and his counsel, Ms. Clark, on notice that we intend
6 to notice his deposition, and I think once we do that it's --
7 the ball's in their court to file a motion for protective
8 order, which we would, of course, respond to.

14:07:00

9 THE COURT: All right.

10 MS. IAFRATE: May I be heard, Your Honor?

14:07:16

11 THE COURT: Sure.

12 MS. IAFRATE: We received an e-mail that I read as I
13 was walking into court. I don't think that I would file a
14 protective order based on an e-mail.

15 THE COURT: All right. Do you want to file a notice
16 of deposition, Ms. Wang?

14:07:26

17 MS. WANG: Yes, Your Honor. As I said, I would expect
18 that the -- that Ms. Iafrate would file her motion after we
19 noted -- actually noticed the deposition.

20 THE COURT: All right. So when are you going to
21 notice the deposition?

14:07:37

22 MS. WANG: We can do that tomorrow.

23 THE COURT: All right. So if you notice the
24 deposition, then I'm going to -- I'm going to leave the
25 deadline the same, and you can incorporate the deposition

14:07:47

1 issues into the discovery request -- or the request for
2 production issued by Mr. Como.

3 Will that be okay, Ms. Iafrate?

4 MS. IAFRATE: Your Honor, the same deadline would be
5 fine, but could I have two separate pleadings to respond --

14:08:02

6 THE COURT: You may.

7 MS. IAFRATE: -- to the two separate issues?

8 THE COURT: You may. Ms. Clark, do you want to be
9 heard and have the right to respond in the RFP with the same
10 deadline?

14:08:14

11 MS. CLARK: I think I better ask for that, yes, Judge.

12 THE COURT: All right. Then the same deadline will be
13 extended to you if in fact you intend to issue some sort of
14 request for protective order.

15 (Off-the-record discussion between the Court and the
16 clerk.)

14:08:32

17 MS. WANG: Your Honor, what would be our deadline for
18 a response to the motion for protective order?

19 THE COURT: How long do you want?

20 MS. WANG: Well, I'd like to ask for a week, but then
21 we're -- I think we're starting to push it.

14:08:45

22 I think we would ask for a week, Your Honor. If you
23 give us a little bit of relief on the deposition, I think we
24 should be fine and stay on track for the -- the hearing set for
25 the 21st.

14:09:11

1 THE COURT: All right. So I'm looking at a bad
2 calendar here. We determined that the deadline for Ms. Iafrate
3 and Ms. Clark is -- did we say the 16th of March?

4 MS. IAFRATE: 17th.

5 THE COURT: 17th, and so that's correct. You would
6 have until the 24th?

7 MS. WANG: That's what we're asking for, Your Honor.

8 THE COURT: All right. You can have until the 24th.

9 MS. WANG: Thank you.

10 THE COURT: Then I'm going to set a hearing --

11 Do I have the 25th?

12 (Off-the-record discussion between the Court and the
13 clerk.)

14 THE COURT: I'm in trial on the 25th, but I'm going to
15 give the hearing at 5 o'clock after trial on the 25th and I
16 will issue my ruling.

17 And then we can make -- if we have to make
18 adjustments, if I have to look at documents in camera, then you
19 can give them to me and I will do them and make a ruling in
20 time for Mr. Como and for you to have access to any that --
21 that you may or may not get prior to any depositions if it will
22 or will not be allowed. Okay?

23 MS. WANG: Thank you, Your Honor.

24 THE COURT: Does that work for everybody?

25 MR. COMO: Your Honor, I don't think we set a deadline

14:09:31

14:09:38

14:09:59

14:10:19

14:10:35

1 for me to respond to Ms. Iafrate's brief on the privilege --

2 THE COURT: Well, it's going to be the same --

3 MR. COMO: That's what I was going to ask, Your Honor,
4 if I could just have the same deadline.

5 THE COURT: Yes. Anything else you're concerned
6 about, Ms. Clark?

14:10:45

7 MS. CLARK: No, Judge.

8 THE COURT: All right. You can go back behind the bar
9 now, unless you --

10 MS. CLARK: Thank you, Judge.

14:10:54

11 THE COURT: -- unless you need something else, need to
12 say something else.

13 MS. WANG: Your Honor, I hate to throw a wrench into
14 what we just discussed, but it does occur to us that the
15 documents that are produced in response to Chief Sands' request
16 may be relevant to some of the other depositions, and I -- I
17 don't want to ask the Court to move the deposition deadline for
18 all depositions if that risks pushing back the schedule for the
19 evidentiary hearing. That is not what plaintiffs would like to
20 do.

14:11:10

14:11:33

21 So I guess what we would just -- we would just flag
22 that as an issue and raise the possibility that we may need to
23 ask for the reopening of dep -- other depositions in a very
24 limited way to deal with any documents that come to light after
25 those depositions are taken.

14:11:52

1 THE COURT: Ms. Iafrate? Do you wish to be heard on
2 that?

3 MS. IAFRATE: It doesn't appear that there's a request
4 before the Court regarding anything, just a warning, so I will
5 reserve my response to if indeed it actually happens. 14:12:08

6 THE COURT: All right. But you don't have any
7 categorical objection at this point?

8 MS. IAFRATE: No.

9 THE COURT: All right. I wanted to raise with you,
10 Ms. Wang, a couple of other issues. Your document 880, which 14:12:24
11 related to whether or not you had ever received the documents
12 that were found in the -- in the review of some of the HSU
13 headquarters that had been vacated and some of the documents
14 that previously Mr. Casey was going to review, have you -- do
15 you know yet whether you've received those documents? 14:12:45

16 MS. WANG: Your Honor, based on what we've been able
17 to get through so far, it does appear that some of those doc --
18 at least some of the documents are new to us, but we still
19 haven't gotten to the bottom of that question.

20 THE COURT: All right. Have you -- 14:13:04

21 MS. IAFRATE: Your Honor?

22 Oh, I'm sorry.

23 THE COURT: That's okay, Ms. Iafrate. Go ahead.

24 MS. IAFRATE: I was just going to avow to the Court
25 that I personally went over and picked up all of those boxes, 14:13:13

1 had them copied by a vendor and sent to Ms. Wang. If there was
2 any discrepancy regarding whether they had received them before
3 or not, we erred on the side of disclosure, to the point of
4 even if it was a duplicate or triplicate, we provided it to
5 her, so I can avow to you that we have provided those to
6 Ms. Wang. 14:13:32

7 THE COURT: All right.

8 MS. WANG: I'm sorry, I thought the Court was
9 asking --

10 THE COURT: No. 14:13:39

11 MS. WANG: -- what -- okay.

12 THE COURT: I was really asking the question that
13 Ms. Iafrate answered, but --

14 MS. WANG: I beg your pardon. She is right, we've
15 actually met and conferred. I think that we have the set of
16 documents now. I thought that the Court was asking whether we
17 received those documents before trial. 14:13:48

18 THE COURT: And you're indicating to me that from your
19 preliminary review, it appears that you have new documents that
20 you had not received before trial. 14:13:59

21 MS. WANG: Yes, that appears to be the case.

22 THE COURT: All right.

23 Well, I currently have an order that requires you to
24 disclose witnesses by the 13th of March. That seems to be
25 unrealistic, and so I will move that date as well unless 14:14:20

1 there's any objection.

2 MS. IAFRATE: No objection from me, Your Honor.

3 MS. WANG: None from plaintiffs.

4 THE COURT: All right. I will hold that until after
5 my ruling on Mr. Como's document production request. 14:14:31

6 And of course, that will apply -- that deadline,
7 whatever it is, Mr. Como, will apply to Chief Sands.

8 One of the reasons, I think, and I think it was
9 actually not you, Ms. Iaftrate, but it was Mr. McDonald filed a
10 request for a Rule 16 to discuss, I think, efficient operation 14:14:55
11 of the hearing and/or perhaps settlement issues.

12 Do you want to be heard on that at all, Mr. McDonald?

13 MR. McDONALD: We had met earlier today and she was
14 going to be the voice on that request.

15 THE COURT: All right. 14:15:13

16 MS. IAFRATE: Your Honor, Mr. McDonald and I filed
17 that jointly. What we --

18 THE COURT: I'm sorry. I didn't mean to suggest you
19 didn't; I just didn't remember.

20 MS. IAFRATE: Not a problem. He can always come up 14:15:27
21 and join me if he'd like to.

22 THE COURT: Um-hum.

23 MS. IAFRATE: Your Honor, we filed that motion to see
24 if there was any type of vehicle where the parties could get
25 together in a mediation type sense and either resolve all the 14:15:40

1 issues or resolve some of the issues to limit the scope of the
2 hearing. Obviously, it's a contempt hearing, Your Honor, so we
3 were well aware that you, Your Honor is the finder of fact as
4 it relates to contempt in a civil matter.

5 THE COURT: Um-hum.

14:16:03

6 MS. IAFRATE: That's why we fashioned it that way.

7 In response, we received a response by the ACLU saying
8 that we never truly met and conferred before we filed that with
9 the Court, which was true. So in our reply we said: I'm
10 sorry, let's meet and confer, which we did do. We met and
11 conferred last week and hammered out an idea and some issues.
12 I thought it was a very productive conversation where everyone
13 participated in good faith. We set up a schedule of what
14 needed to be done.

14:16:20

15 We decided, the -- provided some ideas for areas that
16 we could agree on, and in response we received a document from
17 the ACLU regarding areas that they wished for us to -- for us
18 to consider.

14:16:40

19 Prior to this hearing, we went over those ideas of the
20 ACLU with the clients, and I can tell you that based on that
21 conversation, all of the issues that the ACLU raised we find to
22 be largely acceptable

14:17:08

23 So I do believe that some sort of mediation or
24 settlement conference would likely resolve all of these issues
25 if Your Honor is willing to mediate, or if you would be willing

14:17:29

1 to submit this to a magistrate to mediate.

2 THE COURT: I did make an observation that if it's
3 going to be a global resolution of the issues including a
4 global resolution of the potential criminal contempt issues, it
5 would be wise to involve the United States Attorney in such
6 discussions. 14:17:47

7 Have you raised that with the United States Attorney?

8 MS. IAFRATE: Yes, Your Honor, I did. We were trying
9 to work through the mechanics of that, because my understanding
10 is that the U.S. Attorney's Office does not participate in
11 settlement discussions. And so we were trying to work through
12 the mechanics to determine how to involve them, because
13 obviously, we wouldn't want to just resolve the civil contempt
14 without considering the ramifications in the criminal contempt. 14:17:59

15 So the U.S. Attorney's Office and I were trying to
16 figure out how best to proceed with their participation, or at
17 least with their knowledge. 14:18:18

18 THE COURT: Well, as I've indicated in my order, I, of
19 course, would have to sign off on any settlement.

20 MS. IAFRATE: Correct. 14:18:34

21 THE COURT: And I don't know what internal policies
22 you may have with the United States Attorney that may
23 complicate things. It will be sufficient for me to consider
24 the settlement if you can -- if, for example, Ms. Strange
25 indicates to me that the United States Attorney was involved in 14:18:47

1 the discussion and has no objection to the settlement proposed,
2 that will be sufficient.

3 Does that pose a problem to you, Ms. Strange?

4 And come inside the bar and take a microphone, please.

5 MS. STRANGE: Yes, Your Honor.

14:19:01

6 (Pause in proceedings.)

7 MS. STRANGE: The policy that she's referring to is
8 we're not permitted to engage in settlement discussions that
9 involve the Court. So what had been suggested --

10 THE COURT: Involving?

14:19:21

11 MS. STRANGE: It involves a magistrate.

12 THE COURT: Okay.

13 MS. STRANGE: But I don't really know what our
14 participation would be because there isn't a criminal matter
15 for us to negotiate, so I don't -- I don't know what role the
16 U.S. Attorney's Office could play at this point.

14:19:31

17 THE COURT: Well, let me just sort of spin something
18 for you, and I don't know if you've got a response, but you
19 may.

20 You understand, and I think I've been careful at this
21 point not to refer this matter for a criminal contempt hearing.
22 If I do, I refer it to you, and I suppose that you then treat
23 it as you could any other criminal prosecution.

14:19:43

24 MS. STRANGE: Correct, Your Honor.

25 THE COURT: And so I do suppose -- well, I know that

14:20:03

1 you settle criminal matters all the time. Perhaps your
2 experience -- and I know that you settle them sometimes prior
3 to filing any indictment or any information, is that not also
4 correct?

5 MS. STRANGE: That's correct. The prohibition is to 14:20:25
6 involve the Court, to be in the settlement negotiations.

7 THE COURT: All right.

8 MS. STRANGE: Certainly, we can engage with parties
9 and --

10 THE COURT: So you can engage with the parties. If 14:20:34
11 you want a mediation, though, what you're saying is it would
12 have to be a private mediator.

13 MS. STRANGE: I believe that would be all right. Let
14 me check with my -- we don't typically do that, so I would need
15 to ask my -- I have counsel with me -- 14:20:49

16 THE COURT: Well, check with counsel.

17 MS. STRANGE: -- senior litigation counsel.

18 (Pause in proceedings.)

19 MS. STRANGE: Your Honor, it may be possible to do it
20 with a private mediator. It's just not typically how we 14:21:16
21 operate. I mean --

22 THE COURT: Well, there isn't much about this that is
23 typically typical, Ms. Strange. So can you check that?

24 MS. STRANGE: Yes, sir, absolutely.

25 THE COURT: And can you file a notice with the Court 14:21:29

1 and with the parties if that is a possibility in which the
2 U.S. Attorney's willing to engage?

3 MS. STRANGE: Yes.

4 THE COURT: And if it is, then do you need the further
5 involvement of the Court in this matter, Ms. Iafrate? It 14:21:39
6 sounds to me like you can either have discussion without a
7 mediator or you can have discussion with a mediator, but if you
8 have it with a mediator, it's going to have to be a private
9 mediator.

10 MS. IAFRATE: Well, I'm not so certain that that's the 14:21:56
11 final decision. I think that there could be a mediation that
12 dealt with the civil contempt with either a magistrate or you,
13 and we could have separate conversations with the
14 U.S. Attorney's Office, who then could notify the Court
15 regarding their conclusion. 14:22:13

16 THE COURT: Well, I will tell you, just for purposes
17 of my own sanity, that I'm not going to sign off on any civil
18 contempt settlement that does not also involve a criminal
19 contempt settlement that is acceptable to me. So that doesn't
20 mean that they have to be -- if you're suggesting they can be 14:22:34
21 separate, that's fine. You're just going to need to wrap them
22 all up and present them in --

23 MS. IAFRATE: Definitely.

24 THE COURT: -- a package to me.

25 MS. IAFRATE: That would be in our best interest also, 14:22:44

1 Your Honor. That's the way that we would like -- we would like
2 to present it to you if that became available. I'm just -- we
3 just started talking about the mechanics with the
4 U.S. Attorney's Office, and so we were trying to brainstorm how
5 best to make this happen also.

14:23:00

6 THE COURT: Ms. Wang.

7 MS. WANG: Your Honor, I'd say first some of what
8 Ms. Iafrate presented a few minutes ago is news to us. We have
9 not had a chance to follow up on the exchange of ideas. So
10 having said that, I think a little more conferring between the
11 parties needs to happen.

14:23:15

12 I would observe that because plaintiffs have been
13 concerned solely with the civil contempt proceeding that I
14 don't believe that there's been enough of a record developed to
15 make any kind -- for plaintiffs to take any kind of position as
16 to criminal contempt at this stage. I think that would be
17 premature. We have said that in our responses to Chief
18 MacIntyre's pleadings in this case.

14:23:34

19 THE COURT: Well, and I do -- I don't mean to be
20 disrespectful to you in any way, but, of course, the criminal
21 contempt matter is a matter between this Court, the United
22 States Attorney, and the potential defendants. It doesn't
23 involve --

14:23:50

24 MS. WANG: Absolutely.

25 THE COURT: -- the civil plaintiffs in this case.

14:24:02

1 MS. WANG: Absolutely, Your Honor.

2 MS. STRANGE: Your Honor, if I just may clarify.

3 Ms. Iafrate brought this up just right before this hearing
4 today in the courtroom, so we really haven't had extensive
5 discussions, and I immediately mentioned to the plaintiffs that 14:24:17
6 we had had a brief discussion about it.

7 THE COURT: Well, it does occur to me, since it's
8 going to be a possibility, I don't really want to prejudice my
9 ability to sit over the civil contempt hearing. As I've
10 indicated, I think that if there's a criminal contempt hearing, 14:24:37
11 because I have an ongoing obligation to monitor the defendant,
12 and have monitored the defendant, and some of the evidence may
13 relate to some of the stuff that my monitor has found, I have
14 concerns that I would be the appropriate judge to preside over
15 a criminal contempt hearing. I would have to refer that matter 14:24:55
16 out to another judge and continue to monitor the civil and
17 the -- and the underlying Melendres case.

18 That being said, it seems to me that it is still,
19 Ms. Iafrate, my obligation to decide whether or not I'm going
20 to refer this matter initially for criminal contempt. And if 14:25:13
21 it gets down to it, I think I know this case better than anyone
22 here, with the possible exception of Mr. Liddy, and there are
23 certain things I won't sign off on unless -- I mean, there are
24 going to be certain bottom-line requirements for me to sign off
25 on any settlement agreement that foregoes a -- a criminal 14:25:36

1 contempt hearing, and maybe if it gets down to that in your
2 discussions with the United States Attorney, with all sides
3 consenting, I'll tell you what they are, and you can
4 determine -- or you can give me what you have given, and I'll
5 tell you what I'm going to also require, if in fact they aren't
6 already taken care of.

14:25:56

7 Is that acceptable to you?

8 MS. IAFRATE: Yes.

9 THE COURT: All right. Anything else that we need to
10 raise about the possibility of having settlement discussions?

14:26:10

11 MS. IAFRATE: And so I'm still slightly unclear, Your
12 Honor. Should we request a magistrate and then have
13 separate --

14 THE COURT: It sounds to me like you can request a
15 magistrate if you think -- if you and Ms. Wang --

14:26:30

16 Here's the deal. I actually think very highly of all
17 of our magistrate judges. Many of them -- we've got some new
18 ones, they're all pretty good, and all of the old ones are very
19 experienced at holding settlement conferences. They're good at
20 mediation. But I don't want to waste their time, frankly.

14:26:46

21 And so if, as you've represented to me and that's
22 something that Ms. Wang agrees with, you're close enough that
23 you think you could mediate the resolution of this matter, you
24 just apply to me if you want me to appoint a magistrate judge
25 and I will appoint a magistrate judge. Usually, that takes

14:27:03

1 about six weeks. I will personally ask them to expedite it so
2 that you can have a quick mediation, so that you can take
3 whatever you might resolve there, go to Ms. Strange and see if
4 you can make a criminal resolution part of the package, and
5 then present it to me for my approval or disapproval.

14:27:25

6 If you can't really get close enough to Ms. Wang where
7 she thinks that you've got a reasonable possibility of
8 settlement, let's not waste our time.

9 MS. IAFRATE: Your Honor, I agree with you, and we
10 read that in your order and we met and conferred with the ACLU.
11 We actually asked for their wish list. And so I stand before
12 you very encouraged that this is a path worth exploring,
13 because I do think that what the ACLU -- and quite frankly,
14 what you indicate would be your wish list as well -- that it
15 would be largely acceptable, and at the end of the day,
16 acceptable that everyone sign off on that agreement.

14:27:39

14:28:09

17 So I am encouraged that this --

18 THE COURT: All right.

19 MS. IAFRATE: -- is a real possibility.

20 THE COURT: Well, then why don't I suggest you do
21 this. You talk to Ms. Wang. If both of you can agree that it
22 makes sense to appoint a magistrate, you tell me.

14:28:17

23 Now, normally, what we do in this district is we put
24 it on the wheel. I put it on the wheel and you draw a
25 magistrate by a lot. The only reason why I might suggest a

14:28:32

1 departure from that in this case is the magistrate we draw may
2 not have the time to do it expeditiously, and I think for it to
3 serve anybody's purpose, we're going to have to have a
4 magistrate judge who can give the time to mediate this case.

5 So I guess what I would do is put it on the wheel, 14:28:50
6 draw the magistrate judge who's drawn, and see if she can --
7 she or he can handle an expedited hearing. And if that's the
8 case, you can go forward with that magistrate judge, and if
9 not, draw another one.

10 Does that make sense to you? 14:29:07

11 MS. IAFRATE: It does.

12 THE COURT: Ms. Wang?

13 MS. WANG: Your Honor, I would just say that, as I
14 said already, we would need to meet and confer with defendants.
15 I think that a lot has happened on the defendants' side 14:29:17
16 unilaterally since yesterday that we have not heard about
17 except in court just now, and we need to talk further about
18 this.

19 One thing I would note, though our discussions have
20 been confidential, is that Chief Sands was not represented in 14:29:41
21 any of our conferences with the defendants, and so I'm not sure
22 how we could resolve this globally, not just without the
23 U.S. Attorney's Office participating, but also with Chief Sands
24 participating.

25 THE COURT: That makes complete sense to me. 14:30:01

1 Any objection, Ms. Iafrate?

2 MS. IAFRATE: No, he would need to be a party to the
3 conversations.

4 THE COURT: All right.

5 MS. IAFRATE: I agree.

14:30:07

6 THE COURT: All right. Do you have any other concerns
7 as it relates to the United States Attorneys' participation,
8 Ms. Strange?

9 MS. STRANGE: I do, Your Honor. We don't know at this
10 point what the Court is going to refer, if the Court does
11 refer the matter to the U.S. Attorney's Office for criminal
12 prosecution, and it's a little bit difficult to consider
13 settlement without knowing what the specific --

14:30:18

14 THE COURT: Well, I will tell you --

15 MS. STRANGE: -- referral --

14:30:33

16 THE COURT: Then I'll tell you. I would refer --
17 anything that I have referred for civil contempt is a possible
18 topic of criminal contempt. That includes the individuals that
19 I have individually noticed in the failure to implement the
20 terms of my preliminary injunction, December 2011 preliminary
21 injunction. And I believe the individuals in that case were
22 both the MCSO, Sheriff Arpaio, Chief Deputy Sheridan,
23 Chief Sands, Chief MacIntyre, and Lieutenant Sousa.

14:30:52

24 In the discovery violation, it was MCSO, Sheriff
25 Arpaio, and Chief MacIntyre.

14:31:15

1 In the May 14, 2014, it was Chief Arpaio, the MCSO,
2 and Chief Sheridan. Those would be the --

3 Did you get a copy of my order to show cause?

4 MS. STRANGE: Yes, sir.

5 THE COURT: All right. Then I think that I have set
6 forth -- although I pretty much limited it to what plaintiff
7 provided me, and there may well be other developing evidence,
8 those are the areas. I'm not, of course, saying -- well, I
9 wouldn't, at least at this juncture, refer any other areas for
10 criminal contempt.

14:31:33

14:31:53

11 MS. STRANGE: All right. That's helpful. Thank you,
12 Your Honor.

13 THE COURT: All right. Anything else?

14 MS. STRANGE: No. Thank you.

15 THE COURT: All right. Did you have anything else on
16 this line, Ms. Iafrate?

14:31:59

17 MS. IAFRATE: No, Your Honor.

18 THE COURT: All right. Ms. Wang?

19 MS. WANG: No, Your Honor. We would just emphasize on
20 the plaintiffs' side what we already have, which is we're
21 willing to meet and confer, but we want to make sure that we
22 don't derail the schedule going forward --

14:32:07

23 THE COURT: Well, I promise you, we're going forward.
24 Unless this matter settles, you will be here, and we will have
25 this hearing at the end of April.

14:32:20

1 Towards that end, is there anything that we can do,
2 and maybe not at this point because we'll need to develop
3 things a little further, but it strikes me, Ms. Iafrate,
4 that -- and I don't know, I'm not saying definitively -- but it
5 strikes me as this matter has developed that there are certain 14:32:41
6 facts that really are not contested by the MCSO at this point.
7 And it seems to me that if we're going to go to hearing on this
8 matter, it seems pointless to spend a whole lot of time
9 developing facts that the MCSO already admits.

10 And so it would seem to me that it might make sense 14:33:04
11 prior to hearing to have a streamlining procedure where you can
12 determinate if we -- determine if you can just stipulate to a
13 certain number of facts on a certain number of issues and just
14 be as convenient as possible about all of that, I would
15 encourage you to think about -- you're all operating on 14:33:22
16 multiple tracks, I realize that, but I would encourage you to
17 think about that as well. It will save everybody time and
18 effort. It will maybe save a whole lot of unnecessary
19 witnesses appearing and depositions if you can just agree to
20 certain facts that I don't think are seriously contested. So I 14:33:39
21 would suggest you consider that.

22 I would also suggest that you consider in the hearing
23 cooperating so that we can call officers and deputies only
24 once.

25 Ms. Iafrate, if you don't want to do that, I'm not 14:33:57

1 going to make you do that, but, you know, if Ms. Wang's going
2 to call somebody in presenting her prima facie case that's an
3 MCSO deputy or officer, my suggestion would be you consider and
4 evaluate whether or not you just want to call that officer once
5 and then let them go.

14:34:13

6 If you were willing to do that, of course, I would
7 give you broad leeway so that your cross-examination could also
8 be your direct examination. Then I would give Ms. Wang
9 redirect, and I would give you redirect, too, just so that we
10 don't have to dislocate all kinds of officers and deputies
11 multiple times, since clearly the people who are going to be at
12 issue are mostly MCSO command staff, and I'm not sure that it
13 makes sense to make them appear multiple times. But again, I'm
14 not going to oblige you to do that, but I would suggest it
15 might be something worth your consideration.

14:34:28

14:34:47

16 Ms. Wang, one thing I started to think about, as I
17 said, it seems to me, and I don't mean to paint you into a
18 corner here or misrepresent the facts, but it seems to me that
19 MCSO has acknowledged that the violation of my preliminary
20 injunction order might result in an extensive number of what we
21 will call victims of their violation of my order, and of course
22 I've authorized at least some discovery for you to get your
23 arms around that number.

14:35:16

24 But as I look at that number, and it's a rather
25 daunting -- or potentially a daunting number, and I'm not even

14:35:31

1 sure if it could ever be ascertained truthfully -- or
2 accurately, I guess I should say -- I'm wondering if this
3 really amounts to a whole separate class action against
4 Maricopa County. And, you know, I have a lot of -- I don't
5 mean to say that my schedule dictates; it does not. I want to 14:35:52
6 see that justice is done here. But part of the justice that I
7 want to see being done is the implementation of the decree that
8 we have, which is, in and of itself, very time consuming.

9 And so as I consider that, and as I consider that if
10 we're going to evolve into a whole new class action of persons 14:36:12
11 who will have damages claims against Maricopa County, it seems
12 to me that that's possibly, because one of the purposes of
13 civil contempt can be compensatory, that's possibly appropriate
14 in this action.

15 But even so, are there fact questions that I ought to 14:36:29
16 impanel a jury on, and is this a matter that might better go as
17 a -- sort of a separate -- maybe it has to be an appendage to
18 this case. Maybe it has to just be a separate case. But it's
19 something that I at least want you to know I'm considering.

20 Do you have any thoughts about that? 14:36:52

21 MS. WANG: I do have some thoughts off the top of my
22 head, and we can give that more consideration with our full
23 team of co-counsel.

24 We are working to identify just a handful out of the
25 many, perhaps countless victims, as Your Honor says, and we'll 14:37:05

1 do our best to put forward evidence as to their particular
2 damages.

3 I think that the Court, because the Court already has
4 expertise through the monitoring process over what's happened
5 here, it might be more efficient, in our view, to keep the 14:37:27
6 compensation of victims of violations of this Court's
7 preliminary injunction order within the confines of this
8 contempt proceeding, or more generally, Your Honor, the Court's
9 inherent power to enforce its orders.

10 We have some ideas that we have considered on 14:37:47
11 plaintiffs' side about how best to accomplish that without
12 delaying other contempt matters from going forward and being
13 resolved one way or the other.

14 One way to do that is to identify and locate the
15 victims that are easily identifiable and locatable and get that 14:38:08
16 information in front of Court and ask for damages on their
17 behalf. Another would be to ask for a compensation fund to be
18 initially funded by the defendants and then replenished as
19 individual victims of violations of the preliminary injunction
20 were to come forward. And we have some other remedies that we 14:38:33
21 may eventually ask the Court for in order to address this
22 particular contempt issue.

23 But those are some of the initial thoughts. I think
24 off the top of my head, and without having an opportunity to
25 consult with co-counsel on your particular question, I do think 14:38:52

1 it would be more efficient to keep it in the court, before this
2 Court and in the scope of the enforcement of the Court's orders
3 in this case.

4 THE COURT: Ms. Iafrate, do you have anything you
5 wanted to say on that?

14:39:07

6 MS. IAFRATE: No, Your Honor. It was always our
7 anticipation that attempting to locate those people for the
8 purpose of potentially compensating them for damages was going
9 to be addressed with this Court regarding these contempt
10 proceedings.

14:39:22

11 THE COURT: All right. Thank you.

12 Ms. Iafrate, you filed a document. It's 852. It has
13 to do with closed investigations that I gather sprang from --
14 when I say "closed investigations," I mean closed internal MCSO
15 investigations that sprang from, I believe, in large part,
16 Deputy Armendariz and some of the review of the videotapes that
17 he had in his possession. I realize that there are a number of
18 investigations that are ongoing, and I believe you've told me
19 that they'll be complete by May 13th.

14:39:54

20 You have also filed, though, and it's document 852, a
21 list of investigations that are closed. I've reviewed that
22 list and I just have a couple of questions of you about it, and
23 I think it's important that we understand it for purposes both
24 potentially of this proceeding and for the ongoing proceedings
25 before the monitor.

14:40:14

14:40:41

1 When you say that a -- I have, I think, given the MCSO
2 the benefit of the doubt, and I probably want to give it the
3 benefit of the doubt but not a lot more, about the
4 confidentiality that internal review processes are entitled to
5 under state law. Individual officers are given an appeal right
6 if certain disciplinary decisions are made which can continue
7 the confidentiality of a file, is my understanding.

14:41:00

8 As I reviewed your -- document 852, it appeared to me
9 that while there were some disciplinary measures taken against
10 several officers, those disciplinary measures did not rise to
11 the level in which the appeal grants -- or the statute grants a
12 right to appeal. And you represented, in any case, that these
13 matters were closed, so I assume they're closed, and I guess my
14 question is: Is there any reason why we need to keep that
15 document under seal at this point?

14:41:30

14:41:46

16 MS. IAFRATE: Well, Your Honor, I don't have that
17 document in front of me. I can tell you --

18 THE COURT: Let me see if I've copied it off before I
19 brought it in here. I may have.

20 Ah. What do you know? I did.

14:42:03

21 THE COURT: (Handing to the clerk).

22 THE CLERK: (Handing to Ms. Iaftrate).

23 (Pause in proceedings.)

24 MS. IAFRATE: Your Honor, as far as unsealing this
25 document, I would like at least the opportunity to go back to

14:42:36

1 my office to review what has been completed -- or done, as you
2 were saying -- regarding these.

3 I can tell you that even as the cases continue, your
4 monitors are privy to all of this information. So my only
5 concern is unsealing this document that you've provided to me. 14:42:56

6 THE COURT: I think your request is reasonable and
7 I'll give you time to consider that.

8 Let me just say that I have asked -- just so you're
9 aware, I tried to match those document -- those investigations
10 up with investigations that you were -- I mean, you were 14:43:15
11 required under one of my previous orders to indicate the
12 investigations, their number, their topic.

13 MS. IAFRATE: Right.

14 THE COURT: And you have done that in significant
15 degree, but almost none of these were on that list. And so 14:43:26
16 when I contacted my monitor, however, because I was trying to
17 match them up, he said, Well, they may not be in technical
18 compliance with your court order, but he had information
19 concerning all of them, so it wasn't like this was going on in
20 the dark, and I'm not concerned from that aspect. But at some 14:43:45
21 point he has an obligation to file a report with me concerning
22 the adequacy of the reports --

23 MS. IAFRATE: Right.

24 THE COURT: -- and even though there is some
25 confidentiality offered to such investigations under state law, 14:43:57

1 it doesn't -- doesn't exist in perpetuity, and a number of
2 these matters may or may not be relevant to the instant
3 proceedings, and certainly they are relevant to the underlying
4 injunctive order.

5 So it seems to me if these are closed, pursuant to 14:44:10
6 Ninth Circuit law, I can't keep them under seal any longer than
7 there's a justification for keeping them under seal. So I
8 would ask you to review those and file a notice with me
9 within --

10 How long do you want? 14:44:24

11 MS. IAFRATE: A week.

12 THE COURT: Okay. I'll give you a week.

13 File a notice with me as to which, if any, of them you
14 think should any long -- whether or not I can release this, or
15 whether or not there are any of the investigations about which 14:44:37
16 you claim a continuing right to hold them under seal.

17 Are there other parties -- are there other matters
18 which the parties wish to raise at this point?

19 MS. WANG: Your Honor, plaintiffs do have a question
20 about the evidentiary hearing. The monitor and his team -- 14:44:56

21 THE COURT: Yes.

22 MS. WANG: -- are in possession of many facts relevant
23 to the three charged grounds of contempt, and we are wondering
24 whether the Court envisions that they will be participating in
25 the hearing, and if so, how? 14:45:13

1 THE COURT: Well, I would rather -- I mean, I don't
2 want to deprive you of facts, and the monitors did do some
3 interviews. But it seems to me that in all probability, those
4 are matters that you could either stipulate to with the MCSO or
5 they're matters that are going to be repeated in depositions 14:45:37
6 you're going to take, anyway.

7 So if we get to the end of the discovery period, and I
8 will reset a period in which we can assess this, there are
9 matters that are perhaps in monitors' interviews that the
10 defense won't stipulate to and/or that you haven't been able to 14:45:55
11 replicate, given your deposition limits, then you can raise
12 that matter with me and I will consider allowing -- and
13 under -- if, and under what circumstances, I should allow any
14 participation by my monitors.

15 Keep in mind, though, even though there will be -- all 14:46:14
16 of the current PSB investigations are going to be terminated
17 by -- or finished by the 13th, there is, and this is -- I'm
18 only reminding you about something that's in the order, there
19 is a bifurcation in the monitor staff responsibilities. The
20 monitor has the independent investigatory authority, and he 14:46:34
21 also monitors the MCSO's own independent investigations. And
22 to the extent that there have been monitors that have reviewed
23 part of that investigation, the reason why it's bifurcated is
24 because the MCSO can still claim whatever privileges it can
25 claim in those investigations despite the fact that a monitor's 14:46:56

1 present up and until the time when, pursuant to statute, it's
2 open.

3 Does that help answer that question?

4 MS. WANG: Yes. Thank you.

5 THE COURT: Anything else you needed to raise,
6 Ms. Iafrate?

14:47:09

7 MS. IAFRATE: No, Your Honor, just you indicated that
8 you're going to extend the deposition deadline?

9 THE COURT: Yes.

10 MS. IAFRATE: Do you intend to do that today?

14:47:20

11 THE COURT: You know, I can do it today, but I think
12 it makes more sense to wait until we've got your objections and
13 we can work on how quickly I can do the review if I'm going to
14 have to do the review and how much time is left.

15 I do think, pursuant to what Ms. Wang suggested, you
16 can proceed with your depositions. If in fact there needs to
17 be re-depositions in light of what's disclosed, to the extent
18 that I'm going to authorize any re-depositions, they will be
19 short, and they will be tailored only to the material that has
20 been disclosed in the discovery sought by Ms. Como.

14:47:34

14:47:48

21 Mr. Como.

22 MR. COMO: I do have something else.

23 Your Honor, your first question to me was whether
24 Mr. Sands was waiving any attorney-client privilege. He has
25 with respect to Mr. Casey, and I answered yes.

14:48:02

1 After reflecting on the possible outcomes of this
2 discovery dispute, one being that only Mr. Sands'
3 communications are produced while other parties', relevant
4 parties' may not be, and also in light of the fact that there
5 is at least a potential criminal contempt proceeding against
6 Mr. Sands contemplated, I think I was hasty in answering the
7 Court without conferring on that issue with my client and his
8 criminal counsel. And so I -- while I answered that question
9 "yes," I would like to retract that and give that issue further
10 consideration until I've had a chance to discuss that issue
11 with my client, because it's the client's privilege to waive,
12 not mine.

14:48:24

14:48:45

13 THE COURT: Well, I had assumed that you would have
14 already discussed that with him before you came in here.

15 MR. COMO: I had not discussed that specific issue
16 with him, Your Honor.

14:49:00

17 THE COURT: All right. Well, let me ask you, is there
18 any basis on which any of your requests make sense unless
19 Chief Sands decides to waive his privilege?

20 MR. COMO: Well, I mean, we could -- we could pursue
21 discovery of other communications between other people, and --

14:49:12

22 THE COURT: I suppose to the extent you're going to
23 claim that the attorney-client -- attorney-client privilege
24 doesn't discuss any of these communications you can make that
25 assertion, but I want to know: How long is it going to take

14:49:37

1 you to figure out whether Chief Sands is going to waive his
2 privilege or not? Because it's definitely going to -- well, it
3 will at least potentially affect my analysis of whether or not
4 you can get some of Mr. Casey's communications and/or meetings
5 in which Chief Sands participated.

14:49:55

6 MR. COMO: I understand, Your Honor. We'll reach that
7 conclusion by the same time that we had talked about --

8 THE COURT: No, we won't do that, because it's
9 pointless to make everybody brief an issue that hasn't been
10 teed up.

14:50:12

11 MR. COMO: I was referring to --

12 THE COURT: Mr. Wilenchik?

13 MR. COMO: Your Honor, I was referring to the earlier
14 deadline of March 3rd, so --

15 THE COURT: All right. We're going to have it before
16 March 3rd.

14:50:22

17 How long is it going to take you to consult with
18 Mr. Como and with your client to determine whether or not
19 you're going to waive any attorney-client privilege you have in
20 communications with Mr. Casey?

14:50:33

21 MR. WILENCHIK: Well, I can tell you right now, Your
22 Honor -- thank you, Mr. Como. I can tell you right now that we
23 are willing, but subject to something I did want to raise with
24 the Court separately because this is my first opportunity here,
25 to be here.

14:50:48

1 But to answer your question directly, it is my
2 intention to waive it if all documents are produced, because
3 you can appreciate if only some of them are produced, it could
4 be very misleading --

5 THE COURT: Well --

14:51:00

6 MR. WILENCHIK: -- to say the least.

7 THE COURT: -- you know, here's my view on that,
8 Mr. Wilenchik. You can either waive or you can not waive.
9 Once you've waived, I will let you make the same arguments I'm
10 going to let Maricopa County make, that there may be some sort
11 of reason to retain some privilege in some of those documents.

14:51:10

12 But I'm not going to allow you to conditionally waive.
13 You're either going to waive or you're not going to waive.

14 MR. WILENCHIK: Well, then the answer to the question
15 is, Your Honor, I believe we will waive, but I would like to
16 raise another issue with the Court.

14:51:28

17 THE COURT: All right. Well, if you need to take a
18 minute with Chief Sands, he's here. I see him.

19 MR. WILENCHIK: I've spoken to him.

20 THE COURT: So you are going to waive the privilege.

14:51:37

21 MR. WILENCHIK: That is my intention, but -- yes.

22 THE COURT: Okay. Is that a yes, or is it it is your
23 intention?

24 MR. WILENCHIK: It is a yes, but if you'll permit me,
25 I want to just say something that I think is on my mind that I

14:51:48

1 think relates to that, that --

2 THE COURT: Sure.

3 MR. WILENCHIK: -- I can give you a definitive answer.

4 THE COURT: Sure.

5 MR. WILENCHIK: Thanks. The problem I'm having 14:51:58

6 sitting here listening to this -- and again, I'm not privy to

7 everything that went before this, so obviously you know that.

8 I've tried to educate myself as best I can. But I don't know,

9 frankly, listening here today, why we're even having a civil

10 proceeding in this regard, and I don't mean to be disrespectful 14:52:13

11 in any way.

12 But it seems to me that what we're having here is, of

13 course, Mr. Como, Ms. Iafrate are being retained by the County,

14 I'm separate counsel being retained by Mr. Sands, and I know

15 this issue was raised in part by Chief MacIntyre and his 14:52:30

16 counsel, but the purpose of my point now is that it doesn't

17 seem to me at this point really much in contention, I think the

18 Court may have alluded to this, that at this point there have

19 been some violations of your orders. I don't think that's a

20 big secret here. The question is civilly, what is the remedy 14:52:47

21 for that? To me, the remedy seems to be a fine of some kind.

22 And that fine will absolutely, we all know here, there's no

23 800-pound gorilla, will be paid by the County, not by any of

24 the individuals.

25 What I hear the Court saying today in my first 14:53:05

1 appearance here is that essentially, the Court is hinting, and
2 I don't want to put the Court, you know, behind any eight ball
3 on this, but the Court is hinting, certainly, very clearly that
4 the same items that are out there known, I don't know that you
5 need much of a hearing on it, but -- but those items that form 14:53:21
6 the basis for the civil contempt that's already on the Court's
7 mind may indeed be the subject you indicated to the
8 U.S. Attorney representative here of potential criminal
9 proceedings, and it sounds to me, with all due respect, that
10 it's probably more than potential. I'm sitting here wondering 14:53:39
11 why we're putting the cart before the horse, basically, and why
12 we aren't basically having a --

13 THE COURT: Do you want me to answer the question
14 and --

15 MR. WILENCHIK: Yeah, well -- 14:53:50

16 THE COURT: -- cut you short?

17 MR. WILENCHIK: -- the reason I bring it up, quickly,
18 is, to cut to the chase, Judge, is because it seems to me,
19 listening to this as a lawyer looking at the criminal
20 potential, which is all I'm retained to do, that in order for 14:54:03
21 me -- when I hear about these settlement discussions, in order
22 for me to reasonably represent my client, you're talking about
23 depositions where he may have to take or others may I have to
24 take -- I'm just saying this generically now -- the Fifth
25 Amendment because of potential criminal violations and not 14:54:19

1 answer anything. That's also a possibility, and there's case
2 law, as you know --

3 THE COURT: I do.

4 MR. WILENCHIK: -- that supports that. Secondly, how
5 do I --

14:54:27

6 THE COURT: Let's cut to the chase.

7 MR. WILENCHIK: Yeah, well, I'm trying to. How do I
8 under those circumstances meaningfully advise my client here --

9 THE COURT: You know what, Mr. Wilenchik? I only
10 invited you up here to ask you a question, which is whether or
11 not your client was going to waive. I do want -- I don't want
12 to, by giving you a little bit of rope, have you take over this
13 whole proceeding, and so I'm going to tell you why I'm doing
14 what I'm doing.

14:54:38

15 The United States Supreme Court, when it discusses
16 civil and criminal contempt, and particularly when it discusses
17 it pertaining to elected officials, requires that I first
18 consider fully whether or not there is any civil contempt
19 remedy which will meet the purpose.

14:54:54

20 That does not foreclose me, and it's pretty clear, it
21 does not foreclose me from subsequently -- or subsequently
22 taking up the criminal contempt matter, but it does require me
23 to first fully consider whether or not there's civil contempt
24 remedies that can meet that.

14:55:08

25 Now, to date, both parties have been -- have requested

14:55:24

1 that I pursue the civil remedies first. I have, it is true,
2 requested -- or stated some doubt as to whether or not there
3 are going to be adequate civil remedies for me to meet the
4 nature of the offenses that have been done here.

5 MR. WILENCHIK: I understand.

14:55:46

6 THE COURT: But I haven't foreclosed that as a
7 possibility, and the fact that the County is willing to have
8 discussions with the United States Attorney and the plaintiffs
9 makes me think that there is conceivably a possibility that it
10 could settle.

14:55:59

11 It is also true, as Ms. Wang has said, that although
12 the extent of the violations, I think, is clear and almost
13 unadmitted, although it may not be completely admitted by the
14 County, there is an issue pertaining to intent --

15 MR. WILENCHIK: In what charge?

14:56:19

16 THE COURT: Intent --

17 MR. WILENCHIK: Yeah.

18 THE COURT: -- that is required to pursue a criminal
19 proceeding. And so I just think that the whole thing would
20 develop -- will benefit from the timely development of those
21 matters.

14:56:32

22 Now, do I realize that that works a hardship on your
23 client? Do I realize that that works a hardship on Chief
24 MacIntyre? I certainly do. But I have noticed them of the
25 possibility that they will be noticed up for criminal contempt

14:56:46

1 not to make them pay you, but to provide them the opportunity
2 to do so if they choose, to protect their potential criminal
3 interests in any civil proceeding.

4 I do realize that there are issues about the Fifth
5 Amendment that you've said that they may have to take if
6 they're deposed in this matter. But if they do, they do.

14:57:04

7 Civil contempt, as you said, is something that mostly
8 is not going to affect any of these folks individually. It
9 will be matters that are paid for by the County. And frankly,
10 that's one of my concerns about a civil contempt, and it's one
11 of the things that, Ms. Iafrate, you might want to consider
12 when you talk to Ms. Strange.

14:57:21

13 It seems -- it's been my experience to date that the
14 sheriff has been willing to have all kinds of expenses borne by
15 the County that he could bear himself, but he wants to preserve
16 his independence, I understand that, Sheriff, at expense to the
17 county.

14:57:37

18 Well, it's not going to work here. Because this
19 matter is going to be ongoing for a number of years, I want to
20 be sure that for going forward -- I don't want to refer this
21 matter to a criminal contempt hearing if I can have adequate
22 assurance -- if I can have adequate remedies for the victims of
23 this case; if I can have, if I believe it is necessary, a
24 punitive element to the individuals who may have been culpable
25 of criminal contemptuous behavior such that it will not happen

14:57:56

14:58:19

1 again.

2 MR. WILENCHIK: Yeah.

3 THE COURT: And so that I can have appropriate
4 coercive remedies if those are available.

5 According to how the Supreme Court says that is to be
6 done, I have to fully consider civil remedies first. I hope
7 that answers your question.

14:58:31

8 MR. WILENCHIK: You know, it does, Judge. I
9 appreciate your task. I'm very mindful of it. I think
10 everything you said I agree with, actually. All I'll say --
11 because it wasn't my intent to take over this proceeding.

14:58:43

12 But all I'll say, Judge, is, to answer your question,
13 yes. Chief Sands' very intention, based on what you've just
14 told me, is to waive any privilege; and to also seek, I might
15 add on top of it, all the other information that Mr. Como's
16 already discussed.

14:58:58

17 THE COURT: All right. Now, just so that I'm clear, I
18 don't want to assume that you've just waived the privilege and
19 then to have you come back a week from now and say, "We didn't
20 waive the privilege."

14:59:11

21 Are you waiving the privilege?

22 MR. WILENCHIK: We are waiving the privilege.

23 All I'm saying, Judge, just to be fair, is that I
24 expect that we will get to a full resolution by everyone
25 producing all relevant documentation in this type of a hearing

14:59:23

1 that the Court I think needs to have to make the determinations
2 you said. And in that spirit, I am absolutely telling you that
3 we will waive the privilege, and we are looking forward to the
4 production of those documents.

5 THE COURT: All right. Thank you.

14:59:36

6 Now, I've let Mr. Wilenchik speak. Do any other
7 specially --

8 MR. WILENCHIK: Thank you.

9 THE COURT: -- appearing counsel wish to speak on any
10 issue?

14:59:46

11 All right. Are there any other matters that need to
12 be raised at this time?

13 MS. WANG: No, Your Honor. Nothing from the
14 plaintiffs.

15 MS. IAFRATE: No, Your Honor. Thank you.

14:59:52

16 MR. COMO: Nothing further, Your Honor.

17 THE COURT: All right. Thank you all.

18 (Proceedings concluded at 2:59 p.m.)
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C E R T I F I C A T E

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

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

DATED at Phoenix, Arizona, this 4th day of March,
2015.

s/Gary Moll