

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. JUDGE GARY ALLEN FEES, JUDGE PRESIDING

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CITY OF LOS ANGELES, et al.,)

Defendants.)

COPY

No. CV-00-11769-GAF

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Hearing on Motion to Amend the Consent Decree

Los Angeles, California

Monday, May 15, 2006

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1 *Los Angeles, California; Monday, May 15, 2006*

2 11:00 a.m.

3 THE CLERK: Calling Civil 00-11769, United States
4 of America v. the City of Los Angeles and others.

5 Counsel, please state your appearances.

6 MS. O'BEIRNE: For the plaintiff
7 Patricia O'Beirne. Also for the plaintiff is the Chief of
8 the Civil Rights Division Special Litigation Sections
9 Shanetta Cutlar, Deputy Chief Dan Weiss, and Attorney Je Yon
10 Jung.

11 THE COURT: Good morning.

12 MR. MERKIN: For the defendants, Frederick N.
13 Merkin, outside counsel assisting the City Attorney.

14 MR. DE LA GUERRA: Good morning, Your Honor.
15 Carlos de la Guerra, Assistant City Attorney appearing for
16 defendants.

17 Also for defendants today is Mr. Gerald Chaleff,
18 the head of the LAPD's Consent Decree Bureau who, with the
19 Court's permission, is available to answer any questions the
20 Court may have with respect to the compliance or
21 implementation of the Decree.

22 Mr. Chaleff was also involved in negotiating the
23 Decree and can speak to the language or intent of any of the
24 provisions, if necessary.

25 THE COURT: Oh, I think I know what the Decree

1 means.

2 MS. LHAMON: Good morning, Your Honor. I'm
3 Catherine Lhamon from the ACLU for community intervenors.

4 MR. YAGMAN: Good morning. Steven Yagman for the
5 intervenors.

6 THE COURT: Good morning.

7 MR. CHERKASKY: Mike Cherkasky for the monitor.

8 THE COURT: All right. Thank you.

9 The matter is on today for hearing on what the
10 parties have chosen to characterize as a Motion to Amend
11 under paragraph 180. One of the things that I'm going to
12 want some discussion on is I don't think it's a 180 motion
13 at all, I think it's a 179 motion, and I think there's an
14 attempt here to eviscerate 179 through the use of
15 Section 180.

16 But before we get there, I do have a question.
17 Maybe Mr. Chaleff is the person to answer this. I want to
18 know what the status of TEAMS II is as of today, right now.

19 MR. CHALEFF: Good morning, Your Honor.
20 Gerald Chaleff.

21 THE COURT: Good morning.

22 MR. CHALEFF: As of right now -- let me back up.
23 TEAMS II consists of four parts. One is the deployment
24 system called DPS; one is the use-of-force system; one is
25 the complaint management system; and then the risk

1 management and information system, which is the system that
2 integrates the other systems and provides the automatic
3 action items and other analysis that's built into the
4 system.

5 As of right now the deployment system is
6 completely rolled out, it's implemented, and is being used;
7 and that's the backbone of the system because unless you
8 know who's where and who worked with who, and who were the
9 supervisors and what they were doing, you can't do the
10 analysis.

11 The use-of-force system is approximately, I
12 believe, 90 percent rolled out and implemented and should be
13 fully implemented by the middle of next month.

14 The complaint management system still has some
15 issues, but we are beginning to phase it in, and they have
16 begun training, but it's been a more difficult process
17 because of some issues with the vendors, but the
18 department's Efficient Standards Bureau and the TEAMS II
19 team and the information people have all been working
20 together to satisfy that problem, but the historical
21 complaint information is in the system.

22 Risk management system will be starting to be
23 rolled out during the summer, but to be fair, I would say
24 more would be early fall, maybe September, where it will
25 have the updated TEAMS II reports and begin to do some of

1 the action items.

2 THE COURT: All right. Thank you.

3 Okay. Let's see. For the City, here's my
4 question. As I think you know from a number of prior
5 hearings, TEAMS II is not just a material part of this, it's
6 an essential part of this Consent Decree and the reforms
7 that are to be implemented through this Consent Decree.

8 Paragraph 179 says that this Decree requires,
9 before it can expire, two years of substantial compliance
10 with each material provision of the Decree. Given that
11 TEAMS II is not in effect yet and that the rollout is not
12 even going to start on risk management, why is two years a
13 sufficient extension, why shouldn't it be more at this
14 point?

15 MR. DE LA GUERRA: Well, if I can answer that,
16 Your Honor, piecemeal.

17 Certainly TEAMS II is a very important component,
18 no question about that. We believe the extension for two
19 years is because the balance of TEAMS II will be rolled out
20 this year.

21 THE COURT: But two years from June 15th, 2006,
22 there will not have been, there cannot have been as of that
23 date two years of substantial compliance with just that
24 provision of the Consent Decree, setting aside everything
25 else? That which is essential to the Decree cannot have

1 been a subject of compliance, substantial compliance, for
2 two years as of that date, can it?

3 MR. DE LA GUERRA: It would be close.

4 THE COURT: Well -- close? They're not even going
5 to start rolling out risk management until this fall, and we
6 don't know when it will actually be fully operational in a
7 way that is meaningful, as required by the Consent Decree,
8 do we?

9 MR. DE LA GUERRA: And just the way the Consent
10 Decree, the existing one provides that it will be
11 reevaluated, I assume the Court will reevaluate it in two
12 years to determine whether or not and to what extent the
13 City has complied with TEAMS II.

14 THE COURT: Well, I don't think that answers my
15 question. My question is how is it possible that I could
16 find two years from June that TEAMS II has been
17 substantially complied with for a period of two years?

18 MR. DE LA GUERRA: Unless it rolls out now, you're
19 correct, Your Honor, it will not be done exactly in two
20 years.

21 THE COURT: All right. Let me hear from the
22 Monitor briefly on just this issue.

23 Mr. Cherkasky, what can you tell me, you've heard
24 what Mr. Chaleff has had to say.

25 What's your take on where TEAMS II's development

1 stands at this point?

2 MR. CHERKASKY: We agree with what Mr. Chaleff
3 said. I think it has been an enormously challenging effort
4 for Los Angeles, I think that they're working hard at it.
5 At the same time Your Honor is absolutely right, there
6 cannot be a rollout, no one's expecting a rollout of the
7 full system until sometime substantially after the fall of
8 2006.

9 We read the Consent Decree much like as Your Honor
10 has indicated that there cannot be substantial compliance
11 unless there's a full two years of monitoring of a critical
12 element of this Consent Decree.

13 THE COURT: All right. In terms of the position
14 of the City with respect to its Section 180 motion, it seems
15 to me that what the City is asking the Court to do is to
16 amend the Decree in a way that would eviscerate that
17 Section 179, which is the compliance provision. Do you
18 acknowledge that or if you don't acknowledge that, if that's
19 not your position, how am I supposed to construe this motion
20 otherwise?

21 MR. DE LA GUERRA: Your Honor, just the mere
22 reading of 179 ignores the language of 180. 180 allows the
23 parties to jointly stipulate to make modifications, changes,
24 or amendments in the Decree. There are no limitations with
25 respect to paragraph 180.

1 THE COURT: Doesn't 179 trump 180? I mean, isn't
2 179: The City must comply with these terms and conditions
3 for a minimum of two years, each term and condition of this
4 Decree for a period of two years before it can be said to be
5 in substantial compliance with the decree? And are you
6 telling me that the three lines of Section 180 can be read
7 to just say, "Well, what we can do is if we're not in
8 compliance, we'll just change the Decree and essentially
9 determine through that mechanism that we are in compliance
10 by eliminating the requirement of Section 179"?

11 MR. DE LA GUERRA: That is not what we're doing
12 here, Your Honor. In fact, we're asking that the provisions
13 where the City is not in compliance be extended.

14 THE COURT: Partial substantial compliance, first
15 of all, is a contradiction in terms and, second of all, is
16 not a phrase which appears in the Decree at least -- I was
17 looking at it over the weekend trying to find that concept.
18 I don't see it there anywhere.

19 MR. DE LA GUERRA: Paragraph 179 envisioned a
20 motion by DOJ to extend the entire Decree; that is not what
21 has occurred here. So if we read 179 to kind of force the
22 parties that that's the only route available, that's also
23 inappropriate because 180 stands on its own. And there are
24 no limitations on 180 that prevent it from doing something
25 different and separate from 179.

1 THE COURT: And is it your position that the Court
2 essentially just acts as a rubberstamp, whatever you folks
3 want to do, I'm just supposed to say, "Well, that's just the
4 way it is, and the Court has no authority over this even
5 though it's an order of the Court"?

6 MR. DE LA GUERRA: Not at all. Your Honor, has
7 inherent authority to craft remedy which we believe it would
8 be appropriate to simply extend those provisions where the
9 City is not in compliance. Those provisions can be severed
10 from the rest.

11 In fact, the Monitor in their paper has indicated
12 as much.

13 THE COURT: That's not how I read the Monitor's
14 paper. I'd be interested to hear what it is in the
15 Monitor's paper that you think leads to that conclusion.

16 MR. DE LA GUERRA: If I may have a moment.

17 THE COURT: And since we have people here who are
18 supposed to talk about language, I'll have Mr. Cherkasky
19 talk about his language after you've told me what you think
20 it means.

21 MR. DE LA GUERRA: Your Honor, if I could refer to
22 the Monitor's filing on Page 3, lines 22 and 23.

23 THE COURT: Hold on. Page 3, lines 22 through 23.
24 Okay.

25 MR. DE LA GUERRA: May I read?

1 THE COURT: You mean "While monitoring of discrete
2 paragraphs is certainly possible."

3 MR. DE LA GUERRA: Sure. The Monitor's position
4 is simply that they want the extension to prevent a
5 backslide. It doesn't say that the provisions that have
6 been complied with somehow cannot be monitored or should be
7 monitored because you can't separate them from those
8 provisions where there has not been compliance.

9 THE COURT: Well, isn't the Monitor really
10 suggesting precisely the contrary, that is, that so long as
11 there has been compliance the Monitor and the City need not
12 expend a substantial amount of time focused on those aspects
13 of the provision, but that they should remain a part of the
14 provision so that periodically if the Monitor thinks some
15 review is appropriate, the Monitor can do that, and the
16 Court still has jurisdiction over the question? Isn't that
17 what the Monitor's saying?

18 MR. DE LA GUERRA: Well, the Monitor has said
19 that, but the basis for saying that is simply because they
20 want to prevent or protect against backsliding, not because
21 it is necessary. There's a distinction there.

22 THE COURT: You mean that we've got such a history
23 of compliance with reform on the part of the department that
24 we should just be very comfortable that backsliding won't
25 happen? That is contrary to the last 40 years of history of

1 this City. And what the Monitor is saying is, "Not on my
2 watch." That's what the Monitor is saying, I think.

3 We'll give Mr. Cherkasky a moment to speak for
4 himself, but that's what I'm reading in this document.

5 MR. DE LA GUERRA: Would you like him to speak now
6 or --

7 THE COURT: Well --

8 All right. Mr. Cherkasky.

9 MR. CHERKASKY: Your Honor, the Monitor's position
10 I think is clear, which is that the Consent Decree in 179
11 specifically talks about this Decree as a whole, and it
12 doesn't parse it out, it doesn't, in fact, have any
13 provisions to separate the provisions. It talks about
14 substantial compliance and that, in fact, refers to
15 "material terms of the agreement," and "material" refers to
16 overall objective of the intent of this Decree.

17 And that is not something that can be parsed, the
18 overall objectives of this Decree. We were certainly not
19 suggesting anything other than -- in fact, very
20 specifically, 180 degrees differently, that this Consent
21 Decree has to be looked as one. In fact, to separate it and
22 to having a ticking and tying exercise, in fact, negates the
23 intent that we believe has been the four corners of this
24 Decree.

25 THE COURT: I take it both from your reports, from

1 documents that have been filed, Mr. Cherkasky, that you
2 would agree that the department has perhaps for the first
3 time in a long time made substantial strides forward in
4 terms of reform efforts. Would you agree with that?

5 MR. CHERKASKY: I would.

6 And, in fact, Your Honor, one of the things I
7 think has to be said today is that overwhelmingly the
8 parties agree, there are some areas where we do not agree,
9 but overwhelmingly we agree that LAPD has made great
10 strides, that they have overwhelmingly acted in good faith;
11 that some of the institutional change, in fact, we had hoped
12 to see in audits, in the IG's Office, in training, they, in
13 fact, not only are greatly reformed, but we think that
14 they're the standard for the country, that that's what this
15 Consent Decree was supposed to do.

16 In paragraph 6 of the Consent Decree it very
17 clearly talks about why we, in fact, are entering into this
18 Consent Decree, and we're entering into it to remediate the
19 problems of the lack of respect for civil rights and to, in
20 fact, create a department that has been practices. We have
21 some of those, but, in fact, the job is not done.

22 And it is very, very clear in the papers, the
23 joint papers of the two parties that the job's not done.
24 We completely agree with the Court's position that 180 is
25 being used in some ways to get around 179, and it's clear

1 from the provisions of 180 that 180 -- that the two parties,
2 by clear paragraph, cannot, in fact, force this Court to
3 adopt that provision. It says, in fact, except where the
4 Court rejects the amendment.

5 And we, in fact, believe that the two parties have
6 indicated while great progress, there is not substantial
7 compliance of all material provisions and, therefore,
8 they're trying to have it both ways. And we don't think
9 that's appropriate.

10 THE COURT: Now, I put some words in your mouth
11 and if I'm wrong, I want you to correct me, but it's my
12 understanding that if the Decree goes forward in its
13 entirety that that doesn't necessarily mean that you and the
14 City have to spend a lot of time and energy focusing on
15 those things where there has been compliance. Am I right
16 about that?

17 MR. CHERKASKY: No, no. You are absolutely right,
18 Your Honor.

19 Clearly, there are limited resources throughout
20 this arrangement and, in fact, we think that it is critical
21 that we take a high-level view over the key aspects that
22 have not been complied with: Clearly TEAMS II, some uses of
23 force, some of the aspects of the gathering of data and the
24 nondiscrimination aspects.

25 There are a series of aspects which we think are

1 material and substantial, have not been complied with, and
2 we believe that those are the things in the next two years
3 we need to focus on.

4 But to, in fact, at this point say we're no longer
5 going to have or the Court's no longer going to have
6 jurisdiction over the rest of this Decree, again, we would
7 submit that this Decree is one, that you can't parse this
8 out; it can't be a ticking and tying exercise. It has to be
9 the overall intent to, in fact, have material compliance
10 with material provisions.

11 So, yes, we would actually intend to focus on
12 those other aspects, but still have the ability if something
13 goes wrong to look at and monitor the rest of the Decree.

14 THE COURT: All right. Thank you.

15 Counsel, do you want to respond?

16 MR. DE LA GUERRA: What Mr. Cherkasky just said
17 about ticking and tying is exactly what would occur if you
18 extend all the provisions and just say: Okay. We're really
19 not going to monitor these over here, it is a ticking and
20 tying that's going on. So the basis then is jurisdiction to
21 see if anything goes wrong. Well, there can always be
22 something that goes wrong. Even if we are in 100 percent
23 compliance, there can be something that goes wrong, and so
24 the risk of preventing this backslide would occur regardless
25 of whether or not we were at 10 percent, 50 percent, or

1 100 percent compliance. It sounds like it's simply an issue
2 of jurisdiction where it's not monitoring, but simply in
3 case something goes wrong.

4 THE COURT: All right. Let me hear from the
5 Department of Justice.

6 MS. O'BEIRNE: Thank you, Your Honor.

7 I would submit to you that the intent of the
8 Decree is best achieved by focusing on the measures which
9 have not been substantially complied with. I think that no
10 one will dispute here that there is a substantial portion of
11 this Consent Decree where reform still needs to be met. I
12 do not agree with Your Honor that we are attempting to
13 eviscerate paragraph 179 through paragraph 180. Paragraph
14 179 calls for that the agreement will terminate unless DOJ
15 makes a motion to extend the entire agreement. We have not
16 done so here. We did not find that it was appropriate in
17 this case.

18 THE COURT: And I wonder why? I have real
19 questions about why the department wants to, in my view,
20 walk away from parts of this Decree.

21 MS. O'BEIRNE: Your Honor, we are not walking away
22 from parts of this Decree at all, what we are doing is
23 recognizing where there has been compliance and --

24 THE COURT: By the way, are you telling me that
25 you don't think I have the authority to extend this since

1 you haven't made a motion under 179?

2 MS. O'BEIRNE: Not at all, Your Honor. We believe
3 that our motion under 180 is the only motion that is within
4 the four corners of the agreement itself, but Your Honor
5 does have inherent authority to enforce the Consent Decree
6 by moving to extend it. I think that's in appropriate
7 circumstances. I just don't think those are the
8 circumstances that exist here where there has been
9 substantial compliance with discrete provisions which can be
10 carved out.

11 THE COURT: If we look at this document and we
12 look at what Mr. Cherkasky has said and what I've been
13 saying for several years now, and what the parties agreed to
14 in the beginning was a totality of an objective, a singular
15 objective to reform the department for reasons -- for
16 problems that had historical roots going back quite some
17 period of time.

18 So the document is created, it is a singular piece
19 of paper, although it's very long, but it has a principal
20 objective, and all of the provisions of that document are
21 aimed at achieving the overall objective.

22 So why now are we hearing that there are discrete
23 provisions and that these discrete provisions should be
24 viewed and analyzed separately when those so-called discrete
25 provisions were incorporated in the first instance to

1 attain a singular objective, which was the overall reform?

2 MS. O'BEIRNE: Yes, Your Honor, that was the way
3 the Consent Decree was written and that was what the parties
4 agreed. We have now had five years of experience with this
5 Consent Decree, and even before that, Your Honor, my office
6 spent years investigating this police department in order to
7 establish our claims, in order to bring the Complaint, in
8 order to negotiate the Consent Decree which also took many
9 months. So we are well aware, and we take serious -- we
10 take our responsibility for enforcing this Decree very
11 seriously, but to answer Your Honor's question after having
12 five years of experience with this Decree, we believe now
13 that it's most important to focus on those areas where there
14 has not been compliance yet.

15 And if you look at the --

16 THE COURT: The Monitor is saying exactly that.
17 The Monitor is saying that look, there's no question that
18 operationally that is going to happen, but don't take away
19 the ability during the course of working on those areas to
20 turn back and say, "What is going on over here where we had
21 made so much progress? Are we still in the -- are we still
22 at the point where we're satisfied with that progress?"

23 And what you're suggesting is take away the
24 jurisdiction of the Court and the Monitor's ability to look
25 at that, and unless and until there's substantial compliance

1 with the whole thing seems to me that that's ill-advised.

2 MS. O'BEIRNE: Your Honor, if you look at the
3 provisions that we are suggesting be allowed to expire,
4 we're talking about some of the provisions that were the
5 easiest for the defendants to come into compliance with.

6 The most -- the meat of this Consent Decree still
7 remains, and we are very much concerned, and we appreciate
8 Your Honor's concern about the progress of TEAMS II, and we
9 monitor that very, very carefully. And we are very much
10 looking forward to that being fully implemented this year,
11 but the ones that we are talking about allowed to expire,
12 we're talking about a situation where the student has made
13 As in Home Ec and shop and now it's time for them to stop
14 taking those classes and start focusing on the real meat
15 subjects that they need to focus on.

16 And I understand that it's the Monitor's position
17 that he still intends to spot check or review those, but
18 once TEAMS II comes up and is fully implemented, that's
19 going to take more resources, I think, than any other
20 Consent Decree requirement to monitor that.

21 I want him focused on that and focused on these
22 more important issues like complaint investigations,
23 categorical use-of-force investigations, and not checking to
24 see whether a form was filled out correctly or whether a
25 report was delivered in seven days or whether it was eight

1 or nine or ten days.

2 THE COURT: Well, it's most important since both
3 of you -- I don't know if you were here during the original
4 negotiation. I think you might have been --

5 MS. O'BEIRNE: Yes, I was, Your Honor.

6 THE COURT: But during the initial negotiation one
7 of the points that both sides made is: That the Monitor's
8 not our agent, we're not responsible for him, he's your
9 agent. So I don't care what you want the Monitor to do, the
10 Monitor's going to do what I want him to do because he's my
11 agent in this process, and I'm comfortable that
12 Mr. Cherkasky has a very clear understanding of how this
13 department works and what he needs to do, and how to
14 allocate the resources, the limited resources, that are
15 available to him. So that I'm not concerned about,
16 number 1.

17 Number 2. I don't think you want to talk about
18 the Home Ec analogy because we're talking in those
19 circumstances about a task that you undertake, you complete
20 it, you don't do it any more. Here we're talking about all
21 the things that have to be day in, day out, week after week,
22 month after month, year after year. It's part and parcel
23 what the department must do constantly. They can never say
24 these are things that we can stop doing now because that's
25 not the nature of their business. So it's not a very

1 effective metaphor from my standpoint.

2 Well, I have some serious reservations about the
3 argument.

4 Let me hear from the intervenors. Who wants to be
5 heard first?

6 MR. YAGMAN: I'll be very brief, Your Honor.

7 I had written down to make the same comment that
8 the Court said about the Home EC and shop and how they were
9 being treated as the most important subjects rather than
10 things like English and American history.

11 I think the Consent Decree should be extended for
12 five years to motivate the LAPD to reform and with the
13 possibility of earlier termination if and only if there has
14 been full compliance with the Decree and with the reforms
15 that were agreed to. That would give the LAPD an
16 opportunity to earn itself out of the Consent Decree rather
17 than piecemeal, each time bumping it ahead. So I think that
18 that's what the Court ought to consider doing. Thank you.

19 THE COURT: Thank you, Mr. Yagman.

20 MS. LHAMON: Good morning, Your Honor. I'll also
21 try to be brief.

22 I think it's important first to take a look at
23 what the cases say about the Court's authority to extend the
24 Consent Decree. They provide consistently that the Court's
25 inherent authority is to make sure that the parties have the

1 relief that was originally bargained for in the Decree --
2 that's the Holland case from the Third Circuit at Page 200,
3 287; and then the Thompson case from the Fourth Circuit said
4 last year that the Court in modifying the Consent Decree
5 should, quote, "strive to preserve the essence of the
6 parties' bargain." The essence of the parties' bargain, as
7 this Court has already recognized was to extend the entire
8 Consent Decree if there was substantial noncompliance.

9 I think it's also important to talk about what's
10 in the provisions that the City and the DOJ have asked not
11 to extend. Some of them are not meat provisions and that's
12 fair, but some of them are meat provisions, as the
13 Department of Justice has characterized them. They seek not
14 to extend paragraph 75 which discourages the filing of
15 complaints.

16 THE COURT: When I see smoke coming from the
17 fingers of the court reporter, I know that counsel is
18 speaking too fast.

19 MS. LHAMON: Thank you. I'll try to slow down.
20 Thank you for the reminder.

21 They seek to expire paragraph 75 of the Consent
22 Decree, which prohibits discouraging the filing of
23 complaints and requires that complaint form 1.28,
24 investigation of any officer who discourages or refuses
25 complaint filing.

1 They also seek to expire paragraph 152 which
2 requires the inspector general to ensure complainants are
3 not discouraged from filing complaints.

4 They seek to expire paragraph 82 which requires
5 officers investigating categorical use-of-force incidents to
6 report other misconduct they discover during investigation.

7 They seek to expire 92 which prohibits retaliation
8 against any employee reporting misconduct. They seek to
9 expire paragraph 139 which requires the Inspector General to
10 review retaliation complaints from the LAPD employees.

11 I think it's important to look at material
12 noncompliance that has taken place in these provisions and
13 also to examine, frankly, what we risk if these provisions
14 are expired. We risk reinstituting the code of silence.
15 What we're talking about here is shrouding what's happening
16 in the police department.

17 Also there has been material noncompliance as
18 recently as the last quarterly report from the Independent
19 Monitor for paragraph 75 and 152 which deal with the
20 discouraging of the filing of complaints. The Independent
21 Monitor found on Page 63 of his last report that he
22 identified certain instances not identified by the Office of
23 the Inspector General in which the complaint intake process
24 was not facilitated by the personnel taking the complaints
25 or where it can even be viewed that the filing of a

1 complaint was being discouraged.

2 He says, for example, in one sting audit, "The
3 undercover complainant was given three options with respect
4 to how the complaint could be followed up. One of those
5 options included placing faith in the sergeant taking the
6 complaint that he would identify, locate and inform the
7 officers involved in the alleged incidents that their
8 behavior was inappropriate" -- this is a quote -- "In
9 another, the sergeant taking the call kept repeating to the
10 undercover complainant to slow down, slow down" a problem
11 for me as well, "seemed overly questioning with respect to
12 the statements that the complainant was making, and
13 generally displayed behavior consistent with discouraging
14 the complaint."

15 Given these incidents, we are not in a position to
16 see material compliance with the taking of complaints and to
17 see those provisions expire.

18 Likewise, for the quarter ending only 11 months
19 ago, the Independent Monitor found only 50 percent
20 compliance with the requirement that officers investigating
21 categorical use of force report other misconduct discovered
22 during the investigations. 50 percent compliance is not
23 material compliance with the terms of the Consent Decree.

24 Likewise, with respect to paragraph 92 which
25 prohibits retaliation against any employee for reporting

1 misconduct, in the 17th quarterly report the Monitor
2 withheld the termination of compliance because the
3 anti-retaliation policy was new and related training was
4 under development. We are not in a position now where we
5 have seen material compliance with the meaty provisions that
6 the DOJ and the City are talking about having excised from
7 this Consent Decree.

8 It's also important to note that these provisions
9 are not discrete in and of themselves and stand-alone
10 provisions.

11 For paragraph 75 and paragraph 152 which deals
12 with the filing of complaints, those paragraphs,
13 paragraph 75 requires that a complaint form 1.28
14 investigation of any officer who discourages the filing of
15 complaints be instituted.

16 And paragraph 152 requires the Inspector General
17 to review complaint-intake information to ensure officers do
18 not discourage the filing of complaints be instituted.

19 And paragraph 152 requires the Inspector General
20 to review complaint-intake information to ensure officers do
21 not discourage the filing of complaints.

22 Intertwined containing provisions are paragraph 90
23 and paragraph 136. Paragraph 90 requires managers to
24 evaluate all complaint form 1.28 investigations to identify
25 problems and training needs.

1 Paragraph 136 requires the Inspector General to
2 audit complaint form 1.28 investigations. It's critical
3 that these intertwined provisions do continue with the rest
4 of the Consent Decree.

5 And finally, Your Honor, I'm very concerned that
6 the City and the DOJ have asked that the Inspector General
7 should take over the Independent Monitor's functions within
8 just one year. We have no evidence to date that the
9 Inspector General is ready now to take over that function,
10 although I very much hope that in the new Attorney General's
11 Office will be able to do that. As much as the Inspector
12 General's Office has made strides and is moving forward, the
13 most recent report from the Independent Monitor noted that,
14 quote, With few exceptions, the Monitor has found the
15 Inspector General's review of audits noncompliant ever since
16 the Monitor's first successful compliance and continued to
17 do so in this most recent report.

18 Thank you, Your Honor.

19 All right. Does the City wish to be heard?

20 MR. DE LA GUERRA: Yes, Your Honor.

21 If I can respond briefly to Ms. Lhamon's comment.
22 The fact that some of these provisions are being requested
23 to expire does not mean that the reasons behind them go
24 away, that the reforms simply evaporate. The department has
25 put into place policies, orders, manual sections that will

1 continue to do the types of things that we are asking simply
2 be removed as part of the Decree. The audits of officers
3 discouraging complaints that will continue. In fact, under
4 paragraph 97, audits are done continually.

5 The fact that the intervenor points to Holland as
6 the basis for extending the whole thing -- if I can just
7 read part of Holland to the Court:

8 "If the district court decides to use its
9 compliance enforcement power to extend the Decree, the Court
10 must make specific findings regarding the exact Decree
11 provisions or sections with which defendant failed to comply
12 and must determine which sections of the Decree must be
13 extended to remedy this noncompliance."

14 And so it requires also a narrowing, not just the
15 broad language that Ms. Lhamon wanted to quote.

16 As the Monitor himself has said in his filing,
17 this is a different department now than what they found in
18 2001.

19 The Court mentions the 40-year history. Certainly
20 not disputing that things have gone on over the past
21 40 years, but certainly the department needs to be given
22 credit for the reforms and the changes that have occurred
23 over the last five years which I can enumerate, but I'm sure
24 the Court is aware of them.

25 THE COURT: You've put them in writing. I'm

1 certainly aware of what's been going on.

2 All right. Ms. O'Beirne.

3 MS. O'BEIRNE: Thank you, Your Honor.

4 A couple of points I want to make in response to
5 the ACLU's presentation.

6 The only paragraphs that the parties have put in
7 their joint motion as requesting that the -- that they be
8 allowed to expire are the ones where the parties have agreed
9 and the Monitor has also agreed that a substantial
10 compliance as that term is defined in the Consent Decree has
11 been achieved. If the Monitor disagrees with me on that
12 point, I certainly would be happy to discuss that with him
13 and amend our filing to that effect, but we consulted very
14 carefully with the Monitor over a long period of time over
15 these provisions. And the other point I wanted to make is
16 we were very careful to make sure and check with the Monitor
17 that if these provisions were to expire that that would not
18 hamper the continued monitoring of the provisions that
19 remain.

20 I also want to address Your Honor's point about
21 the Monitor and particularly about the Department of
22 Justice's role in this case here. My office, the Special
23 Litigation Section and Civil Rights Division, has tremendous
24 experience in investigating and negotiating and enforcing
25 compliance with Consent Decrees and agreements regarding the

1 statutes that we enforce.

2 We currently have over 100 matters open in our
3 office, over 60 of these involve enforcing compliance with
4 Consent Decrees and other agreements involving claims of
5 unlawful or unconstitutional conduct. At any time over
6 40 percent of our staff is on the road either conducting
7 on-site investigations or compliance visits or compliance
8 activities. We do not hesitate to bring contempt actions or
9 file suits when it's appropriate.

10 We've entered into 28 Consent Decrees in the last
11 ten years, seven of those involving police departments. We
12 have tremendous success with the work we do. We bring all
13 of this experience and all this commitment to every single
14 matter under our jurisdiction.

15 Your Honor, we're the plaintiffs here. I know
16 that you said that you consider this to be your Consent
17 Decree, but we also consider it to be our Consent Decree.

18 As I mentioned we spent years in investigation and
19 negotiation of the Consent Decree, but even once the Consent
20 Decree was entered our responsibilities continued. We have
21 review and approval responsibility for all the scores of new
22 policies, we never rubber-stamped a single one, they all
23 went back with substantial edits and comments and questions.
24 That was work that did not involve the Monitor.

25 The design of TEAMS II, we spent almost two years

1 negotiating and working with the City to make sure that that
2 design was appropriate and met the requirements of the
3 design paragraphs of the Consent Decree. We had private
4 consultants that we gave them the benefit of, we met
5 countless times, thousands of e-mails and hours of meetings
6 and phone calls just to get that design document approved.
7 The Monitor had no role in that.

8 Not only do we consider it our responsibility to
9 ensure that the defendants are complying with the Consent
10 Decree, but it's also our responsibility to make sure that
11 the Monitor is doing his job appropriately, focusing on the
12 areas that he's supposed to focus on and monitoring the
13 Consent Decree the way the parties intended. To that end,
14 we are here every month attending the monthly compliance
15 meetings, we are actively involved in the discussions
16 regarding what the Monitor has accomplished over the month
17 and what the defendants have accomplished. We make requests
18 and suggestions and comments where it's appropriate. We
19 comment on the Monitor's draft report every quarter.

20 In the beginning years of this Consent Decree our
21 comments ran 30 single-spaced pages for a hundred page
22 report. Like everything else, it's gotten better, but we
23 have taken this job very seriously.

24 We've also, over the past five years, we've
25 undertaken our own investigation independent of the Monitor

1 regarding issues that we had concerns about. We have at
2 times recommended to the Monitor that he find the defendants
3 out of compliance with provisions where he wanted to find
4 them in compliance, and we've negotiated and had disputes
5 about that.

6 We've directed the Monitor's attention to issues
7 that we felt have not been appropriately addressed. So I
8 take issue with Your Honor's comment that we are walking
9 away from this. We have never walked away from this. We've
10 been involved with this very seriously every single day from
11 the very beginning, including me personally.

12 As Your Honor noted, I was involved in the
13 negotiation of this Decree, and I have been involved with
14 this case ever since.

15 THE COURT: All right. Is that it?

16 MS. O'BEIRNE: Yes, Your Honor. Thank you.

17 THE COURT: All right.

18 Mr. Cherkasky, do you have any final comments?

19 MR. CHERKASKY: Just one, Your Honor.

20 A little over five years ago you called me into
21 your office and you asked me to commit to this Consent
22 Decree, and you said to me that you wanted me to commit the
23 way the parties have committed, that I would be here for
24 five years or whatever it took, and that we would commit to
25 obtain the objectives of the Consent Decree, which you

1 expressed in personal terms to be important.

2 I made that commitment to you and I think that was
3 appropriate, and I think at the time the parties made that
4 commitment, and I'm not suggesting they're not committed
5 now, but I think that commitment has to be reaffirmed.
6 Simply, we haven't finished the job. It is critically
7 important. It is one Consent Decree. You can't start to
8 carve out pieces of this and get the full intent of what
9 we're trying to do, which is remediate a long-term problem
10 with LA. We need to, in fact, finish this job so it won't
11 happen again, so I'd ask the Court to do that.

12 THE COURT: All right. Thank you, Mr. Cherkasky.

13 All right. The -- my view of this motion is that
14 by making the motion under Section 180, I do think that
15 there's an effort to go around Section 179, and I'm not
16 going to allow that to happen. Section 179 is what I think
17 is controlling, and Section 179 says that the Decree
18 continues unless and until there's substantial compliance
19 with all material provisions. The parties have conceded in
20 submissions to this Court that there are material provisions
21 of this agreement with which they're not in substantial
22 compliance.

23 TEAMS II, aspects of categorical use of force,
24 aspects of the discrimination provisions of the Consent
25 Decree are areas where there is not substantial compliance.

1 As I've said in the course of this discussion, I agree that
2 the department has made progress, progress in many ways that
3 have never been done before, but I think I may have said
4 this before. I do not believe that in my working life there
5 will be any other case that is remotely close to as
6 important as this case for this department and this
7 community.

8 If we can achieve the objectives of this Consent
9 Decree in this case, we will have a better police department
10 and we will have a better City in which to live. It will be
11 to everybody's benefit. Those who participate in the
12 department, as well as those who are subject to the police
13 department in their everyday lives, for the people who live
14 here, who work here, who travel here, it will be a better
15 place, and I expect that that is going to happen. And I
16 expect that we are going to achieve that objective, but we
17 are not going to achieve that, in my view, by starting to
18 carve pieces out. The motion to modify the Consent Decree
19 is, therefore, denied.

20 The Consent Decree based upon the concession of
21 the parties that there's not substantial compliance, as well
22 as the series of quarterly reports which have been submitted
23 to me by the Monitor since this matter has been committed to
24 my jurisdiction is extended; and it's extended for a period
25 of three years, through June 15th, 2009.

1 I do not see any point in extending it for two
2 years when the first question I asked was answered in a way
3 that we know it cannot be complied with. There cannot be
4 substantial compliance with the core term, what I believe to
5 be the core term of this Decree, TEAMS II. There cannot be
6 substantial compliance for a period of two years as of
7 June 15th, 2008, so continuing it to that date simply
8 invites further motion practice. That is the Court's ruling
9 and that is how we're going to proceed with this matter.

10 The Court will be in recess.

11 *(At 11:52 a.m., proceedings adjourned.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript format is in conformance with the regulations of
the Judicial Conference of the United States.

Date: February XX, 2006


LISA M. GONZALEZ, U.S. COURT REPORTER
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