

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **No. 4:16-CV-180-CDP**
)
CITY OF FERGUSON, MISSOURI,)
)
 Defendant.)

EXCERPT OF RULING FROM MOTION HEARING

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

APRIL 19, 2016

APPEARANCES:

For Plaintiff: Jude J. Volek, Esq.
 Christy Ellen Lopez, Esq.
 Amy Senier, Esq.
 Charles Wesley Hart, Jr., Esq.
 Chiraag Bains, Esq.
 UNITED STATES DEPARTMENT OF JUSTICE

For Defendant: Dan Keith Webb, Esq.
 Jared Lyons Hasten, Esq.
 WINSTON & STRAWN LLP

 Stephanie Karr, Esq.
 CURTIS, HEINZ, GARRETT & O'KEEFE

REPORTED BY: *Gayle D. Madden, CSR, RDR, CRR*
 Official Court Reporter
 United States District Court
 111 South Tenth Street, Third Floor
 St. Louis, MO 63102 (314) 244-7987

(Produced by computer-aided mechanical stenography.)

1 THE COURT: All right. First, I want to thank
2 everybody here for their comments today. I found this hearing
3 to be quite helpful, and I appreciated hearing from all of the
4 members of the community who spoke. It certainly added to my,
5 I guess, understanding. I think I understood it already from
6 the law and the things the parties had filed, but certainly
7 adding seeing the people involved makes a big difference, and
8 I appreciate hearing from everyone who spoke.

9 So I've carefully reviewed the Consent Decree and
10 listened to the arguments and the comments and considered all
11 the legal issues, and I will approve the Consent Decree. It
12 will be effective today. Whether it gets docketed today or
13 tomorrow, I'm not sure. I'm not going to write a separate
14 written opinion about my approval. I'm simply stating it to
15 you orally on the record, and this portion, the things I am
16 saying right now, will be transcribed and docketed at the
17 court expense. Obviously, if anybody wants a transcript of
18 the rest of the hearing today, they have to follow the normal
19 procedures and order it and pay for it. However, this is my
20 opinion.

21 I don't think that a lengthy legal opinion is
22 necessary. The law is very well-established as to what I
23 should consider in approving a consent decree such as this.
24 And just to back up, obviously, in this case, the United
25 States alleged in the complaint that the City of Ferguson

1 through its law enforcement officials and municipal court
2 system engaged in a pattern and practice of conduct that
3 deprived the people of the rights protected by the First,
4 Fourth, and Fourteenth Amendment to the United States
5 Constitution, and the City of Ferguson has denied that it
6 engaged or engages in any unconstitutional practices. This is
7 how all lawsuits are. The parties disagree about the merits
8 of the case. This is perfectly normal.

9 However, as in most lawsuits, they have agreed to
10 settle the case. I believe the settlement they've reached is
11 fair, adequate, and reasonable to address the allegations made
12 by the Plaintiff, the United States. The Consent Decree is
13 tailored to address the United States' allegations. The
14 matters contained in it, although it is very detailed, are
15 directly tailored to address the allegations made in the
16 complaint.

17 It is consistent with the public interests, including
18 the purposes of 42 United States Code § 14141, which prohibits
19 any pattern or practice of conduct by law enforcement officers
20 that deprives people of rights, privileges, or immunities
21 protected by the U.S. Constitution.

22 It is also consistent with the purposes of 42 U.S.C.
23 § 2000d, otherwise known as Title VI, which prohibits
24 discrimination on the basis of race, color, or national origin
25 in any programs receiving federal funds.

1 It is the result of arm's length negotiation, and it
2 avoids the unnecessary costs and delay of litigation. And I
3 will simply say that the -- well, I also think -- I find that
4 it's the most effective and efficient means of resolving the
5 claims and ensuring constitutional and effective law
6 enforcement in Ferguson. The alternative to moving forward on
7 this consent decree would be litigation, as I stated earlier,
8 and certainly, if that were appropriate, I would have ordered
9 that. That would have meant, I'm sure, several years' worth
10 of discovery, document production, interrogatories,
11 depositions, motions, and then ultimately a trial. Trials of
12 this type of case, where they have happened, are obviously
13 lengthy and result in a -- if the -- if the plaintiff wins
14 result in a remedy that may not be as good for the citizens of
15 the community as one that is negotiated, and that is why this
16 negotiated settlement is -- is effective and efficient and
17 does avoid the unnecessary costs and delay of the litigation.
18 It's far better for the citizens of Ferguson to start
19 implementing the remedy proposed by the Consent Decree now
20 rather than spending a huge amount of money on both sides
21 litigating the case and then ultimately, perhaps, doing
22 exactly the same thing several years down the road. So I
23 think it's in everyone's best interests, and I think it's in
24 the interests of justice.

25 I have looked at both procedural and substantive

1 fairness in reaching this decision. The procedural fairness,
2 I think, is amply met in this case. Although some people have
3 complained that they weren't involved in the negotiation of
4 the settlement agreement, the parties to the case were
5 involved in the negotiation, and they sought input of the
6 public, and I think the comments here today and those that
7 were provided in writing -- although some people disagree with
8 the way this was handled, I think people have had a chance to
9 have their positions heard, and so that it is a procedurally
10 fair -- the result of a procedurally fair process. I believe
11 it is substantively fair, as I've stated, on the merits for
12 the reasons stated before.

13 I mentioned at the beginning of this hearing that my
14 job under the law -- I'm not allowed to rewrite a settlement
15 agreement, but I wouldn't do that anyway in this case. I
16 believe that this agreement is appropriate as it is written.
17 The parties recognize that it may not be perfect and not
18 everybody got everything they wanted, but that is what happens
19 in settlements, and with any settlement, as with any
20 settlement, the parties to the case know it best and know what
21 is reasonable.

22 The Court is not a rubber stamp. I have
23 independently reviewed these provisions and studied the facts
24 and the allegations and the things presented to me, and after
25 that careful study, I believe that the parties did get it

1 right and this is a reasonable resolution.

2 The public has an overwhelming interest in seeing
3 that policing and municipal court practices are done in
4 compliance with the Constitution of the United States. I
5 believe that this settlement agreement will result in that
6 happening in the city of Ferguson. I do want to comment on a
7 couple of things. The agreement does not have every single
8 policy that will -- will govern what is going on in Ferguson,
9 but that will be -- as was pointed out by the Department of
10 Justice lawyer just a moment ago, those policies will be the
11 outcome from the process that is set out in the agreement.
12 It's not appropriate to put every single detail in an
13 agreement such as this, and we all know, at 130 pages or
14 whatever it is, every single detail would have just made it
15 that much harder, and I think it's plenty detailed as it is.

16 I also find that both sides in this matter have shown
17 good faith in their negotiating. This was an arm's length
18 negotiating -- negotiation. I understand that there are
19 people who are not happy with either side. I've received many
20 comments that said that they believe the Department of Justice
21 was biased in its approach. I received many comments and
22 heard more today about people saying, "We can't trust the
23 City." I understand both sides have strong feelings about
24 these things, but based on what I have seen, I believe this
25 was the product of good faith and both parties acted in good

1 faith.

2 Additionally, good faith implementation will be
3 required. It will be required by me and this court and the
4 justice system, meaning the court system. The monitor who
5 will be appointed -- and, obviously, I have no idea who that
6 will be, but I will expect that that person will take the
7 responsibilities very seriously and will report to me as well
8 as to others if this is not being implemented in good faith on
9 both sides. So I have full expectations that this will
10 happen, and there's no reason to believe that it will not.

11 This investigation, obviously, grew out of a horrible
12 tragedy that has affected the people in this room and the
13 citizens of Ferguson as well as the people of the region. But
14 this is in the best interests of everyone to move forward with
15 this Consent Decree.

16 One of the concerns I have -- and this came from not
17 only reading the things that have been presented to me here
18 today and listening to the comments but also from my common
19 sense and my simply knowing what's gone on in this metro area
20 for the last couple of years. I am concerned that because
21 there are such strong feelings here not everyone involved
22 treats one another with the respect that we all owe one
23 another as citizens. I am imploring all of the members of the
24 community, no matter what you think of this or what faction or
25 side you may be on, to approach this with an attitude of

1 respect and to give it your best shot. If we disrespect one
2 another, if we're yelling and hollering at each other or
3 threatening one another, this won't work. You all have to
4 approach it as citizens and come together, and I hope that you
5 will do that.

6 I have been very impressed with how everyone has
7 behaved here in court. People were worried. When I said I
8 was having this hearing, various people involved in the court
9 system said, "What are you going to do if everybody starts
10 jumping up and screaming and yelling?" And I said, "People
11 don't do that in court. They know how to behave." And you
12 all have done so, and I really appreciate that. So behave
13 that way when you're dealing with one another in the community
14 too. It's what you ought to do, and it's the right thing.
15 Give this a chance to work. I think that it really will work
16 and that you all have come up with a solution that I hope will
17 work.

18 And also, of course, I will be paying attention to it
19 and following my duties.

20 So I will sign the decree. I will expect to hear
21 from the parties in due course when it is time for me to
22 consider the things that I have to consider in the decree. I
23 will say that when I went through it I certainly circled every
24 time it said the Court will do this and the Court will do that
25 because I'll be watching for it, but I leave it to you all,

1 and I think you've done a good job here today. It's a good
2 first step, and let's see if it will work.

3 Okay. So I will sign the decree, and this is my
4 ruling. Court's in recess.

5 (Proceedings concluded at 3:25 p.m.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 9 inclusive.

Dated at St. Louis, Missouri, this 19th day of April, 2016.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter