

UNITED STATES OF AMERICA PLAINTIFF
VERSUS CIVIL ACTION NO. 3:16-CV-00622-CWR-FKB
STATE OF MISSISSIPPI DEFENDANT

(Appearances noted herein.)

CANDICE S. CRANE, RPR, CCR #1781
OFFICIAL COURT REPORTER
501 E. Court Street, Suite 2.500
Jackson, Mississippi 39201
Telephone: (601) 608-4187
E-mail: Candice.Crane@mssd.uscourts.gov

APPEARING VIA VIDEOCONFERENCE:

FOR THE PLAINTIFF, THE UNITED STATES OF AMERICA:
DEENA FOX, ESQ.
PATRICK HOLKINS, ESQ.
VIVIANA BONILLA-LOPEZ, ESQ.

FOR THE DEFENDANT, THE STATE OF MISSISSIPPI:
JAMES W. SHELSON, ESQ.
DOUGLAS T. MIRACLE, ESQ.

ALSO PRESENT:
DR. MICHAEL HOGAN
JACKIE FLEMING
TWANA SUMMERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

Style and appearances.....	1-2
Court Reporter's Certificate.....	31

PROCEEDINGS VIA VIDEOCONFERENCE, APRIL 4, 2022

THE COURT: Good afternoon. I apologize for the delay. Can everyone hear me? I guess that's the first question by nodding your heads. If you're not speaking, please keep your microphone -- well, we've muted you, I believe, already.

So this is 3:16-622, United States of America versus State of Mississippi, CWR-FKB. I think today we're supposed to have a status conference to see how things are going with respect to the provisions of the -- seeing through the provisions of the Court's order, and I know I could easily look on the docket to see where the appeal is now with respect to the -- to that court's progress.

I do know that the State of Mississippi filed its initial brief. I do believe the United States sought an extension to file its response.

Has that response been filed, or has that time run yet?

MR. HOLKINS: Yes, Your Honor, that response has been filed. This is Patrick Holkins with the United States.

THE COURT: Okay. Thank you. So now the time is running for the State to file its reply, I presume.

So who do I have on for the United States?

MR. HOLKINS: Your Honor, this is Patrick Holkins for the United States. I'm joined by my colleagues Deena Fox and Viviana Bonilla-Lopez.

1 THE COURT: Okay. And who's on for the State of
2 Mississippi?

3 MR. SHELSON: Your Honor, Jim Shelson at Phelps Dunbar
4 and Doug Miracle at the Mississippi Attorney General's Office.

5 THE COURT: Okay. Thank you. And we have Mr. Hogan
6 here. Are you and your team here, Mr. Hogan, or just you?

7 MR. HOGAN: Your Honor, I'm here, and I see Jackie
8 Fleming, and I know that Teri Brister was going to join as
9 well. I haven't seen her here yet. I'm sure she's here.

10 THE COURT: Okay. The public is invited to attend this
11 hearing, because in the Court's view, this is a matter of
12 public concern.

13 So let me start off by -- I will get the special master
14 to come any way that he chooses to give the Court an update;
15 I'll give the parties an opportunity to respond; and then
16 we'll see what the map is going forward after today, when
17 might there be a need to hold the next status conference.

18 So, Mr. Hogan, you may proceed in any way you wish.

19 MR. HOGAN: Well, thank you, Your Honor. I will try to
20 be succinct here, although it's not my nature. I do know that
21 the parties are very familiar with the issue, and so I don't
22 feel any need in particular to speak to them, so I thought I
23 would orient my remarks more to members of the public that may
24 not have been following this closely, and so some of this will
25 be perhaps redundant.

1 But as Your Honor has said, this is a conference to
2 review the first report by the court monitor in this
3 long-standing case, and the case, as everybody probably knows,
4 is about Mississippi's care for adults with serious mental
5 illness, which means a significant mental illness like
6 schizophrenia or bipolar disorder or clinical depression,
7 accompanied by some degree of impairment or disability.

8 In September of 2021, Judge Reeves issued two orders.
9 The first was a remedial order that laid out what the State
10 must do to resolve the problems found at trial; and based on
11 the previous history of the case, this order largely adopted
12 the State's recommendations regarding services that would be
13 put in place and the Department of Justice's recommendations
14 regarding monitoring progress. And second, in September Your
15 Honor appointed me to monitor this progress and, in that
16 order, required a report every six months, and so this is the
17 first. It was submitted about a month ago.

18 And as Your Honor notes, since just in recent times the
19 State has entered an appeal of the order and meanwhile now the
20 federal government has responded, meanwhile the order is in
21 effect; and in my view the State, while appealing the order
22 legally, the people in government, particularly Department of
23 Mental Health, have worked hard to implement the remedies that
24 are in the order. So we're on two paths at once.

25 In this report I summarize the monitor's activities in

1 the last six months, discussed how we would proceed to monitor
2 the order, provided some early citings on compliance with the
3 order, and included an appendix summarizing the major players
4 and dynamics in the Mississippi mental health system.

5 And to briefly go over each of those points regarding
6 our activities, the first thing I did, not being from around
7 where you-all are, was to find two people, very qualified, who
8 on a part-time basis are helping me in this matter. Both are
9 credentialed mental health professionals. Dr. Teri Brister
10 worked in community mental health in Mississippi and now
11 serves as a national program director for the National
12 Alliance on Mental Illness, and she lives outside of Jackson;
13 and Ms. Jacqueline Fleming is a clinical social worker who
14 worked briefly in community mental health and then many years
15 at Mississippi State Hospital overseeing social services and
16 social work activities, and she lives in Jackson.

17 And by now the team has visited all the state hospitals
18 and community mental health centers in Mississippi, although
19 COVID delayed our last round of visits until March.

20 On our approach to monitoring, a key aspect of this
21 would be to review and to look over and validate what the
22 State itself will do to monitor care. We'll look at the
23 adequacy of what the State is doing and assess whether those
24 approaches are working. Some of these monitoring activities
25 by the State are now in place, and some are just being phased

1 up.

2 To supplement that and to see whether it's all working,
3 we adopted an approach to monitoring care that the joint
4 commission calls a tracer methodology, which the joint
5 commission uses to evaluate care in hospitals. Basically it
6 traces care over time. For example, we've used it to follow
7 people from community to hospital and back out to their
8 community, and the tracer approach starts with reviewing the
9 record of care, and it may involve conversations with staff
10 and ultimately with people receiving care.

11 We'll also look at data from primarily the Department
12 of Mental Health and the Division of Medicaid. The order
13 requires the State to obviously review the data itself and,
14 starting this year, in June or July, to post that data on a
15 public website. And although the State provided a good deal
16 of data to us, not all this data was yet available. So what
17 we've seen and reported on is early and very much a work in
18 progress.

19 If I were to try to summarize it, the grade for our
20 review so far as well as for the State's compliance with the
21 order is mostly incomplete. We have seen some signs of early
22 progress. At this point the State has made available to the
23 community mental health centers funding for all of the
24 additional services that are listed in the order, and this
25 is -- has to be acknowledged as substantial progress, although

1 not all those services are yet fully running, in part because
2 of challenges in this economy of finding and keeping staff.

3 And this leads us to note how the impact of the
4 pandemic on mental health and mental health care in
5 Mississippi has been serious. Hospitals and community
6 programs kept on going with some accommodations from the
7 State; for example, like Medicaid allowing care to be
8 reimbursed that was delivered over the telephone or via
9 videoconference, and this helped greatly in the most intense
10 months of the pandemic.

11 But the capacity of programs like hospitals and crisis
12 centers was reduced in part because of staffing challenges and
13 in part because of quarantines, and this has resulted in
14 waiting lists for care increasing, and these waiting lists
15 still exist.

16 A particularly troubling aspect of this was that people
17 who are waiting for a state hospital bed in some instances had
18 to wait in jail until a bed became available, and this --
19 these challenges are exacerbated by two troubling trends that
20 we've found. This is just on a preliminary review. But one
21 of those is that a number of state hospital beds are taken up
22 by people who have been committed to that hospital but do not
23 have a serious mental illness. They might have conditions
24 like dementia or a developmental disability or substance abuse
25 problem without having a serious mental illness, and these are

1 people who need care but for whom the state hospital is not
2 the right place, and their being there obviously backs up the
3 system a little bit.

4 Relatedly, a surprising number of state hospital
5 admissions we've found are people who were treated in a
6 private hospital and then transferred to the state hospital,
7 perhaps because their insurance ran out; perhaps because it's
8 thought the state hospital has more resources available for
9 discharge, although that's not necessarily true. Most --
10 these what the Department of Mental Health calls
11 same-level-of-care transfers, they occur infrequently for many
12 community hospitals, but they occur often from a handful of
13 hospitals; and these two patterns of people admitted who are
14 not seriously mentally ill and then people who are transferred
15 contribute to delays in people with serious mental illness
16 accessing care, and they contribute to people waiting in jail.

17 We reviewed records at three of the state hospitals
18 during this period and in six of the community mental health
19 centers, and we could see that DMH efforts to improve
20 so-called discharge planning; that is, connecting people back
21 to their community, getting them ready to move back, these
22 efforts have yielded some promise. So we found very
23 consistently, for example, that people had an appointment for
24 their care in the community before they left the hospital and
25 they had a supply of medicine.

1 But we also see that this progress is incomplete.
2 People may not know or have met or been introduced, whether
3 directly or over the phone, to the person they're supposed to
4 see. We know this reduces the chance they'll make the
5 appointment. And people might not be necessarily connected to
6 the level of care that will work for them. They may need a
7 visit at home, but they may have been referred back to a
8 therapist. So we see progress, but it's incomplete.

9 I will not comment much here on our summary of the
10 issues and how the mental health system in Mississippi is
11 structured or funded since our focus here today I think is in
12 compliance with the order other than to note that there are
13 stressors in the system that ultimately may affect compliance.

14 For example, the community mental health centers are
15 required by regulation to serve people regardless of their
16 insurance coverage or ability to pay, but the cost of that
17 care may not be reimbursed. The CMHC record systems and
18 billing systems are variable. These are independent local
19 entities, and that variability affects consistency of care.

20 And perhaps most significantly, the pandemic has
21 greatly affected staffing with vacancy rates that are quite
22 substantial across the board, although they're quite variable
23 from place to place. So the pandemic is affecting health care
24 and other industries, and it is certainly affecting community
25 mental health.

1 Going forward, the monitoring team will build on this
2 initial report. As I'd said, in the next few months a lot of
3 data will begin to flow and be publicly posted and available,
4 and we'll look at that. A lot of this data will be organized
5 by region or by community mental health center to get a
6 picture of how things are going in each region as well as
7 statewide.

8 We will be visiting a few centers in a couple of weeks
9 to look at crisis care. Crisis care is significantly featured
10 in the order. It may come in the form of calls for help, the
11 need for a visit by a mobile crisis team, or perhaps a stay in
12 a crisis stabilization unit. And the crisis system is under
13 significant development, because not just in Mississippi but
14 nationally, the clock is ticking on a long-overdue
15 development, which is the creation at a national level of a
16 single three-digit number. It's sometimes called 911 for the
17 brain. And this three-digit number, which is 988, will take
18 effect as a single national number for mental health crisis
19 and suicide prevention.

20 Meanwhile, of course, people may still call the number
21 at their local center, or they may still call this National
22 Suicide Prevention Lifeline, but all the phone carriers are
23 set up to transfer calls that go to 988 into this system,
24 which over time is going to make a big difference. So we'll
25 have a preliminary view of crisis care for the next report.

1 We'll be looking at all that data, and we'll continue to use
2 this tracer methodology to review progress and care, and we'll
3 have more opportunities to talk to people in care over the
4 next six months, which ultimately provides perhaps the most
5 solid foundation for our review.

6 So I think, Your Honor, with that, I've taken about as
7 long as I think is appropriate to take, but I'm happy, if it
8 pleases the Court, to try to respond to any questions that you
9 have or anyone else that you may want to direct.

10 THE COURT: Okay. Thank you, Mr. Hogan. I take it
11 your -- the report reflects that you were on the ground here a
12 couple of different times, I think. Is that correct?

13 MR. HOGAN: Yes, Your Honor. I think -- we made four
14 visits, some a couple days, some a full week, in the last
15 period; and then we were -- we just -- we're back and spent a
16 week going across the whole northern part of the state in
17 March, and we'll be back again in a couple weeks.

18 I say, Your Honor, that "we'll be back." Really I'll
19 be back. Jackie and Teri are on the ground there and will
20 probably pick up more activities themselves directly as we get
21 deeper into this.

22 THE COURT: Okay. Does the United States have any
23 questions or points that it thinks the Court ought to be made
24 aware of?

25 MR. HOLKINS: Your Honor, this is Patrick Holkins of

1 the United States.

2 We don't have any questions for Dr. Hogan, but we do
3 have some brief remarks if now would be an appropriate time.

4 THE COURT: This is an appropriate time, Mr. Holkins.

5 MR. HOLKINS: Thank you. We just want to acknowledge,
6 Your Honor, that the monitor has and the State has taken
7 meaningful steps to implementing the requirements of the
8 Court's remedial order. Executive director Wendy Bailey and
9 her team have demonstrated their commitment to moving this
10 process forward.

11 We would also like to express our appreciation for the
12 efforts made by the monitor and his team in the first
13 reporting period under (AUDIO GAP). Their work thus far is
14 yielding valuable information about the State's efforts
15 towards compliance. In particular, the tracer methodology
16 used by the monitor to track and evaluate care as used by
17 individuals across settings holds promise. Provisions of the
18 remedial order relating to discharge planning and, to a lesser
19 extent, diversion were the focus of the monitor's substantive
20 review activities during the first reporting period. For very
21 good reasons, the monitor's information correction and review
22 efforts were limited in scope during this reporting period.
23 Because the monitor has not meaningfully surveyed the State's
24 performance in northern Mississippi, his compliance ratings
25 even with respect to this subset of provisions are premature.

1 However, even based on the monitor's reporting available at
2 this time, it is clear that the State has more work to do.
3 That is what we would expect at this early stage in the
4 process.

5 While the United States is encouraged by the State's
6 implementation of a systemwide discharge planning protocol
7 that incorporates the measures required under the Court's
8 order, the monitor's review suggests that adherence with those
9 measures is inconsistent across the state hospitals and CMHS
10 regions surveyed. It is concerning that the monitor saw
11 little evidence that MHCs are coordinating with state hospital
12 patients prior to discharge and that staff are adjusting care
13 appropriately for individuals is readmitted to the state
14 hospitals.

15 The United States shares the monitor's serious concern
16 about the continued use of county jails to hold civilly
17 committed individuals pending admission to in-crisis state
18 organizations or the state hospital. The evidence at trial,
19 including testimony by Adams County Sheriff Travis Patten,
20 demonstrates how devastating this fact is. That individuals
21 with SMI facing no criminal charges continue to be detained
22 inappropriately in facilities wholly unsuited to meet their
23 needs is itself proof that the State has much work ahead.

24 Particularly with the expansion of crisis residential
25 services, we would expect this practice would have been

1 reduced or eliminated, even at this early stage of
2 implementation. Ultimately it is simply too soon to make even
3 preliminary findings that the State is in real compliance with
4 any provisions of the remedial order. The monitor will need
5 more time and data to determine whether people continue to be
6 unnecessarily institutionalized in the state hospitals. While
7 the monitor's report indicates that admissions to the state
8 hospitals have reportedly declined since the trial, it is
9 unclear whether this reduction occurred as a result of the
10 pandemic or because individuals are getting needed services in
11 their homes and communities.

12 In future reporting periods, we understand, as the
13 monitor shared today, that he and his team will be looking
14 behind the State's data and self-assessments, including by
15 collecting information directly from individuals who have
16 experienced state hospitalizations firsthand and may need core
17 services to avoid future institutionalization.

18 We look forward to maintaining a productive
19 relationship with the State and the monitor as the State
20 continues to work toward full compliance with the remedial
21 order.

22 I'll be happy to answer any questions that Your Honor
23 has.

24 THE COURT: Thank you, Mr. Holkins.

25 Well, let me ask the monitor this question based on

1 something that the United States said, and of course I'm going
2 to get the State an opportunity to tell me what it wishes or
3 ask any question or do whatever it needs to do for the record.

4 As I recall some of the testimony at this trial, during
5 this trial, and also just taking information from other cases
6 and proceedings in which I've been involved and otherwise,
7 there's a limited number of beds at the state -- at Whitfield.
8 There's a limited number of beds that are used to, I guess,
9 determine whether or not one -- to do the forensics and to
10 determine whether one is sufficiently capable of having
11 committed a particular crime, if they're sane, insane, or
12 whatever the words that are appropriate to be used. There's
13 only a certain number of beds, and that has caused from time
14 to time for those persons who might be arrested and waiting on
15 a mental health examination, they wait in a queue for -- and
16 sometimes for a significant period of time waiting on a bed
17 for a forensic evaluation.

18 Do we know at this time, Mr. Hogan, the number of beds
19 that are being used specifically for those purposes at
20 Whitfield as of today?

21 MR. HOGAN: Your Honor, I do not know. I'm sure that
22 the State's representatives would know that. I would point
23 out that the problem of people waiting in jail is mostly
24 entirely unrelated to the question of whether or not they've
25 been charged with a crime and are competent to stand trial,

1 which would be the, I guess one might say, legitimate or at
2 least quasi-legitimate, you know, path to care.

3 The problem that we've found is people who are not
4 charged with a crime, simply need care, a bed is not
5 available; and by what I understand is a long-standing
6 practice, they are detained in jail. In some cases it's a
7 separate facility maintained by the jail or a separate wing or
8 something like that. In some cases it might be general
9 population. I haven't directly examined this yet. But
10 they're held in jail essentially because there's no place to
11 go, no other place to hold them until a hospital bed is
12 available.

13 So the -- the issue of so-called forensic care is not
14 something that I think by and large is directly addressed in
15 this case, although if I'm asked to get into it, we can
16 evaluate it. This problem of people waiting in jail is
17 entirely people who just need treatment and for whom a bed is
18 not available, and they're held in jail until a treatment bed
19 is available for them. And as I understand, I believe this is
20 a long-standing practice.

21 There's not much doubt in my view that this was
22 exacerbated as a result of beds that were essentially reduced
23 by or in response to COVID. The data that the Department
24 has -- Department of Mental Health has provided suggests that
25 in the first six months -- excuse me, the first three months

1 of the current fiscal year; that is, July through September of
2 2021, there was an average of about 80 people waiting for a
3 state hospital bed at any point in time; and of those, about
4 25 were waiting in jail.

5 There was an improvement in the second three months of
6 the year where it looks to me like an average of about 50, 55
7 people were waiting for a bed at any point in time; and about
8 15 of those were waiting in jail.

9 So long way around the barn, but I hope that's somewhat
10 helpful in response to Your Honor's question.

11 THE COURT: Okay. Thank you.

12 I'll hear from the State now. And one of the questions
13 that I do have for the State, I realize that the legislative
14 session may or may not end today, and I think they were
15 waiting on -- I think part of what the legislature is doing is
16 compiling a budget, I do believe.

17 Do we know if the budget request by MDH, or Mississippi
18 Department of Mental Health, do we know what that number is or
19 what request has been approved or not approved?

20 MR. SHELSON: Your Honor, Jim Shelson.

21 Unless something happened in the last few minutes, I
22 don't think we know that yet.

23 THE COURT: Okay. Do we know what amount the agency
24 requested, approximately?

25 MR. SHELSON: I don't know that number, Your Honor,

1 because I'm focused on the community-based aspect of it, and
2 there's a whole lot that goes into the number besides what
3 this lawsuit's about.

4 THE COURT: Okay. Is there -- Mr. Shelson, do you wish
5 to say anything in response to what Mr. Hogan or what
6 Mr. Holkins has told the Court at this time?

7 MR. SHELSON: Yes, sir. The forensic piece is not
8 applicable here. What Dr. Hogan was talking about was civil
9 commitments. That just has nothing to do with the forensic
10 side. So the people Dr. Hogan's talking about are not
11 awaiting forensic evaluations. Sheriff Patten's testimony
12 kind of conflated the two. That was unfortunate. But it is
13 what it is. But they are unrelated, especially as it relates
14 to this lawsuit.

15 To be clear, to the extent people are waiting in jail,
16 it's not because there's a bed available and they're being
17 denied a bed. I'm not saying Mr. Holkins suggested that, but
18 to the extent he did, we disagree with that. As Dr. Hogan
19 said, they're there because a bed is not available. It's not
20 just the state hospital beds. It's also that there's no CSU
21 bed available.

22 I don't know if Your Honor has been to any of the CSUs,
23 but they're not sprawling facilities like the state hospitals,
24 and if you have a COVID patient in that facility, you kind of
25 shut the whole facility down. So I think as Dr. Hogan alluded

1 to, a combination of a reduction of state hospital beds --
2 which we understood to be a good development and we hope that
3 there's no change in course that the State should now increase
4 the number of state hospital beds it has, but the combination
5 of reduction of state hospital beds, the pandemic, and
6 staffing issues has created a backlog for beds either at the
7 state hospitals or the crisis stabilization units, and it's
8 going to take some time, frankly, to work out of that backlog.
9 If the pandemic doesn't flare back up, that would be a quicker
10 process. If it flares back up, it's going to be difficult.
11 There's no question about it.

12 So Dr. Hogan identified three things that were
13 troubling. One was the jail. We just addressed that. Second
14 thing he addressed are people committed to a state hospital
15 who do not have serious mental illness, or SMI. That is a
16 problem. It unfortunately is happening more than certainly
17 the State would like it. But, Your Honor, to be clear, and I
18 mean no disrespect to any court when I say this, that's --
19 when that happens, it's a chancellor committing an error of
20 law. It's not noncompliance by the State with your order.
21 It's unfortunate, but the statute -- under the statute, you're
22 not supposed to be committed unless you have SMI. To the
23 extent a chancellor commits somebody that doesn't have SMI, it
24 is a problem, but it's a mistake by a chancellor. I don't
25 know how else to say it.

1 And as Your Honor knows because Your Honor has alluded
2 to this in your opinions, Mississippi Supreme Court has said
3 when a chancellor commits somebody to the state hospital, the
4 state hospital cannot turn them away. So when that happens,
5 they have to get admitted and they have to be in there for at
6 least a period of time till the state hospitals can evaluate
7 them and then discharge them.

8 Last thing is -- that Dr. Hogan mentioned that's
9 troubling is the same-level-of-care issue. That, again, is an
10 unfortunate issue, but it's not an issue of noncompliance on
11 the State's part. There are a number of private hospitals who
12 will commit a person to their facility and then after a short
13 period of time will seek to have that person committed to a
14 state hospital. And, again, there's a number of reasons for
15 that, but if the chancellor commits them, then they're
16 committed and the state hospital has to do what it has to do.

17 So to close out, Your Honor, we thank Dr. Hogan and his
18 team for their efforts. We do not want to have an adversarial
19 relationship with Dr. Hogan, so we shared some comments with
20 him about his report, and we'll leave it at that. We
21 certainly don't desire to cross-examine him or go through a
22 line-by-line review of his 40-page report in terms of
23 objections.

24 So this is going to be a process. We -- the State has,
25 I think without doubt, accommodated Dr. Hogan and his team,

1 and we certainly intend to continue to do so.

2 THE COURT: What date have you calculated your brief at
3 the Fifth Circuit to be due, Mr. Shelson?

4 MR. SHELSON: Your Honor, the Fifth Circuit Court sent
5 out an e-mail this morning with instructions to the United
6 States to resubmit -- it's some technical things, to resubmit
7 their brief on or before April 18th. I'm not sure our time's
8 running yet.

9 THE COURT: Oh, okay.

10 MR. SHELSON: But I may be wrong about that. I haven't
11 had a chance to look at the rule. But I'm assuming it will be
12 30 days from when the United States makes their technical
13 corrections. So that remains to be seen. But, Your Honor, it
14 wouldn't be surprising to me -- certainly the State may ask
15 for additional time.

16 THE COURT: Right. Right. Has -- have the parties --
17 this is to the United States as well as the State of
18 Mississippi. Beginning at page 21 of Mr. Hogan's report, he
19 has prepared a chart. Regardless of what the content of the
20 chart is, do you-all find that that chart is helpful in the
21 way in which he proceeds with evaluating the things that he
22 needs to do? Is that sort of chart or diagram one that y'all
23 discussed before? I mean, do you find that chart helpful?
24 Regardless of what -- what his ultimate findings might be on
25 that chart, is the breakup one that you find that you agree is

1 helpful, at least?

2 MR. HOLKINS: Your Honor, I can speak on behalf of the
3 United States. We do find the chart approach is -- in this
4 first report to be constructive as a way to provide notice to
5 the parties, to the Court, and to the public regarding the
6 monitor's latest thinking on compliance with each of the
7 provisions in the order. We think it's important, as the
8 monitor did in his report, to compare that chart with merited
9 information that explains the bases for his compliance
10 ratings. We think this approach is sound and recommend
11 continuing with it.

12 THE COURT: Okay. And what about the State? Did the
13 State find it helpful?

14 MR. SHELSON: Your Honor, this is Jim Shelson again.
15 The State is fine with the table or the chart. The
16 narrative, we share some comments about that with Dr. Hogan.
17 You know, the narrative -- all we'll say at this point is we
18 think the narrative should be certainly within the scope of
19 the order to the extent there is one. And, of course, what
20 Dr. Hogan is charged with evaluating is compliance, so the
21 table is the key to the analysis, in our view.

22 THE COURT: Okay. Thank you.

23 All right. Well, Dr. Hogan, when do you expect your
24 next report to be submitted? I realize this one was just
25 submitted a month ago.

1 MR. HOGAN: Well, Your Honor established a requirement
2 of submission every six months, and so --

3 THE COURT: Okay.

4 MR. HOGAN: -- it would be -- it would be early
5 September. In discussion with the parties, we've agreed they
6 need a little bit of time to review a draft and make any
7 comments or address any objections that they have, and then we
8 need a couple weeks to review and incorporate those comments,
9 so we'll be -- my team will be putting a wrap on a draft about
10 the beginning of August, and, you know, the Court should see
11 it a month later.

12 THE COURT: Okay. All right. And after it is
13 submitted, the Court anticipates that we'll have a status
14 conference. Obviously the next report will likely go into --
15 at least we'll know by then what budget MDMH is operating
16 under and -- you know, and what other implementations, if any,
17 MDMH is making with respect to implementing any portion of or
18 none of or whatever they might be doing with respect to the
19 order.

20 So I do appreciate, Mr. Hogan, your services. I do
21 appreciate and commend the parties for working with you to
22 allow you to do the work that you've been tasked with doing,
23 and I really do appreciate the parties in that regard.

24 I really have no more questions. I just wanted to make
25 sure that we touch base with one another since the filing of

1 this report, and we will -- we will go from there.

2 I think, Dr. Hogan, you've -- you have the opportunity
3 to speak with people when you're here on the ground. You have
4 the opportunity, if necessary, to meet with the Court or even
5 meet with the parties from time to time if you need to. I
6 think that's part of the order or the agreement that we've
7 sort of reached in any way.

8 So obviously the parties know if there's a need to
9 schedule anything prior to the anticipated next conference,
10 which will be following the submission of the next status
11 report, the parties know if there's any need for the Court --
12 for the parties to file anything to get the attention of the
13 Court, we'll make that available for you. But, again, I
14 certainly appreciate the efforts and the work that you-all are
15 doing, and that's all I have.

16 Is there anything further, Mr. Hogan?

17 MR. HOGAN: It may not be necessary, Your Honor, but
18 just to underline a couple of the points that you've made. I
19 think my team has been received graciously and professionally
20 by the parties, and indeed in our visits to the programs
21 around Mississippi, we've been treated very well, so that --
22 we appreciate -- we appreciate that.

23 I will say this might be unnecessary but that in the
24 next report due in September, I think we'll continue to be in
25 a developing mode with respect to our ability to look at -- to

1 look at things. For example, all of the data that the State
2 will post will be coming up online just about the end of June,
3 the beginning of July, and our second report is due a month
4 later, so we may not have been able to fully integrate all of
5 that.

6 There are other activities that the Department is
7 engaged in that we need to -- they need to develop and that we
8 need to participate in. For example, they're developing an
9 approach to monitor two of those provisions that we discussed
10 here today: discharge planning from hospitals and diversion
11 of people from hospitals. So on those -- on those points and
12 some others, the Department is hiring some people who will be
13 in a position of checking how that's going, and so obviously
14 we'll want to work with them, and then, you know, the way this
15 goes, we'll have to check their -- check their work.

16 Similarly, there are -- as Your Honor knows, many parts
17 of the order relate to the so-called core services, the
18 essential services for people with serious mental illness, and
19 for many of those, the Department has developed or is
20 developing an approach to monitor whether those local programs
21 are functioning the way they ought to. They have a schedule
22 set up for doing those reviews, and my team will ride along
23 with them on some of those starting in the fall to see how
24 that all goes.

25 So long way around the barn by way of saying that we'll

1 get into some more things in the next report, and I think by
2 the fall, looking forward to the report a year from now, all
3 the key elements should be in place and our judgments should
4 be more comprehensive.

5 THE COURT: Okay. Thank you, Dr. Hogan.

6 Anything from the United States?

7 MR. HOLKINS: Your Honor, this is Patrick Holkins with
8 the United States.

9 We have nothing further to add regarding the monitor's
10 first report. We did want to just alert the Court to a
11 pending motion regarding United States' ex parte
12 communications with community mental health centers under
13 Rule 4.2. We think the briefing, including responsive
14 briefing from the State, fully addresses the issue, but we're
15 happy to answer any questions the Court has regarding those
16 motions if it did not.

17 THE COURT: Yeah. We are aware of the motion, and
18 we're thinking about it and working on it, and if we do need
19 to have argument or anything on it, we will let the parties
20 know. And hopefully, you know, we'll do it in time so
21 Dr. Hogan can be fully informed on what he needs to do. As of
22 now, though, that motion is pending, I think before the
23 magistrate judge, I think. So maybe what the magistrate judge
24 rules might satisfy everyone. If not, obviously parties could
25 take the next step, whatever that might be. So I was speaking

1 out of turn when I said I'll set a hearing and all. I think
2 that motion is currently before the magistrate judge, I think,
3 and he'll -- I'm pretty sure he'll rule in due course. Yeah.

4 Anything from -- thank you, Mr. Holkins.

5 Anything from the State?

6 MR. SHELSON: Yes, Your Honor. Jim Shelson.

7 Just -- I want to note, Your Honor, that in the orders
8 there's no requirement of a party objecting in the sense of
9 filing objections with the Court to the monitor's reports, so
10 unless we're misreading that, the State certainly does not
11 intend to undertake to do so for a number of reasons,
12 including we don't think there's a requirement to do that;
13 and, two, we don't think there should be because it creates
14 adversity between the parties and the monitor, and that's not
15 helpful. And so unless the Court views that there's a
16 requirement to formally submit objections with the Court, the
17 State did not intend to do so.

18 THE COURT: Okay. No, I won't. I mean, I do think
19 that the parties' sort of approach to working with the monitor
20 is helpful, and I think through the three of you, you've
21 decided that the monitor will provide to you a preliminary
22 report, I think, and give you an opportunity to get your
23 feedback, your comment on it before it's finalized. It's
24 likely that -- based on some of the comments that either one
25 of you -- either one of the parties may cause the monitor to

1 revise his report in some way before it's finalized to
2 incorporate some of the concerns that you may have and things
3 of that sort, so that's how I see the approach. That's how I
4 see it working, substantially like I believe the parties
5 envision it working. But thank you, Mr. Shelson.

6 Anything else? Well, again, I appreciate all that
7 you-all are doing and just ask that you continue to do so.
8 And thank you for making yourselves available for this call.

9 This concludes all that the Court has before it. The
10 Court is adjourned.

11 *****

COURT REPORTER'S CERTIFICATE

I, Candice S. Crane, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically recorded by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 9th day of May, 2022.

/s/ Candice S. Crane, RPR CCR

Candice S. Crane, RPR, CCR #1781
Official Court Reporter
United States District Court
Candice_Crane@mssd.uscourts.gov