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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA Plaintiff, vs. CITY OF SEATTLE Defendant.	CASE NO. C12-1282JLR **MEMORANDUM REGARDING INSTRUCTIONAL SYSTEM DESIGN MODEL FOR SEARCH AND SEIZURE AND BIAS-FREE POLICING TRAINING**

In compliance with the Second-Year Monitoring Plan, the Seattle Police Department ("SPD") prepared and submitted its Search and Seizure & Bias-Free Policing Instructional System Design Model (the "ISDM") to the Monitor and the Parties, attached hereto as Exhibit A. The training plan outlines an eight-hour training program for officers, supervisors, and command staff, consisting of four hours of interactive in-class instruction on stops and detentions and another four hours of instruction on bias-free policing. The training plan results from substantial work by SPD's Education and Training Section; substantial research on training approaches used by other law enforcement agencies and among other professions with respect to issues of bias

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and procedural justice; and sustained collaboration among the Department, Parties, Monitoring Team, Community Police Commission ("CPC"), and other community stakeholders.

After carefully evaluating the proposed training, the Monitor has concluded that it constitutes a critical step in providing officers with ongoing, in-depth training on central areas of the Consent Decree. *See* Dkt. 3-1 at 43–48. The Monitor recommends approval of the proposed training on the basis of the Parties' understanding that in 2015 the Department will (a) provide separate, additional in-service training on stop and detention issues to satisfy its annual requirements under paragraph 142 of the Consent Decree, and (b) provide separate, additional, and in-depth classroom training on bias-free policing, including those topics introduced in 2014's four-hour training.

I. MEMORANDUM

A. The Nature and Form of the 2014 Voluntary Contacts and *Terry* Stops and Bias-Free Policing Training

As it did for use of force, the Second-Year Monitoring Plan called for two "phases" of training on stops and detentions and bias-free policing in 2014. The first phase, which served as "interim" training, consisted of an introductory video message from SPD Chief Kathleen O'Toole, relevant Reader Board content, multiple e-learning modules training officers on the most critical areas of the new policies, and the preparation of a comprehensive roll call training initiative by which officers will receive ongoing trainings during pre-shift roll calls at precincts. *See id.* at 9; *see generally* Ex. A at 2–14. As of August 1, all patrol officers, supervisors, and command staff completed the Phase I "interim" training.

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Ex. A constitutes the training plan for Phase II, or "comprehensive" training, on stops and detentions and bias-free policing. The training plan conforms to the ISDM approach that the Department used to construct its comprehensive use of force training initiative currently underway. *See* Dkt. 144-1; Dkt 154 at 24–26 (discussing the origins and advantages of the ISDM approach). The 2014 Voluntary Contacts and *Terry* Stops and Bias-Free Policing Training ISDM calls for all patrol officers, supervisors, and command staff to complete, by December 31, 2014, one day of in-class, interactive, classroom instruction consisting of a four-hour instructional block devoted to stops and detentions and another four-hour block devoted to bias-free policing. Ex. A at 27–28, 74–75.

B. Voluntary Contacts and *Terry* Stops Training

The four hours of Voluntary Contacts and *Terry* Stops training "is designed to implement or operationalize the concepts established in the Voluntary Contacts and Terry Stops policy issued in early 2014 for all officers. Ex. A at 3. The Court approved those consensus policies on Voluntary Contacts & *Terry* Stops, Seattle Police Manual 6.220, on January 17, 2014, and the new policy went into effect on January 30, 2014. *See* Dkt. No. 118. As noted above, all officers have already completed a Phase I, "interim" training on the new policies. In addition to providing instruction on the new policies, the ISDM also addresses lessons learned and critical operational insights derived from the Education and Training Section's ongoing participation on the Force Review Board. *See* Ex. A at 3 ("The involvement of personnel from the Education and Training Section in the Use of Force Review Board has highlighted the need for a more complete and robust training program in the area of Search and Seizure."). Ongoing training, including e-learning modules and roll call trainings, will supplement the in-class training. *See id.* at 10.

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The first section of the training addresses voluntary contacts. A voluntary contact is a "consensual" contact in which "a reasonable person would feel free to leave" or "to refuse to answer the officer's questions . . . or respond to his/her requests." Ex. A at 36. The training exercises emphasize that an officer's conduct, communications, and even non-verbal communication can transform a voluntary contact to a seizure. *Id.* at 37. Importantly, it also advises officers that they "should not avoid contacts just because there is no reasonable suspicion to support a *Terry* stop." *Id.* at 42. Officers must remain mindful of how a consensual interaction can be transformed, for any of a number of reasons, into a *Terry* stop for which officers would require "reasonable suspicion that a crime has occurred, is occurring or is about to occur." *Id.* at 45. The training emphasizes that *Terry* stops are seizures that are "[b]rief and minimally intrusive." *Id.*

The training also provides instruction on "frisks" and consent searches. *Id.* at 54–57. Officers will be reminded that the law permits an officer who has made a *Terry* stop to frisk the subject only if the officer "reasonably suspect[s] the subject is armed and presently dangerous"—and limits the scope of the frisk to weapons and the subject's outer clothing. *Id.* at 55. Another exercise reviews concepts related to the *Miranda* warnings that must be "delivered prior to a custodial interview." *Id.* at 58.

Officers will then review the key concepts of "reasonable suspicion" and "probable cause." This final section focuses on important issues relating to the "level of seizure" that officers can justify under various factual circumstances. *Id.* at 63.

The Monitor and Department of Justice carefully reviewed several iterations of the Voluntary Contacts and *Terry* Stop training. SPD's Education and Training Section ably

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addressed the comments and suggestions of the Parties and Monitoring Team. Important input from the CPC was also incorporated. Overall, the proposed training satisfies, for 2014, the Consent Decree's requirement that SPD "provide all SPD patrol officers with an in-service training on an annual basis" addressing issues related to contacts, non-custodial interviews, and *Terry* stops. Dkt. 3-1 ¶ 142; *see id.* ¶ 143. The Monitor looks forward to continuing conversations with SPD about providing training on stops and detentions in 2015 that provides continued guidance on the nuanced considerations relating to "the legal distinction between" types of stops, the "distinction between various police contacts according to the scope and level of police intrusion," and the "facts, circumstances and best practices that should be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention." *Id.* ¶ 142; *see, e.g.*, Katherine M. Swift, "Drawing a Line between *Terry* and *Miranda*: The Degree and Duration of Restraint," 73 U. Chi. L. Rev. 1075, 1075 (2006) ("Courts have not settled on a workable rule for determining custody in *Terry* stop cases.").

C. Bias-Free Policing Training

The Court also approved SPD's new policy on Bias-Free Policing on January 17, 2014. *See* Dkt. 118. The purpose of the policy is to ensure that the Department "provide[s] equitable police services," "build[]s mutual trust and respect with Seattle's diverse groups and communities," and, in so doing, "increase[s] the Department's effectiveness as a law enforcement agency." *Id.* at 21. It prohibits officers from "mak[ing] decisions or tak[ing] actions that are influenced by bias, prejudice, . . . discriminatory intent," or "discernible personal characteristics" that are not "part of a specific suspect description based on trustworthy and relevant information . . . . " *Id.* at 22, 23. It calls for documentation of, and supervisory response

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to the scene of, complaints of bias. *Id.* at 24–25. It also "requires periodic analysis of data which will assist in identification of SPD practices . . . that may have a disparate impact on particular protected classes relative to the general population." *Id.* at 27.

The Bias-Free Policing portion of the ISDM incorporates material and approaches from numerous sources, including but not limited to:

- "Fair & Impartial Policing," a training program developed by law enforcement leaders, criminologists, social scientists, and community representatives in partnership with the Department of Justice's Community Oriented Policing Services ("COPS") Office;
- Training materials by the Implicit Bias Task Force of the American Bar Association's Section of Litigation;
- The National Center for State Courts' ("NCSC") "Helping Courts Address Implicit Bias" training materials for state-court judges and personnel;
- E-learning training materials on unconscious bias by the Association of American Medical Colleges;
- Washington State Criminal Justice Training Commission's L.E.E.D. Justice Based Policing Essentials training initiative;
- Training materials from the Seattle Office for Civil Rights ("SOCR"); and
- Applied social science and legal research.

The four-hour training course accordingly incorporates critical features and key insights from numerous fields, well-established academic research, and existing law enforcement and professional training programs. The ISDM's Appendix provides some, but not all, of the sources

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that the Education and Training Section consulted and from which it derived course material. *See* Ex. A at 173–406.

The training also incorporates important advice, input, and specific comments from the Community Police Commission ("CPC") and its Training Workgroup. The dynamic collaboration between the Training Section and CPC across multiple iterations of the ISDM has helped to ensure that the training addresses some of the central concerns of Seattle's diverse communities with respect to differential treatment and issues relating to procedural justice.

The Bias-Free Policing training assumes that officers are expressly committed to treating all individuals equally and with respect regardless of race, ethnicity, gender, age, sexual orientation, membership in other protected classes, or possession of other discernible characteristics. *See* Dkt. 116 at 21–22. That is, it presumes that officers maintain an express commitment against discrimination and differential treatment. Accordingly, the Department's 2014 Bias-Free Policing training focuses on how innate mental processes may subconsciously influence decision-making and behavior in a manner that may at times prove less consistent with such an express commitment to equality and fairness than officers, the Department, and the community may desire. It likewise emphasizes skills and strategies that officers can deploy to minimize the effects of undesirable, subconscious mental processes.

The first section of the Bias-Free Policing training focuses on issues related to community perception of law enforcement, procedural justice, and police legitimacy. *See* Ex. A at 83–100. It provides the opportunity for officers to relate their specific encounters with each subjects' sense of fairness and equity—and to relate subjects' views of procedural justice to the community's larger view of SPD. It emphasizes that an individual's assessment of how she was

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treated during an interaction with police is substantially more important to her voluntary acceptance of police decisions than the outcome of the interaction (e.g., whether she was cited, received a warning, was arrested, or the like). Ex. A at 95–96.

During the training, attendees will hear directly from community members about their views of, and relationships with, SPD. First, "[t]he class will be shown a video prepared by the Seattle Police Department . . . asking both community members and police officers the question 'How would you like to be treated when contacted by the police?'" *Id.* at 99. Second, during each training session, "[a] member of the Community Police Commission will make a short presentation" that will "present a vision of what Bias-Free policing looks like to the community." *Id.* at 100. Although the Education and Training Section and CPC will be continuing to work on a structure for this presentation, the Monitoring Team and Parties are enthusiastic about the value of a live, in-class presentation by a CPC member about the opportunities that the Department has to partner with Seattle's diverse communities and to reaffirm its commitment to fair and impartial policing..

In the second section, officers will learn about the concept of bias, mental schemas, and stereotypes. Ex. A at 101–09. They will learn that all human beings "[o]rganize and categorize objects, places, events, activities, and people" and do so "innately to understand, predict, and make sense of the world." Ex. A at 104. Relatedly, they will discuss that "when we expect or assume—often without thinking—that, because a person belongs to a particular group, they must possess the characteristics that we have come to associate with the group," we are applying stereotypes. Ex. A at 106.

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In the third section, officers will learn about implicit bias, which "refers to the attitudes or stereotypes that affect our understanding, actions, and decisions . . . involuntarily and without an individual's awareness or intentional control." Kirwan Institute for the Study of Race and Ethnicity, "State of the Science: Implicit Bias Review 2014," *available at* http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf [hereinafter "Kirwan Institute"], at 16. Everyone possesses implicit biases because:

> [The human] brain . . . learns over time how to distinguish different objects (e.g., an apple and an orange) based on features of the objects that coalesce into patterns. These patterns or schemas help the brain process information efficiently—rather than figuring out what an apple is every time it encounters one, the brain automatically recognizes it and understands that it is red, edible, sweet, and juicy . . . . These patterns also operate at the social level. Over time, the brain learns to sort people into certain groups (e.g., male or female, young or old) based on combinations of characteristics as well. The problem is when the brain automatically associates certain characteristics with specific groups that are not accurate for all individuals in the group . . . .

National Center for State Courts, "Helping Courts Address Implicit Bias: Resources for Education" (2012), *available* at http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx, at 3 (outlining approaches of implicit bias training programs for state court systems in California, Minnesota, and North Dakota); *accord* Implicit Bias Task Force, ABA Section of Litigation, "Toolbox PowerPoint Instruction Manual,," *available at*

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http://www.americanbar.org/content/dam/aba/administrative/litigation/implicit-bias/Facilitator-Instruction-Manual.authcheckdam.pdf, at 30 (noting that "[r]esearch shows we tend to implicitly and immediately classify people" according to external characteristics). Thus, even "individuals who, at the conscious level, reject prejudices and stereotyping" and who 'express beliefs in equality" often hold implicit biases. Ex. A at 112; *see* Justin D. Levinson, Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering 57 Duke L.J. 345, 360 (2007) ("[I]mplicit racial attitudes . . . frequently diverge from explicit racial attitudes"); Kirwan Institute at 17 (observing that "[i]mplicit and explicit biases are generally regarded as related but distinct mental constructs" (emphasis omitted)).

Implicit biases have been noted across numerous professions—including lawyers, judges, physicians, teachers, and social service providers. *See,* e.g., "Christine Jolls and Cass R. Sunstein, "The Law of Implicit Bias," 94 Cal. L. Rev. 969, 975 n.31 (2006) ("The legal literature on implicit bias is by now enormous."); Theodore Eisenberg and Sheri Lynn Johnson, Implicit Racial Attitudes of Death Penalty Lawyers, 53 DePaul L. Rev. 1539, 1553 (2004) (finding implicit bias among defense attorneys); Alexander R. Green, et al, "Implicit Bias among Physicians and its Prediction of Thrombolysis Decisions for Black and White Patients," 22 J. of Gen. Internal Med. 1231, 1237 (2007) ("physicians, like others, may harbor unconscious preferences and stereotypes that influence clinical decisions").

After officers are introduced to the basic concept of implicit bias, the training will focus on a well-established implicit bias, the "race/crime association"—or the "cognitive association between the social category 'Black,'" as well as other racial or ethnic groups, "and criminality" that has been well established within literature in social psychology. Anneta Rattan, et al, "Race

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and the fragility of the Legal Distinction between Juveniles and Adults," 7 PloS ONE 1, 4 (2012); *see* Ex. A at 114–29.

Officers will learn about, and discuss, several research studies that address how the "race-crime" implicit bias is relevant to law enforcement. The purpose is to initiate a thoughtful, fact-based discussion on how implicit biases might directly affect officers. One line of studies addresses the potential impact of the race-crime implicit bias on officers in "shoot/don't shoot" scenarios. *See* Melody Sadler, et al, "The World is Not Black and White: Racial Bias in the Decision to Shoot in a Multi-Ethnic Context," 68 J. Soc. Issues 286 (2012); Joshua Correll, "Across the Thin Blue Line: Officers and Racial Bias in the Decision to Shoot," 92 J. Personality & Soc. Psychol. 1006 (2007). Those studies found that the officers in the study exhibited a small but statistically significant delay in reaction time when confronted with subjects inconsistent with stereotypes—an unarmed black subject or an armed white subject. That is, officers were quicker to react to an armed black subject than an armed white subject. Similarly, officers were quicker to react to Latinos suspects. This delayed reaction time precisely mirrored findings among the general, non-officer population. Although, likely because of the extensive tactical training that officers receive, for subjects of most races, delay in reaction times tended not to affect the "accuracy" of officer decision-making, or ultimately shooting armed subjects and refraining from shooting unarmed subjects. Notably, delayed responses to white subjects were related to decreased decision-making accuracy. The studies illustrate both that law enforcement officers, like members of numerous other professions, may exhibit the effects of implicit bias in real-world settings and that the effects of unrecognized bias may impact officer safety. The ISDM highlights another, similar study that found that "[e]xposure to Black male faces

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facilitated the identification of crime-related objects" while "[e]xposure to White male faces slowed the identification" of such objects—suggesting that unrecognized implicit biases could, in some instances, impede the recognition of situational factors that could compromise officer safety. Ex. A at 118 (summarizing Jennifer Eberhardt, et al, "Seeing Black: Race, Crime, and Visual Processing," 87 J. Personality & Soc. Psychol. 876 (2004)).

After being introduced to the concept of implicit bias and to academic studies surveying such potential bias in the law enforcement context, officers will consider the possible effects of such bias on *Terry* stops, the biases that the community may bring to their interaction with law enforcement, and the existence of many additional potential biases associated with various discernible characteristics. Ex. A at 126-38.

Officers subsequently will explore "tactics, strategies, and procedures" for minimizing the effects of implicit bias. *Id.* at 139. These include:

- Ensuring, "where feasible, more time and space to identify facts and reduce errors" because "more time permits 'controlled responses' and 'reduce[s the] ambiguity' of situations," *id.* at 141;
- "Think[ing] about being able to articulate your reasoning process," *id.* at 144;
- Being mindful that "[e]ducation and training builds awareness" of implicit bias so that officers can more consciously "'override' or minimize implicit bias," *id.* at 144; and
- "When interacting with the community, us[ing] 'LEED,'" or the "Listen and Explain, with Equity and Dignity" interaction and communication framework formulated by the Washington State Criminal Justice Training Commission, *id.* at 146–51.

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Thus, the training emphasizes how officers can use clear tactics, skills, and strategies to prevent, mitigate, or reduce the potential effects of implicit bias in decision-making and in interactions with subjects—all while ensuring officer safety, community well-being, and the achievement of fundamental law enforcement objectives.

Overall, this four-hour Bias-Free Policing training represents an important introduction to the "complicated and critical" "issues of bias present in our society." Dkt. 3-1 at . ¶ 147. A four-hour block cannot fully address the "legal requirements related to equal protection and unlawful discrimination," provide officers with detailed, real-world "strategies . . . to avoid conduct that may lead to biased policing or the perception of biased policing," and provide "precinct-level cultural competency training." *Id.* at ¶ 148. SPD, the Parties, and the Monitor have discussed additional in-depth training in strategic and cross-cultural communication skills, implicit bias, and procedural justice in 2015. Likewise, because patrol officers, supervisors, and command staff will be receiving the same introductory training in 2014, supervisors and command staff have not yet received all of the tailored training required under the Consent Decree. *Id.* at ¶ 149. SPD, the Parties, and the Monitor have commenced discussions about how to structure such training in 2015. The Monitor's approval is contingent on the provision of additional training on bias-free policing, and topics encompassed by paragraphs 145-49 of the Consent Decree to all patrol officers, supervisors, and command staff in 2015.

D. Conclusion

The task of the Monitor was to duly consider if the proposed Search and Seizure & Bias-Free Policing ISDM embodies the requirements of the Consent Decree and provides officers with appropriate instruction on the Department's policies addressing stops, detentions, and bias-

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free policing. The Monitor and the Monitoring Team have determined that the ISDM does so and recommends that the Court approve the ISDM. This recommendation is premised on the Monitor Team's understanding that in 2015 SPD will both (a) provide separate, additional in-service training on stop and detention issues to satisfy its annual requirements under paragraph 142 of the Consent Decree, and (b) provide separate, additional, and in-depth classroom training on bias-free policing, including those topics introduced in 2014's four-hour training.

DATED this 2nd day of September, 2014.

Merrick J. Bobb, Monitor

The Court hereby approves the Search and Seizure & Bias-Free Policing Instructional System Design Model (the "ISDM") filed herewith as Exhibit A.

DONE IN OPEN COURT this 21ST day of September, 2014.

THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of September, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 2nd day of September, 2014.

/s/ Carole Corona
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