

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>MOTION TO APPROVE SEARCH AND</u>
CITY OF CLEVELAND)	<u>SEIZURE TRAINING CURRICULUM</u>
)	
Defendant.)	
)	
)	

Pursuant to Paragraph 173 of the Consent Decree and the Fourth Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted a proposed curriculum for its Search and Seizure Training to the Monitoring Team, consisting of an Introduction, Module #1 – Citizen Contacts, Module #2 – Consent/Residential Searches, and Module #3 – Warrantless Arrests (together, “Proposed Training Curriculum”), attached hereto respectively as Exhibits A through D.

The Monitoring Team has carefully reviewed the Proposed Training Curriculum. The Team has determined that it provides sufficient guidance for CDP officers to understand the Division’s revised Search and Seizure policies through a variety of effective adult learning techniques, particularly through interactive roleplay exercises that allow officers to better

understand legal subjects that can be difficult to learn and put into practice. The Monitoring Team therefore recommends that the Court approve CDP's Search and Seizure Training Curriculum.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING SEARCH AND SEIZURE TRAINING

Paragraph 173 of the Consent Decree requires that "CDP [] provide all officers with initial training . . . on investigatory stops, searches, and arrests, including the requirements of this Agreement." The training must "address the requirements of the Fourth Amendment and related law, CDP policies, and this Agreement, including:

- a. "the difference among the scope and degree of intrusion associated with different types of police contacts; the difference between probable cause, reasonable suspicion, and mere speculation; and the difference between voluntary consent and the mere acquiescence to police authority;
- b. "the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop;
- c. "the level of permissible intrusion when conducting searches, such as 'pat-downs' or 'frisks';
- d. "the permissible nature and scope of searches incident to an arrest;
- e. "procedures for executing searches, including handling, recording, and taking custody of seized property and evidence; and
- f. "the principles of procedural justice and the effect that differing approaches to investigatory stops, searches, and arrests can have on community perceptions of police legitimacy and public safety."

Dkt. 7-1 at ¶ 173.

II. PROCEDURAL HISTORY

The Search and Seizure curriculum has spent a long time in development. The Monitoring Team first reviewed a draft curriculum in March 2018 and provided detailed comments, but also indicated that the Division's focus should be on the development of the Search and Seizure policies, rather than the training to implement them. The policies were filed with the Court and approved on May 16, 2019. Dkt. 261.

The Monitoring Team provided additional technical assistance on an updated draft curriculum on February 28, 2019. The Division provided the next draft on April 9, 2019, followed by numerous iterations through the end of July. During this time, multiple in-depth discussions were held with CDP command staff, members of the Training Section, the Department of Justice, and the Monitoring Team. Additionally, the Cleveland Community Police Commission provided several important substantive suggestions. The Division worked hard to incorporate the recommendations from the different stakeholders.

However, the development process faced some challenges. During the process, the Monitoring Team flagged concerns about the curriculum, including adequate training on the new policies themselves, lack of clear guidance to instructors to ensure clarity and consistency, confusing application of law, and inadequate integration of adult learning standards.

In early July 2019, the Monitoring Team arranged for external technical assistance from a consultant, using the Monitoring Team's budget, to help develop the training and provide significant input on adult learning strategies. The Division reworked the training significantly and provided updated drafts on July 15, 2019. On July 19, 2019, the Monitoring Team provided final technical assistance by way of a deep dive into the training curriculum with CDP's Training Section. Following this discussion, the Monitoring Team signaled greater optimism about the probable success of the training and acknowledged the hard work of the Division, especially the Training Section.

On August 22, 2019, after incorporating a final round of feedback, CDP submitted the current Proposed Training Curriculum to the Monitoring Team and Department of Justice.

III. STANDARD OF REVIEW

The Monitoring Team's role is to "assess and report whether the requirements" of the Consent Decree "have been implemented." Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to "review . . . policies, procedures, practices, training curricula, and programs developed and implemented under" the Decree). The task of the Monitoring Team here is to determine whether the Proposed Training Curriculum complies with the Consent Decree's requirements.

IV. ANALYSIS OF THE SEARCH AND SEIZURE TRAINING

The Division's Search and Seizure Training Curriculum is a six-hour block of training designed to instruct all CDP officers on the revised Search and Seizure policies. The Division's Search and Seizure policies, revised to meet the terms of the Consent Decree, were approved by the Court on May 16, 2019. Dkt. 261. The curriculum is composed of an Introduction and three modules addressing specific CDP protocols around stops, searches, and arrests. The Division began training officers using the current curriculum on July 30, 2019.

The Introduction module defines important terms such as consensual encounters, non-custodial interviews, seizure, search, reasonable suspicion, and probable cause—terms important not only to substantively understand the policies and protocols, but also for officers to follow along throughout the training. Ex. A at 10-11. The curriculum references other important training initiatives within the Division, such as the Community Engagement and Problem-Solving training, to help officers to get a better context of how the new Search and Seizure training fits within CDP's broader training schema.

Module #1 focuses on citizen contacts, including factors that can turn consensual encounters into a seizure or detention and protocols that CDP officers must follow once a seizure occurs. Ex. B at 4. It primarily uses a roleplay exercise in which officers respond to a call for service over the radio. There are detailed debriefing discussion points, highlighting to officers

how certain behavior during the roleplay can turn a non-custodial interview into a detention or arrest. *Id.* at 8-9. This scenario also reinforces the overlap between community policing and search and seizure by providing officers a “path to success” without utilizing any type of seizure.

Module #2 focuses on consent and residential searches, with officers expected to understand “if they are legally justified to enter private property, seize an individual and/or search a residence[.]” Ex. C at 1. It includes specific topics such as “factors that would legally justify encroaching on a property owner[']s curtilage” and “factors that legally permit an investigatory stop and a probable cause arrest[.]” *Id.* at 4. The module uses a roleplay exercise in which two officers are dispatched to investigate a report of a male shooting a firearm into the air in his backyard. Following the curriculum, instructors ask the class about, among other things, the legal basis for the contact; telling the subject the stop is being recorded; the issuance of a Miranda warning; the articulation of facts and circumstances that led to the arrest; and the need for a search warrant to enter the residence to retrieve firearms. *Id.* at 8-10.

Module #3 focuses on warrantless arrests, or when officers are legally justified to “seize an individual and conduct a pat down or search of persons or places[.]” Ex. D at 1. The module focuses on the reasonable suspicion standard; factors that raise an encounter from reasonable suspicion to probable cause; and the difference between a pat down/frisk and a search incident to arrest. *Id.* at 4. In the roleplay exercise, two officers in a patrol car get flagged by a victim of a robbery, and the officers encounter an individual matching the physical description provided by the robbery victim. Following the exercise, instructors ask the class about the existence of reasonable suspicion to stop the suspect; how to write a report for the initial encounter; and the use of any coercion during the course of the encounter. *Id.* at 9-10.

Overall, the training uses a commendable variety of adult learning techniques, including question-and-answer, interactive exercises, large group discussions, and handouts. Members of the Monitoring Team have observed several sessions, each with many iterations of each scenario, and were impressed by the quality of the training. Based on these sessions, CDP instructors have done an impressive job of elevating the curriculum to engaging and effective instruction.

Despite the arduous process of developing the curriculum, the end result demonstrates that CDP instructors have done an excellent job translating the curriculum into an effective and valuable training for the Division. The decision to partner with the City Prosecutors' Office and have a City Attorney present to discuss and analyze complex legal issues in real-time was an excellent choice. Having observed the high quality delivery of the curriculum, the Monitoring Team is satisfied with the final product, with the caveat that the Team will continue to work with the Division to increase the capacity and resources of the Training Section to ensure that CDP can create and deliver trainings with less hands-on involvement from the Monitoring Team in the future. The City and CDP have already promised that substantial resources to the Training Unit will be forthcoming.

V. CONCLUSION

The task of the Monitoring Team is to duly consider whether the City's submitted Proposed Training Curriculum satisfies the terms of the Consent Decree. The Monitoring Team concludes that the Proposed Training Curriculum meets the terms of the Consent Decree. Accordingly, the Monitoring Team approves CDP's Search and Seizure Training Curriculum in its entirety and requests that this Court order it effective immediately.

Respectfully submitted,

/s/ Hassan Aden

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I served the foregoing document entitled Motion to Approve Search and Seizure Training Curriculum via the court's ECF system to all counsel of record.

/s/ Ayesha Bell Hardaway
AYESHA BELL HARDAWAY