

THE HONORABLE JAMES L. ROBERT

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 SUBMITTING
CONSENSUS SEATTLE POLICE
DEPARTMENT POLICIES**

The Monitor hereby submits proposed Seattle Police Department ("SPD") policies on *Terry* stops and bias-free policing. All parties and the Monitor concur that the policies comply with the requirements of the Consent Decree. The policies will guard against the risk of discriminatory policing, as well as stops and searches, without the requisite reasonable suspicion or probable cause. The Parties and the Monitor respectfully request this Court's approval of these policies.

Importantly, the policies call for the collection of data from which assessments can be made as to the existence of discriminatory policing or disparate impact. The data collected will also include the specific reasons in a narrative form as to why a police officer decided to stop or

1 search. The data will be collected in a relational database that will ultimately permit supervisors
2 and managers to compare officer- to- officer performance, shift to shift, and precinct to precinct.
3 The parties and the Monitor have committed to confer and add any additional data points by the
4 Monitor's birthday on February 17, 2014.

5 These policies have been posted on the Monitor's website for review and comment by the
6 public. Additionally, among other individuals and organizations, the Community Police
7 Commission ("CPC")—which received the draft policies in May 2013 but did not provide final
8 comments and suggestions until a few days before Christmas—met with the parties.
9

10 Finally, the Monitor and the Monitoring Team actively evaluated and considered these
11 important policies. The Monitor and Monitoring Team researched and critiqued similar policies
12 in place elsewhere, as well as model policies by leading police organizations and academicians.
13 As we did with the respect to the use of force policies, we reached out to community
14 representatives and civil rights, civil liberties, and grassroots organizations. The Monitor and the
15 Monitoring Team considered at length whether these new policies dealing with stop and frisk
16 and discriminatory policing will increase community trust and public confidence in the police.
17 We determined that they would.
18

19 I. *Terry Stops*

20 Among the highlights of the new policy and the areas in which Consent Decree
21 provisions open new ground are the following:

22 Under the new policy, a Seattle police officer must have a reasonable suspicion that a
23 crime has or is about to occur before stopping a pedestrian or driver. Reasonable suspicion must
24 be documented using specific articulable facts. (Policy 6.220-1.)
25

1 Not every reasonable suspicion of a crime may legitimately lead to a stop. For example,
2 a reasonable suspicion of misdemeanors may not give rise to a stop unless the suspect's conduct
3 itself poses a public safety risk or has the potential to escalate. (Policy 6.220-3.)

4 During a *Terry* Stop, officers will limit the seizure to a reasonable scope. Actions that
5 would indicate to a reasonable person that they are being arrested or indefinitely detained may
6 convert a *Terry* stop into an arrest requiring probable cause or an arrest warrant. Unless justified
7 by the articulable reasons for the original stop, officers must have additional articulable
8 justification for further limiting a person's freedom during a *Terry* stop, such as:
9

- 10 • Taking a subject's identification or driver license away from the immediate vicinity
- 11 • Ordering a motorist to exit a vehicle
- 12 • Putting a pedestrian up against a wall
- 13 • Directing a person to stand or remain standing, or to sit on a patrol car bumper or any
14 other place not of their choosing
- 15 • Directing a person to lie or sit on the ground
- 16 • Applying handcuffs
- 17 • Transporting any distance away from the scene of the initial stop, including for the
18 purpose of witness identification
- 19 • Placing a subject into a police vehicle
- 20 • Pointing a firearm

- Frisking for weapons
- De minimis force

(Policy 6.220-4.)

The policy specifically provides that merely because a *Terry* stop occurs in a high-crime area is not by itself sufficient to justify a frisk. A frisk is not a generalized search of the entire person. The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience. The frisk for weapons is strictly limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby. Generally, the frisk must be limited to a pat-down of outer clothing. Once the officer ascertains that no weapon is present, the officer's limited authority to frisk must stop. (Policy 6.220-8.)

Under Washington state law, traffic violations may not be used as a pretext to investigate unrelated crimes for which the officer lacks reasonable suspicion. Pretext is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause. The Washington State Constitution forbids use of pretext as a justification for a warrantless search or seizure. Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction. (Policy 6.220-9.)

Officers must be able to clearly articulate the objective facts they rely upon in determining reasonable suspicion. Officers must document all *Terry* stops and have a supervisor approve the documentation before they leave at the end of their shift. The data will be collected in an electronic form suitable for analysis. The documentation must contain at least the

following elements:

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- 1 • Original and subsequent objective facts for the stop or detention
- 2 • The reason (including reasonable suspicion or probable cause) and disposition of the
- 3 stop (including whether an arrest resulted; whether a frisk or search was conducted
- 4 and the result of the frisk or search; and whether the subject was moved or
- 5 transported from the location of the initial stop)
- 6 • Demographic information pertaining to the subject, including perceived race,
- 7 perceived age, perceived ethnicity and perceived gender.
- 8

9 As noted above, the Parties and Monitor will continue to confer about the full scope of
10 the data to be collected on *Terry* stops. A more comprehensive list of data to be collected will be
11 completed by February 17, 2014.

12 A supervisor shall approve the documentation of *Terry* stops. Absent extenuating
13 circumstances, by the end of each shift, supervisors will review their officers' reports that
14 document the *Terry* stops made during the shift to determine if they were supported by
15 reasonable suspicion and are consistent with SPD policy, federal, and state law. (Policy 6.220-
16 10, 11.)

17 18 **II. Bias-Free Policing**

19 The Parties negotiated at length, in meetings facilitated by the Monitor and the
20 Monitoring Team, to determine how best to encapsulate in policy the concerns about possible
21 discriminatory or biased policing described in the Department of Justice's Findings Letter and in
22 the Consent Decree. The policies described below define expansively on persons and
23 characteristics which may not be discriminated against.

24
25 Bias-based policing is the different treatment of any person by officers motivated by any
characteristic of protected classes under state, federal, and local laws as well other discernible

1 personal characteristics of an individual. Such “discernible personal characteristics” include, but
2 are not limited to, the following:

- 3 • Age
- 4 • Disability status
- 5 • Economic status
- 6 • Familial status
- 7 • Gender
- 8 • Gender Identity
- 9 • Homelessness
- 10 • Mental illness
- 11 • National origin
- 12 • Political ideology
- 13 • Race, ethnicity, or color
- 14 • Religion
- 15 • Sexual Orientation
- 16 • Status as a veteran

17 (Policy 5.140.)

18 Employees shall not make decisions or take actions that are influenced by bias, prejudice,
19 or discriminatory intent. Law enforcement and investigative decisions must be based upon
20 observable behavior or specific intelligence. Officers may not use discernible personal
21 characteristics in determining reasonable suspicion or probable cause, except as part of a suspect
22 description. Employees shall not express—verbally, in writing, or by other gesture—any
23 prejudice or derogatory comments concerning discernible personal characteristics. Employees
24
25

1 who engage in, ignore, or condone bias-based policing will be subject to discipline. Supervisors
2 and commanders who fail to respond to, document and review allegations of bias-based policing
3 will be subject to discipline. (Policy 5.140-2.)

4 The policies place responsibility and accountability not only on the officer who engages
5 in discriminatory policing but also on supervisors, managers, and executives:

6 Employees who have observed or are aware of others who have engaged in bias-
7 based policing shall specifically report such incidents to a supervisor, providing
8 all information known to them, before the end of the shift during which they make
9 the observation or become aware of the incident. Supervisors, commanders and
10 civilian managers have an individual obligation to ensure the timely and complete
review and documentation of all allegations of violation of this policy that are
referred to them or of which they should reasonably be aware.

11 (Policy 5.140-4.)

12 An officer or other SPD employee who hears a complaint of discriminatory policing must
13 call a supervisor to the scene to review the circumstances and determine the appropriate course
14 of action. Policy 5.140-5 The officer must fully document the encounter and collect identifying
15 information from the complainant. (Policy 5.140-6.)

16 The new SPD policies are distinctive in their approach to disparate impact. These
17 policies are noteworthy for the lack of rigidity or ideological bias:

18 The Seattle Police Department is committed to eliminating policies and practices
19 that have an unwarranted disparate impact on certain protected classes. It is
20 possible that the long term impacts of historical inequality and institutional bias
21 could result in disproportionate enforcement, even in the absence of intentional
22 bias. The Department's policy is to identify ways to protect public safety and
23 public order without engaging in unwarranted or unnecessary disproportionate
enforcement.

24 This policy requires periodic analysis of data which will assist in identification of
SPD practices – including stops, citations and arrests – that may have a disparate
25 impact on particular protected classes relative to the general population.

When disparate impacts are identified, the Department will consult as appropriate
with neighborhood, business and community groups ... to explore equally
effective alternative practices that would result in less disproportionate impact.

1 Alternative enforcement practices may include addressing the targeted behavior in
2 a different way, de-emphasizing the practice in question or other measures.
Initially, disparate impact analysis will focus on race, color, and national origin.

3 (Policy 5.140-9.)

4 **III. Conclusion**

5 The task of the Monitor was to duly consider if the proposed SPD policies on *Terry* stops
6 and bias-free policing policies embody the requirements of the Consent Decree. The Monitor
7 and the Monitoring Team have determined that the proposed SPD *Terry* stops and bias-free
8 policing policies do so. Accordingly, the Monitor respectfully requests that this Court accept
9 these policies and order them effective forth with.
10

11
12 DATED this 31st day of December, 2013.

13 
14

15
16 _____
Merrick J. Bobb, Monitor

17
18 The Court hereby approves the consensus SPD Policies filed herewith as Exhibits A and B and
19 orders them effective forth with.

20
21 DONE IN OPEN COURT this _____ day of _____, 2014.
22
23
24

25 _____
THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on the 31ST day of December, 2013, 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 31ST day of December, 2013.

/s/ Carole Corona
Carole Corona