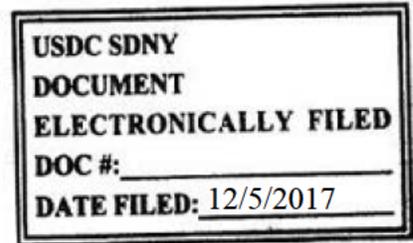


**ARNOLD & PORTER
KAYE SCHOLER**

Peter L. Zimroth
+1 212.836.7316 Direct
Peter.Zimroth@apks.com

November 16, 2017



VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York*, 08-CV-1034 (AT),
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
Recommendation Regarding In-Service Stop and Frisk Training for Sergeants and Lieutenants

Dear Judge Torres,

I am pleased to submit my recommendation regarding the NYPD's in-service training materials for supervisors (sergeants and lieutenants) on Investigative Encounters. I am attaching the following for your review and approval:

1. Investigative Encounters In-Service Training: Instructors Guide, Part IA (publicly filed with redactions)
2. Investigative Encounters In-Service Training: Instructors Guide, Part IB, for Sergeants and Lieutenants
3. Investigative Encounters In-Service Training: PowerPoint Presentation, Part IA (publicly filed with redactions)
4. Investigative Encounters In-Service Training: PowerPoint Presentation, Part IB, for Sergeants and Lieutenants
5. Frequently Asked Questions

The parties have informed me that they do not object to the approval of this recommendation.

The Development of the Training Materials Being Submitted

Patrol officers and supervisors are required to attend training annually to refresh their knowledge about important policing issues, to teach them about new developments in law, policy or police procedure, to impart specialized knowledge about particular areas of concern (e.g., dealing with emotionally disturbed people), to keep skills sharp (e.g., the use of weapons or other uses of force), and to talk about policies and practices that the Department thinks need emphasis. Development of this training began with the concerns raised in *Floyd*, *Davis* and *Ligon* litigations. In the *Floyd* Remedial Opinion, for example, the Court identified certain incorrect statements in training materials that needed to be changed. 959 F. Supp. 2d 668, 679-680 (S.D.N.Y. 2013).

When the Department looked at its in-service training, it became apparent that there needed to be a significant overhaul beyond simply making the changes required by the Court. If the Department was going to spend the considerable resources needed to retrain roughly 22,000 patrol officers and supervisors, it should take a deeper look at not just the legal content of the materials, but whether they were best designed to engage the officers and convey the desired lessons. Thus began the intense process that led to the submission of these materials.

The training staff at the Police Academy and members of the Risk Management Bureau, with the assistance of the monitor team drafted a series of “modules” that could fit together to cover the necessary subjects. Meetings with plaintiffs’ counsel and continued meetings with the monitor team followed, at which the materials were carefully scrutinized. Suggestions were made for changes by the Department, the plaintiffs’ counsel and the monitor team, focusing

particularly on whether the materials would be good tools to convey not just the law of stop, question and frisk and trespass enforcement, but also on the responsibilities of supervisors and how they and the officers should be using the new stop report forms, which are now electronic.

It was also recognized that what lawyers and police officials thought would work as teaching tools might not necessarily be what officers taking the classes might find most useful. So, beginning in January 2017, the NYPD conducted a series of focus groups that would help it sharpen the materials. Then, beginning in June 2017, the Department organized pilot classes of both officers and supervisors at which the new materials were tried out. There have been more than 50 such focus groups and pilot classes. Senior Academy officials and/or Risk Management personnel instructed and/or observed every class, the monitor team was present at many, and plaintiffs' counsel observed quite a few. Much was learned from the officers and supervisors in the class, and from the instructors and observers. Appropriate changes were made. Many attendees stated in feedback forms that the training was among the best they have received.

The monitor believes that it is now time to move from the pilot phase to implementation. The current plan is to begin with supervisors (sergeants and lieutenants).

The Planned Rollout of the Training

More than 22,000 members of the service will go through the training, which will be held at the Tactical Village at Rodman's Neck. To be effective, each class will be limited to 30-35 officers or supervisors. To the extent possible, supervisors will be trained first so the training can cover additional material on supervisory responsibilities. After several thousand sergeants and lieutenants are trained, the Department plans to begin training patrol officers. The NYPD estimates that it will take up to 18 months to put the members of the service through the course.

The training will be taught every weekday and will be taught on both the day (7AM-3PM) and evening (3PM-11PM) tours.

Content and Format of Training

In the monitor's view, these training materials clearly and correctly cover the fundamental principles of stop, question and frisk, trespass enforcement and bias-free policing. Opportunities for discussion about the role of race in investigative encounters are included in several places. The materials clearly describe the difference between the constitutionally permissible use of race based on a specific, reliable suspect description and the constitutionally impermissible targeting of racially defined groups for stops. The materials also effectively convey the changes in NYPD procedures governing investigative encounters and interior patrols, as well as what is expected of officers and supervisors regarding the documentation and supervision of stops and trespass arrests. In sum, they meet the requirements of the court orders.

The day's class will begin with a short written quiz (taken anonymously) about the law of stop, question and frisk. In pilot classes, the quiz served its purpose of showing the class that there are misunderstandings about the law and NYPD procedures. Then an attorney and uniformed members of the service will co-teach an interactive class on the law and procedures regarding investigative encounters. Just before the meal break, there is a SurveyMonkey quiz that officers complete anonymously on their smartphones. In the pilot sessions, the results of the post-lecture quiz indicated that the content of the class was absorbed by most of those in attendance. The lesson plan and PowerPoint presentation for this part of the supervisors' class, labeled Part IA, are attached.

The content of the post-meal session will include discussions of video footage from NYPD body-worn cameras (BWC) and focus on the sergeants' and lieutenants' role as supervisors, particularly with regard to how to supervise stops and how to discuss stop reports with their subordinates. The BWC videos used in the pilot were encounters that resulted from radio runs. The Department is looking for videos of self-initiated stops appropriate for training that can be substituted or added. The lesson plan and PowerPoint presentation for the post-meal part of the class, labeled IB, are attached.

Redactions and Materials Filed Under Seal

I am submitting for your approval the two instructors' guides (Part IA for use before the meal break and Part IB for use after the break) and the two corresponding PowerPoint presentations (also labeled Parts IA and IB). Also submitted for your approval is a "Frequently Asked Questions" document to assist instructors in answering trainees' questions.

As indicated, these materials include an anonymous quiz at the beginning of the class and a SurveyMonkey questionnaire after the legal portion of the training. The parties agree that, for pedagogical reasons, the quiz and SurveyMonkey questionnaire should not be available to members of the service before the training, and that those materials do not need to be part of the materials submitted to the court for approval (although, for the court's information, they will be filed with the court under seal). In addition, there are some parts of the instructors' guide and the PowerPoint presentation that reference the quiz questions and answers. I have deleted the quiz answers from the instructors' guide and the PowerPoint presentation in my ECF filing but am filing un-redacted versions under seal.

The training materials include BWC videos and instructors' notes on those videos. For forensic reasons, plus concerns about the privacy of those captured on the videos, the parties

agree that the training videos should not be part of the public record. Moreover, the Department is continuously looking for additional videos that can be added to or substituted for the ones used in the pilot classes. Neither the parties nor I believe that these training videos require your approval. However, it will be helpful for the court to view the current videos being used to get a broader sense of the training. For this reason, I am submitting under seal for your information the videos referred to in the written material and the instructors' notes about those videos. Finally, I believe that the introductory video by Commissioner O'Neill, referred to on pages five and six of the Instructors' Guide, Part IA, is important and should be public. Because it is not possible to post videos on the court's ECF system, I will post this video on the monitor website at nypdmonitor.org/resourcesreports/training.

Respectfully submitted,

/s/ Peter L. Zimroth

Peter L. Zimroth
Monitor

Enclosures

The Court has reviewed the training materials attached to this letter, and they are hereby APPROVED. In addition, good cause having been shown, the request to file the unredacted training materials and videos under seal is GRANTED.

SO ORDERED.

Dated: December 5, 2017
New York, New York



ANALISA TORRES
United States District Judge