



March 3, 2022

Antoinette Ursitti
Deputy Chief of the Training and Support Group
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

RE: Feedback on the Chicago Police Department’s Constitutional Policing Training Module

Dear Deputy Chief Ursitti:

On February 15, 2022, COPA’s Policy, Research & Analysis Division (PRAD) met with a member of your staff to discuss COPA feedback on the Department’s Constitutional Policing training module. In advance of the meeting, PRAD gathered feedback from COPA staff members assigned to the Investigations section on recurring themes in Fourth Amendment complaints, as well as reviewed recent COPA data related to complaints of improper search/seizure. From these efforts, we identified several areas of concern for the Department to address in its training. We outline these below.

Following the meeting, PRAD received a draft copy of the Department’s lesson plan for the Constitutional Policy training module, and it is apparent that a significant amount of time and effort has already gone into the development of these materials. The following seeks to expound on discussion points from the February 15th meeting and memorialize COPA’s high level feedback to assist the Department in its goal of delivering equitable and constitutional policing to all members of the public.

De-escalation

COPA investigators observed that Fourth Amendment complaints more frequently arise from discourteous or unprofessional behavior—not actions that encroach rights or violate Departmental policy. Their observations reflect an important truism: even lawful police actions can undermine community trust. At the same time however, efforts to improve communication skills may deter such reactions. Indeed, the Department recognizes that “[t]he daily interaction of Department members with citizens presents a unique opportunity to strengthen police-community relations.”¹ Training on investigatory detentions and other Fourth Amendment issues should emphasize that, even where the law permits adverse enforcement actions (*e.g.*, the initiation of a traffic stop, the

¹ General Order G02-01, Item II(C).

application of handcuffs, the search of a vehicle, *etc.*), members should strive to maintain the highest degree of courtesy and transparency when interacting with members of the public—even those who may have committed criminal offenses. To this end, we recommend the following:

1. Departmental training should aim to combat implicit bias and improve member communication skills.

Implicit bias continues to affect members' communication choices. *I.e.*, it is well-established that the nature of police interactions with members of the public differs according to their race, sex, and age. The Department needs to do better in teaching members that these factors can unconsciously influence beliefs and behaviors. In fact, research shows police encounters are damaging to the mental health of many members of discrete and insular minority groups. Training should emphasize the need for members to employ communication strategies that create a sense of courtesy and transparency when interacting under safe conditions with all members of the public. Including body-worn camera footage from successful and unsuccessful encounters between members and the public may be one way the Department can achieve this goal.²

Members' responses to litigious suspects present another area of concern. While many members can speak with impressive fluency about Fourth Amendment principles and other legal concepts, investigators tell us members' efforts to share their knowledge with members of the public—especially during enforcement actions—are often not helpful in attaining compliance. To quote one member of COPA's investigative staff, "Nobody likes the law professor in uniform." Accordingly, Department training should encourage members who encounter litigious suspects to focus on communicating the reasons for their actions, listening, and offering assistance in filing complaints (when it is safe to do so).

2. Departmental training should instruct members to exercise discretionary powers in a manner that facilitates community trust.

COPA investigators tell us members who receive Fourth Amendment allegations of misconduct often make recourse to discretionary actions that aggravate suspects without enhancing investigatory efforts. Even where members enjoy broad discretion to initiate certain actions—such as removing a suspect from his or her vehicle—exercising more restraint may be beneficial in attaining cooperation from suspects and promoting trust in the Department more generally. Training should encourage members to consider suspects' behavior, temperament, and similar factors before exercising the full scope of their discretionary powers.

Scope of Authority

While many members possess expansive knowledge of Fourth Amendment jurisprudence, our cases also expose recurring deficiencies in their grasp and application of critical concepts. As a result, many members take a broader view of their authority than the law permits. Departmental

² *E.g.*, Log #2019-0000691. The didactic value of body-worn camera footage from the investigatory stop in Log #2019-0000691 is particularly strong since it shows members take divergent approaches in communicating with three noncooperative detainees during a traffic stop.

training should highlight concepts members are failing to apply correctly in the field. To this end, we recommend the following:

1. Departmental training should instruct members to recognize that investigatory detentions, searches, and pat-downs are governed by discrete legal standards.

Our investigators tell us that, in many cases, members do not recognize the presence of reasonable articulable suspicion to initiate a search does not also justify the performance of pat-downs or vehicular searches. As Departmental policy states, “[a]n Investigatory Stop and a Protective Pat Down are two distinct actions-both require independent, Reasonable Articulable Suspicion (i.e., to stop a person there must be reasonable suspicion of criminal activity, and to stop a person and perform a Protective Pat Down of the person, there must be reasonable suspicion of criminal activity and reasonable suspicion that the person is armed and dangerous or presents a danger of attack).”³ Given the frequency of unlawful pat-downs, it is clear training must do better in educating members about the standards required to undertake this action.

Also, according to our investigators, some members are confused about the nature of consent in the search-and-seizure context. Consent must be “uncoerced and legally voluntary.”⁴ In applying this standard, courts consider multiple objective factors (*e.g.*, whether interrogation has commenced; the length of the detention; and the application of restraints), as well as subjective factors (*e.g.*, intoxication; intelligence; and age). And, thus, even a suspect’s express verbal statement is, in theory, insufficient to establish “legally voluntary” consent. Training should educate members how courts evaluate consent so that, when in the field, they will be able to recognize whether detained individuals can give consent in the eyes of the law.

2. Departmental training should communicate to members the importance of making their own independent determinations about the lawfulness of their actions.

Our investigators say Fourth Amendment violations often arise when competent members act in reliance on cues from their colleagues instead of their own independent judgment. While COPA recognizes it is important for members to trust and share information with each other, training must do better in teaching members the importance of making their own assessments and, when necessary, stopping their colleagues from undertaking actions that violate the law or Departmental policy. COPA has previously raised concerns about the need for improved bystander intervention by members when making recommendations in the Department’s use of force training.⁵ And we were pleased to learn during our meeting that the Department is exploring Georgetown’s Active Bystandership for Law Enforcement (ABLE) program. We are hopeful the Department will continue to expand opportunities for peer intervention training, especially in the context of investigatory detentions.

³ Special Order S04-13-09, Item II(C)(2).

⁴ *Schneekloth v. Bustamonte* 412 U.S. 218 (1973); *see also People v. Anthony*, 198 Ill. 2d 194 (2001).

⁵ *See* COPA’s 6/25/21 letter to the Chicago Police Department addressing Use of Force In-Service Training Curriculum.

3. Departmental training should identify emerging issues in Fourth Amendment jurisprudence and set forth the Department's position on these issues.

As you are aware, the boundaries of Fourth Amendment jurisprudence are often nebulous and constantly evolving. The Department must be proactive in attempting to identify emerging issues in its training and articulate for members where the City stands on those issues (even if courts have yet to address them). For example, there are open questions about how members should proceed upon detecting the odor of cannabis in the face of new state and local laws. The Department should not expect members to address the many thorny questions arising from this rapidly evolving area of the law alone. This may require the Department to assume some risk of making a legal error in delivering a carefully crafted training program than to pass that risk onto members due to a lack of certainty on issues they are almost certain to encounter in the field.

Reporting Requirements

Finally, COPA cases frequently demonstrate deficiencies in member reporting practices for investigatory detentions. Thorough and accurate reporting is essential to the criminal justice system and to police accountability especially. The Department's training must focus on improving the member reporting practices. To this end, we recommend the following:

1. Departmental training should emphasize the importance of accurate investigatory stop reports.

Training should emphasize the need for accurate memorialization of events in investigatory stop reports. Investigators tell us reports are frequently erroneous or incomplete. In their words, members tend to report facts in "the most favorable light—not the most accurate light."

The Department has been criticized for similar problems in the past. For example, in 2019, the American Civil Liberties Union found Departmental protocols "permit ISRs with substantive . . . deficiencies" in establishing reasonable articulable suspicion."⁶ Yet, these deficiencies persist. Training should treat report writing with the utmost seriousness: reports protect both law enforcement and the public, and the Department must make clear that documentation is a central part of almost any serious police action.

2. Departmental training should advise members to memorialize their actions as part their communications strategy after activating body-worn cameras.

Body-worn camera footage is often an important piece of evidence in exonerating members accused of wrongdoing. The Department should reinforce the idea of body-worn camera footage as a source of protection for members—and the public—by encouraging them to use recordings as an opportunity to document their observations, actions, and reasoning. To this end, the Department should consider training members to memorialize significant observations and actions through contemporaneous verbal declarations as part of their on-scene communications with partners, members of the public, and/or the Office of Emergency Management and Communications. While

⁶ Arlander Keys, *The Third Report Assessing the Chicago Police Department's Compliance with the Investigatory Stop & Protective Pat Down Agreement* 26 (Oct. 2019).

such declarations are not legally required, such recordings will enhance the reliability of member narratives, achieving the twin goals of making accurate reports and creating a sense of transparency and trust with the community.

Conclusion

We appreciate the opportunity to contribute to the Department's development of its new training program on the Fourth Amendment and constitutional policing. We are confident the introduction of this program has the potential both to improve the efficacy of the Department's investigatory practices and build community trust in the City's police force. We look forward to continued collaboration towards our joint goal of ensuring equitable and constitutional policing in the City of Chicago. Please do not hesitate to contact COPA if you wish to discuss these issues further.

Respectfully,



Jay Westensee
Deputy Chief Administrator

cc: Robert Boik, Executive Director, Chicago Police Department
John Benigno, Lieutenant (Commanding Officer), Instructional Design & Quality Control
Section – Training & Support Group, Chicago Police Department
John O'Malley, Deputy Mayor – Public Safety, Office of the Mayor
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