



SAN JOSE POLICE OFFICERS' ASSOCIATION

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June 26, 2018

Honorable Sam Liccardo
Honorable Members of the City Council
City of San Jose
200 East Santa Clara Street
San José, CA 95113

Dear Mayor Liccardo and City Council,

We write to provide further information and context to accompany our "Formal Complaint of Alleged Misconduct of IPA Aaron Zisser" which was hand-delivered to your offices yesterday and was signed by over 500 members of the San Jose Police Officers' Association spanning the ranks of Police Officer to Assistant Chief.

As of yesterday, Mr. Zisser has continued his pattern of making misleading and inaccurate statements and pronouncements to the public related to his initial 2017 Annual Report. These statements made to numerous media outlets contradict his video taped testimony at the May 22, 2018 City Council meeting and reinforce our contention that he lacks the integrity to remain in his current position.

First, it is important to note that our allegation of official misconduct does not rest solely upon the now infamous pages 35 and 36 of Mr. Zisser's initial 2017 Annual report where Mr. Zisser purposefully sought to sensationalize statistics centered on race and policing. Rather, pages 35-36 represent the most egregious examples of Mr. Zisser's cavalier behavior.

With regards to Mr. Zisser's use of data relative to disparities in the treatment of suspects by San Jose Police based on race, on June 25 Mr. Zisser stated the following to the San Jose Mercury News:

Zisser later clarified that the section was meant to demonstrate the usefulness and limitations of the dashboard, not to make a definitive statement about race and force.

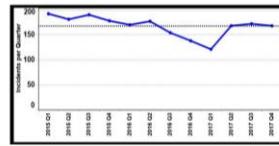
"We were showing what was available on the dashboard," he said. "Could we have done it a bit better? Absolutely."¹

Mr. Zisser's excuse is absolutely untrue. A simple review of the initial (rejected) 2017 Annual Report or Mr. Zisser's presentation to the City Council on May 22, 2018 validates that Mr. Zisser **at no time** presented the "limitations" of the dashboard data based on the small number of incidents. Rather, Mr. Zisser stated that the "limitations" of the dashboard data were primarily the fact that the information is predominantly taken from police officer reports and that it only involves "reportable uses of force." Further, Mr. Zisser stated the limitations also included only "force" contacts vs. all "contacts." We include this slide from Zisser's presentation below:

¹ "San Jose officer union wants police auditor out over maligned report," San Jose Mercury News, Robert Salonga, June 25, 2018; <https://www.mercurynews.com/2018/06/25/san-jose-officer-union-wants-police-auditor-out-over-maligned-report/>

Use of Force: SJPD Data Dashboard

- 1. Dashboard as a useful tool for public
- 2. Police Strategies, LLC, analysis
 - o Overall: 50% lower than other cities studied; but average ratio of force per arrest
 - o Injuries: 50% higher (per use of force); fractures 5 times higher
 - o Weapons: Above average in impact and projectile weapons (as % of uses of force)
- 3. Data limitations
 - o Reportable uses of force
 - o Reliance on officers' narratives
- 4. Dashboard limitations → preliminary
 - o Force only vs. all contacts
 - o Aggregated vs. underlying records
 - o Three separate dashboards: Demographics share dashboard w/ e.g., crime and resistance, but not w/ injury, weapons/tactics



Further, Mr. Zisser fails to disclose to the public, through his media interviews on June 25, that throughout his initial report he highlights “Key Statistics”. These “Key Statistics” are explicitly separated and highlighted from all the other data presented in his initial report. Below is how Mr. Zisser chose to highlight this particular data from page 35-36 regarding disparate treatment based on race:

Key statistic
White suspects were reportedly more than 2.5 times more likely than Latinos and 81% more likely than Blacks to leave a use-of-force incident with “no charges” referred.

ii. Officer-involved shootings

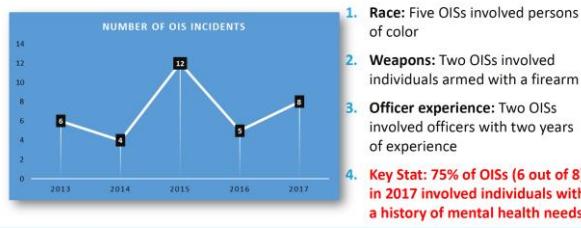
While we respond to the scene, participate in the 90-day review panels, and review other information about officer-involved shootings, the IPA office's insights into such incidents are limited. First, we receive very few citizen complaints regarding officer-involved shootings and therefore audit very few IA

investigations of such incidents. Second, Duty Manual section L 2646 mandates that the Chief of Police provide, on an annual basis, a public summary of the Panel's deliberations and recommendations to the Mayor and City Council.⁶ These annual summaries have not been provided. We urge the Department to produce a summary reflecting panel reviews conducted in 2017 and to ensure that timely reports are made public each year. Chief Garcia has indicated that SJPD will issue these reports. 2017 saw a relatively high number of officer-involved shootings, though 2015 marked the peak in recent years.

As you can see, this was not a simple stating of the alleged “facts” or a demonstration of the limitations of the dashboard. Mr. Zisser’s key statistic is meant to draw the reader’s attention to the percentages highlighted. We do not know who Mr. Zisser thinks he is kidding, but the intent behind the data is clear. Nowhere in highlighting this “key statistic” is information for the reader informing them that the data derives from three, just three cases where a suspect was sent to jail. In fact, to arrive at the statistics presented by Mr. Zisser here, he could not rely on the dashboard, he performed his own calculations to get at the “2.5 times more likely” and “81% more likely”. His intent was to inflame the public and drive a wedge between people of color and police officers. It’s shameful.

The question then becomes, did Mr. Zisser treat all statistical cases throughout his initial report in the same manner? No. As you can see from the presentation slide below, when presenting information on Use of Force: Officer-Involved Shootings and mentally ill suspects, he uses both the raw data and the percentage to provide perspective. Why the difference?

Use of Force: Officer-Involved Shootings



Mr. Zisser is now stating publicly to the media that “I immediately committed to making the changes and have done so... worked closely with the Chief and his office to understand the concerns, so our changes were responsive.”² As you

² “San Jose police officers want independent auditor removed,” ABC 7 News, David Louie, June 25, 2018; <http://abc7news.com/sjpd-officers-want-independent-police-auditor-removed/3652105/?sf192566804=1>

know, this is the exact opposite of what Mr. Zisser said and did at the May 22, 2018 City Council meeting. In fact, he in essence told you, his boss, to go pound salt.

Mr. Zisser's exact words on May 22, 2018 in rejecting the council's request to correct his admitted misleading report was the following: "I am very disinclined to modify the report" and while chuckling he said "I guarantee you Councilmember there are other inaccuracies in this report" and "We can not be perfect, we can not get it right.". He also stated: " I'm not comfortable taking out all of this data."

Mr. Zisser admits his report was misleading but is uncomfortable taking out the misleading data and replacing it with accurate data and context. Wow. Mr. Zisser's statement that he immediately committed to making changes is untrue, false, misleading, and continues a pattern of avoiding the truth. His defense of his shoddy initial report provides even more proof that he lacks the integrity, openness and objectivity to perform the job the City Council appointed him to.

Setting aside Mr. Zisser's attempt to rewrite history yesterday through a series of media interviews, a troubling practice for someone charged with ensuring police accountability, we direct you to Chief Eddie Garcia's presentation to the City Council rebutting Mr. Zisser's initial annual report. We have never witnessed a Chief of the San Jose Police Department forced to publicly correct the IPA's annual report in so many instances. It is because of Chief Garcia that we now know that Mr. Zisser's "Key Statistic" on racial disparity rested on just 3 incidents. Mr. Zisser hid that from the public.

It is because of Chief Garcia that the Council was able to learn that use of force complaints were down, making up only 5.25% of all use of force cases in 2017 vs. 9.39% in 2016 (That's a decrease of 178.9% in Zisserspeak). Mr. Zisser chose to characterize that same statistic as follows: "Complaints regarding force are down dramatically, though much of this decline may track the overall decline in use of force during the same general period of time."³ As Chief Garcia pointed out, total uses of force remained steady between 2016 (639 total cases) and 2017 (629 total cases). Uses of force went down by 1.56%, obviously not proportional to the 178.9% drop in the percentage of uses of force versus use of force complaints.

In order for police oversight to have legitimacy, it must be deemed fair and unbiased by the public and the police officers. The stakes are too high for us to simply chalk up Mr. Zisser's omissions, mistruths, and exploitations of data as "a rookie mistake." Mr. Zisser sold himself to the public and to the Council based on his extensive resume as a lead attorney with the Department of Justice with extensive experience in overseeing law enforcement related cases germane to the IPA's job.

We simply no longer trust Mr. Zisser's ability to carry out his duties in an impartial manner. We urge you to initiate the investigation we requested, just as would happen to any San Jose police officer accused of misconduct, incompetence, and including misleading information in an official city report.

Sincerely,



Paul Kelly
SJPOA President

Cc: SJPOA Board of Directors
Tom Saggau
Gregg Adam

³ 2017 San Jose Independent Police Auditor's Report, page 5.