

COMMISSION ON POLICE PRACTICES
Wednesday, December 11, 2024
4:30pm-7:30pm

REGULAR BUSINESS MEETING
AGENDA

Balboa Park Santa Fe Room
2144 Pan American W. Road
San Diego, CA 92101

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1610950576>

Meeting ID: 161 095 0576

In-Person Public Comment on an Agenda Item: If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the "Raise Your Hand" button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Gloria Tran)
- II. ROLL CALL (Executive Assistant Alina Conde)
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES
The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. NON-AGENDA PUBLIC COMMENT
(Executive Director Paul Parker)
- V. CHAIR REPORT (Chair Tran)
- VI. EXECUTIVE DIRECTOR REPORT (Executive Director Parker)
- VII. INDEPENDENT CIVILIAN AUDIT FOR SAN DIEGO POLICE DEPARTMENT COMPLAINT INVESTIGATIONS FOR THE COMMISSION ON POLICE PRACTICES 2020-2023 (Chair Tran)
 - A. Introduction (Chief Investigator Olga Golub)
 - B. Presentation (Outside Investigator Jerry Threet) (Virtual)
 - C. Public Comment
 - D. Discussion
- VIII. CLOSED SESSION
 - A. Public comment
 - B. Outside Counsel Duane Bennett – Lead CPP into Closed Session **(Not Open to the Public)**
 - C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be announced and posted on the Commission’s website at www.sandiego.gov/cpp.

- I. San Diego Police Department Feedback on Case Specific Matters (0)
- II. Shooting Review Board Reports (0)
- III. Officer-Involved Shooting (0)
- IV. Discipline Reports (0)
- V. In-Custody Death (0)
- VI. Case Review Group Reports (0)
- VII. Case-Specific Recommendations to the Mayor/Chief (1)
- VIII. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0)
- IX. Legal Opinion(s) Request & Response (0)
- X. Confidential Review of Expired Cases (0)

IX. REPORT FROM CLOSED SESSION (Outside Counsel Duane Bennett)

X. COMMISSIONER COMMENTS (TIME PERMITTING)

XI. ADJOURNMENT

Materials Provided:

- Independent Civilian Audit for San Diego Police Department Complaint Investigations for the Commission on Police Practices 2020-2023
- San Diego CPP Independent Review of San Diego Police Department Complaint Investigations PowerPoint

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissiononpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

Independent Civilian Audit of
San Diego Police Department
Complaint Investigations for the
Commission on Police Practices
2020-2023



October 2024
Law Office of Jerry Threet

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INTRODUCTION

In the summer of 2020, the City of San Diego experienced a series of protests concerning policing and an intense public discussion about policing issues, as was true for much of the nation. Local public attention on policing increased dramatically in the wake of George Floyd's killing by Minneapolis police officers in May of 2020. And the Black Lives Matter protests that swept the nation also occurred at the local level. While the immediate catalyst for such attention was the Floyd killing, local demonstrations also related to San Diego County's own history of incidents involving local law enforcement agencies. One result of that discussion was the placement of Measure B on the 2020 election ballot for consideration by San Diego voters. Measure B was approved by San Diego voters by a margin of 74.6% during one of the highest voter participation elections since the 1950s.

Measure B strengthened both the independence and authority of civilian oversight of the San Diego Police Department (SDPD). The City of San Diego had an established civilian oversight agency and Commission known as the Community Review Board (CRB). However, many community members believed it had not fulfilled its purpose and needed to be reformed to be more effective. Measure B reconstituted the CRB as the Commission on Police Practices (CPP). The newly reconstituted CPP was expanded to 25 members and was given greater authority to accomplish its missions.

Among other things, the CPP serves as an investigatory body of the City, operating independently of the Police Department and Mayor. Commission staff include an Executive Director, appointed by the Council, to serve at the direction and will of the Commission. The Commission has its own legal counsel, independent of the City Attorney. The Commission has the power to subpoena witnesses and documents, enforceable through contempt proceedings under state law. The Commission is required to investigate all deaths occurring while a person is in Department custody, all deaths resulting from interaction with a City police officer, and all City officer-related shootings. The Commission must also receive and review all complaints against City police officers except in specified circumstances. The Commission may also investigate allegations against officers of inappropriate sexual conduct, physical assault, and domestic violence. Equally important, the CPP is empowered to audit SDPD and analyze departmental patterns and practices.

Following the passage of Measure B, it took several years for the City to establish the CPP, pass an implementing ordinance, appoint CPP members, and make it operational. During that interim period, the Commission suffered from vacancies in membership, as well as impacts of COVID restrictions, and was thus unable to keep current with reviews of San Diego Police Department investigations within its purview. A backlog of investigations increased significantly over this time.

Once the new Commission was seated and began work in 2023, it considered how to handle SDPD investigations that had passed the one-year statute of limitations for imposing discipline on an officer for sustained misconduct. Commissioners were reluctant to let these investigations go without any review, but were advised by legal counsel that the time for CPP findings against

individual officers had passed. After much discussion, the CPP decided to hire an independent auditor to review the 153 investigations that had passed that deadline to see what might be learned. The process of contracting with an auditor began in the summer of 2023 and was completed in February 2024.

In consultation with the contracted auditor and mindful of time and resource limitations, the Commission crafted a scope of review that included multiple stages: 1) a general review of all 153 investigations, 2) a deeper audit of a subset of investigations, and 3) potential findings concerning policies and procedures. The intention was to reveal any trends and systemic issues common to these investigations and any policy and procedure lessons that could be gleaned from a review of 153 investigations. With that guidance, the auditor began work in late March of 2024.

This report is the product of that effort. It was prepared by Jerry Threet, an experienced attorney specializing in reviewing police practices and the civilian oversight of law enforcement. Mr. Threet is the retired director and founder of the Sonoma County Independent Office of Law Enforcement Review & Outreach (IOLERO) and served from 2020 until recently as an independent investigator of alleged police misconduct for the Richmond, California Community Police Review Commission. Mr. Threet has consulted with City officials and community members in jurisdictions across the state to review police policies, practices and training, and to advised on setting up an appropriate civilian oversight entity for their police departments. He regularly presents civilian oversight training for the National Association for Civilian Oversight of Law Enforcement. He has presented several trainings on community policing for cadet classes at the Santa Rosa Junior College Public Safety Training Academy.

EXECUTIVE SUMMARY

As discussed below in more detail, this review’s results are generally mixed, with multiple areas of concern and suggestions for improvement. SDPD and its investigators do many things right and are to be commended overall for their commitment to a robust accountability system with strong procedures and policies in many key areas. The Department’s accountability systems nevertheless would benefit from strengthening in several respects. The Department’s administrative investigations of possible employee misconduct or violations of policy should be more timely, complete, and objective, for the benefit of all stakeholders.

General Review Findings

The general review of 153 investigations from 2020-2023¹ found significant racial disparities in the rate of complaint allegations about use of force, racial discrimination, unlawful detentions and searches, and discourtesy. These disparities were even more pronounced when these allegations were made in connection to traffic and pedestrian stops, suggesting that such stops may have a negative impact on relationships between the Department and San Diego communities of color. In addition, this review found that for allegations of racial discrimination and discourtesy, the Department overwhelmingly issued a finding of “unfounded,” meaning that the evidence showed that the alleged conduct did not occur. The general review also found that the Department seldom met its own guidelines for completion of Category 1 (CAT I) and Category II (CAT II) investigations, although it did meet statutory deadlines in all but one complaint for a finding within one year of learning of the allegations.

Deeper Review Summary

The deeper review of 20 investigations identified issues common to those reviews and the more general review of 153 investigations. All 20 of these reviews revealed investigations that were incomplete in some way and less than fully objective. These same issues were present in many but not all of the 153 investigations. The deeper look also suggested that traffic and pedestrian stops were heavily focused on Black and Hispanic community members and reinforced the impression that such stops may negatively impact relations with communities of color. In addition, this review found that the Department’s over-reliance of a finding of “unfounded” for allegations of racial discrimination and discourtesy was inappropriate and not consistent with the evidence in almost every case. For some allegations in this group, the auditor concluded that the evidence supported findings of “sustained” instead of the negative findings made by the Department. Finally, there were cases where conflicts of interest undermined the appearance of objectivity of the investigation.

¹ This review included two investigations from 2019 and one investigation from 2024. The remaining 150 investigations reviewed were from 2020-2023. Therefore, the auditor uses the latter date range in order to more accurately describe the time period reviewed.

Policy Findings Summary

Based on the review of these 153 investigations, the auditor made findings intended to increase the integrity, fairness, objectivity, completeness, and timeliness of the complaint investigation process. In addition, findings were made for policies, practices, and training in the areas of use of force, bias-free policing, traffic and pedestrian stops, detentions and searches, protest policing, and other miscellaneous areas.

INDEPENDENT REVIEW METHODS

This review focused on 153 investigations conducted by SDPD, each involving alleged officer misconduct or policy violation(s), and spanning incidents from 2020 through 2023. Notably, these are investigations that did not undergo CRB/CPP review. Despite being completed and findings being made by SDPD's investigators, the CRB/CPP had no opportunity to provide their insights before the cases were closed and decisions were made. Hence, this audit marks the first and only instance of these investigations being subject to civilian review. This independent review process was conducted in multiple stages.

The City contracted with the auditor as a consultant for the City over the course of several months beginning in the summer of 2023. As the contracting process neared completion, the auditor met with the CPP Cabinet on February 3, 2024, to discuss this project's scope. Following that meeting, the CPP approved a scope of work to guide the audit project. The City signed the consultancy contract on February 12, 2024. The auditor also signed a confidentiality agreement with the City on February 19, 2024. On February 29, 2024, the CPP director issued the auditor an Authorization to Proceed with Review and Auditing Consulting Services.

The next step was providing the auditor access to confidential SDPD records necessary for the review. In early March, the auditor was provided with an official City of San Diego email to access the secure online sources of records related to each investigation. The auditor then accessed Google drives containing the investigative files for the 153 investigations to be reviewed. In addition, he accessed investigative interviews of the subject officers in an investigation through Evidence.com upon request. Because the files in the Google Drives were in "view only" mode, the auditor was restricted to viewing them in the Google Viewer and could not print any of the documents nor copy any text from the documents for use in this report. This approach slowed the auditing process and, thus, the number of investigations that could receive a deeper review.

The auditor began work in earnest in late March 2024. The investigations were reviewed in isolation, meaning the auditor was not able to question SDPD's investigators but instead relied solely on the records provided in the investigative files for each complaint. Evidence such as body-worn camera video was occasionally missing from these files, necessitating follow-up requests to obtain it. Each request resulted in providing the requested records within a few days.

The review itself took place in three stages. The first stage took place in April and involved a review of all 153 investigations to document data in multiple categories, such as demographics of officers and contactees, reasons for initial police contact, types of allegations made, police divisions involved, and issues raised by the investigations. This data was then analyzed to reveal trends or common issues among the investigations. This general analysis required some level of review of all evidence in the file to ensure these investigations' integrity. The auditor documented this information in a spreadsheet to facilitate the compilation of data and analysis of trends.

From this first level of review, the auditor identified investigations with more concerning issues for a deeper review in the next stage of the project. In mid-May, the auditor again met with the

CPP Cabinet to discuss the status of the work and preliminary impressions at that point. In addition, the auditor sought and received additional guidance on focusing the remainder of the deeper review.

Due to resource constraints, not all investigations could receive a deeper level of attention. The auditor focused on 20 investigations for a deeper review, all of which raised serious concerns warranting more analysis. These 20 were selected to be representative of issues that existed in the broader group of investigations, and while they were not the only ones that warranted a deeper analysis, they were what could be reviewed within the resource constraints of the project.

Finally, the auditor began analyzing the resulting data further and writing this report. While the auditor drafted parts of this review incrementally, he turned his full attention to preparing this report throughout June and into August. During each stage of the review, the auditor noted any issues related to existing policies or procedures that might warrant recommendations for change. Additional revisions took place in consultation with the CPP staff and leadership between September and October, 2024.

The auditor offers thanks to the leadership team of the Commission on Police Practices, including Interim Director Darnell Scarborough, newly appointed Executive Director Paul Parker, Chief Investigator Olga Golub, and the following members of the CPP Cabinet: Chair Gloria Tran, Vice Chair Dennis Brown, and Second Vice Chair Douglas Case. Their collaboration and assistance were vital in facilitating this independent review and the resultant report. The author sincerely hopes it proves helpful to the City, SDPD's newly hired Police Chief, the CPP, and the San Diego community.

OVERVIEW OF THE SAN DIEGO POLICE DEPARTMENT

The City of San Diego Police Department was established in 1889 and has existed for 135 years. Over that time, SDPD has become a large, sophisticated organization with over 2,687 budgeted positions and over 1800 sworn officers, covering a geographic area of over 372 square miles inhabited by a diverse community of over 1.38 Million. The Department is organized into 9 area commands, a Traffic Division, and a Police Plaza. The Department provides neighborhood patrols, traffic enforcement, investigation, records management, permits and licensing, laboratory, Multi-Cultural Storefront, and other support services. The Department's proposed 2024-25 annual budget totals over \$658 Million.

The Department has had some form of civilian oversight in place since at least 1988, when voters approved a ballot measure to create the Citizen's Review Board on Police Practices. The form, mission, and authority of this body was twice amended at the ballot in 2016 and 2020.

INTERNAL COMPLAINT INVESTIGATIONS

SDPD's Complaint Investigations System

Every police department must rely on its employee complaint investigations as a critical component of employee and organizational accountability, both internally and to the public. A department may have the best policies and procedures in the nation on paper, but they have little worth unless there is meaningful accountability for employee violations of their provisions. This is especially true concerning the most consequential departmental policies, such as the use of force, bias in policing, violations of constitutional rights, abuse of authority, body-worn camera operation, dishonesty, and the like. A vital measure of a department's effectiveness and community engagement is how well it responds to community complaints alleging officer misconduct. The public has a right to expect that when it makes known a violation of such policies, explicitly designed to protect the public, there will be serious consequences for employees who commit such offenses.

A well-functioning accountability system communicates to the public that a police department takes seriously any complaint that a community member may raise about unsatisfactory behavior by an agency employee. It does this through welcoming complaints, treating complainants with fairness, respect, and courtesy, evaluating the evidence objectively, communicating transparently with the public on the outcomes of complaints, and imposing meaningful discipline for employees who have violated departmental policies or the law. And even where an employee's action may not violate a policy, an investigation nevertheless provides an opportunity for both the Department and its employees to consider how they could improve interactions with community members and improve policies and procedures. Thus, a well-functioning complaint investigation system helps enhance community relationships and the functioning of the Department.

Almost as important, police officers have a right to expect that misconduct allegations will be investigated in a fair, unbiased, and timely manner based solely on the evidence. Other factors extraneous to the investigation, such as relationships or favoritism within a department or external political pressure, should play no role in such a system. Also, employees should expect that consequences for sustained misconduct findings will be applied fairly among employees and that discipline for a violation will be reasonably predictable. Such a system reflects procedural justice principles, leading to greater employee satisfaction, higher employee morale, and greater compliance by employees with departmental policies.

To evaluate SDPD's employee accountability system, the auditor reviewed a group of 153 complaint investigations conducted by the Department from 2020-2023. This population of investigations was no longer available for the CPP to sit and make recommendations on findings for individual officers, as the statute of limitations for imposing any discipline set out under state law had already expired in each of them.

All 153 of these investigations were individually reviewed with an eye toward any trends or systemic issues that might be identified, such as types of complaints, types of police contacts that resulted in complaints, timeliness, completeness, percentages of each type of finding, and

accuracy of classification of complaint type. In every investigation, the auditor reviewed the complaint and all associated narratives. In addition, the Investigation Report created by the SDPD complaint investigator was thoroughly examined for internal consistency, review of all issues raised by the complaint, and thorough review and analysis of the investigative evidence and issues raised by that evidence. In some cases, an initial review of associated video also was undertaken. This initial, broader review only drew conclusions on substantive issues about the investigation, such as bias, conflict of interest, or validity of findings, when those conclusions were obvious.

Following this broader review, the auditor undertook a deeper review of a subgroup of investigations where the initial review revealed more significant concerns. This additional review included a thorough viewing of associated video footage and in many cases also a review of recorded interviews. For this set of 20 investigations, the auditor drew additional conclusions concerning potential bias, completeness, conflict of interest, validity of findings, and the like. In undertaking this review, the auditor also examined the complaint intake and investigation process.

Governing Law and Policy for Complaint Investigations

The SDPD Internal Affairs Unit Operating Manual sets out the Department's official complaint investigation process thoroughly and comprehensively. In addition, all complaint intakes and investigations are governed by California Penal Code Sections 832.5, 832.7, and 832.8, as well as Government Code Sections 3303-3305.5 (the "Peace Officer Bill of Rights"). There also are established "best practices" for administrative complaint intake and investigations for police officers found, for example, in standard Internal Affairs Investigations training approved by the California Commission on Peace Officer Standards and Training, which are relevant to this review.

The IA manual establishes a complaint investigation process that divides complaints into CAT I, CAT II, and "informal" complaints. CAT I complaints are defined in SDPD Policy 1.10 as including all allegations against Department members involving any of the following: arrest, criminal conduct, discrimination, unreasonable force, use of a slur, or an unreasonable search. CAT II complaints are defined to include allegations involving service, courtesy, procedure, conduct or some other category not included in CAT I. The SDPD policy defines an "informal" complaint as one where a complainant is offered the opportunity to resolve the matter without a formal investigation and "voluntarily" opts for that process. Informal complaints result in a memo to file and are not referred to the CPP upon completion. There appears to be no policy or procedure restriction regarding what type of allegations can be processed informally.

When an agency has a category of "informal" complaints, it can mean that such complaints are not subject to a formal investigation with findings, as appears to be the case at SDPD. Yet, Penal Code Section 832.5(a)(1) mandates that every police agency in the state "establish a procedure to investigate complaints by members of the public against [] personnel[.]" The language of this provision does not make an investigation of a complaint optional but rather mandatory. Penal Code Section 832.7(f)(1) further requires that a "department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the

disposition.” Again, this language does not allow a department to choose not to investigate the complaint; otherwise, the Department could opt not to provide a finding to the complainant.

The Complaint Investigation Process in Practice

Complaint Intake

SDPD’s approach to external complaints against employees has many positive aspects. To its credit, SDPD provides multiple opportunities for members of the public to access its complaint process, including in person, by phone, online, and through the CPP. Complainants may also file complaints anonymously. These positive features can make a complainant feel that SDPD values their concerns.

However, the Department could improve other aspects of the intake process. For example, the instructions provided with the form could be revised to encourage community members to express their concerns about the services they receive from an SDPD employee. Currently, the form places a prominent warning on the second page, stating that the complainant could be criminally prosecuted if they “make an allegation against an officer knowing that it is false.” While it is true that Penal Code 148.6 requires this advisory to be on the form, that statutory provision is of questionable constitutionality.² In light of this, and because this provision could discourage complaints from community members who distrust the Department, SDPD should consider eliminating this provision from its complaint form, considerably lessening its prominence, noting its questionable continued legality, and/or emphasizing that complaints are valuable and welcomed by the Department.

² There are two state laws enacted at the behest of police unions related to the part of this statement that warns of possible legal repercussions from filing a complaint. Civil Code § 47.5 was enacted in 1982 to overrule a court decision holding that complaints against the police were absolutely privileged and thus not subject to civil lawsuits: *Imig v. Ferrar*, 70 Cal. App. 3d 48 (2nd Dist. 1977). Stats. 1982, Ch. 1588. Penal Code § 148.6, Stats 1995 Ch. 590 § 1 (AB 1732), was enacted for the express purpose of curbing the increased number of civilian complaints against officers stemming from the Rodney King “incident” in March 1991. See Assembly Committee on Public Safety, Analysis of AB 11732, at 1–2 (Feb. 24, 1995).

Court decisions are conflicting as to whether the California statutes remain good law at all. The California Supreme Court upheld Penal Code § 148.6 against a constitutional attack in the *Stanistreet* decision, but the Ninth Circuit disagreed with *Stanistreet*, and held that “the statute impermissibly regulates speech on the basis of a speaker’s viewpoint.” *Chaker v. Crogan*, 428 F.3d 1215, 1228 (9th Cir. 2005), cert. denied, 547 U.S. 1128 (2006). Cf., *Los Angeles Police Protective League v. City of Los Angeles*, 78 Cal.App.5th 1081 (2022, Second Appellate District), petition review granted, 297 Cal.Rptr.3d 111 (2022) [enjoining LAPD from accepting complaints against police officers without requiring a signed advisory proscribed in Pen. Code Section 148.6, following *Stanistreet*.]

Civil Code § 47.5 was also found unconstitutional because it “impermissibly regulates speech based on the content of the speech.” *Walker v. Kiouisis*, 93 Cal. App. 4th 1432, 1437 (4th Dist. 2001). But a subsequent decision upheld the law as constitutional, based on the *Stanistreet* decision. *Loshonkohl v. Kinder*, 109 Cal. App. 4th 510 (4th Dist. 2003). A federal court found the law to be unconstitutional. *Haddad v. Wall*, 107 F. Supp. 2d 1230 (C.D. Cal. 2000), but that decision was vacated by the Ninth Circuit for lack of jurisdiction. *Haddad v. Wall*, 48 F. App’x 279 (9th Cir. 2002). The bottom line of these decisions is that there is good reason to question the continuing validity of these two laws that have been held unconstitutional by the Ninth Circuit..

Interacting with a community member who is upset over an interaction with an SDPD employee can be challenging for the Department's employees. A complainant can sometimes be upset and accusatory toward SDPD's representative and may not always accurately perceive what happened during an incident. Nevertheless, such interactions have inherent value and provide an opportunity to strengthen relationships between the Department and the community when handled appropriately. Informally addressing a complaint might sometimes be effective and appropriate and clarify misunderstandings efficiently. However, a suggestion by a Department employee that a complaint should be handled informally can easily be perceived as dismissiveness or hostility toward the complainant. Even an apparently "unreasonable" complaint merits some investigation to ensure that there is no more to the situation than initially assumed by an SDPD employee. By doing so, the Department communicates that it takes community concerns seriously. And every legitimate complaint deserves investigation, even if an initial conversation with an intake supervisor mollifies the complainant.

Complaint Investigation

The California Commission for Peace Officer Standards and Training ("POST") identifies several basic tenets of a valid internal affairs investigation process, including 1) neutral questioning designed to elicit all information a witness has observed through personal observation; 2) respectful treatment of all witnesses; 3) collection of all evidence material to the outcome of the investigation; 4) findings that reflect unbiased, fact-based analysis of the evidence, without regard to any allegiance to agency or officer; and 5) investigations conducted by a neutral party with no personal or professional interest in the outcome. The Department's policies and procedures mirror these requirements, although this review has found they are not always honored in practice, as explained below in more detail.

CAT I complaints are handled by investigating sergeants in the SDPD Internal Affairs Unit, with multiple reviews by managing supervisors. They are then reviewed independently by the CPP, which makes recommendations, before they come back to SDPD for final decision. CAT II complaints typically are handled by a sergeant in the Division in which the subject officer is assigned. Some CAT II allegations are investigated by IA when they involve officers from more than one division or where they are complex or high profile. In either case, the investigation is subject to review by SDPD managing supervisors and then referred to the CPP for its review. However, unlike CAT I complaints, CAT II investigations do not wait for CPP recommendations before they are finalized by the Department.

"Informal" complaints result in a memo documenting resolution, rather than an Investigation Report. These memos are not referred for review to the CPP and complainants receive a letter with no findings, an acknowledgement that the complaint was informally resolved, and a statement that no further investigation will take place. As noted above, this process is not sanctioned by statute.

Issues with the Conduct of Investigations

Completeness of Investigations

The issue of completeness of an investigation takes at least two forms. First, whether the investigator obtained and considered all evidence that might materially³ affect the outcome of the investigation. Second, whether the investigation analyzed all issues raised by the evidence, including both those raised by the complainant and those raised by the evidence or circumstances that may not have occurred to the complainant.

An investigator should move quickly to identify any evidence that should be obtained and witnesses that should be interviewed. Evidence must sometimes be preserved quickly to avoid its loss. This is particularly true regarding video or audio evidence that may only be preserved if a need for it is identified and acted upon. Similarly, witness statements will likely have greater clarity and credibility when obtained close to the time of an incident. Reluctant witnesses may need to be convinced of the value and desirability of providing their statement. They may need assurances that there will be no possibility of retaliation for providing evidence implicating an officer in misconduct. The failure to contact and interview a witness to an incident leaves a gap in the investigative evidence and calls into question the validity of the findings. Particularly when the allegations involve officers' subjective perceptions (such as unreasonable force or racial bias), interviews of subject officers are especially necessary for a full investigation, to the extent possible.

All issues a complainant identifies should be investigated and analyzed without exception. Where it is unclear what allegation a complainant is making, every effort to clarify that allegation should be made upfront. Complainants cannot be expected to be familiar with the full range of policies and procedures the Department has in place and thus cannot reasonably identify those provisions when making their allegations. Therefore, the Department's investigators should consider all policies and provisions that alleged facts may implicate in conducting a complete investigation. For similar reasons, complainants may observe facts without realizing they implicate possible policy and procedure violations and, therefore, not emphasize those facts. A complete investigation will nevertheless explore those facts more fully and analyze any potential violations raised by them.

One critical determinant of an effective accountability system is how a department handles evidence of a potential violation that a complaint did not allege. A well-functioning, nimble IA system follows the evidence where it leads. The entire purpose of such investigations is to ensure employees follow policies and training designed to guide their actions and ensure they operate effectively, responsibly, and safely.

Complete investigations ensure that the community understands their concerns are taken seriously and that the Department values their input. Incomplete investigations leave the possibility that potential misconduct is unaddressed and that valid complaints will receive an

³ The concept of materiality in evidence means that the evidence may contribute to proving or disproving a fact that is of consequence to the outcome of the investigation.

incorrect outcome. Such outcomes are not in the interest of the community, the Department, or its employees.

Timeliness of Investigations

A persistent issue in the complaint investigations audited was the timeliness of the investigative outcomes. In some cases, investigations took a very long time to complete, with little obvious explanation in the file. While it is true that state law allows a department up to one year, in most circumstances, to issue potential discipline after learning of alleged misconduct, no department should use that one year as its guideline for timeliness. To its credit, SDPD's operating manual provides that all CAT I investigations should be completed within 90 days, and all CAT II investigations should be finished within 60 days. However, as noted below, it is rare for SDPD administrative investigations to satisfy these guidelines.

For a police officer who is the subject of an IA investigation, the process can be fraught with uncertainty and anxiety. It is unlikely the Department will consider an employee for a promotion or coveted collateral assignment during this process. Depending on the seriousness of an allegation, potential disciplinary consequences could significantly impact employee lives and livelihoods, including loss of pay and termination. For community members concerned enough to file a complaint, every day of delay is one in which they may question whether it was worth filing the complaint.

From a management perspective, unnecessary delays between a complaint and resulting discipline attenuate the constructive value of corrective action. And significant delays in investigative outcomes may preclude a department from imposing any consequence on an employee, undermining the entire accountability system. For everyone involved, timely outcomes are the pathway to limit anxiety, communicate respect, and ensure the system's effective functioning. Therefore, SDPD should prioritize ensuring that it completes every complaint investigation in a timely manner by adhering to internal timelines to complete investigations.

Level of Discipline

While discipline is a crucial issue in the functioning of an effective accountability system, this review was unable to evaluate that factor. The files available to the auditor included only the Investigation Report and investigation evidence but no information about disciplinary recommendations or decisions. To reasonably consider the appropriate level of discipline for an employee, the auditor would need to become familiar with several factors, including the historical practice of the Department in issuing employee discipline and the disciplinary history of subject officers with sustained findings. Nevertheless, this section is offered for general consideration in light of the CPP's authority to recommend discipline in specific cases.

Several factors are relevant to a discussion of appropriate discipline. Employee discipline for violation of policies and training generally should be aimed at correcting deviations from those standards rather than punishing employees, *per se*. Subject to appeal, the Chief holds discretion about what level of discipline is appropriate for such violations, considering a range of factors

like prior violations, contrition, performance evaluations, and other contextual knowledge gleaned from managing the Department. Most departments use a progressive discipline approach, under which discipline generally should start at a lower range for first offenses and escalate for subsequent sustained violations and aggravating factors.

Nevertheless, overly lenient consequences for serious misconduct can create challenging dynamics for any police agency. Overall, disciplinary outcomes communicate to all employees the consequences of their actions, with minor discipline communicating that the agency does not take the violated standard very seriously. For example, if excessive force goes without any consequence, officers receive the message that a department generally condones the use of force without regard to whether it is reasonable. Suppose a department finds against bias allegations without a thorough investigation and analysis. In that case, officers learn that agency leaders are not serious about delivering fair and impartial policing to all community members. Also, where a department imposes minor discipline for a serious offense, an employee could contest the imposition of significant discipline in the future for not being consistent with past practice under a progressive discipline system.

In addition, consistent disciplinary outcomes are essential to employee perceptions of internal procedural justice. If favored employees receive less scrutiny or lesser disciplinary consequences for similar misconduct than less favored employees, this communicates that the system is not fair for everyone. Such outcomes can damage morale and lessen general respect for policy and procedure, to the detriment of employees and the public. Hopefully, future CPP reviews of this issue will be able to examine these types of concerns more concretely, with examples from actual investigations.

GENERAL AUDIT OF SDPD INTERNAL INVESTIGATIONS

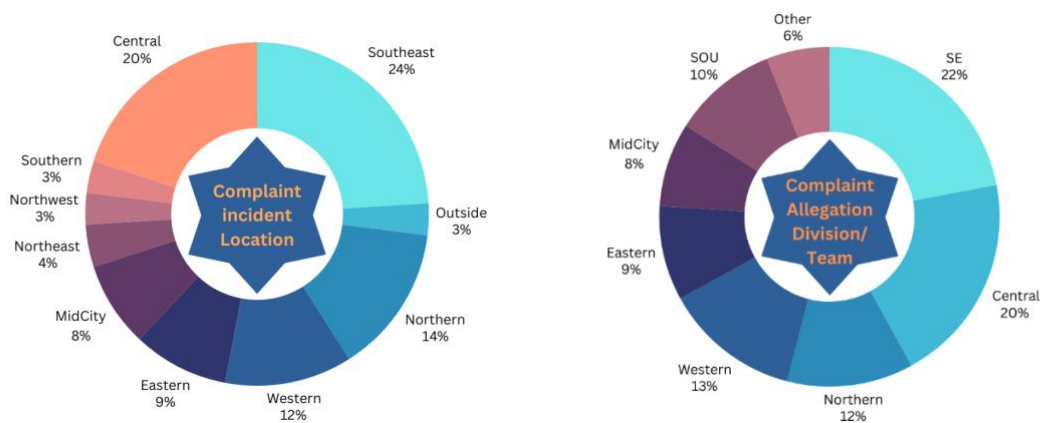
Overview of Audit Conclusions

As mentioned previously, the initial review of 153 investigations allowed the auditor to draw certain conclusions about internal administrative investigations from 2020-2023. These general findings are presented here.

General Complaint & Allegations Data

There were 153 complaints that had expired and were reviewed in this analysis, including 613 total allegations. 95 of the complaints were CAT I investigations and 58 were CAT II investigations. 330 of the allegations involved more serious CAT I subjects (unreasonable force, discrimination, criminal conduct by an officer, unlawful search/seizure, unlawful detention, unlawful arrest). 283 of the allegations involved CAT II subjects that are generally considered less serious (discourtesy, procedural errors, etc.), although 149 of these 283 allegations were a part of a CAT I investigation that included other, more serious allegations. These 613 allegations involved around 243 separate officers, with some officers subject to multiple complaint allegations during the time period in question.

Of the 153 total complaints, 24% came from incidents occurring in the Southeast (SE) Division of the Department, with 20% from Central Division, 14% Northern, 12% Western, 9% Eastern, 8% MidCity, 4% Northeast, 3% Northwest, and 3% Southern. 1% were unknown and 3% involved incidents outside the city.⁴ Of the 613 allegations, the distribution by SDPD Division/Team was as follows: 22% Southeast, 13% Western, 12% Northern, 10% Special Operations Unit (SOU), 9% Eastern, 5% MidCity, and the remainder distributed over more than 20 other divisions/teams.



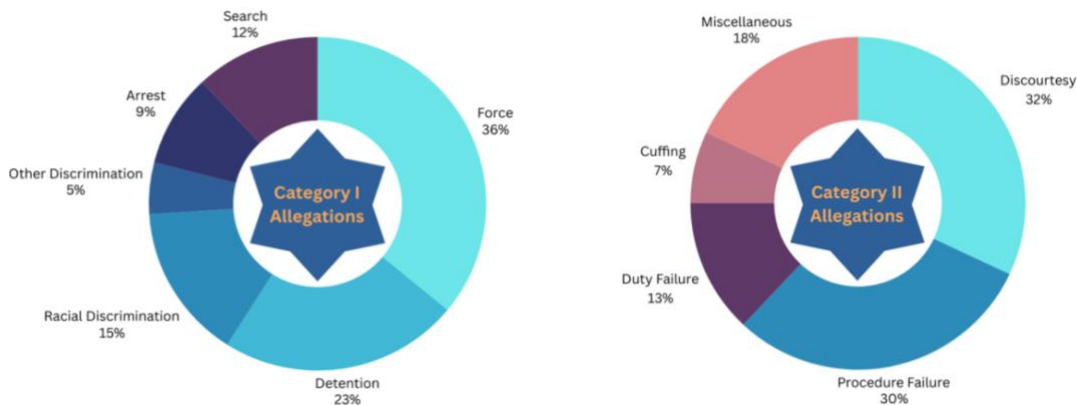
⁴ For purposes of the graphic illustration of locations of complaint incidents, the unknown category was excluded.

Allegations Made by Complainants

This section examines what type of allegations were most frequent among the complaints filed. Because the Department generally classified investigations according to the type of allegation, this section will split the data into two categories, CAT I and CAT II for reporting purposes.⁵

For CAT I allegations, the rates at which they were lodged are listed in descending order of prevalence: unreasonable/excessive force 36%, unlawful detention 23%, racial/ethnic discrimination 15%, unlawful search 12%, unlawful arrest 9%, transgender discrimination 2%, other discrimination 2%.

For CAT II allegations, the prevalence of allegations did not fall into larger categories so easily due to the great variety of allegations made. The exceptions were for discourtesy at 32%, and cuffing too tightly at 7%. There were a variety of specific allegations that could be generally described as failure to correctly perform procedures that amounted to 30% of the CAT II total, and failure to perform a duty that accounted for 13% of the CAT II total. The remainder included: conduct unbecoming 3%, refusal to share officer identification 3%, improper impounding of property 3%, dishonesty 2%, traffic violation 2%, failure to take a complaint against an officer 1%, failure to call a supervisor upon request 1%, failure to use BWC properly 1%, improper conduct 1%, and parking violation 1%.

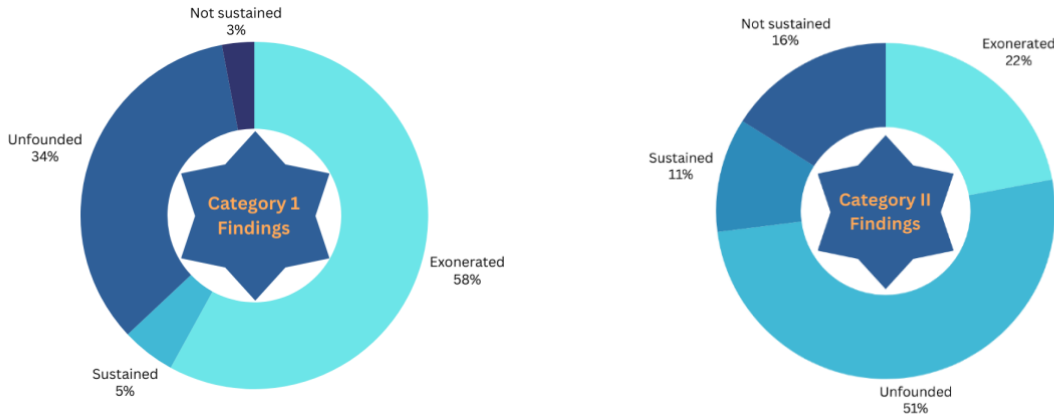


SDPD Investigative Findings

This section examines what findings were made by SDPD for allegations, generally. Looking at the entire universe of allegations for all investigations reviewed, SDPD reached the following findings: exonerated 51%, unfounded 37%, sustained 6%, and not sustained 6%. These percentages differed, however, when considering CAT I investigations and CAT II investigations separately. For CAT I investigations, SDPD reached findings at these rates:

⁵ This split does not exactly mirror the investigations because CAT II type of allegations are sometimes lodged together with more serious CAT I allegations. When that happens, Internal Affairs (IA) investigates the associated CAT II allegations as part of the CAT I investigation. In the reporting in this section, all CAT II allegations are grouped together regardless of whether investigated by IA. In addition, some of the 283 CAT II allegations were not lodged by complainants but instead were based on facts observed by the investigator during their investigation of the complaint. This section looked only at allegations lodged by complainants.

exonerated 58%, unfounded 34%, sustained 5%, and not sustained 3%. For CAT II investigations, the rates were as follows: exonerated 22%, unfounded 51%, sustained 11%, and not sustained 16%. As this data shows, officers were cleared at higher rates by Internal Affairs investigations than by investigations performed by division sergeants. However, division sergeants were significantly more likely to reach a finding of unfounded in their investigation of allegations.



Timeliness

The Department sets an ambitious schedule to complete CAT I and CAT II investigations. Compliance with the 90-day and 60-day deadlines for these investigations serves the interest of both employees and the public. However, for the most part, the Department failed to meet these deadlines in the investigations reviewed here. This analysis will consider both the percentage of investigations and the percentage of allegations investigated that met the deadlines for findings.

27% of these investigations were completed within the deadlines prescribed in the Internal Affairs Operating Manual. Looking at the population of individual allegations investigated, 20% received findings within these deadlines. Considering the categories separately, 23% of CAT I investigations were completed within the 90-day deadline, while 34% of CAT II investigations were completed within the 60-day deadline. However, only 17 % of allegations in CAT I investigations received findings by the deadline, while 32% of allegations in CAT II investigations did.

Notably, there was only one investigation involving eight allegations that was not completed within the one-year deadline provided under state statute for imposing disciplinary consequences on an officer for misconduct. This CAT I investigation involved a traffic stop, and the complainant made allegations of an illegal detention and search, lack of courtesy, and racial discrimination. However, multiple investigations approached that one-year deadline, even considering tolling periods allowed under the statute. Nevertheless, SDPD completed administrative investigations in a timelier manner than many other departments across the state.

Demographic Data

These 153 investigations also provide a window into the demographics of incidents that generated complaints concerning the behavior of San Diego police officers. The reader should be cautious in interpreting this data, as the set of incidents investigated during this period is not necessarily representative of all incidents involving officers of the Department. In fact, one would expect that the population of incidents that generated complaints would exhibit more negative characteristics than those where no complaint was filed. The Department has reported that its officers conducted over 152K stops in 2020, more than 130K in 2021, and more than 96K in 2022.⁶ These 153 incidents, which included at least 613 separate allegations, were ones in which a member of the public was dissatisfied enough to file a formal complaint about the behavior of an officer or officers.

In addition, the context of police community relations must also be considered when interpreting the data. It is a truism that in many cities, including San Diego, communities of color as a group hold less trusting views of police officers than those held by White or White-aligned communities. Given this, one might expect a reluctance by Black or Hispanic community members to file complaints against police officers. Such a reluctance could be due to a fear (whether based on fact or not) that negative consequences might follow or result from a fatalistic expectation that a police officer will not provide satisfactory service to a member of one's community. If these assumptions are accurate (and further study in San Diego would be necessary to reveal if they were), then the numbers of actual complaints by Black and Hispanic individuals would be expected to underestimate the number of their actual unsatisfactory experiences with officers. Likewise, one might expect White community members generally to expect good service from an officer and feel more comfortable filing a complaint when those expectations are unmet.

With that context, the auditor analyzed the actual data.

All Complaints

Looking at the entire population of 153 complaints, the breakdown for racial category of the person contacted by police during incidents complained about was as follows:

- White 30%
- Black 47%
- Hispanic 15%
- Asian 1%
- Unknown/not applicable⁷ 1%

⁶ See <https://voiceofsandiego.org/2023/04/24/police-stops-have-fallen-dramatically-in-the-last-three-years/>

⁷ In some complaints, there was no incident where an officer contacted a community member. One example was a complaint involving an officer's social media posts. In those cases, there is not demographic data for a contactee.

All Allegations

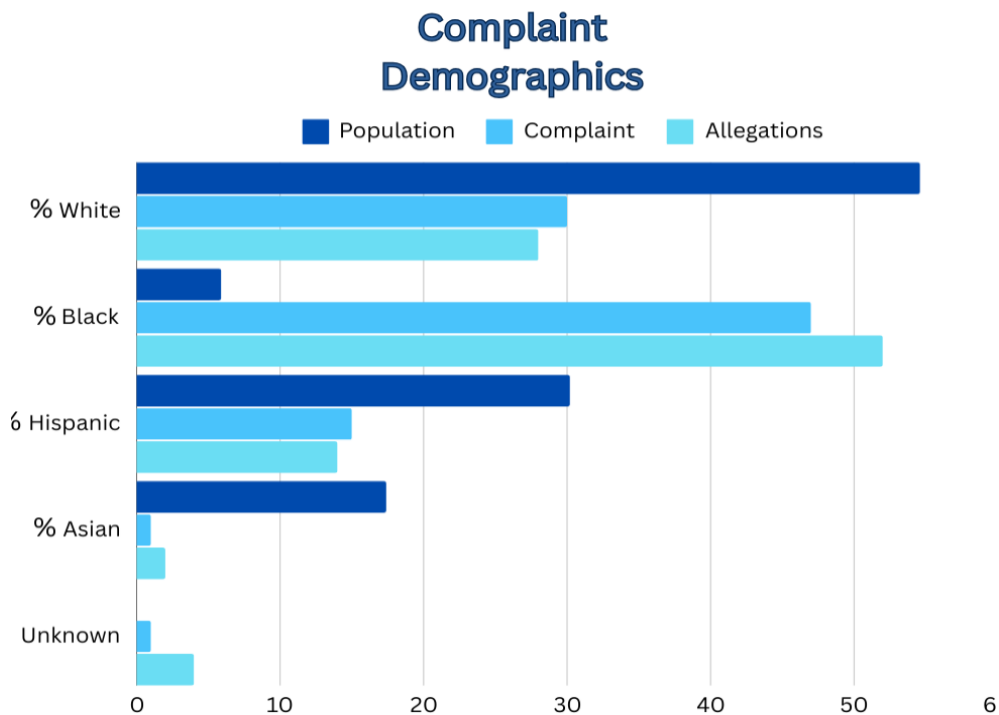
Looking at the entire population of 613 allegations, the breakdown for racial category of the person contacted by police during incidents complained about was as follows:

- White 28%
- Black 52%
- Hispanic 14%
- Asian 2%
- Unknown/not applicable 4%

City of San Diego Population

These percentages contrast to the racial demographic for residents of the City of San Diego from the 2022 census update, which follows:⁸

- White Monoracial Population: 54.6%
- Hispanic Population: 30.2%
- Population Asian Alone: 17.4%
- Multiracial Population: 12.8%
- Black Monoracial Population: 5.9%



⁸ One caution that should be noted is that census data is based on self-reported racial information, while police data depends on the racial category assigned to a person by the officer during the incident. While this data may be verified by reference to police databases in some instances, that is not always guaranteed.

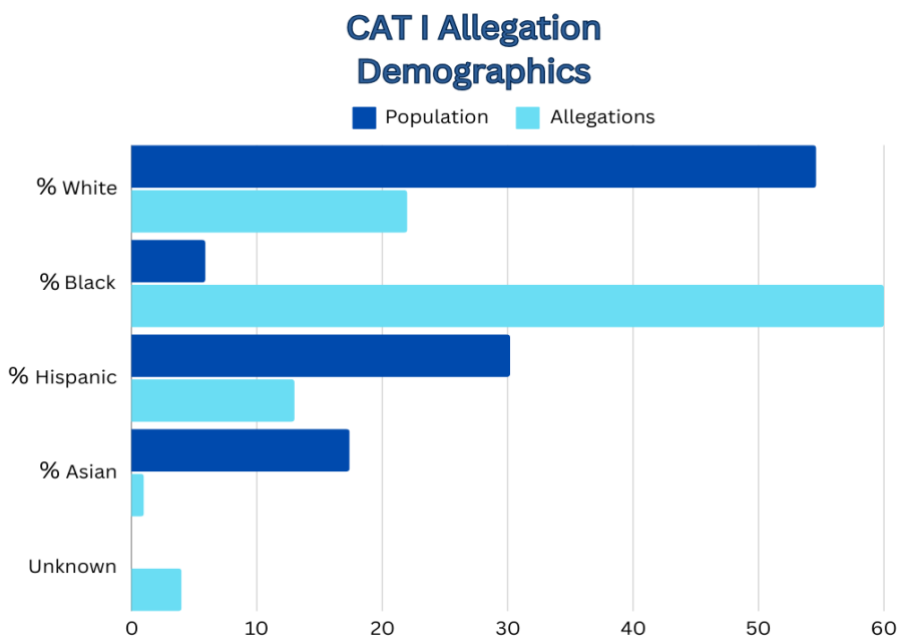
As is evident from this data, complaints concerning interactions between San Diego officers and Black community members are far higher than what might be expected given the small percentage of Black residents of the City. Allegations against officers involving Black community members occurred at rates almost nine times their percentage of the population. In contrast, allegations involving Hispanic community members occurred at less than half of their percentage of the population. Notably, White community members made allegations at rates a little more than half of their percentage of the population. Asian community members made allegations at rates that were a small percentage of their share of the population. One reasonable interpretation of these discrepancies is that Black community members are much less satisfied with police services in the City of San Diego than other demographic groups.

In terms of gender, about 69% of allegations involved officer interactions with male community members, while about 27% involved females and 3% involved trans females. The city's population is about evenly divided between males and females. Just under 1% of the San Diego County adult population identified as transgender or gender non-conforming, although there appears to be no good data at the city level for this population.

CAT I Allegations

Looking at the subgroup of 479 CAT I allegations, the breakdown for racial category of the person contacted by police during the incident complained about was as follows:

- White 22%
- Black 60%
- Hispanic 13%
- Asian 1%
- Unknown 4%



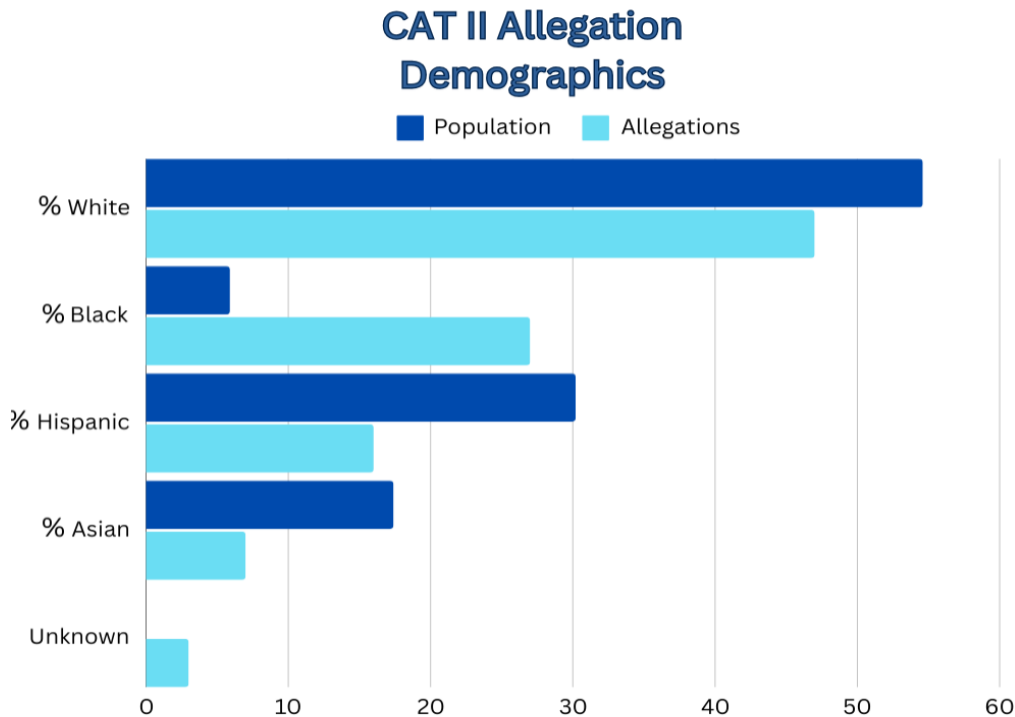
As this data shows, the above-noted racial disparities increased when complaint allegations concerned more serious officer misconduct. Rates of complaints by Black community members relating to interactions with San Diego officers are even higher for these types of allegations, rising to more than 10 times their percentage of the population. However, the percentage of allegations made by all other racial groups dropped for these more serious types of allegations. A reasonable interpretation of this data is that Black community members are much more likely than any other racial group in San Diego to have unsatisfactory experiences with officers involving perceived uses of excessive force, racial discrimination, or illegal detentions, arrests, and/or searches.

In terms of gender, about 71% of CAT I complaint allegations involved officer interactions with male community members, while about 23% involved females and 3% involved trans females. Thus, the percentages skewed a bit more toward male and trans female when it came to these more serious types of allegations.

CAT II Allegations

Looking at the subpopulation of 135 CAT II allegations, the breakdown for racial category of the person contacted by police during the incident complained about was as follows:

- White 47%
- Black 27%
- Hispanic 16%
- Asian 7%
- Unknown 3%

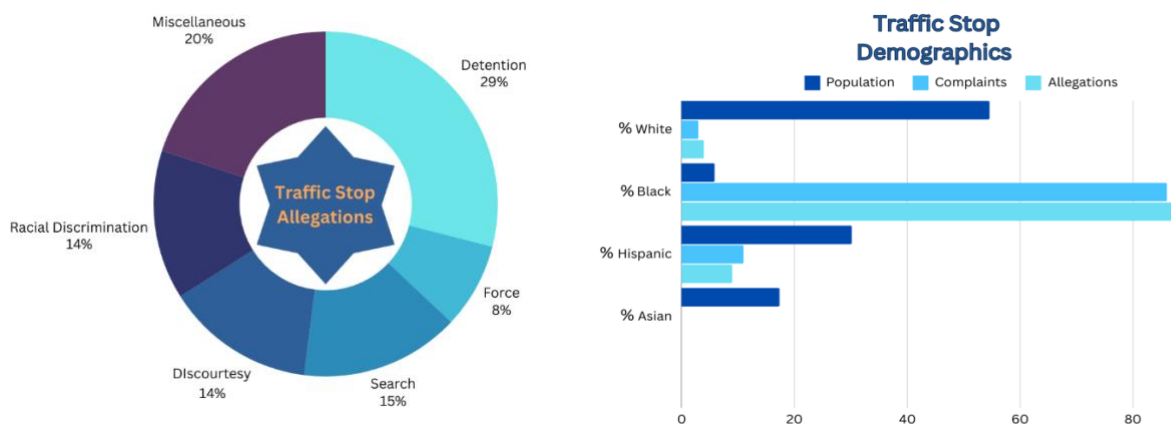


As this data shows, the racial disparities noted above decreased when complaint allegations concerned less serious officer misconduct. While rates of allegations by Black community members concerning these types of interactions with San Diego officers are still higher than their percentage of the population, they are five times higher rather than more than ten times higher. In contrast, the rate of allegations made by all other racial groups increased for these less serious types of allegations. This data again suggests that Black community members are much more likely than any other racial group in San Diego to have unsatisfactory experiences with officers even when less serious types of indignities are involved, such as rudeness or failure to take a report. However, it also suggests that these types of alleged behaviors are more likely to be experienced and raised by those of other races. Another possible interpretation of this data is that Black people are less likely to complain about such police behavior, while people of other races are more likely to make such allegations.

In terms of gender, about 56% of CAT II complaint allegations involved officer interactions with male community members, while about 39% involved females and none involved trans females. Thus, the percentages came closer to matching overall population percentages for gender for these less serious types of allegations.

Traffic & Pedestrian Stops

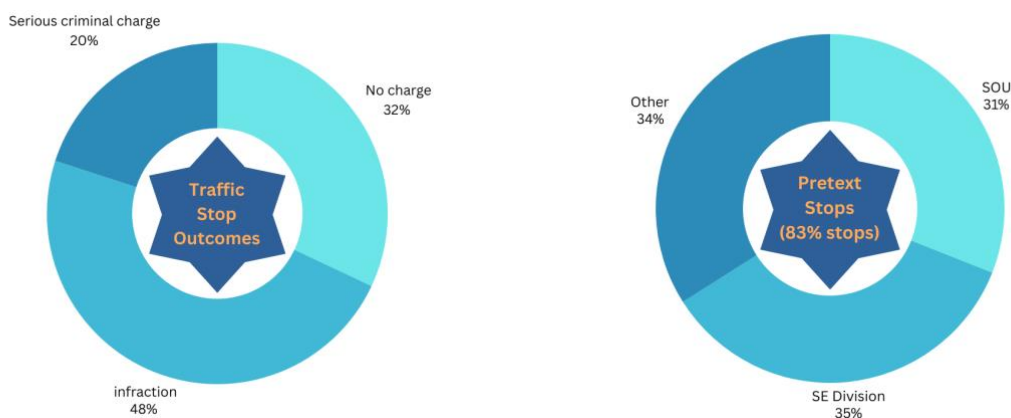
At the request of the CPP, the auditor also has focused on data from a high-level review of complaints about traffic and pedestrian stops. These types of police contacts generated 160 of the 613 allegations reviewed or about 26%. 152 of these 160 allegations, or 90%, were more serious CAT I type allegations. The most common allegation of these complaints was illegal detention, at 29%, followed by unlawful search (15%), racial discrimination (14%), discourtesy (14%), and unreasonable force (8%). 86% of these complaints and 87% of the allegations involved a stop of a Black person, followed by 11% of complaints and 9% of allegations for Hispanic contactees, and 3% complaints and 4% allegations for White contactees. This means that during these particular stops, Black people were stopped at a rate almost 15 times their share of the population of the City.



The most common outcome of such stops was that the person was cited for an infraction or minor misdemeanor (48%), followed by a serious criminal charge (32%), and no violation issued (20%). Breaking down the serious criminal charges further as a percentage of all outcomes, 6% were for illegal firearms, 11% for narcotics, 5% for both firearm and narcotics, and 11% for resisting, delaying, or impeding an officer in their performance of their duties. Separately from the charging decision, officers impounded vehicles in 20% of the stops, including stops for which the officer issued no criminal charge or citation.

A closer review of these complaint allegations and the associated investigative evidence raises several issues for consideration by SDPD and the CPP. Many of these stops appear to be what are known as ‘pretextual stops.’ The California Racial and Identity Profiling Advisory (RIPA) Board describes pretextual stops as occurring “when an officer stops someone for a [. . .] traffic violation or minor infraction with the intention to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause.”⁹ Using this definition, it appears that about 83% of complaint allegations resulting from these stops were from pretextual stops.

About 31% of all these stops were conducted by the Special Operations Unit, or SOU, a specialized team focusing on “proactive enforcement” strategies. As the officers themselves described these strategies during investigations of their decisions, this proactive approach is designed to make as many stops as possible in the area of focus and search vehicles where possible to take illegal guns and other contraband off the streets. Another 35% of the stops occurred in the Southeast (SE) Division of the city and often were conducted by the Crime Suppression Team of that Division. Again, the strategy employed was proactive enforcement saturation in an area of geographic focus. Taken together, that means 2/3 of these stops were a part of a focused, proactive enforcement strategy.



As the RIPA Board has noted, pretextual stops often involve a significant degree of officer discretion in deciding whether to conduct a stop and whether there is “reasonable suspicion” to conduct a pat down of a person or vehicle for weapons. Such discretion may lead to significant racial disparities in how such stops are initiated and unfold. Indeed, there are substantial racial

⁹ 2023 RIPA Board Annual Report, p. 11.

disparities in this set of data. However, unlike the results of the RIPA analyses, which look at all stops rather than just those that generate complaints and found many resulted in no criminal charge or citation, many of these stops resulted in some criminal charge or citation.

Although pretext stops and attendant detentions and searches are often constitutional, many community members may not have a nuanced understanding of what is allowed under the Fourth Amendment in this context. Many mistakenly believe such stops and searches require either consent or probable cause and a warrant. Thus, such stops can engender a perception that pretext stops, detentions, and searches are illegal even when allowed under Fourth Amendment case law. A community's belief that stops are arbitrary, unlawful, or discriminatory erodes community perceptions of procedural justice by a Department. This perception can lead to less cooperation by those stopped and searched, which can cause officers to escalate the situation further to gain compliance.

Although it was not possible here to do the type of detailed factual analysis necessary to determine compliance with the Fourth Amendment in all of the complaint investigations reviewed, the auditor agreed with the finding of "exonerated" in most of the complaint allegations involving illegal detention, arrest or search during these stops. However, where this group of investigations mostly found allegations of racial discrimination "unfounded," the auditor did not agree with the appropriateness of that finding in most of these incidents.¹⁰ Of the 23 racial discrimination allegations in these stops, the auditor found 17 "not sustained," 2 "sustained," and 4 "exonerated." In comparison, SDPD found 19 "unfounded," and 4 "not sustained."

An overreliance on a finding of "unfounded" for allegations of racial discrimination in policing tends to undermine public trust in a police department, particularly among Black and Hispanic communities that have experienced a history of racially motivated over-policing. With the exception of incidents where it is clear from the evidence that the alleged officer behavior did not occur, SDPD would be wise to reach a finding of "unfounded" only very cautiously for allegations of racial discrimination by an officer.

For example, consider a hypothetical complaint where a Black community member experiences a White officer speaking sharply to them and feels disrespected during a targeted, "proactive" enforcement situation in a predominately Black neighborhood. It can be challenging to discern whether an officer's manner of speaking to the community member was influenced by conscious or unconscious bias in such a situation. Yet, a finding of "unfounded" may be received by community members as completely discounting their experience in favor of the statements of the

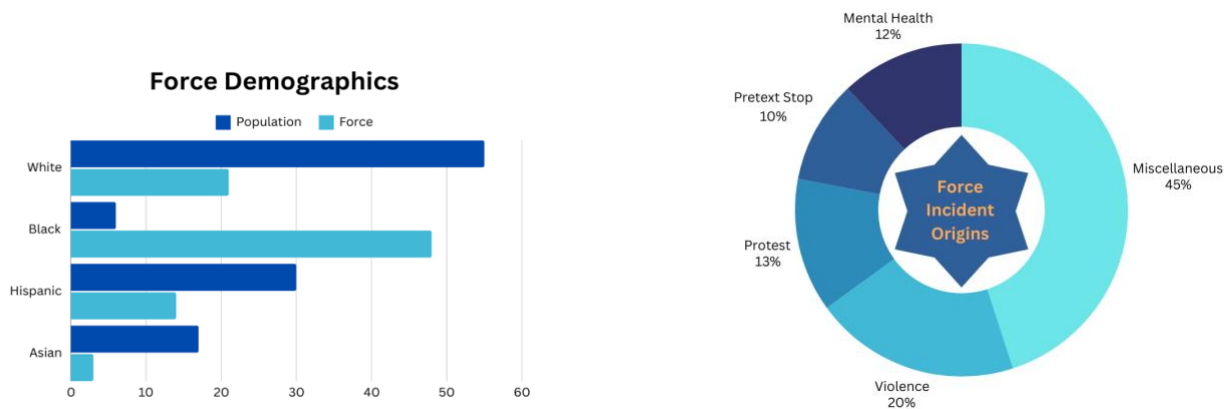
¹⁰ The finding of "unfounded" is typically defined to mean that the evidence showed that the alleged conduct did not occur. In many if not most allegations of discrimination, there is little dispute about whether the alleged facts occurred and considerable dispute over the interpretation of those facts. In an administrative investigation of discrimination, a key factor often is whether an officer's subjective motivation for an enforcement action included race, either unconsciously or consciously. The contextual evidence can often raise a question of whether an officer was motivated by race, but seldom can definitively prove that issue. Where contextual evidence is too conflicted to prove whether race played a role, the best finding in such a circumstance is "not sustained," rather than "unfounded."

White officer. Such a dynamic makes the Department’s efforts to build community trust more challenging.

Excessive Force Complaint Investigations

The auditor also reviewed and analyzed CAT I complaint investigations alleging unreasonable or excessive force during an incident. This type of police contact generated 122 of the 613 complaint allegations examined or about 20%. About 48% of these complaint allegations involved force against a Black person, followed by 21% White, 14% Hispanic, and 3% Asian.¹¹ This means that during these particular incidents, Black people were subject to force at a rate over eight times their share of the population of the City, while White people were subject to force at rates just over 38% of their share of the population. Officers used force against Hispanics at rates of about 46% of their share of the population, with force against Asians at rates of about 14% of their share of the population.

Of the 122 excessive force allegations, the great majority (>20%) of the incidents were initiated due to a call for service that involved alleged violence or the threat of violence. However, a significant minority of the incidents began with a First Amendment protest (13%) or pretext stops (10%), and most of the force used in pretext stops was against Black individuals. Mental health-related calls accounted for about 12% of the complaint allegations concerning excessive force.

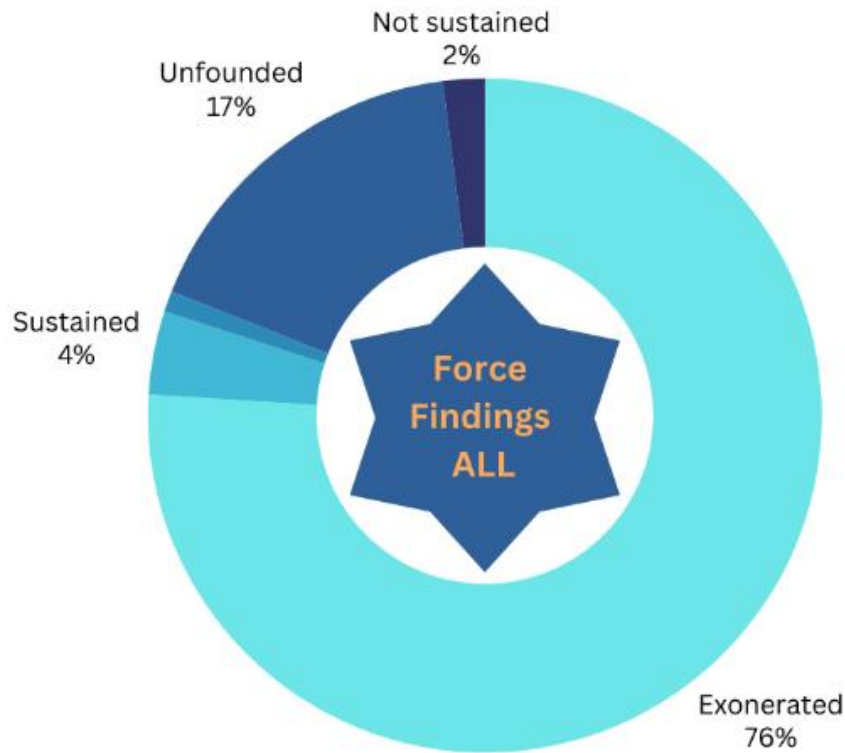


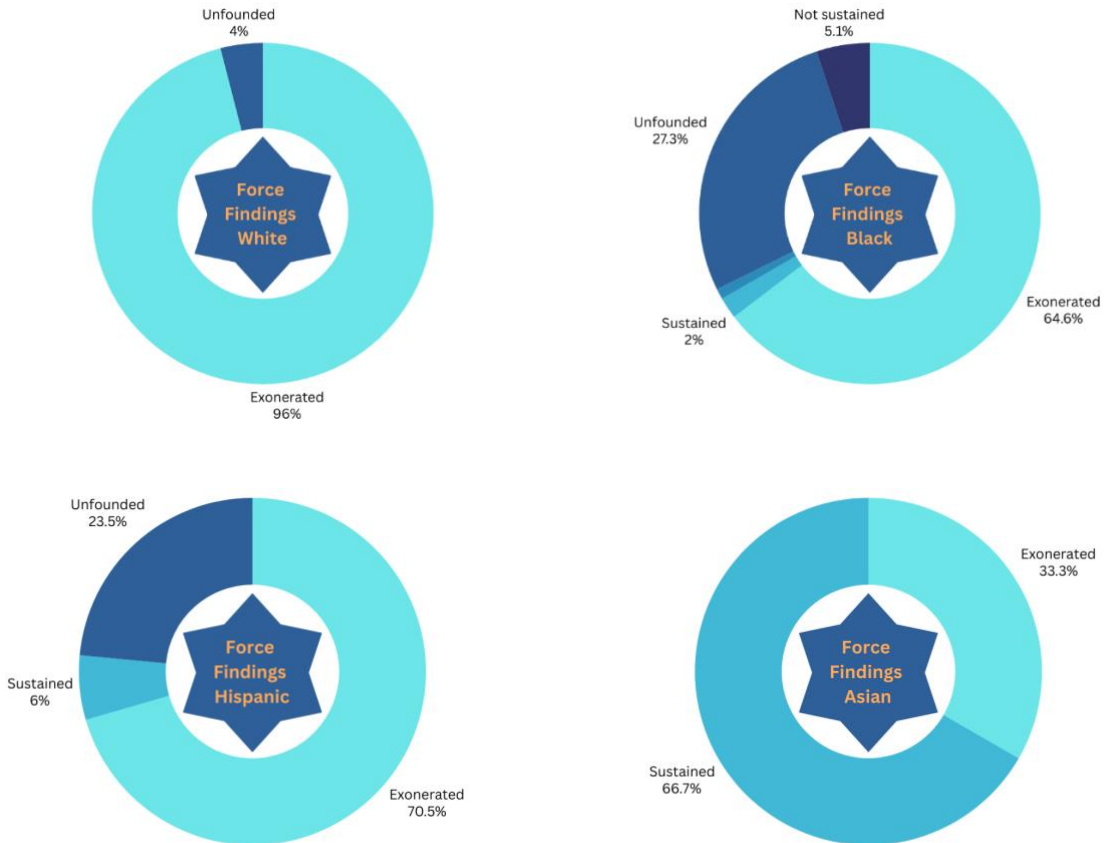
With regard to SDPD findings on complaints of excessive force, 76% were found “exonerated,” 17% were “unfounded,” 4% were “sustained,” 2% were “not sustained,” and one complaint allegation was not analyzed, and thus there was no finding issued by the investigation. Because a force review involves a highly fact-intensive analysis, the auditor could not evaluate whether the IA findings were correct for every allegation of excessive force in this batch of complaint

¹¹ These numbers include 16 complaint allegations of excessive force during a single protest where the race of the people on whom force was used was not reported in the Complaint Investigation Report. This left the race unknown for 14% of the people on whom force was used in these force allegations. If those 16 are removed from the calculations, then the relevant percentages reported above would remain unchanged for Asian and Hispanic, but the percentages for Black people would increase to 56% and the percentages for White people would decrease to 25%.

investigations. However, as can be seen in the section on a deeper review of selected investigations, there were several instances where the auditor concluded that findings of “exonerated” or “unfounded” were not justified by the facts, and some allegations where the allegation of unreasonable force should have been but was not sustained.

Breaking the data down further, it is evident that there are differences in finding rates when considering the race of the person on whom force was used. In these complaints, there were 26 allegations of excessive force used on a White person, with 96% of those resulting in a finding of exonerated and the remainder resulting in a finding of unfounded. There were 59 allegations of excessive force against Black individuals, with 64% resulting in a finding of exonerated, 27% unfounded, 5% not sustained, 2% sustained, and one allegation not analyzed. There were 17 allegations of excessive force against Hispanic individuals, with 70.5% resulting in a finding of exonerated, 23.5% resulting in a finding of unfounded, and 6% sustained. Of the three allegations of excessive force against Asians, 2/3 were sustained, and 1/3 were exonerated.





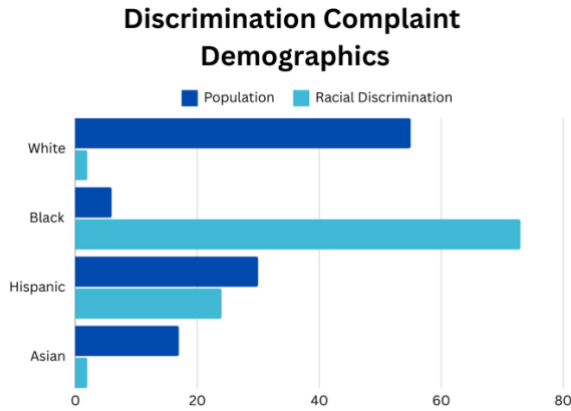
In terms of gender, 71% of the complaint allegations involved force against a male, with 26% involving a female and 4% involving a transgender female.

Racial Discrimination Complaint Investigations

The auditor also reviewed and analyzed CAT I complaint investigations alleging racial discrimination during an incident. This type of police contact generated 51 of the 613 complaint allegations examined or about 8%. About 73% of these complaint allegations involved discrimination against a Black person, followed by 24% Hispanic, 2% Asian, and 2% White. This means that during these particular incidents, discrimination against Black people was alleged at a rate over 12 times their share of the population of the City. Complaints alleged discrimination against Hispanics at rates approximately ¾ of their share of the population. Complaints alleged discrimination against Asians and Whites at rates of about 11% of their share of the population.

In these complaints, 92% of the racial discrimination allegations resulted in investigative findings of “unfounded,” while 8% resulted in findings of “not sustained.”

80% of the racial discrimination allegations involved male contactees, while 20% involved females. Of the females, ½ were transgender.

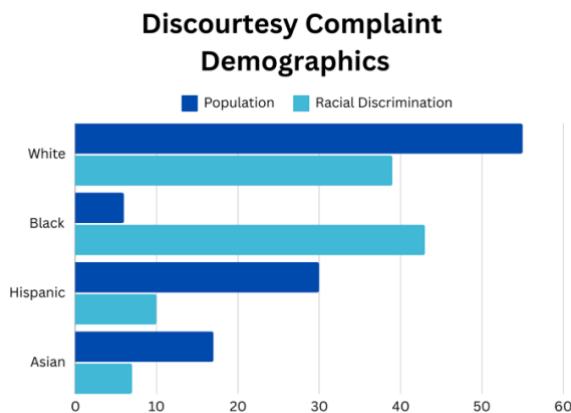


Discourtesy Complaint Investigations

The auditor also reviewed and analyzed CAT I and CATII complaint investigations alleging discourtesy during an incident. This type of police contact generated 87 of the 613 complaint allegations reviewed or about 14%. About 43% of these complaint allegations involved discourtesy against a Black person, followed by 39% White, 10% Hispanic and 7% Asian. This means that during these particular incidents, allegations of discourtesy against Black people were lodged at a rate over 7 times their share of the population of the City, while allegations of discourtesy by White people occurred at rates just under 71% of their share of the population. Allegations of discourtesy against Hispanics were lodged at rates 1/3 of their percentage of the population. Asians lodged such complaints about equal to their share of the population.

80% of discourtesy allegations resulted in findings of “unfounded,” followed by 8% “not sustained,” 6% “exonerated,” and 6% “sustained.”

57% of these allegations involved alleged discourtesy against a male contactee, while 43% involved females. These rates are relatively aligned with the population rates for gender, although slightly over-representative of males.



DEEPER AUDIT OF SELECT INTERNAL INVESTIGATIONS

Overview of Audit Conclusions

As mentioned previously, the initial review of 153 investigations allowed the auditor to draw certain conclusions about SDPD administrative investigations from 2020-2023. Based on impressions from this initial audit phase, the auditor chose a subgroup of 20 investigations to take a deeper look. In collaboration with the CPP Cabinet, the auditor focused primarily on investigations that raised significant questions that justified a deeper look and implicated issues seen in other investigations.¹² Nevertheless, because of this negative selection bias, the auditor cautions against using this section to draw firm general conclusions about complaint investigations conducted by the Department. Where a deeper audit in this section implicates issues spotted in multiple investigations not included in this group, the auditor will note that. Still, the issues discussed in this section deserve scrutiny, both by the Department and the CPP, and future complaint investigations should be examined closely to ensure that troubling issues do not recur.

This section will discuss significant issues spotted in auditing this group of 20 investigations and how they may relate to the whole group of 153 investigations. These deeper audits looked at several standard issues for each audit, along with specific issues raised by that particular type of investigation. Each deeper audit considered whether the investigation was complete, objective, and reached valid findings. Where conflict of interest, de-escalation, or body-worn camera issues were evident, they are noted and discussed.

As used in these deeper audits, “completeness” has several aspects. The first is whether the investigation collected and analyzed all evidence relevant and material to the resolution of the complaint allegations. The second considers whether the investigation pursued all potential issues raised by the evidence, regardless of whether the complainant specifically flagged them. Another is whether the investigation thoroughly analyzed the issues identified.

The issue of bias or objectivity in an investigation can be a sensitive one, both for complainants and subject officers, as well as for the investigators conducting the investigation. When this audit suggests bias in an investigation, it is not meant to indicate that an investigator has intentionally favored officer(s) over the community member(s) that were the subject of the incident. Instead, it suggests that the investigation failed to objectively collect, review, and analyze all aspects of the material investigative evidence. While this could be due to an investigator’s explicit bias in favor of officers, it could as easily be attributed to time pressures, unconscious biases attendant to working as an officer, or other less alarming reasons. Nevertheless, a lack of objectivity in complaint investigations harms officer accountability and community relations and should be addressed, whatever its root causes.

¹² The auditor flagged about 100 investigations in the initial review that would have benefited from a deeper review. However, the limitations of time and resources made prioritizing necessary, so the review was focused on 20 that raised the most significant questions. This neither suggests that further review of the remaining 80 flagged for review would have confirmed concerning problems, nor that they were issue free. It does suggest that concerning issues were not uncommon among these investigations.

Systemic Investigative Issues

Several issues evident from this group of investigations are common to many of the remaining 153 investigations that were not as deeply reviewed. Among them are examples of lack of completeness and bias in the investigation. Another recurrent issue is that, in the auditor's opinion, findings did not always reflect an objective consideration of the totality of the evidence. Some investigations featured conflicts of interest that may undermine confidence in their findings.

Completeness

Each of the 20 investigations subject to a deeper review was found incomplete in some way, a trend also observed in many of the 153 investigations reviewed. While not always leading to a different finding, this incompleteness cast doubt on the validity of the findings in some cases. Confidence in the integrity and credibility of complaint investigations is greatly enhanced when every effort is made to conduct a complete investigation.

In some investigations, no attempt was made to interview the person who was the subject of the incident with the officer(s) against whom a complaint was made. This absence left the investigator to rely solely on the statements of the subject and witness officers. Where community members were interviewed and gave accounts that conflicted with that of officers, there often was no attempt at a credibility analysis to determine which witness accounts best matched the other evidence. Instead, officer statements were often explicitly credited, and community member statements were implicitly discounted, sometimes with little or no explanation. When community members were interviewed, investigators made little effort to flesh out their account of the incident with follow-up questions on specific factual issues. Where inconsistencies were evident in officer statements, investigators rarely attempted to question the officer about them or to analyze the import of those discrepancies. Instead, such differences generally were ignored.

Multiple complaints involved evidence suggesting possible violations other than those directly alleged, but these sometimes were neither investigated nor analyzed. (There were also other examples where investigators identified, analyzed, and sustained issues the complainant did not raise.) Indirect evidence relevant to allegations was sometimes not even addressed by the investigative analysis, especially when racial discrimination or discourtesy allegations were involved. In some cases, witnesses identified material evidence that was never obtained or reviewed in the investigation.

In addition, some investigators reframed allegations in ways that distorted the complainant's concerns and the consequent analysis. For example, in one investigation subject to a deeper review, the contactee complained about the officer keeping his gun at low ready while approaching his vehicle for a traffic stop for tinted windows. This complaint was not analyzed as a potential use of force violation nor any other type of violation, although it was the main focus of the complaint. In another investigation, the complainant alleged dishonesty by the subject officer to justify a citation issued in retaliation for the complainant's non-deferential attitude toward the officer. The investigator reframed the allegation to be one about illegal detention, a

narrower question that avoided issues of potential racial discrimination and retaliation. While it sometimes makes sense for an investigator to consider underlying issues included in a complainant's allegations, that does not justify ignoring other issues specifically called out in the complaint. These issues also occurred in investigations that were not subject to deeper review.

Lack of Objectivity in Investigations

Similarly, each of these 20 investigations exhibited examples of a lack of objectivity in collecting and analyzing (or not collecting and analyzing) evidence relevant to the allegations. These issues were also present in many of the 153 investigations subject to general review. This is not to say that the investigations lacked any objectivity or that the examples of bias necessarily changed the finding reached in the investigation in all cases where it existed. Still, the integrity and credibility of the investigative process depend in part on ensuring it remains objective, and every effort should be made to adhere to that goal. The examples of bias were varied in this group of investigations.

Investigator questioning of officers sometimes lacked objectivity in multiple ways. In several instances, investigators questioned subject officers in a directive "yes or no" manner, leading them to responses that supported negative findings on the complaint allegations. In one instance, an investigator allowed a subject officer's attorney to make substantive statements on his behalf multiple times during the investigative interview in clear violation of department procedures governing such investigations. The attorney was also repeatedly allowed to ask the subject officer extremely leading questions, soliciting an affirmative answer designed to support negative findings on the allegations.

Investigators sometimes asked no questions about inconsistencies or ambiguities between officer statements and BWC video evidence. Investigators never asked questions about whether an officer accused of racial discrimination would have taken the same action if the contactee was of another race. Nor did they ask for examples of times the officer took similar enforcement action in a White neighborhood or with a White contactee. In some examples, the investigator ignored evidence supporting the allegations and entirely credited an officer's account in conflict with that evidence. In fact, in one case, a BWC video directly refuted an officer's statement, but the investigator never even mentioned that video in the resulting Investigation Report.

Finally, in multiple investigations, the investigator's questioning of the subject officer was so curt, directive, and short in duration that it was obvious the investigator was not approaching the process with curiosity and an objective frame of mind. Rather, it appeared the investigative interview was a formality to be conducted quickly so that the investigation could be concluded.

Excessive Force Investigations

Unreasonable or excessive force was one of the most common allegations among the 153 complaints and 613 allegations reviewed, accounting for about 20% of those allegations. It is also considered among the most serious types of allegations that can be investigated by a police department and has significant impacts on policed communities. The manner in which such

allegations are investigated and analyzed can have a significant impact on perceptions of a department's legitimacy among the communities in which a department often patrols.

Several common issues were identified by the deeper review of SDPD investigations of excessive force that were reflected in the larger group of 153 investigations. Overall, these investigations tended to use a "cookie cutter" approach where the exact text from the SDPD use of force procedures was cited verbatim up front, emphasizing the discretion allowed to officers facing potentially threatening situations. Seldom was there any reference to SDPD Policy 1.04, which limits an officer's discretion in a meaningful manner: "[m]embers shall not use more force than is *reasonably necessary* under the circumstances." [*Emphasis added.*] Having framed the force review in this manner, the analyses in these investigations focused on the more nebulous and accommodating concept of general "reasonableness," wholly ignoring the concept of necessity in the use of force. Such an analytical focus tends to allow greater discretion by an officer than what SDPD's policy allows and thus is not entirely consistent with that policy.

One of the most common issues in these investigations was a need for a complete analysis of the instances of force about which complaints were made. In many of the investigations, the investigator considered the force used from an overall perspective rather than looking in detail at the totality of circumstances at the point when a particular instance of force was used by an officer. Such a generalized approach is contrary to Fourth Amendment case law, which requires each instance of force to be separately justified under the circumstances as they existed at that moment.

For example, a level of force may be reasonable when a suspect is actively resisting, but once that resistance subsides, that same level of force may become unreasonable. In addition, some investigations grouped force used by several officers and analyzed reasonableness from that group perspective rather than looking at what each officer reasonably perceived at the moment that officer used force. Again, this is not an appropriate approach.

In addition, the seminal Supreme Court case analyzing the reasonableness of force, *Graham v. Connor*, sets out multiple criteria to examine in deciding whether any particular use of force was reasonable. An analytically sound review of an allegation of unreasonable force would carefully review and apply the *Graham* criteria to the totality of the particular facts present when that particular officer used a particular force. However, such a particularized factual analysis of force was relatively rare in the investigations reviewed in this group, despite the Department's procedures setting out many of these criteria to guide uses of force.

Also, it was extremely rare for any force investigation in this group to focus on and analyze whether there was a reasonable opportunity for an officer or officers to utilize de-escalation techniques to avoid the necessity of force. This is despite the requirement since 2021 in state law that "officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible." In addition, SDPD Procedures since 2020 have required officers to attempt to use de-escalation techniques where feasible to avoid the need for force.¹³ Every complete

¹³ SDPD Procedure 104, Section V.B., provides that "[b]efore approaching a subject, when given the time and opportunity, and based on the totality of circumstances, officers shall use de-escalation strategies or techniques consistent with Department Procedure 1.55, De-escalation, to persuade the subject to voluntarily comply or to

force investigation of an incident after January 1, 2021 should at least discuss why it was not feasible to employ de-escalation techniques prior to resorting to force.

There were exceptions reviewed by the auditor that demonstrated that investigators in the SDPD Internal Affairs Division were aware of and could capably analyze force allegations in a complete and appropriate manner. Indeed, in one force investigation, the investigator did a model job of reviewing the particularized facts and applying the relevant criteria in finding that an officer's use of force was not compliant with policy in certain respects, yet was compliant in others. And those few investigations that employed a use of force expert within the Department tended to be of higher quality than those that did not. So, the question left unanswered is why an appropriate analysis of force did not happen in every instance. The Department would be well advised to emulate its force investigations that modeled these approaches in every case.

Racial Discrimination Investigations

Racial discrimination was another common allegation among the 153 complaints and 613 allegations reviewed, accounting for about 8% of those allegations.¹⁴ It is also considered among the most serious types of allegations that a police department can investigate, with significant impacts on policed communities. The manner in which such allegations are investigated and analyzed can significantly impact perceptions of a department's legitimacy among the communities in which a department patrols.

Several common issues identified by the deeper review of SDPD investigations of racial discrimination were reflected in many of the larger group of 153 investigations. The most prevalent issue observed in both groups was how the allegation was interpreted and analyzed. Investigators tended to conceptualize racial discrimination as consisting of direct, overt, and intentional officer statements or actions based on the race of the contactee. When questioning subject officers and officer witnesses, investigators asked a standard series of questions about whether the subject officer mentioned the race of the contactee or used derogatory or racially charged terms during the incident. Officers were commonly asked if they took the enforcement action due to the suspect's race, and the investigator simply accepted their negative response without further questioning about contextual facts that may have supported the allegation.

Such an approach misses many potential facts that can illuminate whether implicit bias may have affected an officer's decision-making. It also tends to artificially narrow the scope of the Department's policies and procedures on racial profiling. SDPD Policy 9.31 provides that officers "shall not base any enforcement action, *in whole or in part*, on race, color, ethnicity,

reduce the need to use a higher level of force." Procedure 1.55 further elucidates the procedures to be used by officers in such de-escalation attempts.

¹⁴ The auditor believes there may be a relationship between allegations of racial discrimination and allegations of discourtesy in some cases. This review revealed that in many cases, the complainant alleging discourtesy felt seriously disrespected by an officer's statements or actions during an incident. For this reason, the number of incidents in which a complainant alleged discrimination may not fully represent the number of incidents where the complainant felt racial bias was present. Whether or not this is true, it would be wise for an investigator to question complainants alleging discourtesy about whether they felt the officer's discourteous actions or statements may have reflected racial bias.

religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, while conducting any law enforcement activity, including stops and detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.” [Emphasis added.] Thus, the policy forbids enforcement action that is even partly based on the race of a contactee. It does not include any requirement that an officer must consciously consider race in making an enforcement decision. Thus, where there is indirect evidence suggesting that an officer may be unconsciously influenced by the race of the person contacted in making enforcement decisions, that evidence should be fully explored and analyzed. This aspect is generally missing from SDPD investigations of racial bias allegations.

Nor is it sufficient to conclude that an enforcement action was justified by objective evidence of a criminal act if the same or similar action would not have been taken for a person of a different race under those circumstances. Yet, many of these investigations reached a finding based mainly on evidence that there was a criminal act without going further. None of these investigations included an exploration of an officer’s pattern or practice of enforcement in similar situations. Such an exploration can have significant probative value in considering whether racial bias may have influenced an officer’s enforcement decisions in a specific incident.

For example, suppose an officer stops Black drivers for car equipment violations but not White drivers. In that case, there is at least some indirect evidence that enforcement action may be based in part on racial bias, implicit or explicit. Similarly, when an officer’s actions with a Black male contactee seem perhaps overly aggressive, questions about whether the officer would take the same approach with a White contactee may be probative. Also, follow-up questions seeking examples of cases in which an officer took that approach with a contactee of another race can be helpful. These types of investigatory queries did not occur in these investigations.

Finally, allegations of racial bias may involve subtle relational dynamics, including a tendency by perpetrators of biased actions to be blind to their racial impacts. This can be especially true when a power imbalance exists, such as in police enforcement encounters. In almost every investigation of racial bias reviewed by the auditor, the officer made the statement or took the action alleged by the complainant. The dispute, then, was over the meaning of those officer statements and actions. The complainant believed they revealed racial bias, while the officer believed bias played no part in their decision. In such a situation, a finding of “unfounded” is wholly inappropriate. An “unfounded” finding generally is defined by police departments to mean that the evidence showed that the alleged conduct did not occur and this is the definition used by SDPD.

Yet, most racial discrimination allegations in these investigations (92%) resulted in findings of “unfounded.” The more appropriate finding for investigations that conclude that alleged acts or statements were made but were not discriminatory is “exonerated.” In addition, a finding of “unfounded” signals to the complainant and the broader community that their perceptions of discrimination at the hands of officers are discounted and not valued. This approach can be perceived as a second form of disrespect by those who experienced perceived discrimination by

officers of the Department and took the step of making this known to the Department. The auditor therefore suggests that this approach be carefully reconsidered.

Automobile & Pedestrian Stop Investigations

This audit also focused on investigations in which the initial contact came from an officer proactively stopping an automobile driver or pedestrian for perceived minor violations of law, such as equipment violations or jaywalking. These stops typically preceded the officer detaining the driver, cuffing the detainee, and then patting down the detainee and their vehicle. If an arrest of the detainee was made, the car was typically towed, and a complete inventory search of the vehicle was conducted. About 22% of such stops resulted in charges for illegal firearms and/or narcotics.

As noted earlier, the auditor concluded that many, if not most, of these stops constituted “pretextual stops.” Indeed, the officers interviewed in these investigations sometimes described their assignment as making as many stops as possible to detect and remove illegal guns or other contraband from the streets of San Diego. The data show that almost all of these stops focused on Black and Hispanic community members, with the greatest percentage stopping Black people (87%).

Such stops often left contactees concluding that they experienced racially motivated, illegal detentions and searches. Due to the great discretion that Fourth Amendment case law allows an officer to cuff then pat down a stopped person, such actions are often legal and constitutional, even if they may harm community relations. However, officer discretion in these situations is not unlimited. Fourth Amendment case law requires that to detain a person, the officer must observe particularized facts sufficient to create a “reasonable suspicion” that a crime has occurred or is about to occur. Being in a high-crime area during the stop is not sufficient to create a “reasonable suspicion.”

To justify patting down a detainee for weapons, an officer must observe particularized facts sufficient to create a “reasonable suspicion” that this particular detainee is armed with a weapon and dangerous. A hunch based on recent weapons arrests in the area is not sufficient to create such “reasonable suspicion.” This is equally true whether the pat down is conducted on the detainee or the detainee’s automobile. In several of these investigations, there was serious doubt whether there were facts sufficient to justify an officer’s claim that they had a “reasonable suspicion” that the detainee was armed and presented a danger to the officer or others. Instead, it seemed that some officers believed that they were preemptively entitled to conduct a pat down based simply on their subjective concerns for officer safety in a stop. This is not the Fourth Amendment standard for constitutional policing in this situation.

In both the investigations more deeply reviewed and in other investigations of stops alleging illegal detentions and searches, the officers mainly presented general evidence of recent illegal gun seizures and/or gang violence in the area of the stop and an uncooperative attitude of a detainee, as justifications for their pat down of both the detainee and the vehicle. While the officers may have offered more particularized evidence if asked, this generally did not occur. Without such particularized facts, a pat down is not constitutional.

In addition, several of these stops resulted in allegations of racial discrimination by complainants. The racial disparities in these stops alone should raise (but not fully answer) the issue of whether racial profiling was implicated in the stops, detentions, and searches of these individuals. However, that information was never reviewed nor considered by investigators in reaching findings of “unfounded” for most of these allegations.

Discourtesy Investigations

Department investigations of discourtesy allegations suffered from some of the same challenges as those for racial discrimination. This similarity makes some sense, as both allegations relate to perceived disrespect by an officer toward a person contacted by the officer. Where the contactee is Black or Hispanic and feels the officer’s words or actions were disrespectful, the question of racial bias may be implicated, even if not alleged. Discourtesy allegations represented 13% of all allegations made in these 613 allegations in 153 complaints. 80% of discourtesy allegations resulted in findings of “unfounded,” followed by 8% “not sustained,” 6% “exonerated,” and 5% “sustained.”

Similar to discrimination cases, most discourtesy allegations revolved around specific statements and behavior of officers that the complainant found disrespectful. In nearly all these cases, the alleged statements and/or actions were confirmed. The crux of the matter was the interpretation of these statements or actions as discourteous or courteous. The complainants perceived them as discourteous, while the officers believed otherwise. While the determination of discourtesy is inherently subjective, the auditor’s review revealed multiple cases where the complainant’s allegations were supported by a preponderance of the evidence, yet were not sustained.

In most cases where discourtesy was investigated, the investigator took a narrow view of what was considered “discourtesy” and focused solely on the illustrative examples offered in the Department’s Courtesy policy. The Department policy on courtesy begins with a simple statement that officers “shall be courteous to all persons.” It then enumerates a series of actions officers shall and shall not do. Investigations of discourtesy allegations focused solely on the prohibitions enumerated in the policy and reached negative findings if the officer’s actions did not violate those enumerated prohibitions. These prohibitions focus mainly on offensive or contentious statements by officers, leaving aside even obviously disrespectful behaviors. This investigative focus artificially circumscribed the analysis of whether the subject officer exhibited discourtesy.

The frequent use of “unfounded” findings in these investigations may send a disheartening message to complainants and the community. It may suggest that their experiences of disrespect and lack of common courtesy are being discounted and undervalued. When the evidence confirms the alleged statements and/or behavior of an officer, a finding of “unfounded” is usually not appropriate. If the evidence shows the statement or behavior was courteous, then the appropriate finding would be “exonerated.” The use of an “unfounded” finding in these circumstances can be perceived as a second form of disrespect by those who have experienced perceived disrespect by officers and made this known to the Department. The auditor therefore recommends a reevaluation of this approach.

Conflict of Interest Issues in Investigations

Two of the investigations that received a deeper review revealed “conflict of interest” issues that deserve attention. In one investigation, the subject officer was a close relative of a member of the Department command staff. In another investigation, one of the subject officers was a high-ranking supervising officer. Both of these investigations featured interviews of the subject officers that were highly deferential to the officer and failed to explore conflicts between the subject officer’s statements and other available evidence. Each of the investigations was also significantly incomplete in multiple ways. Each of them also exhibited bias in favor of the subject officer.

Putting an investigator, who is a sergeant, in a situation where they must make findings in a complaint against a person of significantly higher rank in their employing organization creates an inherent conflict of interest for that investigator. The investigator must worry that an adverse finding against the high-ranking officer could negatively affect their career within the Department. In addition, such a situation creates a significant appearance of conflict for the investigator, undermining public trust in the investigative process. The auditor recommends that the Department strengthen its policies and practices to avoid such situations in the future. Should a complaint be filed against a high-ranking SDPD official, perhaps the best option is to refer such an investigation to an outside investigator with a sound public reputation for integrity and independence.

Miscellaneous Discrete Investigative Issues

Several of the investigations given a deeper review revealed issues that are not necessarily systemic, but nevertheless deserve attention and are mentioned briefly here. Many, if not all, of these issues could be grouped under the category of “conduct unbecoming” of an officer, as they involved officer actions that tended to bring the Department into disrepute or otherwise interfered with its ability to accomplish its missions. Yet, each was a discrete example of how conduct could have that public effect. Each of these is summarized in a bullet point, below.

- During a sexual assault investigation, the officer explored contradictions in the victim’s statements as if the victim were a criminal lying to escape accountability, rather than a victim affected by trauma. The victim withdrew from cooperation with the investigation. No allegations were sustained by the complaint investigation.
- An officer posted allegedly offensive comments about a high-profile police killing on a social media platform. This behavior was excused as encouraging public discussion of an important public issue. No allegations were sustained by the complaint investigation.
- An officer wore Thin Blue Line attire while investigating a crime, causing offense to the victim’s family. No violations were sustained by the complaint investigation.
- An officer claimed a criminal gang affiliation in a public exchange with a community member. This behavior was excused as an attempt to de-escalate the situation. No allegations were sustained by the complaint investigation.
- An officer was alleged to have driven recklessly in violation of traffic laws despite not responding to an emergency call for service. Similar allegations were made in other complaints. No allegations were sustained by the complaint investigations.

- An officer was alleged to have violated a valid custody order by allowing the transfer of custody of a child. Neither the officer nor the investigator correctly assessed the validity of the order, nor consulted a legal expert. The officer exhibited gender bias in favor of the father. No allegations were sustained by the complaint investigation.
- Officers in several complaints were alleged to have shown disrespect and made denigrating comments about community activists. No allegations were sustained by the investigations of these allegations.

FINDINGS: DEPARTMENT POLICIES, PROCEDURES, AND PRACTICES

Perhaps the most critical aspect of ensuring officers police the community in ways that conform to community expectations is including the community in creating policies to guide those efforts. For this reason, one of the first pillars of the Final Report of the President’s Task Force on 21st Century Policing (“President’s Report”) focuses on this process in discussing how a law enforcement agency can build and maintain trust and legitimacy with the public. The President’s Report states, “In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures.” This is particularly important with regard to policies of significant focus and attention by the public. Several policy areas fall into this category.

Policies that guide the investigation of misconduct complaints are essential to ensure that such investigations reflect integrity and respect for the public. Policies on officer use of body-worn cameras help ensure that officers use these tools appropriately and that video is available for investigations of both crime and officer misconduct, helping build trust with the community. Policies on the use of force and biased policing typically are of great importance to the community. And this review has revealed that policies guiding officer courtesy are important in San Diego. In these areas, SDPD should employ a robust process for community members and leaders to provide input in shaping policies that guide local policing, with the CPP playing a role in that process.

This review has identified Department policies and practices that could benefit from review and discussion, and the auditor has made findings about the policies mentioned above. These findings are gathered here for ease of review. In general, the auditor has limited findings to issues that arose in connection with this review of SDPD investigations and has not conducted a broader review of Department policies and practices. The one exception is in the area of complaint investigation policies, as that process is foundational to an effective accountability system. Therefore, this review includes findings on the complaint investigation system that go beyond issues identified by specific investigations reviewed.

SDPD Complaint Investigations System

FINDING 1: The Department policy allowing civilian complaints to be designated as “informal” allows a complaint not to be fully investigated and no finding made. State law does not support this process, which could create police pressure on civilian complainants to avoid a full investigation. The clearest way to address this is to eliminate the “informal” complaint category from the Department’s complaint investigation process.

FINDING 2: The warnings and instructions to complainants about possible consequences of filing a false complaint on the Department’s complaint forms make the complaint process less than welcoming and suggest negative consequences could follow from filing a complaint. The Department could greatly lessen this deterrent effect by eliminating these warnings and instructions from the complaint forms.

FINDING 3: The Department’s policy on intake of complaints is unclear as to whether supervisors on the scene of an incident should handle a citizen complaint or call another supervisor to handle the intake of the complaint. Clarifying this policy could eliminate confusion by complainants seen in some investigations.

FINDING 4: The Department’s policy on civilian complaints allows SDPD to conduct a preliminary analysis of the allegations and evidence and determine that the complaint is “frivolous” and therefore need not be fully investigated. Such complaints result in no investigation report and no formal findings and are not referred to the CPP for review. This provision of SDPD’s policy is not consistent with the requirements of state law. The Department could comply with state law by requiring all complaint allegations to be fully investigated as long as sufficient evidence exists.

FINDING 5: The Department does not provide complainants with official findings on complaints when it designates the complaint as “informal” or “miscellaneous,” despite state law requiring a finding for every complaint allegation lodged. SDPD should provide complainants with a written notice of findings for any complaint filed.

FINDING 6: While the Department’s policy requires complaint investigators to make repeated efforts to contact and interview complainants throughout the investigation, this is not always done in practice. The Department should consider whether its training is sufficient to ensure that an investigator makes every reasonable effort to interview every complainant. Doing so will help ensure that the investigator fully understands the nature of the complaint and the complainant’s view of the available evidence and convey to the complainant that the agency takes all complaints of employee misconduct seriously.

FINDING 7: The Department’s complaint investigators do not always obtain and preserve all evidence that may be material to an investigation. SDPD should promptly secure and analyze all evidence material for a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation.

FINDING 8: The Department’s complaint investigators do not always use neutral, open-ended questioning of witnesses, nor fully explore the witness’ knowledge and perceptions of the incident being investigated. SDPD should conduct all investigative interviews using neutral, open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. The investigator should encourage the witness to remember and provide all of the information they may be aware of.

FINDING 9: The Department’s complaint investigators seldom conduct explicit credibility analyses of witness statements, including when there are internal discrepancies within those statements and with other conflicting evidence. SDPD should use investigative interviews to clarify discrepancies within a witness’s statements and between the witness’s statement and other evidence collected by the investigator. Where there are such conflicts, the investigator should conduct a credibility analysis to help resolve those inconsistencies objectively.

FINDING 10: The Department's complaint investigators sometimes do not fully explore the allegations of a complainant who exhibits mental health issues. Where a complainant exhibits potential mental health issues, the investigator should endeavor to broadly interpret the allegations of their complaint so that potentially valid issues are not missed due to the misperceptions of the complainant.

FINDING 11: The Department's complaint investigation system in practice allows Department officials to investigate an incident in which they may have a personal, familial, or professional interest. SDPD should ensure that its policies, practices, and training specific to complaint investigations prohibit any officer or Department official from acting in an investigative or decision-making role for any complaint investigation that may implicate their personal, familial, or professional interests.

FINDING 12: SDPD should consider outsourcing complaint investigations to a trained and experienced civilian investigator in circumstances of Department conflicts of interest, in order to provide neutrality, eliminate actual and perceived conflicts of interest, and to provide the public greater confidence that such investigations are objectively conducted.

FINDING 13: The Department typically misses its internal deadlines for completing complaint investigations set out in policy. SDPD should develop a realistic work plan to meet the Department's written internal deadlines to complete an investigation and periodically conduct a systemic audit of investigations for deviations from those deadlines.

FINDING 14: The Department's complaint investigators sometimes do not fully identify and review all issues relevant to the incident. SDPD should periodically conduct a systemic audit of its complaint investigations to ensure that all relevant issues are identified and investigated to the greatest possible extent.

FINDING 15: The Department's complaint investigation system allows investigators to close an investigation with a memo and no findings where the investigator concluded there was insufficient evidence to identify a subject officer. The Department should consider auditing complaints that have been closed out with a memo and not fully investigated due to insufficient evidence identifying a subject officer to assess whether the initial investigation to identify the officer was sufficient and whether the investigation was appropriately closed.

FINDING 16: The CPP should consider auditing SDPD investigations periodically to help ensure that all relevant issues are identified and investigated to a reasonable extent.

FINDING 17: The CPP should consider a focused audit of SDPD investigations to determine the circumstances under which allegations may be excluded from full investigation and analysis by the Department and whether this was appropriate.

Use of Force

FINDING 18: The Department’s complaint investigators usually do not explicitly analyze force according to state and federal legal requirements that force be objectively reasonable and the minimal amount necessary to achieve a lawful objective. Although SDPD Policy 1.04 requires that force used by an officer be “reasonably necessary,” that criterion is not explicitly employed by investigators in evaluating complaints of excessive force. Nor do investigators measure the reasonableness of force against the multiple criteria of federal case law governing force. The Department’s use of force policy, procedures, and training should emphasize that any force used must be objectively reasonable and the minimal amount necessary to accomplish a lawful policing objective. (See SDPD Policy 1.04; California Penal Code Section 835a; *Graham v. Connor* (1989) 490 US 386).

FINDING 19: The Department’s Use of Force policy requires that an officer use only that force that is reasonably necessary under the circumstances, but fails to define “necessary.” SDPD should consider clarifying its Use of Force (UOF) policy and procedure to include a definition of “necessary” as it applies to force. One option would be to define it as meaning that a lower level of force (or no force) likely would not have achieved the lawful objective in question.

FINDING 20: The investigations reviewed suggest that there are racial disparities in force used against suspects by Department officers. SDPD’s UOF policy should provide that, overall, force used by the Department should comply with principles of fair and unbiased policing, so that there is no disparate rate of force used against any demographic category of persons under similar circumstances.

FINDING 21: The Department’s complaint investigators tend to evaluate force by examining the overall circumstances of the incident, rather than conducting a particularized assessment of the changing factual circumstances as the incident unfolds. The UOF policy should provide that officers and force investigators must continually re-assess the situation to evaluate the necessity of force or continued need for force as circumstances change.

FINDING 22: The investigations reviewed suggest that Department officers approach incidents with a “command and control” orientation that may not adequately consider a suspect’s emotional or cognitive ability to understand and comply with commands during a very stressful incident. Special consideration should be given in both UOF policy and training for vulnerable populations, including those for whom there is evidence or suspicion of mental/emotional/behavioral health challenges, those under the influence of drugs or alcohol, pregnant women, the elderly, those who are cognitively divergent, and the young. Where feasible, this should include efforts at de-escalation for these populations.

FINDING 23: The investigations reviewed suggest that Department officers often rely first on verbal and physical escalation to gain compliance with their orders. Officer training under the UOF policy should emphasize increased reliance on good communication skills to minimize escalation of emotional reactivity and the need for use of force.

FINDING 24: The investigations reviewed suggest that Department officers sometimes make no attempt to use de-escalation techniques before moving to force options to gain compliance with orders. Likewise, complaint investigators usually do not evaluate an officer’s failure to attempt de-escalation in assessing a complaint of excessive force. The Department’s UOF policy, procedure, and training should require that evaluation of use of force incidents include whether the officer exhausted other reasonable alternatives before resorting to the force used and whether de-escalation techniques were reasonable and employed.

FINDING 25: The Department’s complaint investigators tend to evaluate force used by reference solely to standards of “reasonableness” and without reference to the concept of “necessity.” Likewise, investigations seldom analyze force according to the individual factors laid out in federal case law. SDPD should consider training its complaint investigators that every UOF investigation must refer to its UOF policy, which forbids any force beyond what is “reasonably necessary” to the situation. In addition, each analysis of UOF should separately analyze each instance of force and employ the factors laid out in the seminal Supreme Court case of *Graham v. Connor* to guide such an analysis.

FINDING 26: The investigations reviewed suggest that when officers use force beyond that which is reasonably necessary under the circumstances, other officers do not intervene to attempt to halt such uses of force, as required by policy and law. The Department may wish to consider undertaking Active Bystander training to shift the culture of the organization toward embracing such interventions by team members.

FINDING 27: The CPP should consider regularly auditing Department UOF investigations to ensure that the above relevant standards are appropriately employed in those investigations.

Bias-Free Policing

FINDING 28: The investigations reviewed suggest that Department officials believe that the Department’s policy prohibiting discrimination in policing applies only to express, intentional discrimination and not to practices reflecting implicit or systemic biases. The Department should consider clarifying its policy by including illustrations of the limited circumstances in which demographic characteristics of individuals may be considered in policing decisions, such as discretionary stops.

FINDING 29: The investigations reviewed suggest that Department officials may rely on remote associations between a person and a racial or ethnic street gang to justify detention and other enforcement actions that require reasonable suspicion of criminal activity to be constitutional. SDPD should carefully delineate when association with or membership in a racial or ethnic street gang is a justified consideration for the use of racial or ethnic characteristics in an enforcement action.

FINDING 30: The Department should consider providing specific examples in its policy where bias in policing may arise, such as decisions to search a person or a vehicle, and explain that such practices are not allowed. The Department may wish to incorporate such criteria around bias in scenario-based training and incorporate them in its evaluations for promotional opportunities.

FINDING 31: The Department’s policy on bias in policing should include a mandate that officers intervene when they see an example of biased policing and report any observed violation of the policy.

FINDING 32: The investigations reviewed suggest that complainants may allege only discourtesy in situations where bias may influence the level of respect displayed by an officer toward a suspect. Where facts alleged in a complaint suggest potential bias may be involved in an incident, the complaint investigation should separately analyze possible biased enforcement, whether or not the complainant alleges it.

FINDING 33: The investigations reviewed suggest that Department officials believe that the policy prohibiting bias in policing applies only to express, intentional discrimination and not to practices reflecting implicit or systemic biases. SDPD should emphasize in its training for officers and complaint investigators that discrimination allegations do not depend solely on direct evidence of explicit discriminatory animus to be well founded, but can be shown through indirect evidence of enforcement actions influenced by implicit bias.

FINDING 34: The Department should consider committing the agency to an anti-racist operational philosophy that seeks to counter the influences of racism in society, generally, on officers’ actions. Such an approach would go beyond simply prohibiting intentionally biased behavior and strive to eliminate disparate racial/ethnic impacts of SDPD’s policing strategies, policies, practices, and training. It might also involve offering support to other government programs that seek to address the social and economic causes of crime in under-resourced neighborhoods.

FINDING 35: The Department should consider incorporating racial disparity data in early warning systems that indicate issues that suggest the need for additional training or closer evaluation of officer conduct.

Proactive Policing Stops

FINDING 36: The investigations reviewed suggest that Department officials believe that generalized facts, such as presence in a “high-crime area,” rather than specific facts particular to a suspect may support reasonable suspicion to detain a person. Through its policies, procedures, and training, the Department should ensure that officers understand the requirements for constitutional policing with regard to reasonable suspicion to detain a person.

FINDING 37: The investigations reviewed suggest that Department officials believe that generalized facts, such as recent shootings in a high crime area, rather than specific facts particular to a suspect, may support reasonable suspicion to pat down a suspect or vehicle. Through its policies, procedures, and training, the Department should ensure that officers understand the requirements for constitutional policing with regard to reasonable suspicion to pat down a person or their car.

FINDING 38: The investigations reviewed suggest that some officers believe that a person’s loose association with members of a criminal street gang may create a reasonable suspicion of

criminal activity by that person or of the person being armed and dangerous. The Department should carefully consider when and if a person's association with criminal street gang members can contribute to such reasonable suspicions. The Department should also clearly define what the terms "associate" and "member" mean in this context and what evidence is sufficient to justify using those terms.

FINDING 39: The investigations reviewed suggest that the Department's continued use of a vigorous, proactive policing approach focused on minor offenses in neighborhoods populated primarily by racial or ethnic minorities negatively impacts relationships with those communities. The Department should carefully consider whether an aggressive enforcement approach for alleged minor criminal infractions is consistent with its commitment to community-oriented, unbiased policing.

FINDING 40: The Department should consider clarifying that any proactive, focused enforcement strategy for minor violations must be implemented without discriminating on the basis of the demographic characteristics of those targeted by the enforcement.

FINDING 41: The investigations reviewed suggest that Department officers sometimes use their discretion to tow vehicles without allowing the driver to have a friend or family member take custody of it. The Department should carefully consider whether it should allow officers the discretion to tow vehicles without first offering a driver the opportunity to have another licensed driver take custody of their vehicle.

Policing of First Amendment Demonstrations

FINDING 42: The investigations reviewed suggest the Department's policing of protest activity does not always prioritize the protection of First Amendment rights of demonstrators. In addition, while the Department's current policy acknowledges that one goal of police involvement in First Amendment activity is to facilitate the safe exercise of First Amendment rights, the policy places that goal behind others that emphasize preserving the peace, preventing criminal activity, and controlling traffic. SDPD should ensure that its policies, procedures, practices, and training addressing First Amendment protests include a clear commitment to prioritize the protection of the First Amendment Rights of demonstrators to freely assemble and express themselves in public spaces.

FINDING 43: The investigations reviewed suggest the Department's policing of protest activity does not adequately emphasize de-escalation prior to resorting to lawful force. The Department's policies, procedures, practices, and training on policing First Amendment demonstrations should emphasize de-escalation as a core approach to effective crowd management.

FINDING 44: The Department's policies, procedures, practices, and training addressing First Amendment protests should include a general limitation on force to circumstances where it is necessary to avoid harm to officers or others or significant destruction of property.

FINDING 45: The Department's policies, procedures, practices, and training addressing First Amendment protests should include limits on the amount and type of force that officers may use

to prevent the destruction of property. One option would be to include a general limit on force to those options unlikely to cause serious bodily injury or worse. The current policy includes very fine-grained guidance on multiple force options that, without more general guidance, may prove too complex for effective application under the stress of a rapidly unfolding event.

FINDING 46: The investigations reviewed suggest the Department's policing of protest activity may too readily resort to mass arrests of protesters without discrimination as to whether protesters are involved in criminal activities. The Department's policies, procedures, practices, and training addressing First Amendment protests should include a prohibition on mass arrests, limiting arrests to individuals for which individualized probable cause exists to justify an arrest.

FINDING 47: The investigations reviewed suggest the Department's policing of protest activity has too readily moved to dispersal of a crowd alleged to be unlawfully assembling. The Department's First Amendment Protest Policy should include limits on crowd dispersal to circumstances that immediately threaten public safety, or where widespread violence or significant property destruction is occurring or reasonably appears imminent.

FINDING 48: The investigations reviewed suggest the Department's policing of protest activity has not included an effective method of ordering the dispersal of an unlawfully assembled crowd. However, it does appear that the Department's current First Amendment Protest Policy includes adequate requirements that dispersal orders be delivered in such a manner that they are audible to an entire crowd and are repeated before efforts to enforce the dispersal order. The policy also requires that the audible announcement include realistic avenues for the crowd to disperse.

Body-Worn Cameras

FINDING 49: The investigations reviewed strongly suggest that officers need to have a clearer understanding of when BWCs should be activated and remain activated, and thus BWCs sometimes miss parts of incidents about which complaints are made. The Department should require officers to activate their BWC at the moment it is clear that they will interact with a member of the public in any official capacity.

FINDING 50: Once BWC are activated, the Department should require officers to maintain their BWC in an active state until the officer's participation in the incident has ceased and the suspect is no longer in the presence of the officer.

FINDING 51: The investigations reviewed strongly suggest that the use of a buffer in BWC recording where no audio is captured results in the loss of crucial evidentiary information that may be crucial in resolving investigative issues. The Department should consider setting all cameras so that they capture audio during the pre-event buffer period.

FINDING 52: The Department's BWC policy should include a notice that the failure to activate a BWC where required, and without a reasonable explanation for such failure, is considered serious misconduct and will result in discipline.

Courtesy

FINDING 53: The investigations reviewed strongly suggest that Department officers and complaint investigators erroneously consider the illustrative examples of the Courtesy Policy to be the only actions proscribed by that policy. The Department should clarify that the examples offered in its Courtesy policy are exemplary only and that investigators should examine allegations of discourtesy against the full definition of discourtesy, however it may be exhibited by officers. The Department also should consider offering a full definition of “discourtesy” in its policy.

FINDING 54: The Department’s policies, practice, and training should ensure that Department officials understand that the examples offered in its Courtesy policy are illustrative only and that officers are expected and required to avoid discourteous statements and behaviors, regardless of whether they meet the specific criteria of the policy’s examples.

Miscellaneous Findings

FINDING 55: The investigations reviewed suggest that some officers respond to community members recording incidents with a range of unnecessary negative actions, such as making disrespectful comments, aggressively insisting that they move far away, and taking away their cell phones. The Department should consider additional guidance and training to its officers and complaint investigators that the recording of incidents by community members is legal and constitutional and that officers should make no negative comments nor make negative assumptions about the motivations of community members engaged in such behavior. Nor should officers take a phone from a community member absent some indication that it will likely be used as a weapon.

FINDING 56: The investigations reviewed suggest that some officers may not fully understand a trauma-informed approach to conducting sexual assault investigations. The Department should ensure that its sexual assault investigators are fully trained in and understand best practices in approaching such investigations in a trauma-informed manner.

FINDING 57: The investigations reviewed suggest that officers and complaint investigators do not fully appreciate how their behavior on social media may bring into question their integrity and professionalism and that of the Department. The Department should consider adopting a clear policy on employees’ use of social media or other public statements or behavior, both on and off duty, and clarify that behavior that negatively impacts the Department’s mission, function, or capabilities constitutes conduct unbecoming and is a serious instance of misconduct. The Department should also clarify that this includes an employee’s speech.

FINDING 58: The Department should consider giving detailed guidance to officers concerning their use of profiles on dating or sex apps or websites and how Department policies, procedures, or guidelines may affect such use.

FINDING 59: The investigations reviewed strongly suggest that the Department’s current policies, practices, and training are inadequate to avoid injury to all suspects during cuffing. The

Department should consider amending its policies, procedures, and training on cuffing detainees and arrestees so that due consideration is given to body factors that may affect the comfort and experience of the person cuffed. For example, cuffs may seem relatively pain-free when a suspect's arms are pulled back for the cuffing process, but a suspect's large body size or tight shoulder muscles may cause the cuffs to cut into their wrists once the officer releases the tension pulling back their arms.

FINDING 60: The Department should consider the benefits of a “trauma-informed policing” approach, both for its officers and the community members they encounter during incidents. Training to understand and accommodate the effects of trauma on both officers’ and community members’ emotional and cognitive abilities has great potential to increase positive outcomes and avoid further trauma.

LAW OFFICE OF
JERRY THREET

CIVILIAN OVERSIGHT
CONSULTANT,
ATTORNEY

San Diego CPP
Independent Review
of San Diego Police
Department
Complaint
Investigations

Introduction & Background

▶ **Jerry Threet**

- ▶ Public attorney for over 30 years and civilian oversight specialist since 2016.
- ▶ Founding Director of Sonoma County IOLERO, Civilian Oversight of Sheriff (2016-2019)
- ▶ Investigator of alleged police misconduct: Richmond, CA (2020-2024)
- ▶ SF Deputy City Attorney (2005-2016) –SFPD Tenderloin District
- ▶ Contract Attorney w/ N. Cal. District U.S. Attorney Robert Mueller (1997-1999)
- ▶ Criminal & Civil Trial Attorney, U.S. DOJ (1987-1991)
- ▶ Briefing Attorney w/ Presiding Judge, Texas Court Criminal Appeals (1988)

Origins of Independent Review

- ▶ 2020 Ballot Measure enacted with 75% vote in favor.
- ▶ CPP Established over 3-year period.
- ▶ Large backlog of investigations not reviewed developed.
- ▶ PROJECT: contracted in March 2024 by CPP for *independent review* of San Diego Police Department complaint investigations.

Independent Review Methods

Initial Review

- 153 Complaint Investigations (651 Allegations)
- Review all written records
- Analyze trends and correlations
- Identify investigations for deeper review

Deeper Review

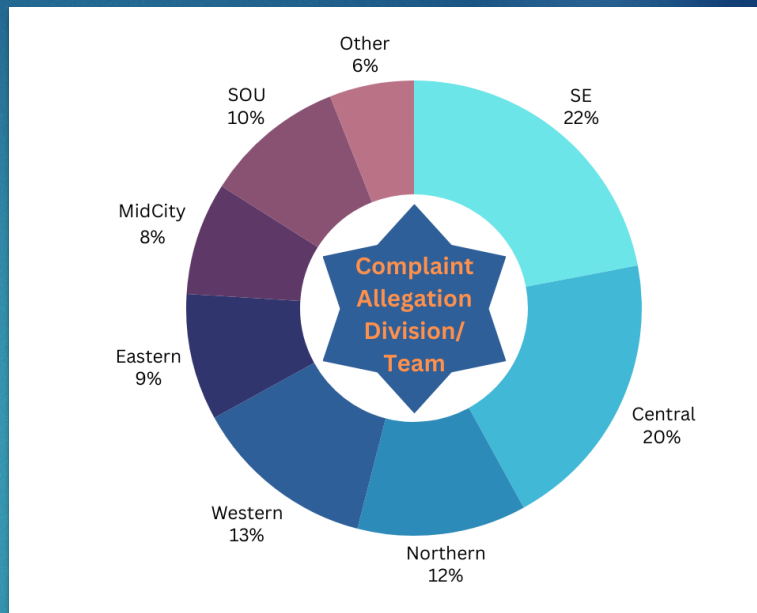
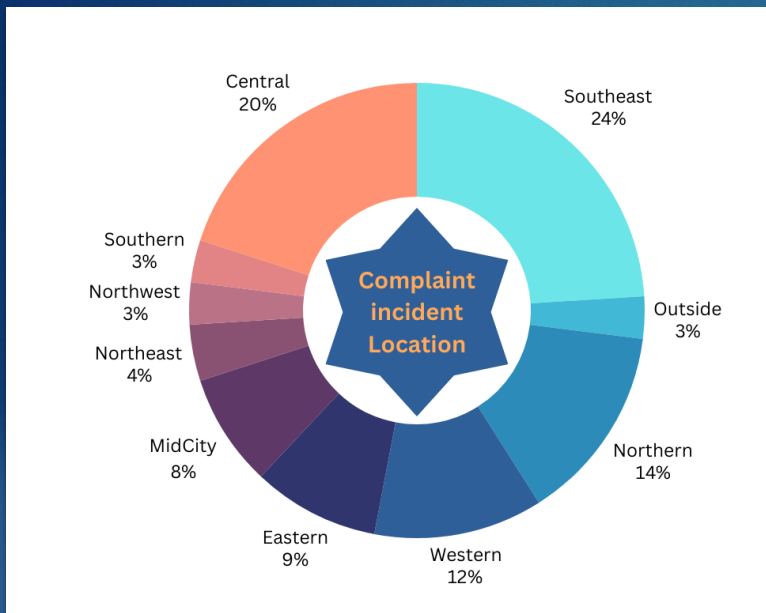
- 20 Investigations (103 Allegations)
- Review BWC Video, interviews of witnesses, subject officers
- Analyze systemic issues:
 - Objectivity
 - Completeness
 - Validity of findings
 - Conflict of interest

Findings & Recommendations

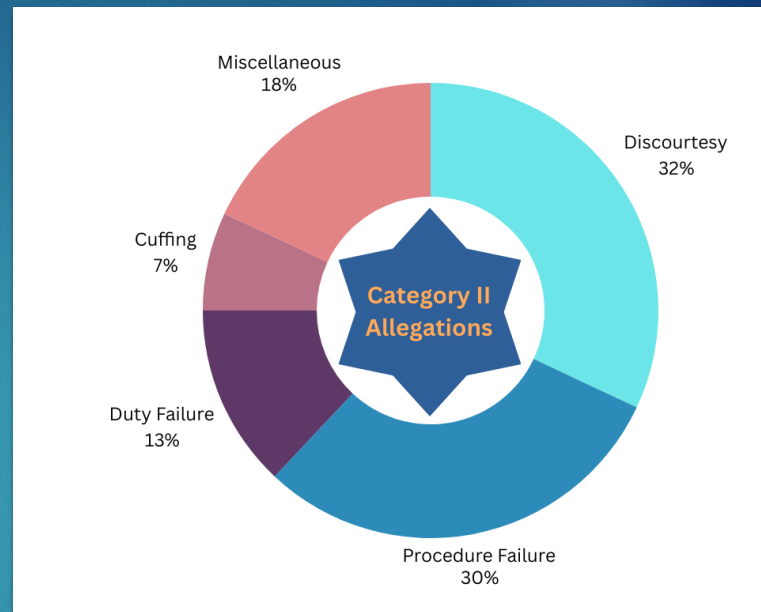
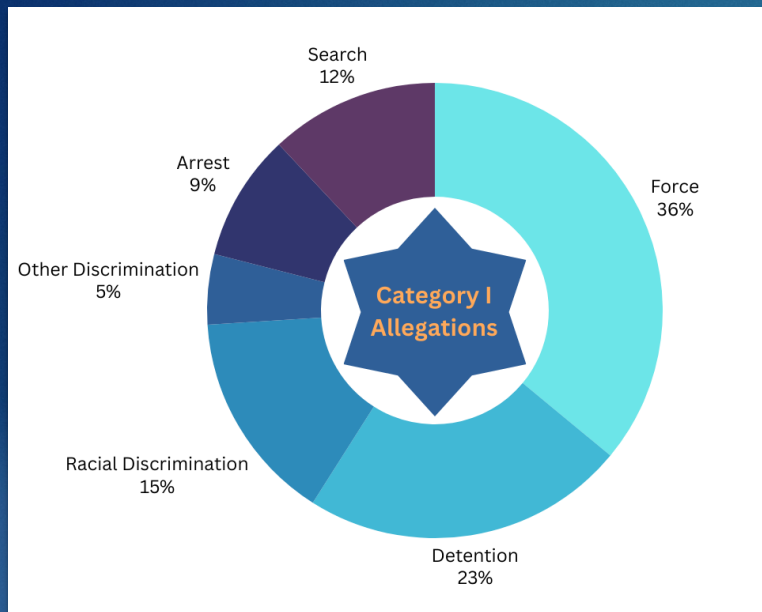
- Complaint investigation
- Use of force
- Bias free policing
- Proactive stops
- Policing 1st Amend. Protests
- Body worn cameras
- Courtesy
- Miscellaneous

Overall General Review

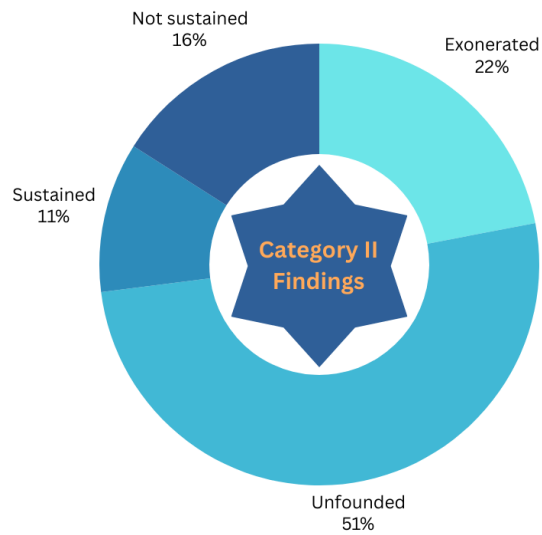
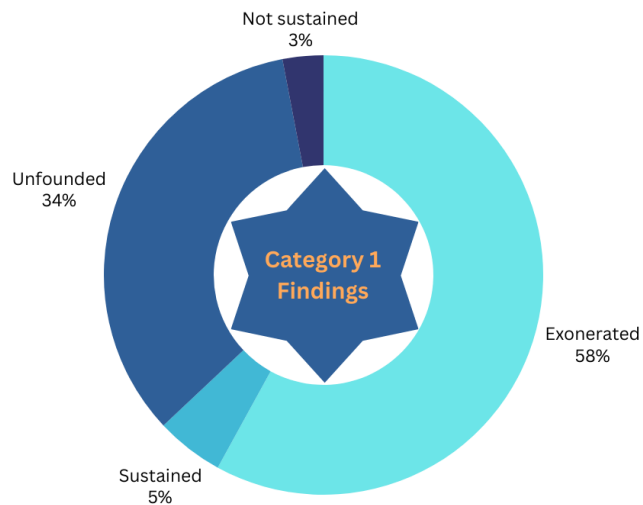
- ▶ 153 complaint investigations spanning 2020-2023
- ▶ Reviewed all written records, some videos, interviews
- ▶ Analysis of internal consistency, completeness, timeliness
- ▶ Compiled & analyzed data for trends, correlations
- ▶ Identified investigations for deeper review & analysis



Complaint Location & Division

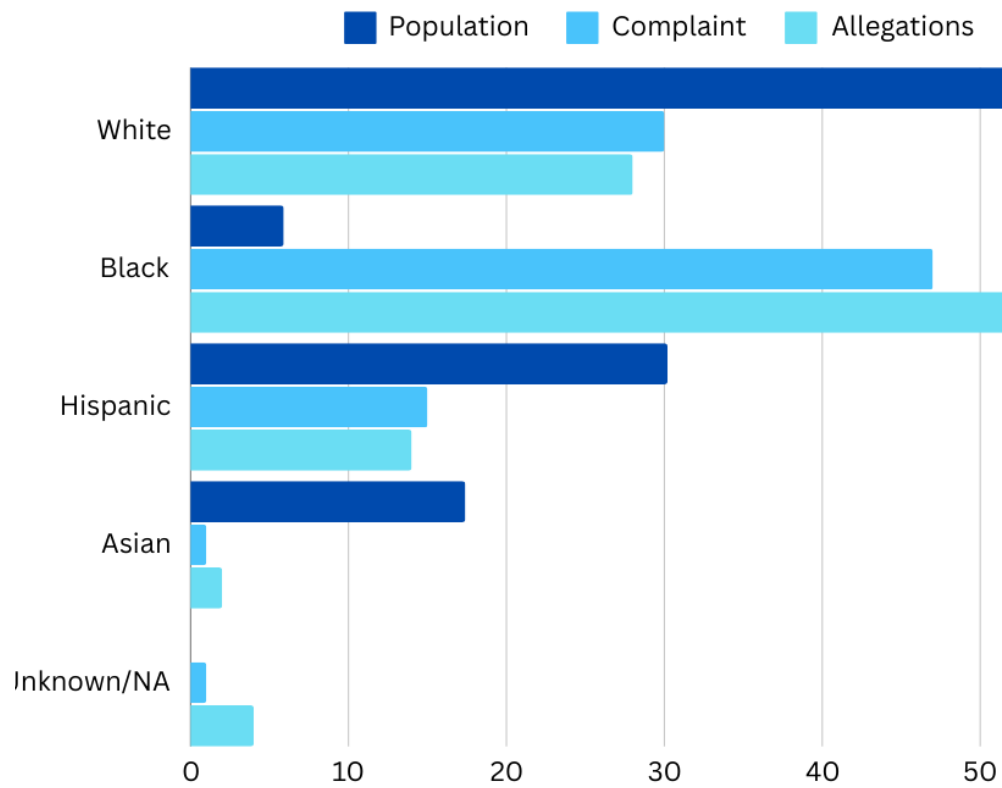


Allegations Made by Complainants

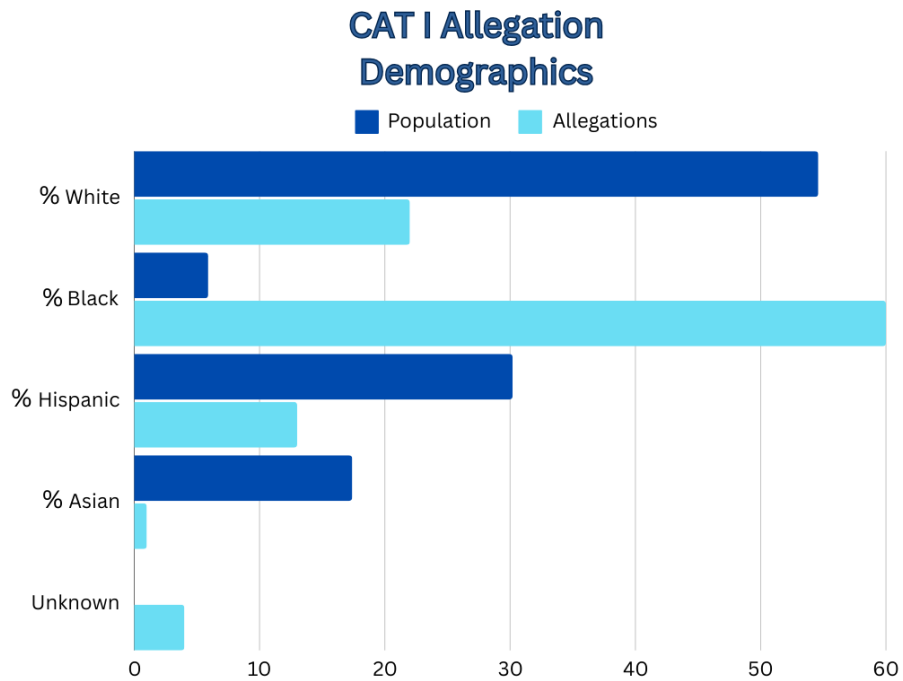


SDPD Investigative Findings

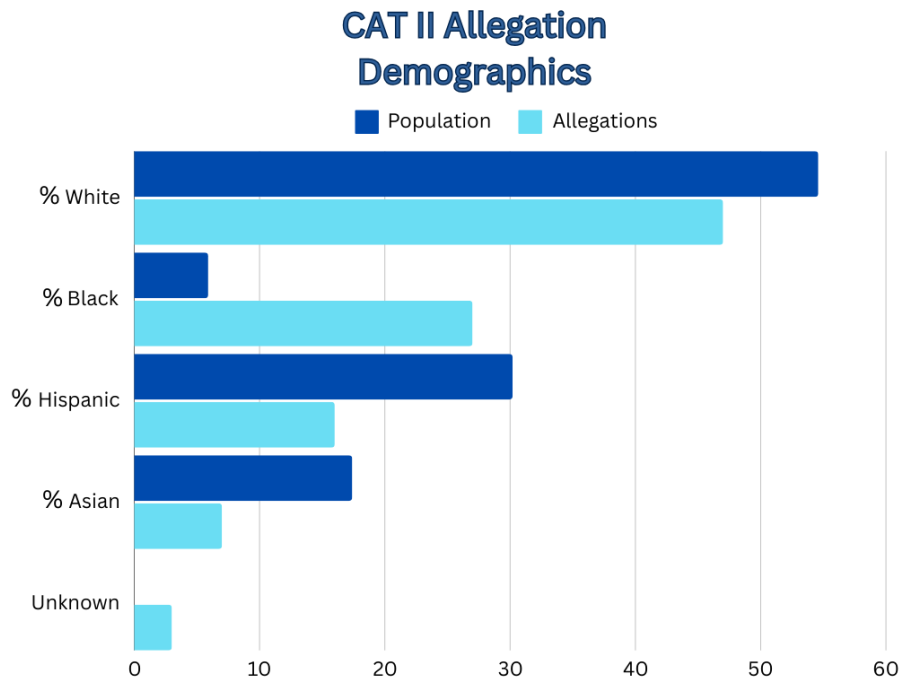
Complaint Demographics



Complaint
Demographics

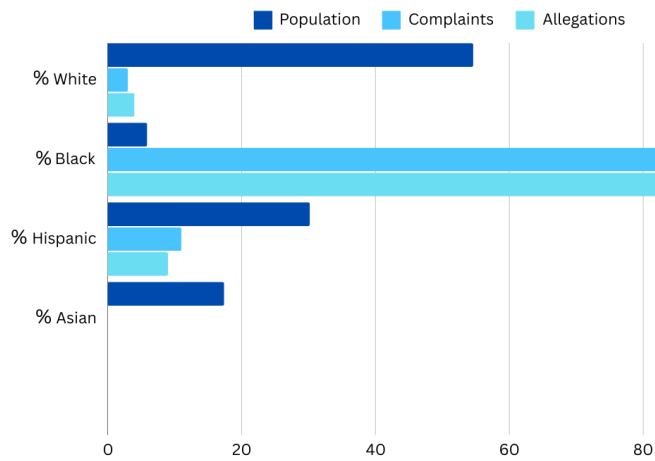


CAT I Allegation Demographics

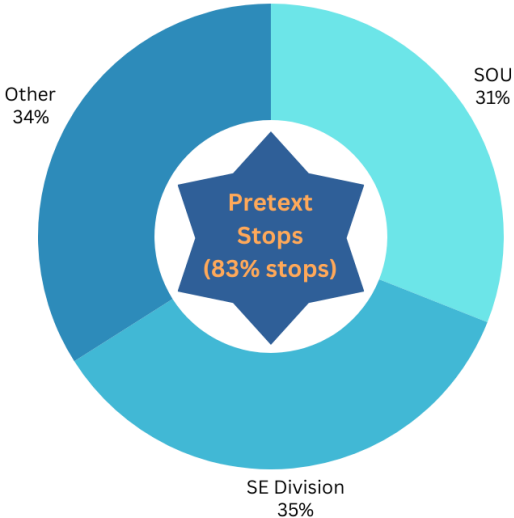
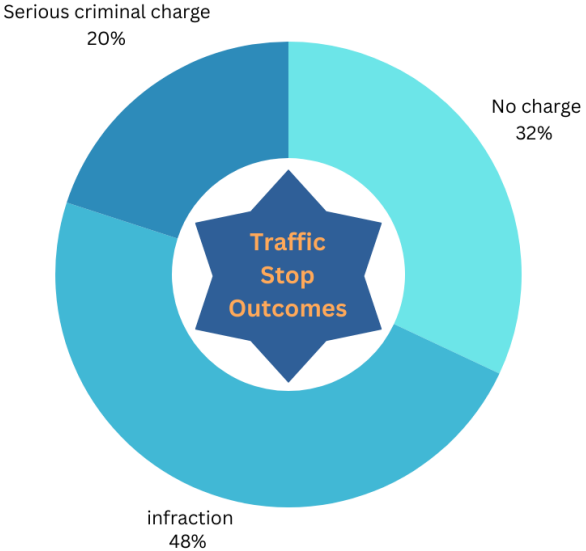


CAT II Allegation Demographics

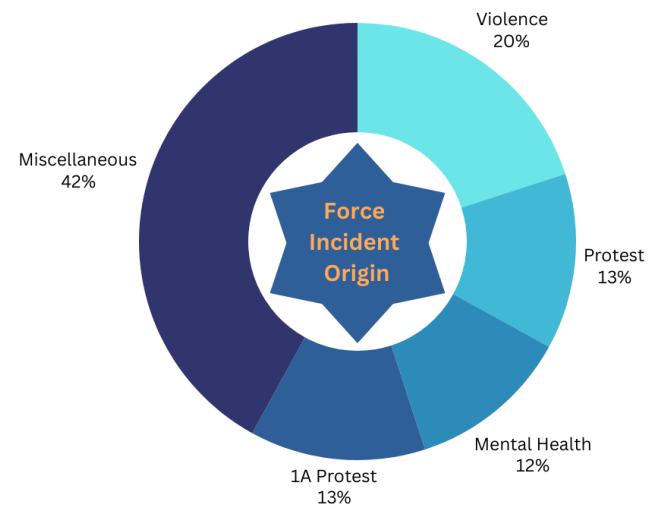
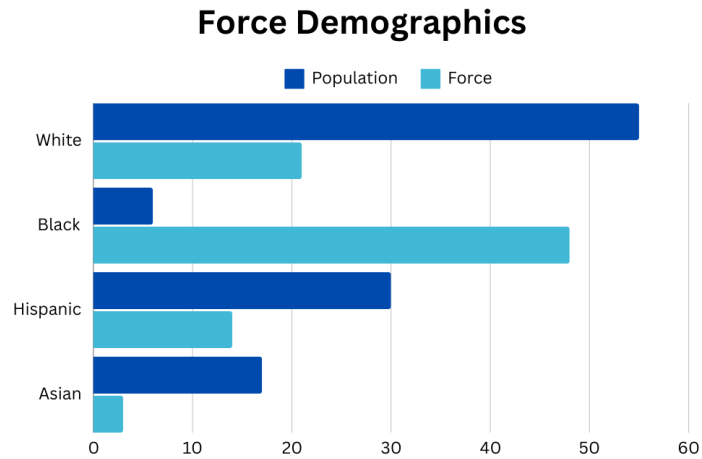
Traffic Stop Demographics



Traffic & Pedestrian Stops

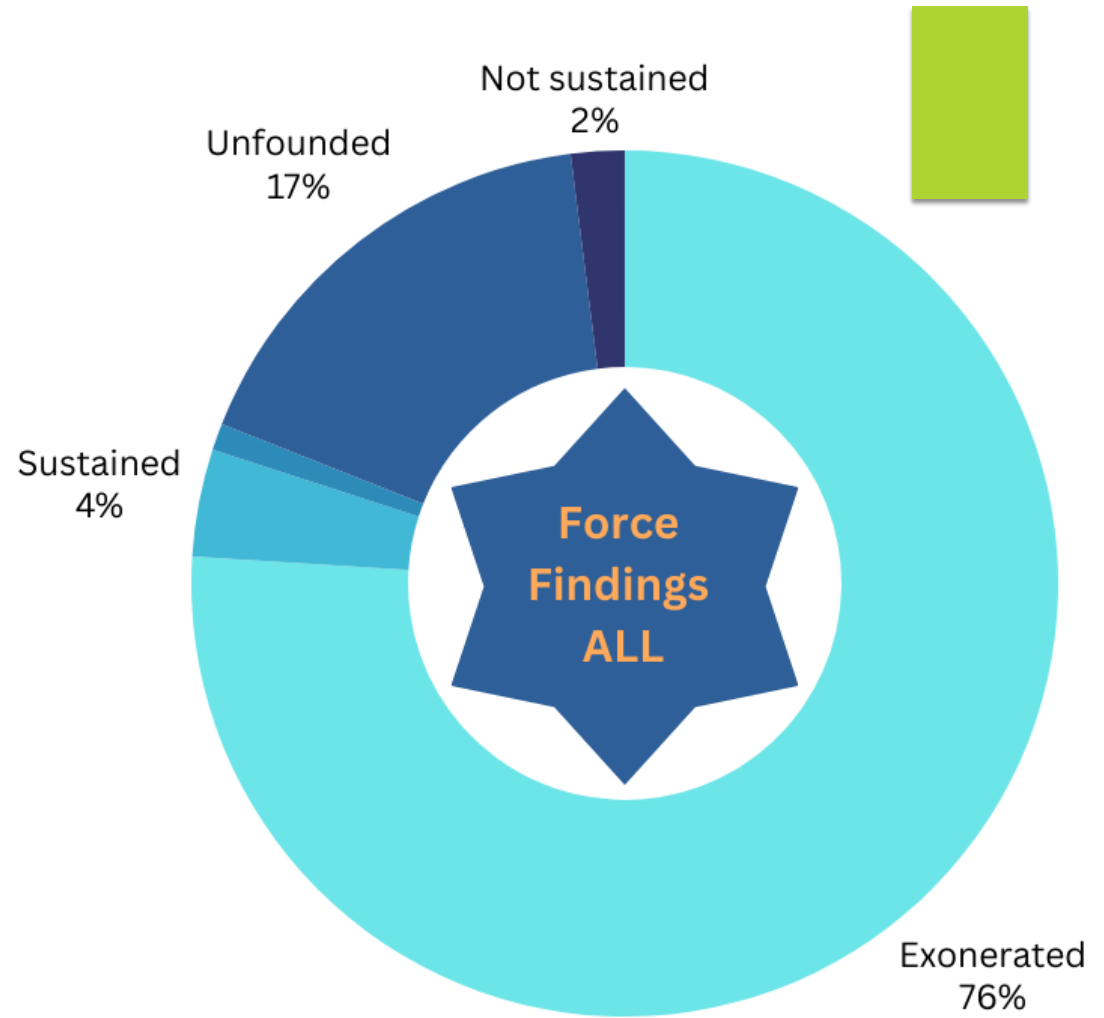


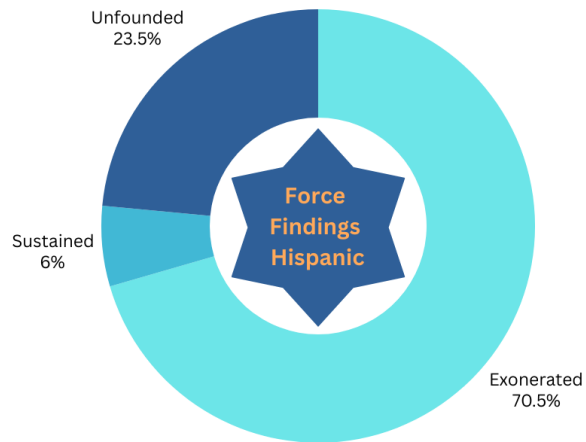
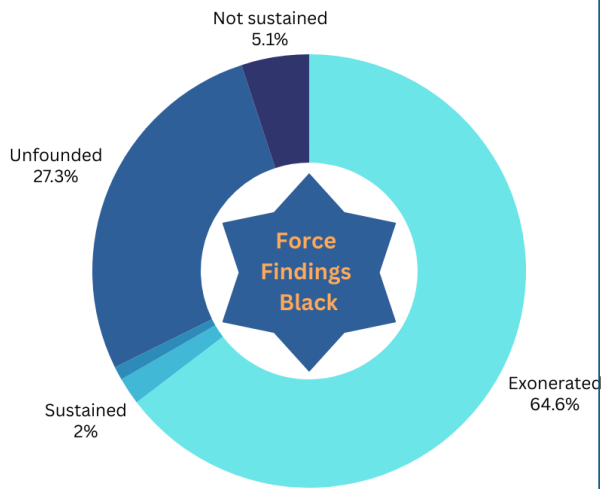
Traffic & Pedestrian Stops



Excessive Force Investigations

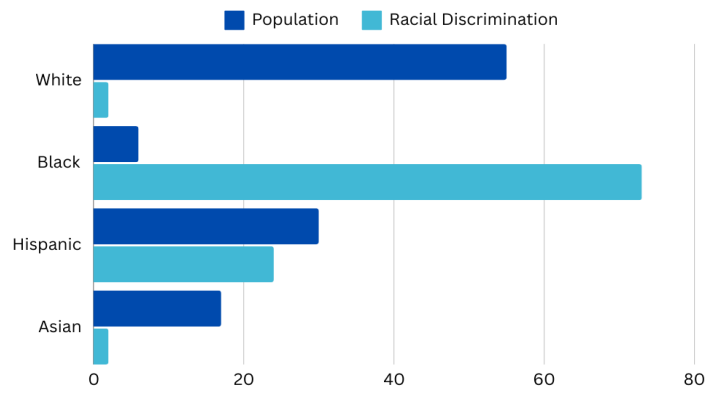
SDPD Force Findings



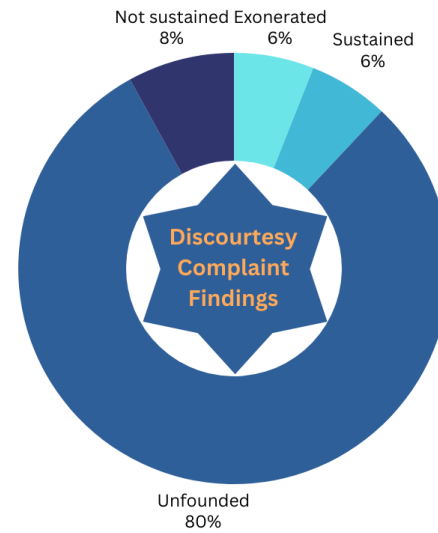
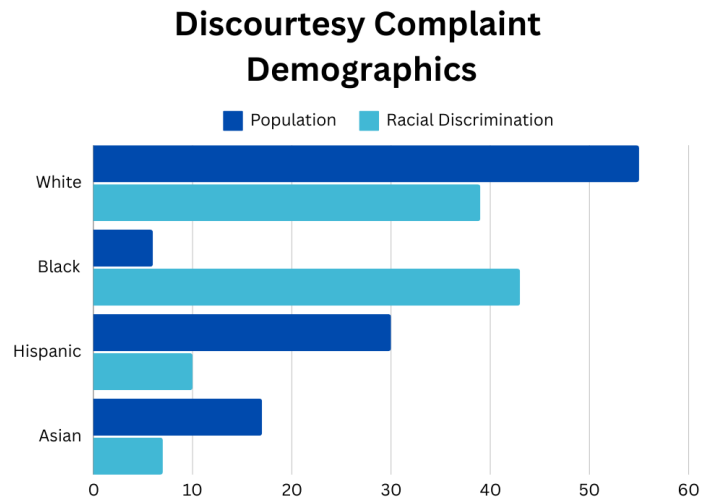


SDPD Force Findings (by race)

Discrimination Complaint Demographics



Racial Discrimination Investigations



Discourtesy Investigations

Deeper Audit of Select Investigations

- ▶ Completeness
- ▶ Lack of Objectivity
- ▶ Force Investigation Deficiencies
- ▶ Discrimination Investigation Deficiencies
- ▶ Traffic Stop Investigation Deficiencies
- ▶ Discourtesy Investigation Deficiencies
- ▶ Conflicts of interest in investigations
- ▶ Miscellaneous Issues



Completeness of Investigations

Who interviewed

- Subject of incident not interviewed

Officer Interviews

- No questions exploring inconsistencies

Complainant interviews

- Full interview to gather all known information

Credibility analyses

- Failure to evaluate credibility of witness statements

Indirect evidence

- Ignoring indirect evidence

Unalleged violations

- Ignoring unalleged potential violations

Reframing

- Ignoring allegations specifically alleged

Objectivity in Investigations



Interview Questions

- Leading questioning patterns that suggest answers

Avoiding questions

- Failing to ask officers about inconsistencies/ambiguities

Ignoring Evidence

- Failing to consider evidence supporting allegations

Credibility analyses

- Failure to evaluate credibility of witness statements

Indirect evidence

- Ignoring indirect evidence

Officer Attorneys

- Allowing officer attorney to suggest answers

Pro forma questioning

- Brief, directive officer interviews of little value

Excessive Force Investigations

“Reasonably necessary”

- Failure to use policy criteria for force analysis

Generalized analysis

- Failing to conduct a particularized analysis of facts

Graham v. Connor

- Failing to analyze key criteria for constitutionality

De-escalation

- Ignoring analysis of feasibility/use of de-escalation

Exceptions Prove the Rule

- Rare example of complete force analyses

Racial Discrimination Investigations

Explicit intent

- Focused on officer conscious intent

Implicit bias

- Failed to analyze evidence of implicit bias

Indirect evidence

- Failed to consider indirect evidence of bias

Criminal charge outcome

- A criminal charge often substituted for analysis

“Unfounded”

- 92% of findings, usually inappropriate result

Proactive Stop Investigations

Significant Disruptions

- Detain > Cuff > Search person > Search car > Tow

Pretextual

- Focused on contraband, not minor violations

Significant Race Disparity

- 87% of these stops were of Black people

Community perceptions

- Hostile, racialized, unconstitutional search & arrest

“Reasonable suspicion”

- Generalized facts insufficient for detention, pat-down

Discourtesy Investigations

Narrowing of Criteria

- Focused on illustrative policy examples, only

Discourteous Behavior

- Ignored obvious disrespectful behaviors

Cookie cutter approach

- Same questions soliciting yes/no response

Focus on subject of incident

- Implicitly excusing officer by blaming suspect

“Unfounded”

- 80% of findings, usually inappropriate result

Conflicts of Interest

Familial relationship

- Inherent conflict where familial relationship

Subject officer rank

- Inherent conflict to investigate superior officer

Appearance of conflict

- Significantly undermines public trust

Overview of Findings

Investigations

- Fortify Objectivity & Completeness

Use of Force

- Fortify Analysis in Force Reviews

Bias Free Policing

- Fortify analysis in reviewing bias allegations

Proactive Stops

- Seek to eliminate racially disparate impacts

Protests

- Prioritize facilitation of free expression

BWC

- Simplify rules for consistent operation

Courtesy

- Fortify analysis in reviewing courtesy allegations

Investigation System Findings

"Informal" Investigations

- No findings made in conflict with law
- Investigate & make findings

Witness Interviews

- Utilize open-ended questioning designed to elicit all relevant information

Credibility Analyses

- Where there is conflict between witnesses or with other evidence, conduct explicit credibility analyses

Conflicts of interest

- Prohibit conflicts of interest based on personal, familial, or professional interests

Timeliness

- Develop a realistic policy for timely completion of investigations, a workplan to meet it, and audit for compliance

Insufficient evidence closures

- Conduct systemic audits of complaints closed for insufficient evidence

Use of Force Investigation Findings

"Reasonable necessity"

- Analyze force according to this criteria, as required by law and SDPD policy

Graham v. Connor

- Analyze force according to this criteria, as required by law and SDPD policy

Racial Disparities

- Require force used to comply with principles of bias-free policing

Particularized analysis of totality of facts at time of force

- Shift from generalized analysis of force to particularized approach

De-escalation

- Require force evaluation to analyze whether de-escalation feasible & tried

Bias-free Policing

"Racial Profiling"

- Clarify when demographic characteristics may be used in enforcement actions

Gang "Association"

- Clarify when association with gang justifies enforcement actions

Officer Intervention

- Require officers to intervene & report when others exhibit bias

Early Warning System

- Incorporate racial disparity data in early warning systems for officers

Proactive Policing Stops

Detention of suspects

- Ensure officers understand requirements for “reasonable suspicion” to detain a person

Pat-downs of suspects, vehicles

- Ensure officers understand requirements for “reasonable suspicion” to conduct pat-down

Proactive policing strategy?

- Consider whether strategy is consistent with community-oriented, unbiased policing

Towing vehicles

- Allow vehicle owner to have their car driven away by friends or family

Protest Policing

Facilitate Expressive Rights

- Ensure facilitation of peaceful protest is the first priority of SDPD's policies, training, & practice

De-escalation

- Emphasize de-escalation as core approach to crowd management during protests

Use of Force

- Generally limit to where necessary to avoid bodily harm to persons or significant property destruction

Crowd Dispersal

- Limit to imminent threat to public safety

Body-worn Cameras

Activation

- **Require activation at moment its clear will interact with member of the public**

Deactivation

- **Maintain activation until participation in incident ceased or person no longer in officer presence**

Buffering of video

- **Set all BWC to capture audio during pre-event buffer period**

Accountability

- **Clarify that failure to activate where required is serious misconduct**

Courtesy

Full Definition in Policy

- **Fully define discourtesy in policy and training**

Illustrative examples

- **Clarify that examples in policy are illustrative and all officer actions will be measured against the full definition of “discourtesy”**

Miscellaneous

Community video recording

- Ensure officers understand community members may record incidents
- Prohibit negative comments or removal of phones by officers absent evidence of use as a weapon

Sexual Assault Investigations

- Ensure investigators are adequately trained in trauma-informed investigative skills

Social Media

- Provide clear guidance to officers on appropriate use of social media

Cuffing

- Ensure policy, training, & practice gives due consideration to large body size or tight muscles that may create undue tension on cuffs & cause injury

THANK YOU



QUESTIONS?



DISCUSSION?